

FTA

FEDERAL TRANSIT ADMINISTRATION

Comprehensive Review Guide Fiscal Year 2017



U.S. Department of Transportation
Federal Transit Administration

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SUMMARY OF CHANGES

Overall

- Combined the Triennial Review and State Management Review guides into one Comprehensive Review guide.
- Added references to Fixing America's Surface Transportation (FAST) Act.
- Incorporated references to the fiscal year (FY) 2016 Master Agreement.

Financial Management and Capacity

- Expanded table delineating Single Audit threshold to include the threshold applicable to the regulation in effect for the audit conducted (question 6).
- Added table delineating the types of entities required to submit cost allocation plans (CAP) or indirect cost rate proposals (ICRP) and the regulatory reference and related cognizant agency to which the CAP or ICRP is to be submitted (question 16).
- Removed trigger, "there is no multi-year financial plan or it is insufficient" and deficiency code as the requirement only applies to New Starts Projects and Metropolitan Planning Organizations. However, if the grantee fails to demonstrate financial capacity as a result of other information gathered, the corrective action will be to submit a new or revised multi-year financial plan (question 26).

Technical Capacity

- Combined Program Management, Grant Administration, and Project Management from the State Management Review into one review area, Technical Capacity.
- Updated guidance relating to Section 5339 program management plans to reflect FAST Act changes (questions 15-20).
- Added question 25 and associated guidance regarding subrecipient agreement content as required by 2 CFR Part 200.
- Added questions 36-38 regarding State tracking of Section 5310 funds by area (rural, small urban, and large urban) and transfers of Section 5310 funds.
- Incorporated new guidance on reporting intervals for Emergency Relief grants (question 60).
- Updated Associated Transit Improvement discussion to incorporate FAST Act changes (questions 69-70).

Maintenance

- No significant changes

Americans with Disabilities Act (ADA)

- Incorporated references to FTA Circular 4701.1, "Americans with Disabilities Act (ADA) Guidance."
- Added guidance regarding content of documentation of eligibility for ADA complementary paratransit service (question 39).
- Added guidance regarding requirement in FAST Act related to ADA complementary service fares for Access Services, Inc.
- Added guidance regarding ADA paratransit visitor eligibility (questions 40 and 41).
- Deleted questions regarding ADA complementary paratransit telephone capacity (questions 38 and 39 of the FY 2016 Triennial Review guide).
- Added guidance regarding the appeal process for no-show suspensions (question 51).

Title VI

- Removed reference to FTA C. 4702.1A, as all grantee programs should be in compliance with FTA Circular.4702.1B.
- Removed triggers regarding the (1) assessment of grantees' limited English proficiency analysis, (2) constructing new facilities and the applicability of the National Environmental Policy Act (NEPA) process, and (3) changes to fare, fare medium, or service characteristics.
- Included the definition of facilities as it applies to facility siting requirements (question 22).
- Added questions on program-specific requirements for MPOs that are direct recipients of FTA funds (questions 39-42).

Procurement

- Added information on Super Circular requirements being the point of reference over FTA C. 4220.1F where there is conflicting information between the two (Reference section).

- Added information on thresholds relating to Buy America (\$150,000) and micro-purchases (\$3,500) (Reference section and applicable questions).
- Revised explanation for notification to FTA of protests (questions 16-17).
- Provided additional information on geographic preference related to construction hiring and USDOT's pilot program for other-than-construction hiring (question 20).
- Revised information relating to need to search System for Award Management prior to award (questions 34-36)
- Updated Buy America information noting that requirements apply to capital leases (question 38).
- Updated information on piggyback, state-led, or joint procurements based on FAST Act (question 49).
- Updated information on Altoona testing pass/fail requirements per FAST Act (question 51)
- Included transit vehicle manufacturer (TVM) definition and additional related information (question 54)

Disadvantaged Business Enterprise (DBE)

- Provided information on obtaining December 1, 2015, semi-annual reports (question 17).
- Added information on working with procurement for DBE clause inclusion (question 21).
- Expanded question and added verbiage to explanation and determination regarding the duration for posting notice of goal to website (question 27).
- Added discussion in explanation that notification of vehicle awards should be done using the Transit Vehicle Manufacturer (TVM) Award Reporting Form located online through the FTA's Civil Rights DBE Webpage (question 34) and provided information on award of options and subrecipient awards.
- Added definition of TVM (questions 34 -35).
- Added information on enforcement of race-conscious goals and monitoring for reporting purposes for race-neutral goals (questions 45-50).

Legal

- No significant changes

Satisfactory Continuing Control

- Added question to address new requirement in FAST Act for grantees that purchase assets with Section 5339 funds are to follow the asset management requirements of the program the asset is used in (question 14).

Planning/ Program of Projects

- Added question regarding State's involvement in the planning program (question 7).

Public Comment on Fare and Service Changes

- No new questions

Half Fare

- No significant changes

Charter Bus

- Clarified that FTA only communicates directly with the entities named in the complaint, therefore, in the case of subrecipients, there is no official role for grantees (question 3).
- Deleted question related to subrecipient's role in complaint process (former question 10).

School Bus

- No significant changes

Security

- No significant changes

Drug Free Workplace and Drug and Alcohol Program

- Added guidance regarding employees subject to both FTA and Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing (question 7).
- Eliminated statement that if only one taxi company is available, it is not subject to FTA drug and alcohol testing requirements (question 7).
- Added question regarding drug and alcohol policies of ferry operators (question 8).
- Clarified required elements of an FTA drug and alcohol testing policy (question 9).

- Clarified Management Information System (MIS) reporting requirements (questions 10 and 11).

Equal Employment Opportunity (EEO)

- Removed questions and related explanation requesting whether grantee reviewed subrecipients' and transit management/operations contractor EEO programs for compliance with specific requirements (question 27-28), opting for a more comprehensive review.

NOTE: In several places, the “Conditions of Award for FTA Public Transportation Emergency Relief Programs” are referenced in relation to Emergency Relief questions. Because this document is an attachment to awarded grants, there is no web hyperlink available.

FTA MASTER AGREEMENT: The fiscal year 2017 FTA Master Agreement is under development. The anticipated release date is October 1 2016. Once it is finalized and released, FTA will update the relevant citations and provide grantees with revised sections through their respective regional FTA office.

1. FINANCIAL MANAGEMENT AND CAPACITY

BASIC REQUIREMENT

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

FTA Emergency Relief Program

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

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

AREAS TO BE EXAMINED

1. *Oversight Reviews/Audits*
2. *Financial Management*
3. *Financial Capacity*
4. *Emergency Relief Grants*
5. *Subrecipient Oversight*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. Single Audit Act Amendment of 1996
4. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
5. 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
6. 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Nonprofit Organizations"
7. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
8. 49 CFR Part 602, Interim Final Rule
9. 51 CFR 552, "Federal Agencies Responsible for Cost Negotiations and Audit of State and Local Government"

10. OMB Circular A-133 "Audits of States, Local Governments, and Nonprofit Organizations"
11. FTA Master Agreement
12. FTA Circular 5010.1D, "Grant Management Requirements"
13. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
14. FTA Circular 7008.1A, "Financial Capacity Policy"
15. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
16. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
17. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
18. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
19. FTA Circular 9070.1G, "Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance and Application Instructions"
20. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
21. May 29, 2013 Federal Register Notice
22. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Guidance for Transit Financial Plans

Flexible Funds: FHWA and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

Electronic Clearing House Operation (ECHO) Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

Emergency Relief Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- there are one or more significant deficiencies or material weaknesses from oversight reviews, assessments, audits, or investigations in the areas of financial management or financial capacity since the last Comprehensive Review
- the grantee has repeat deficiencies from oversight reviews, audits, or investigations in the areas of financial management or financial capacity
- there are past due or open deficiencies from oversight reviews, audits, or investigations in the areas of financial management or financial capacity
- the grantee displays a pattern of poor quality corrective actions from past oversight reviews (e.g., the grantee does not provide corrective actions or corrective actions need to be repeatedly resubmitted until they are acceptable)
- financial issues have been identified in FTA's Oversight Assessment Tool (OAT)
- the grantee has not conducted annual single audits as required or kept FTA appropriately informed of single audit findings
- the grantee has had numerous ECHO rejections or made numerous credits/refunds in the ECHO system
- FTA implemented drawdown restrictions due to non-compliance with requirements
- the grantee does not have or has not updated its written financial policies and procedures for its financial management practices addressing items such as internal controls and audit resolution
- the grantee does not develop and maintain financial management reports comparing actual expenses against budgets with explanations of significant variances
- the grantee officials do not routinely review financial reports
- the grantee does not demonstrate that it has adequate accounting expertise
- Federal Financial Reports (FFRs) have not been completed correctly or submitted in the FTA Electronic Award and Management System (EAMS) (see the Technical Capacity review area for input into this trigger)
- the cost allocation plan (CAP) or indirect cost rate proposal (ICRP) is outdated (due to a change in accounting systems or the percentage change made in the rate being charged or change in methodology), CAP or indirect cost rate is unapproved, or the CAP does not support the rate being charged on the FFRs
- the grantee has experienced or projects deficits, layoffs, service cuts, deferred or late maintenance, or reduction in service
- there are indications of unfunded liabilities, state or local match is not available, funds are being redirected from originally budgeted purposes, or the sources of local funds are changing
- the grantee does not have procedures or a program for providing financial oversight of subrecipients

Part A. Oversight Reviews/Audits

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Financial Management Oversight Reviews (FMOs), Financial Capacity Assessments (FCAs), and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of financial management or financial capacity?*
2. *Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year (FFY)?*
3. *Did the grantee experience difficulty or lateness resolving or closing any oversight review, investigation, or audit deficiencies or findings?*

4. *Are any deficiencies or findings from any oversight review, investigation, or audit currently open?*
5. *Are any issues related to financial management or financial capacity indicated in the Oversight Assessment Tool (OAT)?*
6. *If applicable, were annual single audits completed for the past three years?*

EXPLANATION

Areas of past non-compliance with FTA financial requirements deserve special attention during the scoping phase of the Triennial Review.

FTA's Office of Transit Safety and Oversight conducts Financial Management Oversight Reviews (FMOs). These reviews are discretionary, in-depth oversight reviews used by FTA when grantees are considered to be non-compliant with Federal financial requirements. The FMO can be a "full scope" review in which all aspects of a grantee's financial management practices are studied and tested, a "follow-up" review, or a "limited scope" review of a specific area(s) of financial management on a less comprehensive scale. FTA's Office of Planning and Environment conducts Financial Capacity Assessments (FCAs), which are typically performed during the project development phase of New Starts and other major capital projects, prior to receiving a full-funding grant agreement.

It is also important to know if an FMO or FCA has been conducted, or requested but not yet conducted. If a review has been requested, the reasons for such a review should be identified (usually from the FTA regional office).

The GAO and OIG periodically conduct independent audits. Audits may be of a grantee, but often are programmatic audits addressing a national issue (e.g., spare ratios and extended warranties) where the grantee may have had a specific part of its operation audited. Audit findings should be resolved within one year. Similarly, the grantee may periodically conduct an internal audit or receive an audit from a state or local agency. These audits or reviews may address FTA program requirements.

FTA regional office staff completes an annual grantee OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the financial management or capacity areas of the OAT could indicate issues in this area.

REFERENCES

None

SOURCES OF INFORMATION

Obtain a list of GAO, OIG, or internal audit reports from the FTA regional office and OTrak to determine if any of the reports address FTA program requirements. Review the information pertaining to previous deficiencies as a result of:

- An FMO or FCA conducted in the past three years
- The most recent Comprehensive Review
- Annual single audit reports
- Annual financial statement audits
- GAO or OIG audits/investigations
- Internal, state or local audits (obtain from grantee)
- Current OAT (available in OTrak)

During the site visit, discuss specific findings of reports with the internal auditor or staff.

DETERMINATION

The grantee is deficient if it has not taken appropriate action to resolve GAO or OIG audit findings promptly. (**DEFICIENCY CODE 215:** Unresolved GAO or OIG audit findings)

The grantee is deficient if it has not taken appropriate action to resolve internal, state, or local audit or review deficiencies related to FTA program requirements promptly. (**DEFICIENCY CODE 216:** Unresolved internal, state, or local audit findings)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit evidence to the FTA regional office of the resolution of all outstanding review findings by the GAO, the OIG, and/or any internal, local or state audits. These findings may relate to other sections of the Comprehensive Review.

7. *If there were no single audit findings related to Federal Transit Administration (FTA) or U.S. Department of Transportation (US DOT) programs, were copies of the Office of Management and Budget (OMB) Data Collection Forms (SF-SACs) submitted to the FTA regional office?*
8. *If there were findings in audits related to FTA or US DOT programs in any of the past three years, was a copy of the audit and the SF-SAC submitted to the FTA regional office?*
9. *What is the status of addressing the audit findings related to FTA or US DOT programs?*

EXPLANATION

For fiscal years beginning prior to December 26, 2014, OMB Circular A-133 required non-Federal entities that expend \$500,000 or more in Federal awards in a year to conduct an independent single audit. For fiscal years that began on or after December 26, 2014, the requirements under 2 CFR 200 Subpart F set the threshold for the single audit at \$750,000. In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger governmental organization, the audit may cover the entire organization, including the Federal funds used for transit.

Single audit reports must be completed and data collection form and reporting package (financial statements, summary schedule of prior audit findings, auditor’s report and corrective action plan) must be submitted to the Federal Audit Clearinghouse (FAC) within the earlier of 30 calendar days after receipt of the auditor’s report or nine months after the end of the audit period. For fiscal years beginning prior to December 26, 2014, if the annual single audit report contains no FTA or other U.S. Department of Transportation (US DOT) program findings, grantees are only required to submit a copy of the OMB Data Collection Form (SF-SAC) to the FTA regional office. If the single audit contained FTA or other US DOT program findings, grantees are required to submit a copy of the entire audit report, management response, and the SF-SAC to the FTA regional office. For fiscal years beginning December 26, 2014, and after, the reporting package and data collection form must only be submitted to the FAC. The below table provides applicability of the OMB Circular A-133 and 2 CFR Part 200 to the fiscal year audit.

Fiscal Year Period	Applicable Guidance	Audit Threshold
July 1, 2014 – June 30, 2015	OMB C. A-133	\$500,000
October 1, 2014 – September 30, 2015	OMB C. A-133	\$500,000
January 1, 2015 – December 31, 2015	2 CFR Part 200	\$750,000
July 1, 2015 – June 30, 2016	2 CFR Part 200	\$750,000

The grantee must resolve single audit findings promptly and upon discovery of the issue for audits under the Uniform Guidance requirements. The grantee’s summary schedule of prior audit findings provides additional information about how well the grantee has rectified previous audit findings and indicates any new areas of concern.

REFERENCES

- Single Audit Act Amendment of 1996
- 2 CFR Part 200, Subpart F
- 49 CFR 18.26
- FTA C. 5010.1D, Ch. VI, Section 8

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to annual single audit reports. Information on audits can also be retrieved from the FAC.

DETERMINATION

The grantee is deficient if it meets the threshold for a single audit and has not had one conducted in accordance with the appropriate requirements. (**DEFICIENCY CODE 172**: Annual audit not conducted)

For fiscal years ending on or before September 30, 2015, the grantee is deficient if it has not submitted its single audit reports, management decision letter comments, or SF-SACs to the FTA regional office. For fiscal years ending after September 30, 2015 the grantee is deficient if it has not submitted its audit report data collection form and reporting package to the FAC. (**DEFICIENCY CODE 254**: Single audit submissions deficient)

The grantee is deficient if it has not taken appropriate action to resolve audit issues promptly. (**DEFICIENCY CODE 199**: Outstanding annual audit deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to have annual single audits conducted.

Direct the grantee to submit single audits, management letter comments, and/or SF-SACs to the FTA regional office; to submit its audit report data collection form and reporting package to the FAC; and to submit a process to ensure that future submissions are completed.

Direct the grantee to submit to the FTA regional office procedures and a schedule for resolving single audit findings.

Part B. Financial Management

10. What internal written policies and procedures does the grantee have in place to ensure effective financial management of FTA funds?

EXPLANATION

Grantees should have detailed policies and procedures for: managing FTA grant funds; outlining the grantee's internal control practices to prevent fraud, waste and abuse; levels of authority; the accounting software being used; required financial reporting; financial oversight of subrecipients; etc. The policies and procedures should show evidence that they have been updated as a result of any previous audit findings, significant organizational or software modifications, and/or changes to Federal regulatory requirements.

REFERENCE

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

SOURCES OF INFORMATION

Review written financial policies and procedures.

DETERMINATION

The grantee is deficient if it does not have written policies and procedures for managing FTA grant funds. (**DEFICIENCY CODE 783**: No financial policies and procedures)

SUGGESTED CORRECTIVE ACTIONS

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

11. Describe qualifications for grantee staff with financial and/or accounting responsibilities. (To answer the question, please complete the following table. Add more rows if necessary)

Title	Financial Qualifications	Total Years of Experience	Years of Experience at the Grantee

12. Describe the financial systems used to carry out the FTA-funded programs.

13. How do financial procedures address the preparation of reports that compare actual expenses against budgets, so that variances can be identified and resolved? How do financial procedures address tracking of grant budgets by activity line item (ALI)? How do financial procedures address a process to reconcile discrepancies between the grantee's and FTA's grant balances?

14. Are there any discrepancies between the Electronic Award and Management System (EAMS) and grantee grant balances?

15. What grantee officials routinely review financial reports?

EXPLANATION

2 CFR Part 200 and 49 CFR Part 18 require that the State has fiscal control and accounting procedures sufficient to:

- Permit preparation of required reports
- Permit the tracking of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes

It is incumbent upon the grantee to have internal controls that monitor these data to determine expenditures by line item. Some grantees have not effectively tracked grant activity, particularly for older grants. In some cases, a grantee's grant balances may not reconcile with those in the EAMS. Frequent reconciling of internal grant balances with those in the EAMS helps the grantee identify and address any discrepancies quickly and prevent discrepancies from delaying grant close outs.

The way in which the grantee's financial functions are organized and staffed, along with the experience and education level of middle and senior accounting/finance staff should be commensurate with the agency's size and complexity.

REFERENCE

- 2 CFR Part 200 Subpart D
- 49 CFR 18.20
- FTA C. 5010.1D, Ch. VI, Section 2.e.(1)(a) and (e)
- FTA C. 9040.1G, Ch. VI, Sections 14 and 16
- FTA C. 9045.1, Ch. VI, Sections 11 and 13
- FTA C. 9050.1, Ch. VI, Sections 11 and 13
- FTA C. 9070.1G, Ch. VI, Section 10 and 20; Ch. III, Section 12

SOURCES OF INFORMATION

Review financial policies and procedures, organizational charts, position descriptions and staff qualification. Discuss staffing on site.

Query the EAMS for the grantee's grant balances. Discuss the grantee's financial management systems and grant accounting with regional office staff. The regional office may know when a grantee's grant balances differ through review of FFRs and processing of ECHO rejections. Review single audits for findings related to grant accounting. On site, discuss with staff.

DETERMINATION

The State is deficient if it does not have fiscal control and accounting procedures sufficient to permit preparation of required reports and permit the tracking of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. (**DEFICIENCY CODE 788**: No fiscal control and /or accounting procedures)

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

SUGGESTED CORRECTIVE ACTIONS

Direct the State to submit to the FTA regional office financial policies and procedures that allow for preparation of required reports and permit the tracking of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Direct the State or grantee to submit to the FTA regional office updated financial management procedures that incorporate a process for tracking grant budgets by ALI. Direct the grantee to submit to the FTA regional office documentation that demonstrates that the procedures have been implemented. Direct the grantee to submit to the FTA regional office a plan for reconciling the differences between the balances in the EAMS and its accounting system and to identify and correct the procedures that allow differences to develop. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

16. *If the grantee charges indirect costs to one or more FTA grants:*

- a. *Does the grantee have an approved cost allocation plan (CAP) and/or indirect cost rate proposal (ICRP)?*
- b. *Was the annual CAP and/or ICRP proposal retained for audit or submitted to the cognizant agency in accordance with the cognizant agency's requirements? What is the status of that submission?*
- c. *Has the CAP submission been acknowledged and/or approved?*
- d. *If grantee central services costs are included in the indirect cost rate, is there an approved central services plan and are the rates in the plan consistent with the rates charged to the operating agency and included in the operating agency's indirect cost rate proposal?*

EXPLANATION

Under federally funded grant programs, recipients may incur both direct and indirect costs. A CAP or ICRP proposal is required to support the distribution of indirect costs to the grant program. Cost allocation is often found in state departments of transportation and municipal systems where overhead/administrative charges are allocated to the transit program.

A central service CAP, is used by a state-wide, local government-wide, and Indian Tribe-wide to distribute executive and central level support functions to operating units which benefit from them. All statewide central service CAPs must be submitted to the U.S. Department of Health and Human Services (DHHS) annually, within six months prior to the beginning of each governmental unit's fiscal year. Each local government that has been designated a "major local

government” by the OMB is also required to submit a plan to its cognizant Federal agency annually. OMB published the list of major local governments and their cognizant Federal agencies in the *Federal Register* January 6, 1986 (51 CFR 552, “Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government”). The cognizant agency for all governmental units or agencies not identified by OMB is determined based on the Federal agency providing the largest amount of Federal funds. Unless required by the cognizant agency, local-wide CAPs do not have to be submitted for review and approval. However, they must be updated annually and maintained for audit. If the cognizant agency does not require the grantee to submit the plan to it for approval, FTA reserves the right to review the plan. FTA approves plans only for grantees for which it is the cognizant agency.

An indirect cost rate proposal is developed annually at the operating agency level to distribute administrative support and/or overhead costs of that agency to the programs (and the grants and contracts) that benefit from them. An indirect cost rate proposal may include the allocable portion of a central service CAP. A governmental unit for which a Federal cognizant agency has been designated must submit its indirect cost rate proposal to its Federal cognizant agency annually.

Effective December 26, 2014, non-Federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to 2 CFR Part 200, “*States and Local Government and Indian Tribe Indirect Cost Proposals*,” paragraph D.1.b (receive below \$35 million in direct Federal funding), may elect to charge a *de minimis* rate of 10 percent of modified total direct costs which may be used indefinitely.

In situations where a governmental unit or agency does not have an established cognizant agency identified per 2 CFR Part 200 or the appropriate agency has determined that annual review of the plan or rate is not required, annual review is not required, but these entities must continue to develop annual plans regarding indirect costs and maintain the proposal and related supporting documentation for audit. Unless required by FTA or the cognizant agency, these governmental units are not required to submit their proposals for review and approval.

In addition to initial approval, FTA requires updates to be submitted to it or another cognizant agency when:

- the grantee has made a change in its accounting system, thereby affecting the previously approved CAP/indirect cost rate and its basis of application
- the grantee’s proposed CAP/indirect cost rate exceeds the amounts **approved previously by the cognizant agency** by more than 20 percent (e.g., if the previously approved rate is 10 percent, approval is needed once the rate exceeds 12 percent)
- the grantee changes the CAP/indirect cost rate proposal methodology

Effective December 26, 2014, a governmental unit that receives more than \$35 million in direct Federal awards must submit its indirect cost proposal to its cognizant agency. Other governmental units or agencies must develop an indirect cost proposal and maintain it for audit.

As applicable, most FTA grantees submit CAPs/ICRPs to the U.S. Department of Housing and Urban Development (HUD). States submit CAPs to DHHS and universities submit CAPs to the Department of Defense Office of Naval Research (DOD Navy). The below table shows the respective cognizant agency for the entities listed.

Entity Type	Appendix to 2 CFR Part 200	Cognizant Agency
State and Local Airport, Transit Authority, Port Authority or Transit District	Appendix V – (CAP) Appendix VII – (ICRP)	DOT
State Government	Appendix V – (CAP) Appendix VII – (ICRP)	DHHS
State and Local Housing and Development Districts	Appendix V – (CAP) Appendix VII – (ICRP)	HUD
Local Government	Appendix V – (CAP) Appendix VII – (ICRP)	DHHS
Tribe	Appendix V	Department of the Interior
University (Institute of Higher Education)	Appendix III	DHHS or DOD Navy based on amount of funding
Non Profit	Appendix IV	Determined by the agency providing the largest funding amount or special arrangement
Public Assistance Agencies	Appendix VI	DHHS

REFERENCES

2 CFR Part 200 Subpart E, Appendices III, IV, V, VI, VII

2 CFR Part 220 (OMB C. A-21)
2 CFR Part 225 (OMB C. A-87), Attachments C and E
2 CFR Part 230 (OMB C. A-122)
51 CFR 552
FTA C. 5010.1D, Ch. VI, Section 6 and Appendix F
FTA C. 9040.1G, Ch. V, Section 14
FTA C. 9045.1, Ch. VI, Section 11
FTA C. 9050.1, Ch. VI, Section 11
FTA C. 9070.1G, Ch. III, Section 12

SOURCES OF INFORMATION

Review FFRs in the EAMS or drawdowns to determine if the grantee reports or incurs indirect costs. Review the EAMS and prior Comprehensive Review documents in OTrak for evidence that a CAP has been approved or at least submitted for approval. Obtain and review documentation of CAP submittal, and when appropriate, evidence of its approval. Review grant files and correspondence. Review the annual single audit regarding the proper implementation of a cost allocation plan. On-site, discuss with grantee staff. During the review of ECHO draws, ensure that indirect expenses are charged using the correct rate against the correct base.

DETERMINATION

The grantee is deficient if it charges indirect costs to FTA grants but has not:

- submitted its initial CAP to FTA for approval if FTA is the cognizant agency
- received approval from the cognizant agency (if other than FTA) if required
- submitted its indirect cost rate proposal to its cognizant agency annually if required
- updated the plan annually and retained it for audit (those governmental units that do not have a cognizant agency identified by OMB)
- updated and resubmitted the plan if required

(**DEFICIENCY CODE 54:** Cost allocation plan deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for complying with the submission and retention requirements of its cognizant agency.

Direct the grantee to provide documentation that it has complied with the cost allocation plan submission and retention requirements of its cognizant agency.

Direct the grantee to provide evidence to the FTA regional office of a process to update the indirect cost rate proposal and CAP annually and retain it for audit, if submittal to the cognizant agency is not required.

17. How many Electronic Clearing House Operation (ECHO) adjustments (rejections, refunds, etc.) have been processed since the last Comprehensive Review?

18. Has FTA placed any ECHO drawdown restrictions on the grantee?

EXPLANATION

The FTA regional office receives notification if Electronic Clearing House Operation (ECHO) payment requests are rejected for insufficient funds or for other reasons.

ECHO transactions made by the grantee are populated to the EAMS. Numerous ECHO transactions other than disbursements, such as refunds or credits, can indicate weaknesses in the grantee's management control over the financial process.

FTA can implement ECHO drawdown restrictions on grantees if there have been financial compliance issues.

REFERENCE

None

SOURCES OF INFORMATION

Review ECHO/drawdown data from the EAMS and information provided by the FTA regional office. Discuss rejections, refunds, or restrictions with the regional office and grantee.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTIONS

None

19. What is the process for receiving and disbursing FTA funds?

20. How does the grantee ensure that only eligible expenses are charged to grants?

21. How does the grantee track drawdowns by activity line item (ALI)?

EXPLANATION

Grantees request Federal funds through ECHO. The grantee's records must support ECHO requests. The information should be traced back to an invoice for goods or services or timesheets, and be supported by information from the grantee's accounting system. Either the individual who is the registered ECHO approving official, or a person to whom this person has delegated the authority in writing, must approve each ECHO request. The approving/authorizing official must not draw the funds.

The grantee may initiate draws only when cash is needed for immediate reimbursement and must disburse the funds within three business days. Disbursement means that the grantee no longer controls the money (e.g., a check has been sent to a vendor). If the funds are not disbursed within three business days, FTA can charge interest beginning on day four. In most cases, grantees request funds on a reimbursement basis (after expenses have been incurred and paid). In some cases (e.g., large bus procurements), grantees request funds prior to issuing a check. This procedure is acceptable as long as the funds are disbursed within three business days.

Grantees may only request funds for expenses that are eligible under the grant. Similarly, funds in a grant project to purchase vehicles may not be used to purchase bus shelters.

A grantee may not use FTA assistance to support ineligible activities. FTA defines public transportation as transportation by a conveyance that provides regular and continuing general or special transportation to the public. It does not include sightseeing, school bus, charter or intercity bus transportation, or intercity passenger and intercity rail transportation provided by Amtrak.

When a grantee requests funds from FTA, the request is made for planning, capital, or operating funds. The EAMS does not track drawdowns by ALI so the grantee must maintain this information and conduct variance analyses to monitor expenses and to know where FTA approval may be needed to request a budget amendment or budget revision that exceeds twenty percent of a scope.

REFERENCES

2 CFR Part 200, Subpart D

31 CFR Part 205

49 CFR 18.21

FTA Master Agreement, Section 7.g

FTA C. 5010.1D, Ch. II, Section 3.a

FTA C. 5010.1D, Ch. VI, Section 9

SOURCES OF INFORMATION

Check the audited financial statements and single audit reports to determine if there are ECHO process findings. On site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure that documentation supports the draws. Review documentation to determine if:

- The approving/authorized official who approved the draw is not the same person who drew the funds.

- The approving official designated on the ECHO payment request form actually approved the draw or delegated that authority in writing to the person who approved the draw.
- The purpose of the draw was eligible under the grant.
- The grantee records show funds requested by ALI and the grantee has made the appropriate requests for budget amendments or revisions.
- The funds were disbursed within three business days. In cases where FTA funds were requested in advance of payment to a vendor or contractor, ensure that the check was mailed within three business days. Do not rely on the date of the check. A grantee may hold onto a check several days before mailing it.
- Indirect costs are charged at the current rate, if applicable.
- The calculation and documentation were accurate and complete.

DETERMINATION

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

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

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

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

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

SUGGESTED CORRECTIVE ACTION

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

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

Direct the grantee to submit to the FTA regional office a process documenting that an authorized official approves each ECHO request.

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

Direct the grantee to develop a process to ensure someone other than the approving official request ECHO funds.

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

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

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

Part C: Financial Capacity

- 22. For the past three years, what were the amounts and sources of funds to support transit programs?*
- 23. What are the anticipated amounts and sources for the next three years?*
- 24. How are expenses, and local and Federal sources of funds budgeted/projected and how are adjustments made to projections, when necessary?*
- 25. What impacts to local funding have occurred since the last Comprehensive Review?*
- 26. In the short-term financial plan (next three years) what are the underlying assumptions that could affect the financial condition of the grantee?*
- 27. Is new transit service or an expansion of existing service planned? How have these issues been reflected in financial plans?*
- 28. Has the grantee had deficits, layoffs, service cuts, or deferred or late maintenance since the last Comprehensive Review?*
- 29. Does the grantee project deficits, or layoffs, service cuts, or deferred maintenance in the next three FFYs?*
- 30. Have the grantee's capital funds been used to cover deficits in the operating budget since the last Comprehensive Review?*

EXPLANATION

Annually, the grantee certifies to FTA (as part of the annual certifications and assurances process) that it has the financial capacity to carry out its proposed program of projects.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves, and the present status of depreciation accounts. Grantees should develop multi-year financial plans (three to five years) that project operating and capital revenues and expenses and capability to maintain and operate current assets and service, and to operate and maintain new assets and service.

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

Financial capacity considers the nature of funds matched to support operating deficits and capital programs, along with forecasted changes in fare and non-fare revenues. If a grantee is forecasting new funding sources, strategies for ensuring their availability must be identified. Unfunded capital or operating deficits could indicate a grantee's lack of financial capacity to fund the projects programmed in the TIP, and/or adequately maintain and operate FTA funded assets at the current level of service.

When state and/or local sources of funding decrease, the grantee may be unable to meet the non-Federal match requirements for existing FTA grants. This may also result in service reductions and/or fare increases, redirection of funds to meet critical operating and maintenance needs, and/or staff reductions.

A grantee's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one or more of its sources of non-FTA funding is affected by pending legislation or "sunset" provisions in current legislation. Similarly, the grantee's eligible and available non-Federal funds may be diverted from serving as match for an FTA grant if there are other Federal grants which are at risk of lapsing.

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

Grantees with New Start projects should have adequate financial capacity to provide at least the same level of service for at least one replacement cycle of such assets or 20 years, or as required in the grantee's active full funding grant agreement contract.

REFERENCES

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

SOURCES OF INFORMATION

Review the EAMS for any indication that projects involving FTA funds are being deferred or have stalled because the non-Federal match is not available. Review the grantee's financial plan projecting revenues and expenses for the next three years (or longer). Review the annual audit reports, local or state legislation, the current year budget and/or financial statements or comprehensive annual financial report (CAFR), if available, for evidence of unfunded operating or capital liabilities. Review the transportation improvement plan (TIP) for levels of transit funding. Obtain operating budgets for the maintenance departments for the past three years and compare amounts allocated to determine if there has been any significant decrease in funds.

DETERMINATION

The grantee is deficient if financial deficits or lack of funding is impacting the ability to maintain and operate existing systems or to complete programs of projects, and there is no mitigation plan. The grantee may be deficient if there is pending legislation that could affect local funding sources negatively, depending on its ability to continue to provide local match for Federal funding or to maintain FTA funded assets. Where the source of local funding is dependent upon an election, action by local governmental body, or other event, a determination may need to await such an event. (**DEFICIENCY CODE 7:** Insufficient financial capacity)

SUGGESTED CORRECTIVE ACTIONS

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

Direct the grantee to submit to the FTA regional office a plan for responding to a change in financial circumstances caused by a "sunset" provision in current local funding legislation or pending legislation that will affect local funding negatively.

Direct the grantee to submit to the FTA regional office a new or revised multi-year financial plan if the grantee fails to demonstrate financial capacity.

31. *Are the funds used for local match eligible?*

32. *How does the grantee fully document volunteered services or in-kind revenue used as local match?*

EXPLANATION

All local share used to match FTA grant funds must come from non-US DOT sources, except for Federal Lands Highway Program funds. No FTA program funds can be used as a source of local match for other FTA programs, even when the funds are contract revenue. Federal loan programs such as Transportation Infrastructure Finance and Innovation Act (TIFIA) or Railroad Rehabilitation & Improvement Financing (RRIF) count as Federal sources even though they are often repaid with local or state funds.

Depending on the grant program, FTA permits the use of the following as local share: cash (or in-kind contribution); non-farebox revenues from transit operations (e.g., advertising and concession revenues); amounts received under a

service contract with a state, local, or private social service agency or organization; undistributed cash surpluses; replacement or depreciation cash funds; reserves available in cash or new capital; revenue bond proceeds (capital only); transportation development (toll) credits; program income generated from an earlier grant; non-US DOT Federal funds if authorized by the originating program to be used for transportation; funds used to purchase vanpool vehicles by private providers of public vanpools (capital match only); and in-kind match for intercity bus service.

In-kind contributions are eligible as long as the value of each is documented and supported, represents a cost that would otherwise be eligible under the program, and is included in the net project costs in the project budget.

REFERENCES

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

SOURCES OF INFORMATION

Review annual audit reports, budgets, multi-year financial plans, and the TIP for information on local funding sources. On site, ask the grantee for an explanation of the funding programs. Review documentation for volunteered services or in-kind match.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation that the funds it uses for local match are eligible. If ineligible funds have been used as local match, work with the FTA regional office to develop a corrective action plan.

Direct the grantee to submit to the FTA regional office procedures for ensuring that the value of non-cash share is documented, the non-cash share represents a cost that would otherwise be eligible under the program, and the non-cash share is included in the net project costs of the project budget.

33. For grantees receiving operating assistance, how is the amount eligible for operating assistance calculated?

EXPLANATION

Section 5307 operating assistance was available to all grantees in urbanized areas (UZAs) with populations under 200,000 through FY2012, and, in very limited circumstances, to UZAs with populations over 200,000. Pursuant to MAP-21, operating assistance remained eligible in UZAs with populations less than 200,000; however, previously authorized exemptions for specific UZAs over 200,000 were repealed and replaced with a single nationwide exemption for fixed-route transit operators that operate fewer than 100 buses in peak service. Qualifying operators are eligible for operating assistance in an amount based on an individual operator's percentage of all public transportation service in the UZA.

Sections 5316 and 5317 funds, last apportioned in FY2012, were available to be used for operating assistance in all UZAs.

MAP-21 expanded eligible 5307 activities to include job access and reverse commute (JARC) projects, which provide nontraditional transportation services intended to serve the employment-related transportation needs of welfare recipients and low-income individuals. These projects were previously eligible under the repealed Section 5316 program. JARC projects may include operating assistance in a large UZA, where operating assistance is otherwise

not an eligible expense. Operating assistance for eligible JARC projects is not limited by the “100 bus” special rule for operating assistance established by MAP-21 under 5307(a)(2).

Section 5310 operating funds are available for public transportation projects that exceed the Americans with Disabilities Act (ADA) minimum requirements, improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA paratransit, or provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

It is the responsibility of the grantee to calculate net eligible operating costs properly. The amount of funds requested for operating assistance must be no more than half the operating expenses, after fare revenues are credited and ineligible costs (such as costs for charter bus, school bus, sightseeing service and lobbying activities) are deducted to arrive at the net project cost. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs. FTA Circular 9030.1E, Appendix C provides a worksheet for calculating eligible operating expenses.

Grantees may also use FTA funding at the 80/20 match level for ADA paratransit, preventive maintenance, and capital cost of contracting. These funds could increase the total amount of FTA funds the grantee could be eligible to request, but would reduce the net project cost eligible for 50/50 operating assistance.

The FTA share of any operating assistance project shall not exceed the lesser of: a) the local match, b) the currently available apportionment to the urbanized area plus any carryover funds available from past years, or c) 50 percent of the net project cost incurred on an accrual basis in the provision of transit services during the period. The remainder must be paid with the grantee’s local share.

REFERENCES

FTA C. 9030.1E, Ch. IV, Sections 2.i, 2.n, 2.p, 4, 5; and Appendices C and E
FTA C. 9040.1G, Ch. III, Section 4
FTA C. 9045.1, Ch. III, Section 12
FTA C. 9050.1, Ch. III, Section 12
FTA C. 9070.1G, Ch. III, Section 13

SOURCES OF INFORMATION

Review the detailed operating budgets for the past three years showing eligible operating expenses. During the site visit, discuss how the amount eligible for operating assistance is calculated. While reviewing ECHO drawdowns, ensure that the correct amounts have been drawn for operating expenses.

DETERMINATION

The grantee is deficient if the documentation is lacking or shows ineligible project costs included in the calculation of operating expenses. (**DEFICIENCY CODE 102**: Ineligible operating expense calculation)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for properly calculating net eligible project costs for operating assistance.

Direct the grantee to work with the FTA regional office for reimbursement, if an inappropriate payment or an overpayment of operating assistance has occurred.

Part D. Emergency Relief Grants

34. For Section 5324 Emergency Relief projects:

- a. *Were the expenses incurred during the period consistent with the approved projects contained in the grant? Have any budget revisions been processed for, or scope revisions made to, grant projects since award? If so, are the items included in the revisions eligible?*
- b. *Did the grantee receive FTA approval prior to incurring costs for local priority resiliency projects?*

c. *Has the grantee received funds from other sources (such as the Federal Emergency Management Agency (FEMA)) to reimburse the total project(s) or a portion of the project(s) receiving Section 5324 funding?*

EXPLANATION

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in 49 CFR 602.5, are eligible for emergency relief funding. For all capital projects, the cost to perform the work, whether by in-house or contracted personnel, is an eligible cost as described below.

FTA's first goal in the Emergency Relief Program is to assist public transportation agencies in restoring public transportation service and in repairing and reconstructing transit assets to a state of good repair as expeditiously as possible. In conjunction with repair and reconstruction activities, a second goal is to increase the resiliency of affected public transportation systems in order to help protect those systems from damage due to future emergencies and major disasters.

"Permanent repairs" are defined as those repairs undertaken following the disaster occurrence for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure to a state of good repair.

Subject to FTA approval, four transit agencies (New York Metropolitan Transportation Authority, New York City Department of Transportation, New Jersey Transit Corporation, and Port Authority of New York/New Jersey) were permitted to use approximately 23 percent of their Hurricane Sandy Emergency Relief allocations for locally prioritized resiliency projects and improvements. A "resiliency project" is a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns.

In its May 29, 2013, allocation notice for the local priority resiliency funding, FTA required grantees to seek FTA prior approval for local priority resiliency projects in advance of incurring costs, but recognized this may not be possible in some cases where work had already begun. This prior approval process is intended to ensure that resilience projects were selected by the grantees in accordance with accepted hazard mitigation principles, were of an appropriate size, scope and complexity for this funding, and had addressed the US DOT policy on floodplain management, which requires that projects in the floodplain be built to be resilient to one foot above Federal Emergency Management Agency's (FEMA) best available 100-year flood elevations. Recipients were instructed to submit detailed project information to FTA for approval in advance of incurring costs, or to notify FTA if project work had already begun prior to the allocation of funds.

Grants awarded with Section 5324 funds, as well as grants awarded under Sections 5307 and 5311 for emergency relief purposes, may be made only for expenses that are not reimbursed by FEMA under the Stafford Act, or by other Federal agencies, or by insurance proceeds. If an applicant has already received FEMA or other Federal agency funding or insurance proceeds, the applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by such other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the value of a vehicle at the time it was destroyed, and not the cost to replace that vehicle. FTA issued an Administrator's Policy Letter in February 2014 stating the policy and options for allocating lump-sum insurance proceeds.

Consistent with FTA C. 5010.1D, FTA may participate in the replacement cost beyond what the insurance proceeds may cover. If FTA makes a grant and the recipient subsequently receives compensation from another source, the grantee must notify FTA and the funds received from the other source must be used to reduce FTA's share of the project cost.

REFERENCE

49 U.S.C. Section 5324

49 CFR Part 602, Interim Final Rule

May 29, 2013 Federal Register Notice

Conditions of Award for FTA Public Transportation Emergency Relief Programs

February 21, 2014 Administrator Policy Letter

SOURCES OF INFORMATION

Review information provided in the EAMS, by the FTA regional office, and responses from the grantee.

DETERMINATION

The grantee is deficient if projects funded by Section 5324 do not meet the definition of emergency operations, emergency repairs, permanent repair, or resiliency projects. (**DEFICIENCY CODE 576:** Section 5324 project definition deficiencies)

The grantee is deficient if projects funded by Section 5234 are also being reimbursed by other sources and FTA's share of the project costs has not been appropriately reduced. (**DEFICIENCY CODE 577:** Section 5324 funding deficiencies)

The grantee is deficient if it is proceeding with local resiliency projects prior to FTA approval and those projects were found not to be in compliance with Federal requirements or did not have an approved waiver. (**DEFICIENCY CODE 582:** Section 5324 resiliency project deficiencies)

SUGGESTED CORRECTIVE ACTION

Consult with the FTA regional office to address correcting project scopes and/or adjusting the FTA share of funding.

35. *Does a review of ECHO documentation for FTA Emergency Relief Program grants verify that the grantee has adequate funds management procedures (i.e., adequate documentation, segregation of duties, no excess cash on hand, eligible costs)?*

36. *Is the grantee utilizing the correct financial purpose codes for FTA Emergency Relief grant drawdowns?*

EXPLANATION

Refer to the first two paragraphs of the Explanation for Questions 17 through 21 for a discussion of the ECHO requirements.

Grantees may only request funds for expenses that are eligible under the grant. Eligible uses of Emergency Relief funds include:

- Emergency operations
- Emergency protective measures
- Emergency repairs
- Permanent repairs
- Actual engineering and construction costs on approved projects
- Resiliency projects

Ineligible uses of Emergency Relief funds include:

- Heavy maintenance
- Project costs for which the recipient has received funding from another Federal agency
- Project costs for which the recipient has received funding through payments from insurance policies
- Projects that change the function of the original infrastructure
- Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster
- Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster
- Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation
- Other project costs FTA determines are not appropriate for the Emergency Relief Program

The Federal share for 5324 grants is identified in each grant and can be up to 90 percent of the net project cost. Grantees are required to maintain records including, but not limited to, all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests under the Improper Payment Information Act.

For Emergency Relief grants, grantees are to use specific financial purpose codes (FPC) for drawdowns. Local priority resiliency funding is to be drawn using FPC 03.

SOURCES OF INFORMATION

When on site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure that documentation supports the draws. Refer to the Sources of Information for Questions 17 through 21 for additional information on reviewing ECHO documentation.

REFERENCES

MAP-21 Section 20017
May 29, 2013 Federal Register Notice
49 U.S.C. Section 5324
Conditions of Award for FTA Public Transportation Emergency Relief Programs

DETERMINATION

The grantee is deficient if it does not maintain documentation adequate to support the ECHO draws, demonstrate sufficient internal controls, or disburse Federal funds within three business days of receipt. Refer to questions related to ECHOs for additional information. (**DEFICIENCY CODE 567**: ECHO deficiencies for FTA Emergency Relief grants)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the FTA regional office to address ECHO deficiencies related to FTA Emergency Relief grants.

Part E. Subrecipient Oversight

37. What are the grantee's procedures for ensuring subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds?

38. What are the grantee's procedures for processing and reviewing subrecipients' reimbursement requests?

EXPLANATION

The grantee is responsible for ensuring that subrecipients have financial management systems that meet standards for financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management. The grantee is not required to monitor the financial management systems of subrecipients that do not receive Federal cash (e.g., subrecipients for which the grantee procures vehicles). Some grantees require applicants, especially first-time applicants, to describe their accounting systems or may perform a pre-award review of accounting systems. Other grantees require subrecipients to maintain separate accounting records for projects. In addition to financial and single audits, some grantees require subrecipients to have their auditors certify year-end financial statements or perform a program audit of their transit operations.

The grantee is required to ensure that subrecipients can trace funds to a level of expenditures adequate to establish, that the funds are used for eligible expenditures under the program. Some grantees review single audits. Some grantees require subrecipients to submit supporting documentation periodically. Some grantees require new and high-risk grantees to submit supporting documentation with every reimbursement request.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.20
FTA C. 5010.1D, Ch. VI
FTA C. 9030.1E, Ch. II, Section 8.b
FTA C. 9040.1G, Ch. V, Sections 6 and 16
FTA C. 9045.1, Ch. VI, Sections 10 and 13

SOURCES OF INFORMATION

Review the state/program management plan(s), subrecipient applications, and monitoring tools, such as a site visit checklist, for discussion of fiscal capability. On site, discuss with staff. During site visits to subrecipients, review the back-up documentation for at least one invoice to the grantee to ensure that the subrecipient can trace the amounts invoiced to source documents. If resiliency or other discretionary funds passed through to subrecipients, include in sample selection. Review the single audits of the subrecipients to be visited.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds. The grantee is deficient if it does not ensure that subrecipients can adequately document reimbursement requests. (**DEFICIENCY CODE 288**: Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients have the financial management systems to carry out the programs, receive and disburse Federal funds, and adequately support reimbursement requests.

39. If subrecipients are charging indirect costs to FTA grants:

- a. *What procedures does the grantee use to review these indirect cost rates or to ensure that they have been submitted to a cognizant agency?*
- b. *What procedures does the grantee use to monitor that the correct rate is charged by subrecipients for FTA-funded reimbursements?*

EXPLANATION

Grantees are responsible for oversight of subrecipients' CAPs. This may include, but is not limited to, ensuring that the plan was submitted to a cognizant Federal agency. Where a local government only receives funds as a subrecipient, the primary recipient is responsible for negotiating and/or monitoring the subrecipient's plan. Effective December 26, 2014, subrecipients may be eligible to charge a *de minimis* rate of 10 percent of modified total direct costs. Monitoring can include ensuring that the plan is retained for audit and ensuring that indirect costs are charged at the current rate and against the correct base.

REFERENCE

2 CFR Part 200, Subpart D
2 CFR Part 200, Subpart E, Appendix IV, V, VII
2 CFR Part 225 (OMB C. A-87), Attachments C and E
2 CFR Part 230 (OMB C. A-122)
51 CFR Part 552
FTA C. 5010.1D, Ch. VI
FTA C. 9040.1G, Ch. V, Sections 14 and 16
FTA C. 9045.1, Ch. VI, Sections 11 and 13
FTA C. 9050.1, Ch. VI, Sections 11 and 13
FTA C. 9070.1G, Ch. VI, Section 10 and 20; Ch. III, Section 12

SOURCES OF INFORMATION

Review the state/program management plan. Discuss the grantee's process for monitoring subrecipients that charge indirect costs to FTA grants. If the subrecipient cost allocation plans are on file with the grantee, review a copy. During the site visit to a subrecipient, determine whether the subrecipient has a cost allocation plan, the plan was approved by a Federal or other agency, and the plan is updated annually and documentation maintained for audit. Determine if the subrecipient is eligible to charge a *de minimis* rate of 10 percent of modified total direct costs. Review the back-up documentation for at least one invoice to the grantee to ensure that the subrecipient is using the approved rate.

DETERMINATION

The grantee is deficient if it does not monitor subrecipients' application of indirect costs to FTA grants. (**DEFICIENCY CODE 288**: Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit procedures to the FTA regional office, along with evidence of its implementation, for ensuring that subrecipients that claim indirect costs have and comply with the requirements of their cost allocation plans.

40. *What are the grantee's procedures for ensuring that single audits of subrecipients are conducted and FTA program related findings resolved?*

EXPLANATION

The grantee must ensure that subrecipients expending Federal awards in a Federal fiscal year have annual independent audits conducted in accordance with 2 CFR Part 200 Subpart F and OMB Circular A-133. For fiscal years beginning before December 26, 2014, the threshold is \$500,000. For fiscal years beginning on or after December 26, 2014, the threshold is \$750,000. Items purchased by the grantee for a subrecipient count towards a subrecipient's single audit threshold. As an exception to this requirement, FTA has not required grantees to ensure that single audits are conducted when assistance is provided solely in the form of capital equipment procured directly by the grantee or direct recipient. Single audits are an eligible grant expense only if the subrecipient meets the threshold. Financial audits are an eligible grant expense even if the subrecipient does not meet the threshold for a single audit. The grantee must ensure that subrecipients resolve audit findings related to FTA funded programs within six months of receipt of the audit report.

REFERENCE

Single Audit Act Amendment of 1996
2 CFR Part 200, Subpart D and Subpart F
49 CFR Part 18.26
FTA C 5010.1D, Ch. VI, Section 8
FTA C 9040.1G, Ch. V, Section 16
FTA C 9045.1, Ch. VI, Section 13
FTA C 9050.1, Ch. VI, Section 13
FTA C 9070.1F, Ch. VI, Section 14
Administrator Policy Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION

Review the state/program management plan for a discussion of the grantee's process for obtaining and reviewing audits of its subrecipients and monitoring the resolution of findings. On site, discuss the process with the grantee. Review the single audits and follow-up correspondence for subrecipients visited.

DETERMINATION

The grantee is deficient if it does not review subrecipient audits and ensure that audit findings related to the FTA-funded program are resolved. (**DEFICIENCY CODE 288**: Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for obtaining and reviewing subrecipients' single audits and monitoring the resolution of audit findings.

2. TECHNICAL CAPACITY

BASIC REQUIREMENT

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

FTA Emergency Relief Program

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

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

AREAS TO BE EXAMINED

1. ***Grant Administration***
2. ***Program Management***
3. ***Project Management***
4. ***Oversight***

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
3. FAST Act, Section 3000
4. Office of Management and Budget (OMB) Open Government Directive - Federal Spending Transparency
5. OMB Circular A-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs"
6. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
7. 49 CFR Part 18 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
8. 49 CFR Part 602, Interim Final Rule
9. 49 CFR Part 639, "Capital Leases"
10. FTA Master Agreement

11. FTA Circular 5010.1D, “Grant Management Requirements”
12. FTA Circular 5100.1, “Bus and Bus Facilities Formula Program: Guidance and Application Instructions”
13. FTA Circular 8100.1C, “Program Guidance for Metropolitan Planning and State Planning and Research Program Grants”
14. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions”
15. FTA Circular 9040.1G, “Formula Grants for Rural Areas: Program Guidance and Application Instructions
16. FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions”
17. FTA Circular 9050.1, “The Job Access and Reverse Commute Program Guidance and Application Instruction”
18. FTA Circular 9070.1G, “Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions”
19. FTA Circular 9300.1B, “Capital Investment Program Guidance and Application Instructions””
20. Emergency Relief Docket (2013 and 2014)
21. March 29, 2013 Federal Register Notice
22. May 29, 2013 Federal Register Notice
23. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Federal Funding Accountability and Transparency Act Subaward Reporting System

www.USASpending.gov/news

Office of Management and Budget Open Government Directive - Federal Spending Transparency

The Federal Financial Report (FFR)

FFR Instruction Guide for Grantees

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

FTA ER Fact Sheet

Construction Project Management Handbook (2009 Update)

Project and Construction Management Guidelines (2003 Update)

Project Management Oversight Lessons

Quality Management System Guidelines

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

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

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

Section 5311 Program Overview

Section 5310 Program Overview

Section 5316 Program Overview

Section 5317 Program Overview

Intercity Bus Overview

TCRP Report 79: Effective Approaches to Meeting Intercity Bus Transportation Needs

National RTAP

National Transit Resource Center

Project Action

National Center on Senior Transportation

United We Ride

Small Urban and Rural Transit Center

Local and Tribal Transportation Assistance Program

FTA State Safety Oversight (SSO) Program Website

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

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

1. *Is this the first Comprehensive Review for the grantee?*
2. *Has the urbanized area of the grantee been re-categorized from small urbanized area (UZA) to large UZA pursuant to the 2010 Census?*
3. *Is the grantee embarking on a type of Federal Transit Administration (FTA)-funded project that is new to it?*
4. *Does the grantee have subrecipients or transit contractors?*
5. *Have any oversight reviews, audits, or investigations of the grantee 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?*
6. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies or findings currently open?*
7. *Are any issues related to technical capacity indicated in the FTA’s Oversight Assessment Tool (OAT)?*

EXPLANATION

Special emphasis in the area of technical capacity may be needed if this is a grantee's first Comprehensive Review or an experienced grantee is undertaking a type of project (such as a New Start, Small Start, or design-build, or has become the designated recipient for the Section 5310 or 5339 programs) that is new to them.

The 2010 Census UZA delineations resulted in 27 UZAs going over the 200,000 population threshold and 36 new UZAs, all under 200,000 in population. The changes to UZAs resulting from the 2010 Census may require changes to how transit agencies, designated recipients, metropolitan planning organizations (MPOs), and state departments of transportation conduct transportation planning and apply for, receive, and manage FTA formula funds. The extent to which change needs to take place depends on how the 2010 Census impacts particular UZAs.

Areas of past non-compliance with technical capacity requirements by the grantee deserve special focus. It is also important to look more broadly at non-compliance in other areas (such as financial management, financial capacity, procurement, maintenance, Title VI, etc.) for signs of systemic technical capacity issues.

Regional office staff completes an OAT on each grantee annually that focuses on several areas of importance for FTA. Items identified in the technical capacity area of the OAT could indicate issues in this area.

REFERENCE

None

SOURCES OF INFORMATION

Review information from the FTA regional office and FTA Electronic Award and Management System (EAMS) on the impact of the 2010 Census on the UZA of the grantee.

Review information in OTrak, including previous review reports, OATs, and upcoming specialized reviews that have been requested and/or scheduled.

Review responses to questions regarding complex or unique procurements submitted in response to Procurement area questions.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

PART A: PROGRAM MANAGEMENT

8. *Describe the resources for administering FTA grant programs. What technical training have employees received in the past three years? (To answer the questions, please complete the following table. Please add more rows if necessary.)*

<i>Responsibility (e.g., grant management, technical oversight of projects, subrecipient/contractor oversight, asset management, planning,)</i>	<i>Number of Staff</i>	<i>Number of Staff with Less Than Three Years Experience in Their Position</i>	<i>Staff Vacancies</i>	<i>Type/Frequency and Method of Training for Responsibilities</i>

Responsibility (e.g., grant management, technical oversight of projects, subrecipient/contractor oversight, asset management, planning,)	Number of Staff	Number of Staff with Less Than Three Years Experience in Their Position	Staff Vacancies	Type/Frequency and Method of Training for Responsibilities

9. Describe any removal/resignation of board members, general managers/CEOs, or other executive leaders since the last Comprehensive Review.

10. Describe any change(s) in key grant or project management staff since the last Comprehensive Review.

EXPLANATION

These questions help determine if an enhanced review is warranted. The answers to these questions, combined with the information gained from the questions on grant management, can assist in making this determination.

Staffing the grant management function, and a grantee’s organizational structure, staffing levels and employee training programs can vary widely depending upon the size of the grantee and the types of transit service being delivered. The manner in which a grantee’s organizational chart(s) identifies specific functions, reporting relationships, and staffing levels can provide insight into the grantee’s overall technical capacity. All personnel must be properly qualified for their assigned responsibilities, duties, and functions. Education, training, experience, competence, and integrity should be considered in assigning work. All must be held fully accountable for the proper discharge of their assignments.

The type, frequency, and method of training provided to staff about FTA requirements and industry best practices are important indicators of how well-prepared the grantee may be in the management of grant funds, program delivery, and capital project initiatives.

REFERENCES

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

SOURCES OF INFORMATION

Review organizational charts and training programs/information provided by the grantee.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

Questions 11 through 30 are for grantees with subrecipients.

11. What unit within the agency is responsible for administering grant programs for subrecipient(s)?

12. What is the organizational structure and staffing of the unit?

13. What other agency units support the administration of the subrecipient programs?

14. What training is provided to staff to ensure capacity?

EXPLANATION

Grantees must have the requisite technical capacity and resources not only to receive and administer Federal funds themselves but also to assure that their subrecipients have the needed technical capacity. It must have the staffing resources necessary to carry out its responsibilities in accordance with FTA requirements and to ensure subrecipient compliance with Federal requirements. Other administrative offices usually support the FTA programs. These offices may include finance, procurement, civil rights, engineering, and legal.

REFERENCE

FTA C. 5010.1D, Ch. II, Section 3
FTA C. 5100.1, Ch. V, Section 1
FTA C. 9040.1G, Ch. III, Section 1a
FTA C. 9045.1, Ch. III, Section 1
FTA C. 9050.1, Ch. III, Section 1
FTA C. 9070.1G, Ch. III, Section 1
FTA C. 9300.1B, Ch. II, Sections 1 and 9

SOURCES OF INFORMATION

Discuss the grantee's organization and staffing levels with FTA regional office staff. Before the site visit, obtain copies of the agency's overall organization chart and a more detailed organization chart for the specific unit within the agency that is responsible for administering grant programs for subrecipients. Ask the grantee to explain the organizational structure, identify current and authorized positions within the unit, and describe the principal responsibilities of each position. Identify other departments or divisions that provide support services for administration of subrecipient programs, such as accounting, human resources, procurement, and civil rights. Identify the major functions and programs administered by the unit.

DETERMINATION

Review of the grantee's organizational structure and staffing levels does not by itself lead to a finding of deficiency. The grantee's organization, functions, and staffing levels, when considered with findings in other aspects of program management (technical assistance, monitoring and routine administrative activities) and other review areas, support a determination of whether the grantee is applying the resources necessary to manage the FTA programs in accordance with FTA requirements.

SUGGESTED CORRECTIVE ACTION

None

- 15. When did the grantee submit to FTA a program management plan for the Section 5310 program?**
- 16. When did the state submit to FTA a state management plan(s) for the Section 5310, 5311, and 5339 programs?**
- 17. How does the grantee ensure that the state/program management plan(s) reflect current policy?**
- 18. If a state/program management plan has been updated since the last Comprehensive Review, what was the date of the revisions? Please explain the impetus for the revision.**
- 19. How and when did the grantee seek public comment for significant revisions to the state/program management plan(s)?**
- 20. How do the plans address the required areas?**

EXPLANATION

Each state that administers the Section 5310, 5311, and 5339 programs and each designated recipient of Section 5310 funds that passes funds to recipients, 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.

State /program management plans document the grantee's policies and procedures for the program(s). FTA gives the grantee the maximum discretion permitted by law in designing and managing the programs to meet the passengers' needs under those programs. The grantee develops program standards, criteria, procedures and policies for the programs. The document should be useful to the grantee, subrecipients, and FTA.

The state/program management plan is intended to facilitate program management and FTA oversight. The plan provides public information on the grantee'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 grantees to issue timely revisions to state/program management plans, particularly when information helpful to minority applicants, subrecipients and third party contractors is involved. The grantee should seek public comment in making significant revisions to a plan. A significant revision is a change in grantee policy, such as a change in eligibility or grant award cycle. Updates to state/program management plans to reflect changes in FTA policy that do not trigger a change in grantee 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.

REFERENCE

FTA C. 5100.1, Ch. V1
FTA C. 9040.1G, Ch. VI
FTA C. 9070.1G, Ch. VII

SOURCES OF INFORMATION

Obtain and review the State/State program management plan(s). Discuss the plan(s) with the regional office to determine whether the plan(s) are current and any concerns or issues the regional office has identified with the plan(s). If necessary, obtain a current copy of the plan(s) with the documents requested for the review. Before the site visit, review the plan(s), review the grantee's responses to the grantee information request (GIR), and note in each section of the GIR the pertinent policies and procedures documented in the plan. During the site visit, discuss and confirm the policies and procedures documented in the plan(s). Compare the information provided in the plan(s) with that obtained through discussion with the grantee. Ask the grantee if the plan(s) is up-to-date and reflects current practice.

DETERMINATION

Determination of deficiency is based on the grantee's direct response to these questions, comparison of the policies and procedures documented in the state/program management plan(s) with the responses to specific questions in each review area, and discussions with the FTA regional office.

The grantee is deficient if it has not submitted a state/program management plan(s) to FTA, or its plan(s) is not current. The grantee is deficient if there are discrepancies between a state/program management plan and actual policies and procedures. The State is deficient if a state management plan does not address each required area. (**DEFICIENCY CODE 43**: SMP/PMP out of date/incomplete)

The grantee is deficient if it did not obtain public comment for significant state/program management plan revisions. (**DEFICIENCY CODE 43**: No public comment for significant SMP/PMP revisions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an updated state/program management plan that includes missing areas or policies, or reflects current practice in all areas. Direct the grantee to seek public comment on the revised state/program management plan if significant revisions are required.

Direct the grantee to seek public comment on the revised state/program management plan if significant revisions are required. Direct the grantee to submit to the FTA regional office evidence that it solicited public comment for any significant revisions and procedures for obtaining public comment for future significant revisions.

21. What are the grantee's procedures for ensuring that subrecipients:

- *have adequate local match and operating funds?*
- *use only eligible sources as local match?*
- *fully document volunteered services or in-kind contributions used as local match?*

EXPLANATION

Annually, the grantee certifies to FTA (as part of the annual certifications and assurance process) that it and its subrecipients have the financial capacity to carry out its proposed program of projects.

The grantee must ensure each subrecipient has or will have the required local match for the project and has or will have sufficient funds to operate and maintain the vehicles and equipment purchased under the project. FTA does not require a dedicated funding source. Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs. The grantee must obtain and maintain sufficient documentation from each subrecipient to support its certification to FTA. The grantee must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented.

All of the local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds. No FTA funds can be used as local match for other FTA programs, even when the funds are contract revenue. FTA permits the use of the following as local share: cash (or in-kind contribution): non-farebox revenues from transit operations (e.g., advertising and concession revenues); amounts received under a service contract with a state, local or private social service agency or organization; undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash or new capital; in-kind contributions; revenue bond proceeds (capital only); transportation development (toll) credits; program income generated from an earlier grant; and non-DOT Federal funds if authorized by the originating program to be used for transportation.

In-kind contributions are eligible as long as the value of each is documented and supported, represents a cost which would otherwise be eligible under the program, and is included in the net project costs in the project budget.

As only actual expenses are eligible; grantees cannot charge a grant rent for a facility they own. Actual facility expenses, such as depreciation, utilities, and maintenance, are eligible as expenses or in-kind contributions.

REFERENCE

FTA Master Agreement, Section 5
FTA C. 5010.1D, Ch. VI, Section 3
FTA C. 5100.1, Ch. III, Section 8
FTA C. 9030.1E, Ch. VI, Section 1.a(2)
FTA C. 9040.1G, Ch. III, Section 4, and Ch. VIII, Section 5
FTA C. 9045.1, Ch. III, Section 12
FTA C. 9050.1, Ch. III, Section 12
FTA C. 9070.1G, Ch. III, Section 16
FTA C. 9300.1B, Ch. II, Sections 7 and 9.b
Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the following documents as applicable: state/program management plan(s), application package(s) and standard subrecipient agreement(s) for information on how the grantee ensures that the subrecipient has the necessary local match and sufficient funds for FTA-funded programs and projects. Review site visit checklists or other monitoring materials. On site, discuss how the grantee considers local match in the application process and ensures that subrecipients have the necessary local match and funds for FTA-funded programs and projects.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients have the required local match and sufficient operating funds to operate and maintain FTA-funded programs and projects. The grantee is deficient if it does not ensure that only eligible funds are used as local match. The grantee is deficient if it does not ensure that subrecipients document and support the value of non-cash share, that the non-cash share represents a cost which would otherwise be eligible under the program, or that the non-cash share is included in the net project costs in project budgets. (**DEFICIENCY CODE 288**: Insufficient financial oversight)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for obtaining information from subrecipients on the sources and amounts of local match available for projects and the anticipated sources and amounts of operating revenue and subsidies for continued operation and maintenance of equipment or facilities.

Direct the grantee to submit to the FTA regional office procedures for ensuring that only eligible funds are used as local match.

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients document and support the value of non-cash share, the non-cash share represents a cost which would otherwise be eligible under the program, and the non-cash share is included in the net project costs in project budgets.

22. *How does the grantee ensure that subrecipients have the technical capacity to carry out proposed projects?*

EXPLANATION

The grantee certifies that its subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. The grantee may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and grantee requirements. The grantee may ensure that subrecipients have the required technical capacity through the application process and oversight, and it may build technical capacity through training programs.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.37
49 CFR 18.40
FTA C. 5100.1, Ch. V, Section 3
FTA C. 9030.1E, Ch. VI, Section 1.a(3)
FTA C. 9040.1G, Ch. III, Section 2
FTA C. 9070.1G, Ch. II, Section 4; Ch. III, Section 3
Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the following documents as applicable: the state/program management plans, subrecipient grant applications, and subrecipient agreements for eligibility and technical capacity requirements. Review oversight procedures. Confirm technical capacity requirements on site.

DETERMINATION

The grantee is deficient if it does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (**DEFICIENCY CODE 660**: Lacking oversight of subrecipient technical capacity)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to revise the state/program management plan or other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects.

23. *Has the grantee entered into a written agreement with each subrecipient stating the terms and conditions of assistance?*

24. Do the agreements address Federal requirements? If not, how does the grantee make subrecipients aware of FTA requirements?

25. Do the agreements include the information required by 2 CFR Part 200?

EXPLANATION

The grantee 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 grantee. The federally required clauses that the grantee is required to incorporate in agreements (see *Procurement* section) reference some, but not all, of the basic Federal requirements. Many grantees pass through FTA requirements to subrecipients by incorporating the FTA Master Agreement by reference.

Grantees 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 grantee 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 registered name in DUNS)
 - (ii) Subrecipient's Data Universal Numbering System (DUNS) number
 - (iii) Federal Award Identification Number (FAIN)
 - (iv) Federal award date
 - (v) Period of performance start and end date
 - (vi) Amount of Federal funds obligated by this action
 - (vii) Total amount of Federal funds obligated to the subrecipient
 - (viii) Total amount of the Federal award
 - (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, grantee, and contact information for awarding official
 - (xi) Catalog of Federal Domestic Assistance (CFDA) number, name, and, dollar amount
 - (xii) Identification of whether the award is research and development
 - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged)
- (2) All requirements imposed by the grantee 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 grantee imposes on the subrecipient in order for the grantee 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 grantee and the subrecipient (in compliance with this part), or a de minimis indirect cost rate

- (5) A requirement that the subrecipient permit the grantee and auditors to have access to the subrecipient's records and financial
- (6) Appropriate terms and conditions concerning closeout of the subaward

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.37
FTA Master Agreement, Section 3.i
FTA C. 8100.1C, Ch. II, Section 7.b(2)
FTA C. 9040.1G, Ch. VI, Section 2
FTA C. 9045.1, Ch. VI, Section 2
FTA C. 9050.1, Ch. VI, Section 2
FTA C. 5010.1D, Ch. IV, Section 3.j(1)
FTA C. 9070.1G, Ch. VI, Section 2

SOURCES OF INFORMATION

Obtain and review the grantee's standard subrecipient agreement for each program. On site, discuss with staff.

DETERMINATION

The grantee is deficient if it has not entered into a written agreement with each subrecipient. (**DEFICIENCY CODE 110**: Missing written agreements)

The grantee is deficient if the written agreements do not address FTA requirements or are missing required elements. (**DEFICIENCY CODE 135**: Written agreements missing required elements)

The grantee is deficient if it does not ensure that all subrecipients have a DUNS. (**DEFICIENCY CODE 671**: Subrecipients without a DUNS)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office executed written agreements with each subrecipient. Direct the grantee to 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.

Direct the grantee to submit to the FTA regional office an amended subrecipient agreement that includes missing FTA requirements. Direct the grantee to submit documentation to the regional office that the amended agreement has been used in the next project application cycle.

Direct the grantee to develop and submit an implemented process for ensuring that its subrecipients have a valid DUNS.

26. Provide documentation that the grantee reports subawards using the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) by the end of the month following the month it made the subaward.

EXPLANATION

All direct recipients of FTA grants, grant amendments and cooperative agreements over \$25,000 awarded on or after October 1, 2010, are subject to the requirement of the Federal Funding Accountability and Transparency Act of 2006 (FFATA). The Act requires recipients to report subaward information to FSRS at www.FSRS.gov by the end of the month after the month in which they make any subaward under the grant. The reporting requirement does not include third party contract data at this time. Grantees must register on-line to use the reporting site. To register, the grantee must have a valid DUNS and current System for Award Management (SAM) registration. Grantees must update their SAM information annually. For a direct recipient to report on a subrecipient, the subrecipient must also have a valid DUNS but is not required to register in the SAM.

Grantees 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 the direct grant). For example, if FTA awarded the grant in November and the grantee signed

subrecipient agreements in February, the grantee has until March 31 to report the subaward into FSRS. Once the grantee 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.

The U.S. Department of Transportation (USDOT) submits a file of all awards made the previous month on the fifth day of each month. Grantees will be able to view and report on subawards after the information is downloaded to FSRS.

Information and training materials about FFATA subaward reporting and FSRS are posted on www.USASpending.gov/news. To receive new information on changes and updates to www.USASpending.gov as soon as it becomes available, subscribe by visiting www.USASpending.gov/news and adding your email address under the "What's New" section.

REFERENCES

P.L. 109-282 Federal Accountability and Transparency Act of 2006
Office of Management and Budget Open Government Directive - Federal Spending Transparency
FTA C. 5100.1, Ch. V, Section 8
FTA C. 9030.1E, Ch. VI, Section 8
FTA C. 9040.1G, Ch. V, Section 13
FTA C. 9070.1G, Ch. VI, Section 17

SOURCES OF INFORMATION

For FTA grants and grant amendments over \$25,000, obtain a list of subrecipients awarded subgrants over \$25,000 and the date of the award. Search for the date that the grantee filed its report for a sample of subrecipients. On site, discuss with the grantee.

DETERMINATION

The grantee is deficient if it has not reported subawards over \$25,000. The grantee is deficient if it has not reported subawards on time. (**DEFICIENCY CODE 175**: FFATA reporting deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to notify the FTA regional office when it has reported subawards to FSRS and to develop and submit to the FTA regional office procedures for reporting future subawards to FSRS timely.

27. How and how often does the grantee provide technical assistance to subrecipients in meeting Federal requirements? Please describe the technical assistance process.

EXPLANATION

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 Section 5310, 5311, 5316 and 5317 programs can be used for technical assistance. Technical assistance may be provided through orientations, informal conversations, formal correspondence, on-site performance reviews, conferences, etc. Grantees sometimes provide detailed guidance for specific activities, such as vehicle procurement or maintenance. Many grantees sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided.

The grantee should document in its state/program management plan(s) the resources and technical and management assistance it makes available to local subrecipients.

REFERENCE

49 CFR 18.37
2 CFR Part 200, Subpart D
FTA C 9040.1G, Ch. II, Section 3.b; Ch. IX
FTA C. 9045.1, Ch. III, Section 10
FTA C. 9050.1, Ch. III, Section 10
FTA C. 9070.1G, Ch. III, Section 12

SOURCES OF INFORMATION

Review the state/program management plan(s) for documentation of technical assistance activities and delivery approaches. On site, discuss the grantee's technical assistance activities and how they are funded. Review RTAP expenditures. Inquire as to how the grantee has provided technical assistance to subrecipients for new or revised Federal requirements.

DETERMINATION

The grantee is deficient if it does not provide technical assistance to subrecipients in meeting FTA requirements. (**DEFICIENCY CODE 151**: No technical assistance provided in meeting FTA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an updated state/program management plan(s) that includes procedures for providing technical assistance to subrecipients in meeting FTA requirements.

28. How many new subrecipients has the grantee taken on since the last Comprehensive Review?

29. How does the grantee monitor subrecipients to ensure compliance with FTA requirements?

EXPLANATION

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

The grantee must have an ongoing system to ensure that subrecipients adhere to Federal requirements. While FTA does not prescribe specific monitoring activities for ensuring compliance, it does expect the grantee to look behind certifications and assurances, contracts, and agreements. FTA relies on each grantee to develop and implement effective systems for monitoring and ensuring compliance with requirements.

The issue of monitoring compliance with Federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the grantee 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 grantee 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 grantee to perform all of its monitoring functions in-house.

Large grantees may have written procedures for oversight of subrecipients. Smaller grantees may have informal oversight mechanisms, such as periodic meetings. FTA expects grantees with a significant number of subrecipients to have formal oversight mechanisms.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
FTA Master Agreement, Section 2.e

SOURCES OF INFORMATION

Review the state/program management plan(s) for a discussion of monitoring activities of subrecipients, including periodic reporting, management or financial reviews, project monitoring and on-site reviews. Review the list of subrecipients in the grantee profile. Review a sample subrecipient agreement and an oversight site visit checklist. Review the oversight file for the subrecipient(s) to be visited during the site visit.

On site, discuss information obtained from the state/program management plans, application packages, agreements, and other documents regarding monitoring activities and have grantee staff confirm and explain the use of specific monitoring mechanisms. Discuss the documentation and follow-up of findings. Obtain copies of routine reporting forms and guidelines for reporting. Discuss how the grantee analyzes the information obtained through periodic reporting and types of follow-up action that could result. Review the files for the subrecipients to be visited during the site visit.

DETERMINATION

The grantee is deficient if it does not have appropriate systems for monitoring compliance with a broad range of requirements or is not applying the resources required to carry out an effective monitoring program. (**DEFICIENCY CODE 208**: Inadequate oversight of subrecipient/third-party contractor/lessees)

The grantee could be found deficient in its monitoring of a specific area but not deficient under Technical Capacity. Similarly, it could be found deficient under Technical Capacity, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit procedures to the FTA regional office to monitor subrecipients for compliance with Federal requirements.

30. How does the State demonstrate that it has adequate resources (staffing and budget) to administer the FTA-funded programs?

EXPLANATION

The State must have the financial and staffing capabilities to receive and administer Federal funds and to monitor and ensure compliance with Federal and state program requirements. This question brings together the review of the:

- Organization and staffing of the agency or unit responsible for administering the programs
- Technical assistance program
- Oversight program
- Compliance with FTA requirements
- Amount and percentage of funds under each program that are being applied to administration

Changes in the State's management of the programs, such as reductions in staff, decreases in the frequency of on-site monitoring of subrecipients, increases in delays in submission of information to FTA, and an increase in deficiencies over the last State Management Review are indications that the State is not applying adequate staffing resources to the programs.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.40
FTA C. 5010.1D, Ch. II, Section 3
FTA C. 5100.1, Ch. V, Section 1
FTA C. 8100.1C, Ch. II Section 7.b
FTA C. 9040.1G, Ch. II, Section 3.a

FTA C. 9045.1, Ch. II, Section 4
FTA C. 9050.1, Ch. II, Section 4
FTA C. 9070.1G, Ch. II, Section 4
FTA C. 9300.1B, Ch. II, Section 9(c)
FTA Master Agreement, Section 3.e

SOURCES OF INFORMATION

Responses to other questions in *Technical Capacity* and other review areas provide the basis for making a determination. Discussions with regional office and State staff support the determination. Review grant budget in the EAMS to determine if the State applies for state administrative funding. Discuss the adequacy of resources the State is applying to the programs with the FTA regional office. On site, discuss with the State.

DETERMINATION

The State is deficient if it is not deploying the resources necessary to manage the programs effectively. (**DEFICIENCY CODE 591**: Insufficient allocation of program resources)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office a plan for deploying the resources necessary to properly administer the FTA programs.

Questions 31 through 44 are for designated recipients of Section 5310 funds.

31. *How does the grantee define eligible subrecipients under Section 5310?*

32. *Do any governmental authorities receive “traditional” Section 5310 funds? Have the governmental authorities been approved by the state to coordinate services for seniors and individuals with disabilities or have they certified that no nonprofits are readily available?*

33. *What is the process used to allocate funds? Is the distribution of funds fair and equitable?*

34. *How does the grantee ensure that 55 percent of the Section 5310 apportionment to their area is applied to “traditional” Section 5310 capital projects?*

35. *What are the grantee’s procedures for monitoring Section 5310 subrecipients to ensure that services being delivered continue to be eligible?*

EXPLANATION

Section 5310 provides formula funding to states and designated recipients of large UZAs (UZAs with populations of 200,000 or more) to improve mobility for seniors and individuals with disabilities. MAP-21 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

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 approved by the state to coordinate services for seniors and individuals with disabilities
- Governmental authorities that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

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 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 program management plan must document program eligibility requirements.

The grantee certifies that the allocation of grants to subrecipients is fair and equitable.

The grantee is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services for seniors and individuals with disabilities. Generally, the grantee's subrecipient application package requests a description of the proposed project, including service area, eligible customers, and days and hours of operation. The grantee must enter into an agreement with subrecipients prior to expending funds that specifies the project to be funded under the grant. The grantee may require subrecipients to report information on the services provided and populations served (e.g., general public, elderly, disabled) on a periodic basis. The grantee must report performance information on gaps in service filled and ridership for the program. The grantee 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 grant 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 delivering meals if the 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 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.

REFERENCE

49 U.S.C. 5310 (b)(2)(A) and (B)
 FAST Act, Section 3000
 FTA C. 9070.1G, Ch. II, Section 4; Ch. III, Sections 5-7, 13-15; Ch. VI Section 5
 Annual Certifications and Assurances

SOURCES OF INFORMATION

Review the State/State program management plan, subrecipient grant applications, and subrecipient agreements for eligibility requirements. Review the most recent program of projects to determine whether any public entities receive Section 5310 funds. Review oversight procedures. Review the EAMS and project information contained in the program of projects. Confirm eligibility requirements on site. Discuss the process and criteria, if applicable, for approving governmental authorities to coordinate services. Review subrecipients' certifications to the governor or state correspondence approving a public body to coordinate services.

DETERMINATION

The grantee is deficient if has awarded Section 5310 projects to ineligible subrecipients. The grantee is deficient if it does not have the appropriate documentation for governmental authorities receiving "traditional" Section 5310 assistance. (**DEFICIENCY CODE 554**: Ineligible Section 5310 subrecipients)

The grantee is deficient if it does not allocate 55 percent of the funds to traditional Section 5310 capital projects undertaken by eligible subrecipients. (**DEFICIENCY CODE 553**: Section 5310 project deficiencies)

The grantee is deficient if the allocation of grants to subrecipients is not fair and equitable. (**DEFICIENCY CODE 245**: Selection process issues)

The grantee is deficient if it does not ensure that the services being funded are eligible. (**DEFICIENCY CODE 663:** Insufficient monitoring of Section 5310 subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to revise its Section 5310 eligibility requirements in its State/State program management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the grantee to obtain public comment on the revised state/program management plan. Direct the grantee to submit to the FTA regional office the revised state/program management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the grantee to submit to the FTA regional office procedures for ensuring that governmental authorities that receive "traditional" Section 5310 assistance are eligible. Direct the grantee to submit to the FTA regional office the appropriate documentation (applicant's certification to the governor or state's correspondence approving a governmental authority to coordinate service) for governmental authorities receiving "traditional" Section 5310 assistance.

Direct the grantee to 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.

Direct the grantee to submit to the FTA regional office procedures for properly allocating Section 5310 funds and/or identify eligible subrecipients.

Direct the grantee to submit to the FTA regional office procedures for ensuring that services provided are eligible for Section 5310 funding.

36. *How are funds apportioned to rural, small, and large urbanized areas tracked to ensure that they are used in the appropriate areas.*

37. *If Section 5310 funds are transferred between areas, did the Governor certify the needs in the area were met?*

38. *In the area(s) from which funds were transferred, how were responsible local officials, publicly owned operators of public transportation, and nonprofit providers consulted?*

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.

REFERENCE

49 U.S.C. 5310
Fast Act, Section 3000
FTA C. 9070.1G, Ch. III, Section 10

SOURCES OF INFORMATION

Discuss how the State tracks apportioned funds by area (rural areas, small urban areas, and each large urbanized area). Obtain and review evidence of consultation with responsible local officials, publicly owned operators of public transportation, and nonprofit providers for transferred funds. Obtain the Governor's certifications for transferred funds.

DETERMINATION

The State is deficient if it does not have adequate procedures for tracking Section 5310 funds by rural, small urban, and 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. 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 553**: Section 5310 project deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office procedures for tracking Section 5310 funds by rural, small urban, and large urbanized areas.

Direct the state to submit to the FTA regional office a certification by the Governor that the needs in the area from which funds were transferred are adequately met and procedures for submitting a Governor's certification for fund transfers.

Direct the State to 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.

39. *Where meal delivery or other incidental service is provided, how does the grantee ensure such service does not conflict with the provision of transit service or result in a reduction of service to transit passengers?*

40. *How does the grantee ensure that nutrition programs pay the operating costs attributable to meal delivery?*

EXPLANATION

Transit service providers receiving assistance under Section 5310 may coordinate and assist in providing 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. FTA expects the nutrition program to pay operating costs attributable to meal delivery. 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.

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

REFERENCE

FTA C. 9070.1G, Ch. II, Section 7.b

SOURCES OF INFORMATION

Review the state/program management plan for discussion of incidental service. On site, discuss with staff the grantee's policy on meal delivery and other incidental service. Identify subrecipients providing incidental service. During subrecipient site visits, ask if the subrecipients provide meal delivery or other incidental service, what are the sources of funding for the incidental service, and if the incidental service detracts from the provision of public transportation.

DETERMINATION

The grantee is deficient if it does not ensure that incidental service does not interfere with the provision of transit service and cover the cost of the service. (**DEFICIENCY CODE 250**: Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that incidental service provided by Section 5310 subrecipients does not detract from transit service.

41. *Do coordinated plans for the Section 5310 program address the required elements?*

- 42.** *What measures were taken to ensure that plans were 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?*
- 43.** *What is the cycle and duration of the coordinated plans?*
- 44.** *How was the development of the coordinated plans prepared in coordination and consistent with the applicable metropolitan and statewide planning process?*

EXPLANATION

Grantees 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. Although the requirement for a coordinated plan is not new, FTA recognizes that some large urbanized areas may need to modify existing coordinated plans to address the specific needs of the program’s target populations and/or be approved by individuals from the target populations. Modifications to existing programs are acceptable.

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. Grantees are not required to submit the coordinated plans to FTA. Grantees must certify that projects were selected from this process and must make reference to the plan in the program of projects.

The coordinated plan serves as the foundation for the program of projects and should be integrated into the metropolitan and statewide transportation planning processes and document local policy support and Federal fund eligibility. The coordinated plan may either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans or be developed as part of the metropolitan and statewide transportation planning processes. If the plan is not prepared within the broader process, the lead agency for the coordinated plan should ensure coordination and consistency between the coordinated planning process and metropolitan or statewide planning processes. The update cycles for coordinated plans in metropolitan areas should follow the update cycles for metropolitan transportation plans (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas).

REFERENCE

FTA C. 9070.1G Ch. V

SOURCES OF INFORMATION

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 grantee providing guidance on development of the plans. Discuss on site. Review the grantee’s documentation of review of a plan and a sample of coordinated plans to ensure that the plans include required elements.

DETERMINATION

The grantee is deficient if the coordinated plan does not contain the required elements. (**DEFICIENCY CODE 66:** Coordinated plans missing required elements)

The grantee is deficient if there is no evidence that the locally developed coordinated plan was developed and approved through a process that included seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public. (**DEFICIENCY CODE 595:** Inadequate public involvement efforts for coordinated plans)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an amended coordinated plan that contains the required elements, along with procedures for ensuring that coordinated plans contain the required elements.

Direct the grantee to submit to the FTA regional office procedures for developing and approving plans with representation from seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public.

Questions 45 through 55 are for designated recipients of Section 5311 funds.

45. How does the State define eligible subrecipients under Section 5311?

EXPLANATION

Section 5311 funds are available for expenditure for public transportation projects and intercity bus projects in areas other than urbanized areas. Under Section 5311, eligible subrecipients may include:

- State agencies
- Local governmental authorities
- Private nonprofit organizations
- Indian tribal governments
- Operators of public transportation services or intercity bus service providers that receive FTA grant funds indirectly through the State or a subrecipient
- Private intercity bus operators (Section 5311(f) only)

Private for-profit operators of transit service may participate through contracts with eligible subrecipients. State agencies may further limit recipient eligibility in order to comply with state laws or to further state program goals. However, the State may not extend eligibility beyond those entities allowed by FTA. The state management plan must document program eligibility requirements.

Federally recognized Indian tribes are eligible as direct recipients of Section 5311 funds administered by the states. Those funds are subject to all the terms and conditions of FTA's standard grant agreements. The special terms and conditions that FTA developed for tribes receiving funding under the Tribal Transit Program (5311(c)(1)) are applicable only to that program. When a tribe becomes a direct FTA recipient, the State is only responsible for the program requirements, such as fair and equitable distribution of funds.

REFERENCE

FTA C. 9040.1G, Ch. III, Section 2

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for eligibility. Review oversight procedures. Confirm eligibility requirements on site.

DETERMINATION

The State is deficient if its eligibility criteria are more permissive than FTA's eligibility requirements. (**DEFICIENCY CODE 269:** Ineligible subrecipients)

SUGGESTED CORRECTIVE ACTION

Direct the State to revise its Section 5311 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the State to seek public comment on the revised state management plan. Direct the State to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

46. What is the process used to distribute funds under Section 5311? How are Indian tribal governments, where present, included in the selection process?

47. Does the project selection process provide for a fair and equitable distribution of funds?

EXPLANATION

The annual Section 5311 program of projects must provide for fair and equitable distribution of funds within the State, including Indian reservations. Tribal Transit Program funds are not meant to replace or reduce funds that Indian tribes receive from states through Section 5311 but are used to enhance public transportation on Indian reservations and other tribal transit services. The State's project selection process must assure equity of distribution of benefits among all groups within the State. The State is responsible for developing project selection criteria and reviewing and selecting projects for approval. The State must document its process for selecting projects and distributing funds in the state management plan.

The State should have a process for publicizing the availability of funding and for distributing applications for funding to all interested parties. The State should provide outreach to minority areas, including Indian tribal governments, regarding the availability of Section 5311 funding and the application process. Some states assist applicants, including Indian tribes and other minority organizations, with the application.

Applicants for Section 5311 assistance tend to be consistent over time. Many subrecipients were in operation before the start of the program or started operations in the early years of the program. States might accept new providers based on criteria such as projected ridership and technical and financial capacity. Many states limit eligibility to public entities. States frequently distribute operating assistance by formula, based on population or some other measure. Some states use performance criteria in addition to, or instead of, population-based formulas.

Most states select projects for capital assistance based on specific project evaluation criteria, which frequently include maintenance of effort, need, coordination, and other factors determined by the State. Generally, states assign weights to each evaluation criterion and provide an overall score for each project, allowing projects to be ranked.

For many states, demand exceeds the availability of funding. The State may restrict Section 5311 funding by increasing the local match requirement, by limiting the use of funds (e.g., operating assistance only), or by imposing other limitations. Some states, for example, give priority to maintenance of effort over service expansion. While this may prevent new systems from participating in the Federal assistance program, it would not necessarily indicate an inequitable distribution of funds.

REFERENCE

FTA C. 9040.1G, Ch. IV, Section 1

SOURCES OF INFORMATION

Review the state management plan, the subrecipient application, and other documentation of the project evaluation and selection process. On site, discuss the selection process with State staff. Identify the basis for distribution of funds for each category of assistance (capital, operating, project administration, and planning). Identify evaluation factors used, weighting of evaluation factors, and the participants in the evaluation process.

DETERMINATION

The State is deficient if its method for soliciting applications for funding, selecting projects or distributing funds does not provide for fair and equitable distribution of funds. (**DEFICIENCY CODE 245**: Selection process issues)

SUGGESTED CORRECTIVE ACTION

Direct the State to incorporate into its state management plan a revised process for distributing funding to provide fair consideration of projects to all eligible Section 5311 applicants. Direct the State to solicit public comment on the

revised plan. Direct the State to submit to the FTA regional office the revised state management plan, evidence that public comment was solicited, and evidence that it was implemented in the next application cycle.

48. *What are the State's procedures for monitoring Section 5311 subrecipients to ensure that services delivered continue to be eligible and are open and promoted to the general public?*

EXPLANATION

Section 5311 funds are available for expenditure for public transportation projects (including Job Access Reverse Commute) and intercity bus projects for people living in any area outside urbanized areas. Public transportation is defined as mass transportation by bus (or rail or other surface conveyance) either publicly or privately owned, which provides, to the public, general or special service on a regular and continuing basis. Section 5311 projects may include transportation to and from urbanized areas. Charter or sightseeing service is not eligible.

Section 5311 service may be designed to maximize use by members of the public who are transportation disadvantaged, including seniors and persons with disabilities. Coordinated human service transportation that primarily serves seniors and persons with disabilities, but that is not restricted from carrying other members of the public, is considered open to the general public if it is promoted as public transportation service.

States are responsible for ensuring that Section 5311 funds are being used to support eligible services. Applications generally request a description of the proposed service, including service area, eligible customers, days and hours of operation, and route information. The State must enter into an agreement with subrecipients prior to expending funds on a project that specifies the project to be funded under the grant. Some states require Section 5311 applicants to provide information on marketing. States typically require subrecipients to report information on the services provided (e.g., populations served - general public, seniors, persons with disabilities) on a periodic basis. States can observe subrecipients' service during site visits. States might also assist subrecipients in developing marketing plans and a public transportation "brand."

REFERENCE

FTA C. 9040.1G, Ch. III, Section 2

SOURCES OF INFORMATION

Review the subrecipient application to identify the information obtained in the application process. On site, discuss the technical assistance efforts, application requirements, reporting requirements, site visits, and other mechanisms used to ensure that subrecipients are providing services eligible for Section 5311 funding.

DETERMINATION

The State is deficient if it does not ensure that 5311-funded services continue to be eligible and are open and promoted to the general public. (**DEFICIENCY CODE 250:** Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office procedures for ensuring that services provided by Section 5311 subrecipients continue to be eligible and are open and promoted to the general public.

49. *Where meal delivery or other incidental service is provided, how does the State ensure such service does not conflict with the provision of transit service or result in a reduction of service to transit passengers? How does the State ensure that nutrition programs pay the operating costs attributable to meal delivery?*

EXPLANATION

Transit service providers receiving assistance under Section 5311 may coordinate and assist in providing 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. FTA expects the nutrition program to pay operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment 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 State must ensure that incidental service provided by subrecipients does not interfere with the provision of transit service. The State may request information on incidental service in the subrecipient application process. Along with the number of passengers, miles and other statistics, some states require subrecipients to report periodically on meal delivery and other incidental service. Some states observe subrecipients' service during site visits.

REFERENCE

FTA C. 9040.1G, Ch. III, Section 2.d

SOURCES OF INFORMATION

Review the state management plan for discussion of incidental service. On site, discuss with staff the State's policy on meal delivery and other incidental service. Identify subrecipients providing incidental service. During subrecipient site visits, ask if the subrecipients provide meal delivery or other incidental service, what are the sources of funding for the incidental service, and if the incidental service detracts from the provision of public transportation.

DETERMINATION

The State is deficient if it does not ensure that incidental service does not interfere with the provision of transit service and cover the cost of the service. (**DEFICIENCY CODE 250**: Insufficient monitoring of subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office procedures for ensuring that incidental service provided by Section 5311 subrecipients does not detract from transit service.

50. Which Section 5311 subrecipients provide service in urbanized areas? How does the State ensure that costs are properly allocated between urban and rural service?

EXPLANATION

A subrecipient may receive both Sections 5307 and 5311 funding to provide public transportation to an urbanized area and surrounding rural areas. The subrecipient must develop a reasonable basis for allocating the cost of service between the two funding sources. Service to and from a rural area may be considered rural, not urban, service.

The State is responsible for ensuring that subrecipients' allocation of expenses between urban and rural areas is reasonable. States generally require applicants for Section 5311 funding to identify the service area. The State may require subrecipients to document their process for allocating costs between urbanized and rural areas. The State may require subrecipients to report total expenses and show the allocation of expenses between urbanized and rural areas when requesting reimbursement. The State may review financial information and the allocation of costs between urbanized and rural areas during site visits.

REFERENCE

FTA C. 9040.1G, Ch. III, Section 2.e

SOURCES OF INFORMATION

Ask the State to identify any Section 5311 subrecipients that provide service in both urbanized and rural areas. Discuss the State's mechanism for ensuring that costs are allocated appropriately between the urban and nonurban service. Review cost allocation methodologies.

DETERMINATION

The State is deficient if it provides Section 5311 assistance to subrecipients operating in both urbanized and rural areas but does not ensure that costs are properly allocated between the urban and nonurban service. (**DEFICIENCY CODE 250**: Insufficient monitoring subrecipient eligible services)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office procedures for ensuring that Section 5311 subrecipients operating in both urbanized and rural areas properly allocate costs between urban and nonurban service.

51. What amount and percentage of Section 5311 funds has the State programmed for intercity bus service, per Section 5311(f), for the past three years?

Intercity Bus Projects			
Federal Fiscal Year	201X	201X	201X
Apportionment			
Grant number			
Grant number			
Grant number			
Grant number			
Grant number			
Grant number			
Total projects			
Percentage of apportionment			

EXPLANATION

The State is required to expend a portion of its Section 5311 apportionment on a program to develop and support intercity bus transportation in rural areas. The requirement applies only to the funds FTA apportions to the State; it does not apply to any funds the State transfers to its 5311 program. Note that since insular areas (American Samoa, Guam, and Northern Mariana Islands) can use their consolidated grant funds for any purpose or program authorized under the programs, they are not required to spend 15 percent of their Section 5311 apportionments on intercity bus service.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

Review the state management plan for discussion of the State’s intercity bus program. Review the Section 5311 programs of projects in the EAMS for the last three years to determine the amount and percentage of funds the State has programmed for its intercity bus program. To determine the percentage, compare the amount programmed for intercity bus projects to the annual apportionment, not the total amount of the grant.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

52. If the State has programmed less than 15 percent on intercity bus projects, when did the governor certify that intercity bus service needs are adequately met in relation to other rural transportation needs?

53. If programming less than 15 percent on intercity bus projects, when did the State consult with intercity bus providers? Was the consultation performed before the governor certified? Please describe the State’s consultation process.

EXPLANATION

The State must program no less than 15 percent of its apportionment on intercity bus projects unless, after consulting with affected intercity service providers, the governor (or designee) certifies that the intercity bus service needs of the State are adequately met in relation to other rural transportation needs. The governor can certify that intercity bus needs are partially met and, therefore, program an amount less than the specified percentage for an intercity bus program in that year. The governor must certify in each apportionment year that the State does not program the required percentage of funds. The State may include more than one apportionment year in a certification.

A State may have obligated and assigned funds to intercity bus projects in prior years or reserved funds for intercity bus projects not yet selected. A State may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either case, if the funds committed or reserved for intercity bus projects are later determined to not be needed for intercity bus service, the State may submit a retroactive certification within the period of availability of funds. This action will permit the use of the prior year funds for other rural transit projects.

Before the governor certifies that intercity bus needs are adequately met, the State must consult with affected intercity bus service providers. FTA has established minimum requirements for the intercity bus consultative process. The process must:

- Identify intercity bus providers in the State
- Consult with identified providers and the intercity bus industry
- Provide an opportunity for intercity bus providers to submit proposals for funding annually
- Demonstrate a direct correlation between the results of the consultation process and a determination that the State's intercity bus needs are adequately met

The state management plan must document the procedure to be implemented for the consultative process.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

Confer with the FTA regional office regarding the governor's certification. Review the Section 5311 state management plan for documentation of how the State implements its consultative process. On site, review documentation of the consultative process and other documentation supporting the certification. Review any statewide assessment of intercity bus needs. Ensure that certifications occurred within the period of availability of funds. Discuss with the State and review documentation related to the consultative process. Ensure that the consultative process met minimum requirements and that there is a direct correlation between the results of the process and a determination that the State's intercity bus needs are adequately met in relation to other rural transportation needs.

DETERMINATION

The State is deficient if it did not expend 15 percent of its apportionment on intercity bus projects and did not certify that intercity bus needs are adequately met. (**DEFICIENCY CODE 592**: Intercity bus certification lacking)

The State is deficient if it did not consult with affected private intercity bus operators and the governor certified that the intercity bus service needs are adequately met. The State is deficient if the consultative process does not meet minimum requirements. (**DEFICIENCY CODE 282**: Insufficient intercity bus consultative process)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA administrator, with a copy to the FTA regional office, a governor's certification for funds within the period of availability. For funds past the period of availability, consult with the FTA regional office regarding the corrective action.

Direct the State to submit to the FTA regional office a revised state management plan that includes a consultative process that meets minimum FTA requirements. Direct the State to submit documentation that it obtained public comment on the revised plan, if applicable.

54. What activities is the State pursuing to support intercity bus service in rural areas? Are these activities eligible?

EXPLANATION

Connection to the national network of intercity bus service is an important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Intercity bus projects may include package express service, if it is incidental to passenger transportation. The definition of intercity bus does not include commuter service (service designed primarily to provide daily work trips within the local commuting area). Commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311 but not counting toward the required percentage for Section 5311(f).

Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Intercity bus does not include air, water, or rail service. While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long distance trips are included in the definition of intercity service. For example, service that provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community) is not considered intercity service, although it may be an eligible public transportation service. Similarly, service that only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route that covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service. The statute identifies eligible intercity bus activities, including:

- Planning and marketing for intercity bus transportation
- Capital grants for intercity bus shelters, joint-use stops and depots
- Operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects
- Coordination of rural connections between small transit operations and intercity bus carriers

This listing does not preclude other capital and operating projects for the support of rural intercity bus service.

Service that acts as a feeder to intercity bus service and makes meaningful connections with scheduled intercity bus service to more distant points is eligible. The feeder service is not required to have the same characteristics as the intercity bus service to which it connects. For example, it can be demand responsive. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

Review the state management plan for a discussion of eligible projects. Review programs of projects in the EAMS for a general description of the State's intercity bus projects. On site, obtain information on the proposals received, the projects selected, and the status of projects. Review agreements with subrecipients of Section 5311(f) for a description of the scope of the project and schedule.

DETERMINATION

The State is deficient if projects selected or funded do not meet the definition of intercity bus service or are not consistent with eligible activities. (**DEFICIENCY CODE 287**: Ineligible intercity bus projects)

SUGGESTED CORRECTIVE ACTION

Direct the State to cease counting ineligible service towards the 15 percent requirement in future grants. Direct the State to submit to the FTA regional office documentation that it has modified the service to comply with the requirements or identified new projects that are eligible.

55. Is the State using an unsubsidized portion of privately provided intercity bus service as in-kind local match for intercity bus projects? If so, provide documentation.

EXPLANATION

Section 5311 provides that in the case of an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, the local match may be derived from the costs of a private operator for the unsubsidized segment of intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under 5311(f). To use the net project cost provided by a private operator as in-kind match, the FTA-assisted project must be defined as including both the feeder service and an unsubsidized segment of the intercity bus network to which it connects.

The unsubsidized private operator costs can be used as the local match only if the private operator agrees in writing to the use of the costs of the private operator for the unsubsidized segment of intercity bus service as an in-kind match. In order to be eligible to be used as in-kind match, a cost must be otherwise allowable under the project. Thus to be eligible under Section 5311, the net project costs contributed by the private operator as in-kind match must connect the rural community to further points.

Fare revenues of the private operator for the unsubsidized segment must be subtracted from the total cost to operate the unsubsidized segment to determine the eligible amount of in-kind match. For administrative simplicity, FTA allows two methods for the private operator to determine its eligible net cost that can be used as local match.

Under the first method, the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the unsubsidized service, and thus only the capital costs of the unsubsidized service may be used as in-kind match. To simplify matters, FTA will use the percentages allowed in the capital cost of contracting guidance to determine how much of the private operator's total costs are attributable to capital (e.g., 50 percent where the operator provides and maintains all the equipment, less if FTA-funded equipment is provided).

Under the second method, the private operator can directly calculate the net project cost of the unsubsidized segment and must provide to FTA verifiable information showing the eligible capital and operating expenses as well as fare revenues attributable to the unsubsidized segment that were used to make the calculation.

REFERENCE

FTA C. 9040.1G, Ch. VIII

SOURCES OF INFORMATION

Review the attachments to the grant application documenting use of in-kind match. Ask the State to provide and explain how it documents in-kind local match for intercity bus projects.

DETERMINATION

The State is deficient if the project is not defined as including the unsubsidized segment of the intercity bus network, if the private operator did not agree in writing to the use of the in-kind match, the in-kind match is not allowable under the project, the fare revenues of the private operator are not subtracted from the total cost to operate the unsubsidized segment, or one of the two approved methods are not used to determine eligible net cost. (**DEFICIENCY CODE 670:** Intercity bus in-kind match issues)

SUGGESTED CORRECTIVE ACTION

Direct the State to revise the project cost to include the unsubsidized segment of the intercity bus network and to upload to the EAMS a revised program of projects. Notify the FTA regional office that the revised program of projects was uploaded.

Direct the State to submit to the FTA regional office a written agreement with the private operator regarding the use of the in-kind match.

Direct the State to cease using FTA funds for the project or to submit to the FTA regional office documentation of eligible in-kind match.

Direct the State to submit to the FTA regional office documentation showing that the fare revenues of the private operator are subtracted from the total cost to operate the unsubsidized segment.

Direct the State to submit to the FTA regional office a revised eligible net project cost using one of the two approved methods.

56. What activities is the State pursuing to support state safety oversight? Are these activities eligible?

EXPLANATION

Under 49 U.S.C. Section 5329(e), states with (A) a rail transit system within its jurisdiction that is not subject to regulation by the Federal Railroad Administration (FRA), or (B) a rail transit system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the FRA.

Each state safety oversight (SSO) program shall establish an SSO agency that:

- is financially and legally independent from any public transportation entity that the SSO agency oversees
- does not directly provide public transportation services in an area with a rail fixed-guideway public transportation system subject to the requirements in this section
- does not employ any individual who is also responsible for the administration of rail fixed-guideway public transportation programs subject to the requirements of this section
- has the authority to review, approve, oversee, and enforce the implementation by the rail fixed-guideway public transportation agency of the public transportation agency safety plan required under subsection (d)
- has investigative and enforcement authority with respect to the safety of rail fixed-guideway public transportation systems of the eligible State
- audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under Section 5329(d)
- provides, at least once annually, a status report on the safety of the rail fixed-guideway public transportation systems the SSO agency oversees to FTA, the Governor of the eligible State, and the board of directors, to equivalent entity, of any fixed guideway public transportation system that the SSO agency oversees

The SSO Formula Grant Program provides funding for eligible States to develop or carry out enhanced SSO Programs that satisfy the requirements of Section 5329. Funding is available for administrative and operating expenses, including training.

States may not use fees, assessments, or funding from rail transit systems in their jurisdictions. States may not use these funds for project costs under 49 CFR Part 659 unless they also support the MAP-21 program.

States submit a Certification Work Plan (CWP) for FTA approval that identifies activities the State plans to pursue to enhance the SSO Program. Only eligible activities are included in the approved CWP as a requirement to apply for a Section 5329 grant.

REFERENCE

49 U.S.C. Section 5329
Fast Act, Section 3000
FTA SSO Program Website

SOURCES OF INFORMATION

Obtain the State's CWP for an understanding of activities the State is pursuing. Review grants in the EAMS to determine the type of activities funded with the Section 5329 funds. On site, review as part of the review of the electronic clearinghouse (ECHO) sample, sample drawdowns made against the Section 5329 grant to determine that the expenses are eligible under the program.

DETERMINATION

The State is deficient if it cannot demonstrate that the Section 5329 grant funding was used solely to support the initial development or enhancement of an SSO program. (**DEFICIENCY CODE 276**: Ineligible expenses charged to grant)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office a plan for using Section 5329(e) funds for initial development or enhancement of its SSO program. If directed by the FTA regional office to do so, direct the State to account for and return funds to the grant that were spent on ineligible activities.

PART B: GRANT ADMINISTRATION

57. *Do the data in the Milestone Progress Reports (MPRs), program status reports and Federal Financial Reports (FFRs), the grant closeout history, and the information from FTA regional office staff indicate that the grantee appears to have good grant and project management practices?*

58. *Are there indications in the MPRs (such as a high number of milestone revisions) or from the FTA regional office that grant-funded projects are not being delivered on time or within budget?*

EXPLANATION

The grantee is responsible for administration of grants in compliance with the grant agreement and other incorporated documents, including statutes, regulations, the FTA Master Agreement, and FTA circulars. FTA expects projects to be completed according to the schedule and budget in the grant agreement, as updated in the MPRs.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 18.20 (4)
49 CFR 18.50
FTA C. 5010.1D Ch. II, Section 3
FTA C. 5010.1D Ch. III, Sections 2, 3, 4, 5 and 6
FTA C. 5010.1D Ch. IV, Section 2

SOURCES OF INFORMATION

Review the EAMS to identify open grants, remaining Federal funds, date of last disbursement, and other grant activity information. Review information provided by the FTA regional office about old and inactive grants and the grantee's timeliness in submitting required reports in the EAMS. Examine the age of the grants, the remaining balances, and other data to determine the status of grants. For grants that appear to be behind schedule or over budget, review MPRs for explanations of grant activity.

Compare upcoming projects in existing grants and in grant applications with completed projects in relation to the grantee's size, organizational structure, and past experience. Review information in MPRs about any claims and change orders that exceed \$100,000 related to FTA funded projects. Look more closely at MPRs and other information about the projects involved for indications that they are in danger of being over budget and/or behind schedule.

DETERMINATION

Input into enhanced review determination.

SUGGESTED CORRECTIVE ACTION

None

59. *Are progress reports submitted for each open grant at the required intervals (quarterly or annually) and on time?*

60. *For FTA Emergency Relief grants, is the grantee submitting MPRs and Insurance Proceeds Reports (IPRs) at the required intervals (quarterly)?*

61. Do the reports contain all required information?

EXPLANATION

Progress reports are the primary written communication between grantees and FTA.

MPRs

Grantees must submit MPRs in the EAMS for each open grant within 30 days of the end of the reporting period. Reports must be submitted for all active/executed grants, even if no activity occurred on those grants since the last report. 2 CFR Part 200, Subpart D, 49 CFR Part 18, and FTA C. 5010.1D detail the information that, at a minimum, must be included in these reports. Reporting on operating assistance is limited to the estimated and actual date when funding has been expended. Reports for other projects must include:

- a) Current status of each open activity line item (ALI) within the active/executed grant
- b) Narrative description of projects, status, problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and contract awards
- c) Detailed discussion of all budget or schedule changes
- d) Dates of expected or actual requests for bid, delivery, etc.
- e) Actual completion dates for completed milestones
- f) Revised estimated completion dates when original estimated completion dates are not met accompanied by:
 - Explanation of why scheduled milestones or completion dates were not met
 - Identification of problem areas
 - Narrative on how the problems will be solved
- g) Discussion of the expected impacts and the efforts to recover from the delays
- h) Analysis of significant project cost variances using quantitative measures, such as hours worked, sections completed, or units delivered and discussion of completion and acceptance of equipment and construction or other work, together with a breakout of the costs incurred and required to complete the project
- i) List of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period accompanied by a brief description, estimated costs, and the reasons for the claims
- j) List and brief description of all potential and executed change orders of amounts exceeding \$100,000, pending or settled, during the reporting period
- k) List of claims or litigation involving third party contracts and potential third party contracts that:
 - Have a value exceeding \$100,000
 - Involve a controversial matter, irrespective of amount, or
 - Involve a highly publicized matter, irrespective of amount
- l) List of all real property acquisition actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel during the reporting period.

Annual Program of Projects Status Reports

Designated recipients of Sections 5310, 5311, 5316, and 5317 funds must submit program of projects status reports for each open grant annually. These reports should be attached to the grantee's corresponding MPR in the EAMS.

Reports must include:

- a) Updated program of projects for each approved grant that contains active projects reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories
- b) Budget revisions for changes in line item budgets
- c) Significant civil rights compliance issues, such as Title VI, Equal Employment Opportunity, or Disadvantaged Business Enterprise complaints against the recipient or subrecipients
- d) Notable accomplishments or problems involving Section 5310 subrecipients

Emergency Relief Grants

Post-award reporting requirements for Section 5324 grants include submission in the EAMS of MPRs, IPRs, and any other reports FTA determines necessary. IPRs must include, at a minimum, the following information:

- Grantee insurance policies that cover any damage sustained by Hurricane Sandy
- Each insurance claim submitted in connection with damage sustained by Hurricane Sandy, for capital and operating costs, from October 29, 2012, through the date of the IPR
- The status of each insurance claim submitted in connection with damage sustained by Hurricane Sandy from October 29, 2012, through the date of the IPR
- The total amount of insurance proceeds received in connection with damage sustained by Hurricane Sandy, for capital and operating costs, from October 29, 2012, through the date of the IPR
- The status of the allocation of any insurance proceeds from October 29, 2012, through the date of the IPR
- If the grantee allocated insurance proceeds, whether it allocated insurance proceeds towards an FTA funded project activity or a non-FTA funded project activity
- If the grantee allocated insurance proceeds towards an FTA funded project activity, then it shall identify that project activity by project number and ALI and the status of any grant action taken to adjust the Federal share, accordingly

Reporting Intervals

The following table shows the reporting frequency for MPRs and FFRs by program. FTA, at its discretion, can require more frequent reporting.

MPR and FFR Reporting Frequency		
Grant Program	Grant Project	How Often
5305	All	Annually
5307, 5310, 5316, 5317 5309/5339 Bus Purchases	Grants with projects in small UZAs (<200,000) and rural areas	Annually
	Grants with projects in large UZAs (>200,000)	Quarterly
5309/5339 Facility Construction	All	Quarterly
5311	All	Annually
5324	Before April 1, 2016	Monthly

MPR and FFR Reporting Frequency		
Grant Program	Grant Project	How Often
	Beginning April 1, 2016	Quarterly
5329	All	Quarterly

REFERENCES

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

SOURCES OF INFORMATION

Examine the grantee's progress reports. Review recently submitted reports in the EAMS to determine if they are submitted on time and include the required information. Determine if the FTA regional office has imposed additional reporting requirements, such as quarterly reporting for grantees required to file annual reports. Review any correspondence from FTA to the grantee regarding reports.

Prior to the site visit, review written grant administration and reporting procedures. During the site visit, discuss the grantee's procedures for grant administration. Review responses against documented procedures.

Review information provided by the FTA regional office about Section 5324 grants and the grantee's timeliness in submitting required reports in the EAMS. Review IPRs in the EAMS, along with additional insurance policy and insurance claim information provided by the grantee.

DETERMINATION

The grantee is deficient if it does not submit reports for each open grant, does not submit reports at the required intervals, or submits reports late consistently. (**DEFICIENCY CODE 38**: Late MPRs/FFRs) or (**DEFICIENCY CODE 568**: Late MPRs/IPRs for Section 5324 grants)

The grantee is deficient if it does not include sufficient detail about schedule delays, omits other required information, or submits inaccurate information. (**DEFICIENCY CODE 68**: Progress reports lack required information), (**DEFICIENCY CODE 569**: Insufficient MPR reporting for Section 5324 grants), or (**DEFICIENCY CODE 570**: Insufficient IPR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office procedures for including all required information in reports.

62. *Are FFRs submitted for each open grant at the required intervals (quarterly or annually) and on time?*

63. *Are FFRs submitted for each open Section 5324 grant at the required intervals (quarterly)?*

64. *Are cumulative Federal cash receipts and cash disbursements reported? If there is a positive balance of Federal 'cash on hand' at the end of the reporting period, is this reported with an explanation included in the 'remarks' section of the FFR?*
65. *If applicable, has the grantee responded to FTA comments on FFRs?*
66. *Describe how the grantee develops and validates data for FFRs. How are the data in FFRs reconciled with the data in corresponding MPRs?*
67. *How are unliquidated obligations calculated?*
68. *If indirect costs are charged to a grant:*
- a. *Is the indirect expense section of the FFR for that grant completed?*
 - b. *Are the rates shown consistent with the approved cost allocation plan or indirect cost proposal?*

EXPLANATION

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

- **Federal cash on hand at the beginning of period** is the amount of Federal cash on hand at the beginning of the reporting period and is reported on a cash basis.
- **Federal cash receipts** are the amount of FTA funds received for the period and are reported on a cash basis—when the funds are actually received.
- **Federal cash disbursements** are the amount of FTA funds disbursed as of the end of the reporting period and are reported on a cash basis—when the funds are actually disbursed. For grantees that draw funds on a reimbursement basis, Federal funds are reported as disbursed only after they are received.
- **Federal cash on hand at the end of period** is populated by the EAMS. Federal cash on hand should never be a negative number. If there is cash on hand at the end of the reporting period, FTA requires an explanation in the remarks and certifications tab describing why drawdowns were made early or other reasons for the excess cash, if any. The cash on hand amount should reflect immediate cash needs. FTA may assess interest charges for excess cash held for more than three business days. Note that Federal share of expenditures and recipient share of expenditures are reported on an accrual basis—when goods and services have been received.
- **Unliquidated obligations** are binding commitments that have been entered into and for which expenditures have not yet been recorded because goods and services have not been received. Examples of these are: a signed contract for bus purchases for which delivery of vehicles has not yet occurred, a contract for construction services not rendered, open purchase orders, contract retentions, and unexpended portions of signed subrecipient agreements.
- **Unobligated balance** is the amount of a grant that has not been expended and is not covered by a binding commitment (unliquidated obligation).
- **Indirect expense** is the amount of indirect costs charged to a grant by the reporting organization. The rate must be based on a previously approved cost allocation plan or indirect cost proposal. The grantee must report the total amount of indirect expenses incurred on a cumulative basis. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate approved by the cognizant agency, the total base amount from which the indirect cost rate is determined, the period covered by the approved rate, amount

charged to the grant, and the Federal share of the indirect expenses charged. For indirect costs of other organizations or subrecipients that are charged to the grant, added notes to the FFR regarding the rates of these organizations.

- The grantee should address any **FTA comments** either in a revised or the next report.

The grantee should have procedures to ensure that FFRs are accurate. Many grantees have program managers that prepare MPRs while financial personnel prepare FFRs. FTA has found frequent instances of data in FFRs not being reflected in MPRs and vice versa. For example, an MPR may indicate that the grantee has awarded a construction contract but the FFR does not report unliquidated obligations.

REFERENCES

49 U.S.C. Section 5324 / MAP-21 Section 20017
2 CFR Part 200, Subpart D
49 CFR 18.41
SF-425, Federal Financial Report
Federal Financial Report Instructions
FTA C. 5010.1D, Ch. III, Section 3
FTA C. 5100.1, Ch. V, Section 3
FTA C. 8100.1C, Ch. II, Section 7.d(6)
FTA C. 9040.1G, Ch. V, Section 19
FTA C. 9045.1, Ch. VI, Section 16
FTC C. 9050.1, Ch. VI, Section 16
FTA C. 9070.1G Ch. VI, Section 23
March 29, 2013 Federal Register Notice
May 29, 2013 Federal Register Notice
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Review FFRs in the EAMS to determine if they are submitted on time at the required intervals. Determine if Federal cash receipts and disbursements are reported. If cash on hand is reported, determine if an adequate explanation is provided in the remarks and certifications tab. Examine MPRs and FFRs to see if the data reported agree. Review FFRs and MPRs to determine if unliquidated obligations are not reported and should be. On site, follow up with the grantee regarding how it defines unliquidated obligations and any issues identified during review of the reports. If the grantee charges indirect costs to grants, verify that the correct rates and amounts have been entered into the FFR.

DETERMINATION

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

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

The grantee is deficient if the data in MPRs are not reflected in FFRs and vice versa. (**DEFICIENCY CODE 68**: Progress reports lack required information, **DEFICIENCY CODE 569**: Insufficient MPR reporting for Section 5324 grants, **DEFICIENCY CODE 122**: Incorrect FFR reporting, or **DEFICIENCY CODE 572**: Incorrect FFR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office procedures for including all required information in reports.

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

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

Direct the grantee to submit FFRs in the EAMS with the correct reporting information in the next reporting cycle.
Direct the grantee to submit to the FTA regional office procedures for validating FFR data.

69. Are Section 5307 Associated Transit Improvement Reports submitted annually?

70. Provide information that demonstrates that the grantee has met its Section 5307 associated transit improvement expenditure commitments.

EXPLANATION

For Section 5307 funds obligated before October 1, 2015, the designated recipient(s) in UZAs with a population of at least 200,000 is required to expend no less than one percent of the fiscal year's Section 5307 apportionment on associated transit improvements. To ensure program funds are expended as proposed, the designated recipient, all recipients, or the MPO must submit an annual Associated Transit Improvement Report listing projects carried out in the preceding fiscal year. This report should include:

- Grantee name
- UZA name and number
- FTA Award Identification Numbers: TEAM grants Project Numbers or Federal Award Identification Numbers (FAIN) for TrAMS grants
- Project category or categories
- Brief description of improvements and progress towards project implementation
- ALI codes from the approved budget(s)
- Amount awarded by FTA for the project

When several grantees are in a UZA with at least 200,000 in population, each individual grantee is not required to spend one percent of its Section 5307 program funds on associated transit improvements. Rather, the grantees together must spend one percent of the UZA's apportionment on projects and project elements that qualify as improvements. To certify that this requirement will be met, either the designated recipient(s) or the MPO must have submitted an annual "split" letter identifying the amounts planned to be spent by each direct recipient on associated transit improvements and a list of qualifying associated transit improvement projects to be undertaken with funding from the relevant fiscal year for all recipients in a UZA.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
FTA C. 9030.1E, Ch. V, Section 9

SOURCES OF INFORMATION

Review Associated Transit Improvement Reports in the EAMS. Obtain information on associated transit improvement expenditures from the grantee and compare to split letters and lists of qualifying projects obtained from the regional office.

DETERMINATION

The grantee is deficient if Associated Transit Improvement Reports are not submitted or do not include all the required information. (**DEFICIENCY CODE 780**: Associated Transit Improvement Report issues)

The grantee is deficient if it did not meet its Associated Transit Improvement expenditure commitments. (**DEFICIENCY CODE 781**: Associated transit improvement commitments not met)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit Associate Transit Improvement Reports for the past year in the EAMS and to submit to the FTA regional office procedures for submitting the reports with the required information annually.

Direct the grantee to submit to the FTA regional office a plan for meeting its associated transit improvement commitments.

71. *As part of the development of the annual program of projects, does the grantee look to available funds in existing grants before applying for new funds?*
72. *What procedures are followed to ensure that projects are completed and grants closed on time?*
73. *Identify and discuss the status of any delayed or inactive grants or grants that should be closed.*
74. *How does the grantee take into account the status of current awards before awarding a subrecipient a grant for a new project?*
75. *What are the grantee's procedures for initiating closeout with subrecipients within 90 days of completion of project activity?*
76. *What are the grantee's procedures for initiating grant closeout with FTA within 90 days of completion of all activity in the program of projects?*

EXPLANATION

Projects may not require the amount of funds originally requested and obligated and therefore funds may remain after the project is completed. The grantee may reprogram remaining funds to other projects. When developing a program of projects for the new year, the grantee should look to available funds in existing grants before applying for new funds. Doing so can minimize the length of time a grant is open and the number of open grants.

Grantees should take into account the status of current awards before awarding a subrecipient a grant for a new project. Grantees should aim to complete projects within the period of availability of funds, which is the time funds are available for obligation. Once grant funds are past the period of availability, the ability to amend the grant to change the scope is limited, thus restricting the use of remaining grant funds to the original scope of the grant. FTA expects projects to be completed within a reasonable, specified time and as scheduled in the grant agreement and updated in progress reports. Sections 5310, 5311, 5316, and 5317 programs of projects should be implemented within two to three years of grant approval. For Sections 5305, 5307, 5309, and 5339 projects, a good "rule of thumb" is to complete the project within the period of availability of funds. For large, complicated construction or technology projects, completing the project and closing the grant within the period of availability may not be feasible.

Funds deobligated within the period of availability are available for re-obligation to a new grant. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds		
Program	SAFETEA-LU	MAP-21/FAST Act
5305	Year of apportionment plus 3	Year of apportionment plus 3
5307	Year of apportionment plus 3	Year of apportionment plus 5
5309 formula	Year of apportionment plus 3	N/A
5309 discretionary	Year of apportionment plus 2	Year of apportionment plus 4

Period of Availability of Funds		
Program	SAFETEA-LU	MAP-21/FAST Act
5310	Year of apportionment plus 2	Year of apportionment plus 2
5311	Year of apportionment plus 2	Year of apportionment plus 2
5316	Year of apportionment plus 2	N/A
5317	Year of apportionment plus 2	N/A
5337	N/A	Year of apportionment plus 3
5339	N/A	Year of apportionment plus 3

Grantees should not excessively prolong the life of the grant. Frequently, grantees allow small balances in completed projects to delay grant closeout. The grantee should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the award if funds cannot be utilized.

The grantee should initiate grant closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. The grantee must initiate closeout with FTA within 90 days after all work activities for a program of projects (POP) are completed. A final FFR, budget, and, for Section 5310, 5311, 5316 and 5317 grants, POP, are required at the time of closeout. It is not necessary to wait for the single audit before closing a grant.

Examples of good grant management practices include:

- (1) As part of the annual grant development process, identify available funds in existing grants before applying for new funds
- (2) Unless directed by the region, apply for remaining apportionments in the next year's grant instead of amending grants to add apportionment balances. A grant may contain multiple years' apportionments.
- (3) Spend oldest funds first for on-going expenses such as program administration (financial purpose code (FPC) 6), operating assistance (FPC 4), ADA complementary paratransit (FPC 8), and preventive maintenance (FPC 0)
- (4) Accumulate program administrative expenses in a generic account and then draw from the oldest grant with available program administrative funds instead of charging the expenses directly to grants
- (5) Set project time limits (less than two years)
- (6) Transfer small remaining balances to new line items
- (7) Move delayed projects to newer grants and active projects to older grants
- (8) Deobligate project balances and reapply for funds (if within period of availability and allowed by the FTA regional office)
- (9) Regularly reconcile grant balances with those in the EAMS
- (10) Tie third party contracts to projects, then tie projects to grants
- (11) When funding a project out of multiple grants, develop a grant drawdown plan
- (12) When funding a project out of multiple grants, charge retainage to the newest grant (and report it as an unliquidated obligation) to enable the closing of older grants

FTA places a priority on closing out grants for which activity has ceased. FTA identifies grants that should be potentially closed out as those that are 100 percent disbursed or those that were obligated more than three years before *and* have not had a disbursement within the past 12 months.

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

If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the funds should be deobligated and the grant closed. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee's control. If there is no realistic chance of a project going forward, FTA will deobligate the grant funds and make them available for other projects that are ready to proceed.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.20(4)

49 CFR 18.50

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

FTA C. 5100.1, Ch. III, Section 3

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

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

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

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

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

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

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

SOURCES OF INFORMATION

Review policies and procedures for documentation of grant administration and closeout processes. For on-going expenses, such as operating assistance, determine whether the grantee draws from the oldest funds first. Identify grants that are old, have small balances remaining, or are more than three years old have not had disbursement activity within the past 12 months. Review progress reports in the EAMS and other correspondence to identify major delays in projects. Prior to the site visit, discuss the status of grants with FTA regional office staff. Review subrecipient agreements for time limits on grant projects. Obtain and review a schedule for closing all open grants.

On site, discuss grant administration procedures, the status of each open grant, reasons why older funds were not spent first, any significant delays in project completion, the reasons for such delays, recovery plans, and project close dates. Have the grantee identify remaining project activities and the projected dates for project completion and grant closeout. Determine if inactive grants or grants with indefinitely delayed projects should be closed.

DETERMINATION

The grantee is deficient if it does not spend the oldest funds first, track the progress of projects, close out completed awards, reprogram unused balances to other line items, or initiate grant closeout in a timely manner. The grantee is deficient if there are open grants that should be closed. (**DEFICIENCY CODE 79:** Inactive grants/untimely closeouts)

SUGGESTED CORRECTIVE ACTION

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

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

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

PART C: PROJECT MANAGEMENT

77. How does the grantee ensure adequate technical oversight of capital projects such as construction, rolling stock, and technology projects?

78. If projects are not on schedule or on budget, what are the reasons? What are the recovery plans for the schedules and budgets?

EXPLANATION

The grantee must ensure continuous management of grant projects. Grantees are required to have a formal Project Management Plan (PMP) for all major capital projects. A major capital project is a project that: involves the construction, extension, rehabilitation, or modernization of a fixed guideway or a New Starts project with a total project cost in excess of \$100 million, or has been determined to be a major capital project by the Administrator, based on criteria in 49 CFR Part 633.

Grantees with smaller capital projects, such as construction projects, rolling stock procurements, and technology projects, should have a mechanism for technical oversight of the projects. Regular meetings between the project manager and contractor(s) should be held to review project status. Even though not required, some grantees have project management plans, especially for construction projects.

Many grantees that do not have the technical expertise or internal resources to manage large projects hire an architectural and engineering (A&E) firm or other consultant to serve as project manager or provide technical oversight. A grantee that is a county or city may rely on the county or city engineer to manage a construction project. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support. A grantee's information technology (IT) department may oversee technology projects, also sometimes with consultant support.

When projects are implemented by an entity on behalf of a grantee, such as by a subrecipient or a management contractor, the grantee is ultimately responsible for, and must ensure technical oversight of, the project. Monitoring mechanisms may include:

- Contracting with a consultant to provide project management oversight
- Reviewing requests for proposals and construction contracts
- Reviewing plans and drawings
- Conducting periodic site inspections
- Requiring progress reports
- Attending project review meetings
- Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the grantee

If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical oversight of projects. The grantee's organizational structure and actions may contribute to continuing problems with project delays. Note that delays are not unusual in major construction and technology projects. For construction projects, land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee may cause the delay.

REFERENCES

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

SOURCES OF INFORMATION

Review MPRs for discussions of delays. Discuss project delays and project management concerns with the FTA regional office. Obtain copies of project management plans and quality control procedures, if written. Review the program management plan(s) and the subrecipient agreement(s) for procedures for administering and monitoring construction projects, bus procurements, and other capital projects. During the site visit, discuss the grantee's quality control procedures for construction projects, revenue rolling stock procurements, and technology projects. If the grantee contracts for such services, review the scope of services of these contracts along with progress reports from the contractors. Discuss the resources the grantee dedicates or plans to dedicate to project management. When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to improve performance by the contractor. For construction projects, land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the grantee may cause the delay.

DETERMINATION

The grantee is deficient if capital projects proceeded without proper quality control. (**DEFICIENCY CODE 16:** No procedures for technical inspection/supervision of work in progress)

The grantee is deficient if it has continuing problems with project delays. (**DEFICIENCY CODE 98:** Excessive delay in project implementation)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office project management procedures for existing or future projects to address deficiencies identified.

Direct the grantee to submit to the FTA regional office a recovery schedule for the delayed project and to report on progress against the schedule quarterly in MPRs.

79. *List new transit management or service contractors, and/or lessees the grantee has taken on since the last Comprehensive Review.*

80. *How does the grantee monitor transit management or service contractors, and/or lessees to ensure compliance with FTA requirements?*

EXPLANATION

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

The grantee must have an ongoing system to ensure that transit management or service contractors, and lessees adhere to Federal requirements. While FTA does not prescribe specific monitoring activities for ensuring compliance, it does expect the grantee to look behind certifications and assurances, contracts, and agreements. FTA relies on each grantee to develop and implement effective systems for monitoring and ensuring compliance with requirements.

The issue of monitoring compliance with Federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the grantee 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:

- Requests for proposals
- Monthly, quarterly or annual reports
- Meetings

- Site visits
- Vehicle/facility inspections

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

Large grantees may have written procedures for oversight of transit management or service contractors, or lessees. Smaller grantees may have informal oversight mechanisms, such as periodic meetings. FTA expects grantees with a significant number of transit management or service contractors, and/or lessees to have formal oversight mechanisms.

REFERENCES

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

SOURCES OF INFORMATION

Review the list of contractors and lessees in the grantee profile. As applicable, review a sample transit management or service contract, and lease. Review an oversight site visit checklist. Review the file for the contractor(s) or lessee(s) to be visited during the site visit.

On site, discuss information obtained from the agreements and other documents regarding monitoring activities and have grantee staff confirm and explain the use of specific monitoring mechanisms. Discuss the documentation and follow-up of findings. Obtain copies of routine reporting forms and guidelines for reporting. Discuss how the grantee analyzes the information obtained through periodic reporting and types of follow-up action that could result. Review the files for the contractor(s) and lessee(s) to be visited during the site visit.

DETERMINATION

The grantee is deficient if it does not have appropriate systems for monitoring compliance with a broad range of requirements or is not applying the resources required to carry out an effective monitoring program. (**DEFICIENCY CODE 208**: Inadequate oversight of subrecipient/third-party contractor/lessees)

The grantee could be found deficient in its monitoring of a specific area but not deficient under Technical Capacity. Similarly, it could be found deficient under Technical Capacity, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit procedures and a staffing plan to the FTA regional office to monitor other entities with responsibility for meeting Federal requirements.

- 81.** *Is the grantee's or a subrecipient's work force used in the execution of capital grant projects? If yes, what is the annual amount of force account work being completed?*
- 82.** *If the amount of force account work required the submission of the force account plan to FTA, what is the status of its review? Was the plan approved prior to the grantee drawing down funds for force account?*
- 83.** *Did the grantee update its existing or develop a new force account plan prior to expending FTA funds due to additional funds received and work performed related to the FTA Emergency Relief program and the available Hurricane Sandy funds, if a waiver was not granted?*

EXPLANATION

Work performed by the grantee's work force on capital projects, other than grant administration, that is included in an approved grant is "force account" work. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the grant. Incremental labor costs from flagging protection, service diversions, or other activities directly related to a capital grant may also be defined as force account work. Force account work does not include preventive maintenance, or grant or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock.

One of four conditions may warrant the use of a grantee's own labor forces. These are: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

When the cost of force account work for a project is greater than \$100,000 but less than \$10,000,000, the grantee is required to develop and maintain on file a force account plan and justification prior to incurring costs. Prior FTA approval is not required. When the cost of force account work to be performed equals \$10,000,000 or more, prior FTA approval is required before incurring costs. For Hurricane Sandy, prior FTA approval was not required; instead grantees were required to have force account plans in place prior to incurring costs.

Force account plans are prepared at the project level. If a grantee is using multiple grants for the same project, then the grantee should have only one force account plan for the project and distribute the costs among the different grants in a reasonable allocation method documented in the force account plan.

The grantee must ensure that subrecipients that have force account work of \$100,000 or more prepare and have on file a force account plan and justification prior to incurring costs.

REFERENCES

49 U.S.C. Section 5324 / MAP-21 Section 20017
FTA Master Agreement, Section 16.h
FTA C. 5010.1D, Ch. IV, Section 4.d
May 29, 2013 Federal Register Notice
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Review grant budgets in the EAMS for indications of force account work. The progress and status of force account activities should be separately discussed in MPRs, with emphasis on schedule and budget. Check with the FTA regional office to ensure that the grantee submitted force account plans for work that equals \$10,000,000 or more. Determine if the FTA regional office has reviewed and approved the plans. Obtain and review force account plans for work below this threshold but equal to or exceeding \$100,000 from the grantee. Ensure that the plans include a justification on the basis of cost, exclusive expertise, safety, and efficiency of operations, or union agreement. During the site visit, follow up with the grantee to ensure that it has a plan for all force account work that meets the threshold for a plan.

Review the program management plan(s) for discussion of requirements for subrecipients to develop force account plans and to submit to the grantee, as applicable.

DETERMINATION

For other-than-Hurricane Sandy projects, the grantee is deficient if it has not submitted for prior FTA approval plans for force account work that cost \$10,000,000 or more. The grantee is deficient if force account work costing between \$100,000 and \$10,000,000 is not supported by a proper force account plan and justification. The grantee is deficient if subrecipients do not have proper force account plans. The grantee is deficient if the plans are not justified on the basis of cost, exclusive expertise, safety, and efficiency of operations, or union agreement. (**DEFICIENCY CODE 85:** Lacking force account plan/justification or **DEFICIENCY CODE 573:** Lacking force account plan/justification for FTA Emergency Relief activities)

For force account work that required prior FTA approval of a force account plan, the grantee is deficient if it drew down funds prior to FTA's approval. (**DEFICIENCY CODE 544:** Inappropriate drawdown of force account funds)

For Hurricane Sandy funds, the grantee is deficient if it incurred costs prior to developing a force account plan. (**DEFICIENCY CODE 588:** Inappropriate drawdown of force account funds for 5324 activities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA regional office a force account plan and justification as detailed in FTA C. 5010.1D for use of its own work force on capital improvement projects and procedures for developing force account plans when required.

Direct the grantee to obtain and submit to the FTA regional office subrecipients' force account plans and procedures for ensuring that subrecipients develop plans when required.

Direct the grantee to cease drawing force account funds until applicable plans are approved.

84. *Since the last Comprehensive Review, did the grantee or a subrecipient use FTA capital assistance to finance the lease of any transit facilities or equipment? If yes, provide documentation that certification was provided to FTA that a cost-effectiveness determination was conducted prior to entering into the lease or receiving the grant.*

EXPLANATION

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

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

For leases entered into before October 1, 2015, grantees shall certify to FTA that it conducted a cost-effectiveness determination prior to entering into any capital lease or receiving the grant, including for tires. Grantees should refer to the guidance in OMB C. A-94 and obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit. For leases entered into on or after October 1, 2015, the requirement no longer applies.

REFERENCES

FAST Act, Section 3019

OMB C. A-94

49 CFR 639

FTA C. 5010.1D, Ch. IV, Section 3.j

SOURCES OF INFORMATION

Review projects in the EAMS to determine if the grantee uses FTA funds to finance the lease of capital items and certified to FTA that it conducted a cost-effectiveness determination prior to entering into the lease or receiving the grant. Discuss capital lease activities with the grantee during the site visit. Note that many grantees use capital funds to lease instead of purchase tires.

DETERMINATION

The grantee is deficient if it did not certify to FTA that it conducted a cost-effectiveness determination prior to entering into the lease or receiving the grant. (**DEFICIENCY CODE 150:** No cost effectiveness documentation for capital lease)

SUGGESTED CORRECTIVE ACTION

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

3. MAINTENANCE

BASIC REQUIREMENT

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

AREAS TO BE EXAMINED

1. *Resources and Reporting*
2. *Vehicle Maintenance*
3. *Facility and Equipment Maintenance*
4. *Warranty Program*
5. *Oversight*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements", Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. 49 CFR Part 37, "Transportation Services for Individuals With Disabilities (ADA)"
6. FTA Master Agreement
7. FTA Circular 5010.1D, "Grant Management Requirements"
8. FTA Circular 5100.1, "Bus and Bus Facilities Program: Guidance and Application Instructions"
9. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
10. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
11. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

USEFUL WEBLINKS

FTA State of Good Repair and Asset Management Website

APPLICABILITY

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

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- there have been repeat maintenance deficiencies in Comprehensive Reviews
 - previous Comprehensive Review or Financial Management Oversight Review (FMO) deficiencies related to maintenance are still open
 - the grantee demonstrates a pattern of poor quality maintenance corrective actions from past oversight reviews
 - maintenance issues have been identified in the grantee's Oversight Assessment Tool (OAT)
 - there are indications that the grantee's preventive maintenance activities are being deferred
 - there have been patterns of service interruptions due to inadequate maintenance
 - there have been safety incidents related to maintenance
 - the grantee does not demonstrate that it has adequate maintenance expertise
 - the grantee does not demonstrate that it has adequate maintenance procedures
 - there is no maintenance management reporting system in place and/or it lacks evaluative performance criteria
 - there have been early retirement and/or mid-life overhauls due to maintenance
1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Financial Management Oversight Reviews (FMO) and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of maintenance?*
 2. *Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?*
 3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings related to maintenance?*
 4. *Are any deficiencies or findings currently open from any oversight reviews, audits, or investigations?*
 5. *Are any issues related to maintenance indicated in the grantee Oversight Assessment Tool (OAT)?*

EXPLANATION

Grantees with repeat deficiencies in the maintenance section of the previous Comprehensive Review may be at higher risk of non-compliance with required maintenance practices if the corrective actions have not been fully implemented or sustained. Full scope FMO reviews may also indicate deficiencies in the area of maintenance.

FTA regional office staff completes an annual OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the maintenance area of the OAT could indicate issues in this area.

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak such as, the OAT.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

6. *Are there patterns of service interruptions due to inadequate maintenance?*
7. *Are there indications that preventive maintenance is being deferred?*
8. *Have there been safety incidents related to maintenance?*
9. *Have there been early retirements and/or mid-life overhauls of FTA-funded assets due to maintenance?*

EXPLANATION

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

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak, such as the OAT. Review information from the past two years (if available) in NTD, including the following specific metrics:

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

Review any available reports on grantee safety incidents.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

Not Applicable

PART A: RESOURCES AND REPORTING

10. *Describe the resources (organizational structure, staffing levels, experience, etc.) assigned to maintenance of FTA- funded assets. This includes resources of a third party contractor if maintenance is contracted. What technical training have maintenance employees had? Does the grantee have certification requirements for maintenance employees or contractors?*

<i>Responsibility</i>	<i>Number of Staff</i>	<i>Number of Staff with Less Than Three Years Experience in Their Position</i>	<i>Staff Vacancies</i>	<i>Type/Frequency and Method of Training for Responsibilities</i>	<i>Required Certifications (such as ASE)</i>

EXPLANATION

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

REFERENCES

None

SOURCES OF INFORMATION

Review organizational charts, position descriptions, training programs/information, and certification requirements provided by the grantee. If maintenance is contracted to a third party, these questions should be addressed to the maintenance contractor.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

11. What maintenance management reporting system is used to track vehicle, equipment, and facility preventive maintenance?

12. What performance reports inform senior management about maintenance activities?

EXPLANATION

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

REFERENCES

None

SOURCES OF INFORMATION

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

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

13. *Has the grantee deferred any vehicle, facility, or equipment maintenance since the last Comprehensive Review?*

EXPLANATION

The level of funds a grantee budgets for maintenance activities should be commensurate with the composition of assets being managed including average age of those assets. Maintenance budget cuts may indicate preventive maintenance activities are being deferred.

REFERENCES

None

SOURCES OF INFORMATION

Review the grantee's annual maintenance budgets for vehicles, facilities, and equipment for each year since the last Comprehensive Review. Grantees should separately identify rail vehicle and ferry maintenance budgets, if applicable. Compare budgeted-to-actual expenditures for the review period.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

PART B: VEHICLE MAINTENANCE

14. *When was the written maintenance plan for FTA-funded rolling stock last updated?*

15. *Does the written maintenance plan for FTA-funded rolling stock include goals and objectives?*

16. *Are the written maintenance plan and preventive maintenance checklists for FTA-funded rolling stock consistent with the current operating fleet?*

17. *Are the written maintenance plan and preventive maintenance checklists for FTA-funded rolling stock consistent with manufacturers' minimum maintenance requirements for vehicles under warranty?*

18. *How does the grantee track the manufacturer's recommendations and updates on requirements for FTA-funded rolling stock?*

19. *How does the maintenance program for FTA-funded rolling stock address on-board security systems?*

EXPLANATION

Recipients of Sections 5310, 5307, and 5339 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Plans should be updated with the purchase of new rolling stock to account for new technology and/or new manufacturer's recommended maintenance intervals and programs, and incorporate actions to maintain each vehicle type and model on a specific cycle. These actions should be designed to ensure proper care and maximize vehicle longevity.

For vehicles under warranty, the grantee typically must perform a series of preventive maintenance actions if the warranty is to remain valid. If the grantee either does not perform these required maintenance routines, or performs them at greater intervals than the manufacturer's maximum intervals, the grantee runs the risk of invalidating vehicle warranty provisions. Some operators have relied on oil analysis to extend the interval between oil changes beyond the engine manufacturer's recommended interval. This is acceptable provided the grantee has a letter from the manufacturer of the vehicles' engines stating that this practice will not void the engine warranty. FTA-funded vehicles that are not under warranty must still be maintained in accordance with the manufacturer's recommendations.

FTA requires that rail operators purchasing vehicles with FTA funds have a rail fleet management plan that has been reviewed by FTA. FTA has extended this requirement to "new start" bus operations. These plans make brief mention of maintenance procedures. Normally, rail operators rely on more extensive written maintenance policies and procedures than those included in the fleet management plan.

FTA expects preventive maintenance programs to address FTA-funded on-board security systems.

REFERENCES

2 CFR 200.313

49 CFR 18.32(d)(4)

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

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

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

FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

As part of scoping review activities, examine the grantee's vehicle maintenance plan(s) and/or program(s), and maintenance checklists. While on site, review the recommended maintenance procedures and updates of the manufacturer. When performing a review of a bus system, compare the interval for the change of engine oil and filters in the grantee's maintenance plan and checklists with the maximum interval specified in the engine manufacturer's maintenance manual. When performing a review of a rail or ferry system, check that the maintenance plan prescribes a scheduled series of maintenance actions to be performed at predetermined intervals.

DETERMINATION

The grantee is deficient if it does not have a written vehicle maintenance program/plan. (**DEFICIENCY CODE 19:** No vehicle maintenance plan)

The grantee is deficient if its program/plan omits some requirements (e.g., goals and objectives), its program/plan does not include the latest additions to the fleet, or preventive maintenance checklists are not consistent with the current operating fleet. The grantee is deficient if the maintenance program/plan does not address on-board security systems. (**DEFICIENCY CODE 48:** Vehicle maintenance plan incomplete or out of date)

The grantee is deficient if the maintenance interval for oil changes is longer than the manufacturer's maximum interval defined for "urban transit service" or approved alternative interval. (**DEFICIENCY CODE 72:** Vehicle maintenance plan not meeting manufacturer's recommendations)

SUGGESTED CORRECTIVE ACTION

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

20. What is the grantee's schedule for preventive maintenance inspections for FTA-funded rolling stock? Maintenance records will be reviewed on site to evaluate performance.

EXPLANATION

Fleet deterioration takes a long time to occur and even longer time to correct (or may even be irreversible) after the deterioration has taken place. Both the deterioration and the correction take a toll on the grantee's resources and put FTA's investments at risk.

Actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance inspections as planned, the grantee's entire maintenance program may be effective. If preventive

maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the maintenance program are lacking as well and the grantee is putting FTA's investment and its warranties at risk.

Preventive maintenance is scheduled and completed differently for bus and rail vehicles based on manufacturers' recommendations and physical components. A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life.

REFERENCES

2 CFR 200.313

49 CFR 18.32(d)(4)

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

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

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

FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

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

For each vehicle chosen, examine the preventive maintenance history for the preceding 12 months. Most grantees schedule preventive maintenance inspections based on relative miles (e.g., 6,000 miles since the last inspection) or hours of service. Others schedule based on absolute miles or hours. Grantees may choose either method. Focus on whether the inspections are conducted when due.

Note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection. Inspections that are no later than 10 percent of schedule are considered on time.

For example, a scheduled 6,000 mile inspection would be considered "on time" if it was performed any time before 6,600 miles. If the grantee uses a different definition of an "on time" inspection, use the grantee's definition if deemed appropriate.

For commuter rail locomotives and cars, in lieu of selecting a sample of preventive maintenance records, examine Federal Railroad Administration (FRA) inspection records. Refer to the Maintenance section of the Records Selection Procedures for further guidance.

Sample maintenance records of ferry vessels.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for completing preventive maintenance inspections on time. Direct the grantee to submit to the FTA regional office a monthly report signed by the chief executive officer or other senior management designee on its preventive maintenance results until the data demonstrate it has conducted at least 80 percent of its preventive maintenance on time for three consecutive months. For each vehicle/vessel that received a preventive maintenance inspection during the month, direct the grantee to include with the submittal to the FTA regional office, a report that lists the vehicle/vessel number, date of the inspection, mileage of the current inspection, mileage of the previous inspection, and the mileage interval between the two inspections. List the percentage of the inspections performed on time. Direct the grantee to submit to the FTA regional office back-up documentation for each bus (e.g., copy of work order, printout from the maintenance management system) documenting the date and mileage of the inspection.

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

21. *How does the grantee's vehicle maintenance program address maintenance procedures for wheelchair lifts and other accessibility features?*
22. *Do vehicle maintenance records indicate regular and periodic maintenance checks for wheelchair lifts and ramps?*
23. *Do vehicle maintenance records indicate that other accessibility features (e.g., kneelers, public address systems, voice announcement systems, etc.) are maintained in operational condition?*

EXPLANATION

The U.S. Department of Transportation (US DOT) ADA regulations require all vehicle accessibility features, such as wheelchair lifts, ramps, securement devices, signs, and communication equipment for persons with disabilities, be maintained and operational. The accessibility features must be repaired promptly if they are damaged or out of order. When ADA equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise use it. The ADA maintenance elements may be incorporated into the regular maintenance plan or addressed separately with specific checklists. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance.

REFERENCES

49 CFR 37.161-163

SOURCES OF INFORMATION

Review the grantee's vehicle maintenance program/plan(s) and maintenance checklists for ADA equipment. When sampling vehicle maintenance records, ensure that accessibility features are maintained regularly and repaired promptly if out of order. Interview personnel responsible for the grantee's vehicle maintenance activities. Review the entire fleet, not just FTA-funded vehicles.

DETERMINATION

The grantee is deficient if its preventive maintenance program does not address vehicle accessibility features, does not follow its program, or does not maintain accessibility equipment promptly. (**ADA DEFICIENCY CODE 273:** Violation of procedures to ensure maintenance of accessible features)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional civil rights officer (RCRO) a preventive maintenance program for ADA accessibility equipment.

Direct the grantee to revise or fully implement its program and submit evidence of implementation to the FTA RCRO.

PART C: FACILITY AND EQUIPMENT MAINTENANCE

24. *When was the written maintenance plan for FTA-funded facilities and facility-related equipment last updated?*
25. *Does the program for FTA-funded facilities and facility-related equipment include inspections and preventive maintenance activities to ensure that assets are protected from deterioration and reach their maximum useful life?*
26. *Is the written maintenance plan for FTA-funded facilities and facility-related equipment consistent with manufacturers' minimum maintenance requirements for equipment under warranty?*

27. *Does the program for FTA-funded facilities and facility-related equipment define 'mission critical' items?*
28. *Does the program for FTA-funded facilities and facility-related equipment address facility security equipment?*
29. *Where does the grantee maintain records of the maintenance history of FTA-funded facilities and equipment?*
30. *How long are the records for FTA-funded facilities and facility-related equipment kept?*

EXPLANATION

Public transit requires a considerable investment in buildings, equipment, and machinery. As with vehicle maintenance, the proper maintenance of facilities, machinery, and equipment is key to protecting the FTA investment and prolonging the useful life of the asset. Grantees are required to have a current written maintenance program for FTA-funded facilities and facility-related equipment. A model program for FTA-funded facilities would include:

- An organization and assignment of responsibility for facility and equipment maintenance
- A series of inspections and routine maintenance actions designed to ensure proper care and maximize useful service life of facilities and equipment
- A record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment

The facility/equipment maintenance program should identify specific mission critical and safety items, which include, but are not limited to:

- Buildings
- Elevators
- Escalators
- Passenger stations/shelters
- Parking lots
- Rights-of-way (guideway, track, ballast, etc.)
- Electric distribution and control equipment
- Plumbing systems
- Overhead doors
- Vehicle maintenance lifts
- Vehicle washers and wash water recycling systems
- Heating and/or air conditioning units
- Power substations, etc.
- Security equipment

Grantees that exclude any of the above items listed must provide justification for such exclusion.

The facility/equipment maintenance program should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Such a system may be part of a grantee's maintenance management information system. Maintenance intervals might be measured in terms of time (daily, monthly, or annually) or in terms of use (hours). In the case of rail systems, FTA's investment often involves the construction of passenger stations, rights-of-way, signals, and other related facilities and equipment.

FRA regulates commuter rail systems and has detailed maintenance requirements for rolling stock, signals, and right-of-way that it enforces with a frequent inspection program. In addition, proper maintenance is needed by grantees for

those components of the rail system not subject to FRA maintenance requirements, such as passenger stations, maintenance facilities, buildings, and equipment.

The grantee agrees to keep satisfactory records pertaining to the use of project property, and to submit to FTA upon request such information as may be required to assure compliance with Federal requirements.

REFERENCES

2 CFR 200.313
49 CFR 18.32(d)(4)
FTA Master Agreement Section 19.d and e
FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C. 5100.1, Ch. V, Section 1.a (5)
FTA C. 9030.1E, Ch. VI, Section 1.a (5)
FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

Examine the grantee's facility and equipment maintenance. Examine related maintenance checklists.

DETERMINATION

The grantee is deficient if it does not have a facility and equipment maintenance program that addresses the current mix of FTA-funded assets. The grantee is deficient if the program does not include a series of maintenance and inspection activities to be performed at appropriate intervals. The grantee is deficient if the maintenance program does not address security equipment. (**DEFICIENCY CODE 117:** Facility/equipment maintenance program lacking or inadequate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a new or revised facility/equipment maintenance program.

31. *What is the grantee's schedule for preventive maintenance inspections of FTA-funded facilities and facility-related equipment? Maintenance records will be reviewed on site to evaluate performance.*

EXPLANATION

The grantee must follow its maintenance program for facilities and equipment. If preventive maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the facility and maintenance program are lacking as well and the grantee is putting FTA's investments and its warranties at risk.

REFERENCES

2 CFR 200.313
49 CFR 18.32(d)(4)
FTA Master Agreement Section 19.d
FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C. 5100.1, Ch. V, Section 1.a (5)
FTA C. 9030.1E, Ch. VI, Section 1.a (5)
FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

Check preventive maintenance inspection intervals by reviewing management reports used by the grantee for monitoring preventive maintenance inspections and by reviewing a sample of facility and equipment maintenance records. For each item in the sample, examine the facility/equipment maintenance history for the preceding 12 months. Note the date when each inspection was accomplished and record the interval from the previous inspection. Compare the interval with the grantee's definition of an "on-time" inspection to determine if the inspection was in accordance with the grantee's facility and equipment maintenance plan.

DETERMINATION

The grantee is deficient if fewer than 80 percent of the inspections for mission critical items (as defined by the grantee) occurred on time. Non-mission critical items need to be maintained at intervals that do not result in long term deferred maintenance. Grantees are not penalized for early inspections, only late ones. (**DEFICIENCY CODE 149:** Late facility/equipment preventive maintenance)

SUGGESTED CORRECTIVE ACTION

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

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

32. How does the grantee ensure that facility accessibility features are maintained in operational condition?

EXPLANATION

The US DOT ADA regulations require all facility accessibility features, such as elevators in the grantee's facilities, be maintained and operational. The accessibility features must be promptly repaired if they are damaged or out of order. When the equipment is not working, the grantee must take reasonable steps to accommodate persons with disabilities who would otherwise use it. The ADA maintenance elements may be incorporated into the regular maintenance program or addressed separately with specific checklists. At a minimum, the grantee must show that accessibility features are checked regularly for proper operation and receive periodic maintenance. These requirements apply to both FTA and non-FTA-funded facilities.

REFERENCE

49 CFR 37.161

SOURCES OF INFORMATION

Review the grantee's maintenance program and the maintenance checklists. When sampling facility maintenance records, ensure that accessibility features are maintained regularly and repaired promptly if out of order. Interview the person responsible for facility maintenance activities.

DETERMINATION

The grantee is deficient in ADA requirements if it does not have a program to maintain accessibility features, does not follow the system, or does not maintain the accessibility equipment promptly. (**ADA DEFICIENCY CODE 273:** Violation of procedures to ensure maintenance of accessible features)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a preventive maintenance program for ADA accessibility equipment.

Direct the grantee to revise or fully implement its program and submit evidence of implementation to the FTA RCRO.

PART D: WARRANTY PROGRAM

33. What is the grantee's system for tracking warranty issues and recovering warranty claims for FTA-funded assets?

34. Are claims for FTA-funded assets pursued satisfactorily?

35. Identify any FTA-funded assets under warranty.

EXPLANATION

If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA. There

should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow up on unpaid claims.

REFERENCES

FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Section 3.k
FTA C. 5100.1, Ch. V, Section 1.a (5)
FTA C. 9030.1E, Ch. VI, Section 1a. (5)

SOURCES OF INFORMATION

Identify the vehicles and equipment under warranty. Ask the grantee to explain how the preventive maintenance program meets or exceeds the manufacturer's recommended program. Ask the grantee for a copy of its warranty recovery program, or, if the program is not in writing, to describe the warranty recovery system. Review the records and files for the program to learn whether the grantee has pursued and collected warranty claims. Compare the records of claims submitted with claims settled.

DETERMINATION

The grantee is deficient if: it does not have a warranty recovery system; it does not have records documenting that warranty claims are pursued; or it is not pursuing warranty claims. (**DEFICIENCY CODE 187**: Warranty claims not pursued effectively)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a written system for managing warranty claims with a plan for implementation.

Direct the grantee to submit to the FTA regional office a plan for documenting resolution of warranty claims.

Direct the grantee to report monthly to the FTA regional office on the pursuit of warranty claims for three months to demonstrate it is pursuing claims.

PART E: OVERSIGHT

36. *What are the State's requirements for subrecipients for the maintenance of FTA-funded vehicles?*

37. *How does the grantee ensure that subrecipients maintain FTA-funded vehicles?*

38. *How does the grantee ensure that contractors and lessees maintain FTA-funded vehicles?*

EXPLANATION

States must develop maintenance requirements for subrecipients, contractors, and lessees for FTA-funded vehicles that are adequate to protect the Federal interest and to ensure that the equipment is maintained in good operating order. Other grantees must require subrecipients to meet FTA requirements and follow acceptable maintenance standards for FTA-funded vehicles and require or have a written maintenance plan. For the Sections 5310, 5311, and 5339 programs, these requirements are normally included in the state or grantee's program management plan and/or referenced in the subrecipient agreements.

Both States and other grantees must have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance activities. An acceptable program would consist of periodic written reports on maintenance activities submitted to the grantee, review of maintenance records, or periodic inspections of the FTA-funded vehicles and facilities.

REFERENCE

2 CFR Part 200, Subpart D
2 CFR 200.313(a)
49 CFR 18.32(a)
49 CFR 18.37 and 18.40
49 CFR 37.161

FTA Master Agreement Section 19.d
FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.a, 3.k and 3.m
FTA C. 9030.1E, Ch. VI, Section 1a. (5)
FTA C. 9040.1G, Ch. V, Section 3c
FTA C. 9045.1, Ch. VI, Section 4a
FTA C. 9050.1, Ch. VI, Section 4a
FTA C. 9070.1G, Ch. VI, Section 4c
FTA C. 5100.1, Ch. V, Section 1.a (5)

SOURCES OF INFORMATION

Review the state/program management plan, subrecipient application packages, subrecipient agreements, contracts, and leases for maintenance requirements. Review a sample of maintenance plans. Determine how the grantee is actively monitoring the activities of subrecipients, contractors, and lessees. Determine who is responsible for monitoring the maintenance activities of subrecipients, contractors, and lessees. For maintenance being conducted by third-party contractors, assess the grantee's strength in procurement and contract management. Ascertain whether the grantee has assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues. Review oversight files. Visit a subrecipient, contractor, and lessee to visually inspect vehicles and to sample maintenance records.

DETERMINATION

The State is deficient if it does not have requirements for subrecipients' maintenance of FTA-funded vehicles that are adequate to protect the Federal interest and ensure vehicles are maintained in good operating order. The non-state grantee is deficient if it does not have or require a maintenance plan from subrecipients for FTA-funded vehicles. (**DEFICIENCY CODE 48**: Vehicle maintenance plan incomplete or out of date)

The State or other grantee is deficient if it does not oversee subrecipient contractor and lessee external maintenance of FTA-funded vehicles. (**DEFICIENCY CODE 191**: Inadequate oversight of contracted maintenance activities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an updated state/program management plan(s) and subrecipient agreements with maintenance requirements for subrecipients.

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

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

39. *How does the grantee ensure that subrecipients maintain FTA-funded facilities and facility-related equipment?*

40. *How does the grantee ensure that its contractors or lessees maintain FTA-funded facilities and facility-related equipment?*

EXPLANATION

The grantee must require subrecipients, contractors, and lessees to meet FTA requirements and follow acceptable maintenance standards for FTA-funded facilities and facility-related equipment, and require or have a written maintenance plan. The subrecipient agreement, contract, or lease should address maintenance requirements.

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

REFERENCE

49 CFR 37.161
FTA Master Agreement Section 19.d
FTA C. 5010.1D, Ch. II, Section 3.a(11) and Ch. IV, Sections 3.k and m

SOURCES OF INFORMATION

Review the state/program management plan, subrecipient application packages, subrecipient agreements, contracts, and leases for maintenance requirements. Review a sample of maintenance plans. Review evidence that maintenance plans have been reviewed. Determine how the grantee is actively monitoring the activities of subrecipients, contractors, and lessees. Determine who is responsible for monitoring the maintenance activities of subrecipients, contractors, and lessees. For maintenance being conducted by third-party contractors, assess the grantee's strength in procurement and contract management. Ascertain whether the grantee has assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues. Review oversight files. Visit a subrecipient, contractor, and lessee to visually inspect vehicles and facilities and to sample maintenance records.

DETERMINATION

The grantee is deficient if it does not have or require a maintenance plan for its subrecipients' FTA-funded facilities or facility-related equipment. (**DEFICIENCY CODE 117**: Facility/equipment maintenance program lacking or inadequate)

The grantee is deficient if it does not oversee subrecipients, contractors and lessee maintenance activities through periodic reports and inspections. (**DEFICIENCY CODE 191**: Inadequate oversight of contracted maintenance activities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an updated state/program management plan(s) and subrecipient agreements, contracts, or leases with maintenance requirements for subrecipients.

Direct the grantee to submit to the FTA regional office written maintenance plans for FTA-funded facilities and facility-related equipment.

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

41. *How does the grantee ensure that subrecipients pursue warranty claims?*

42. *How does the grantee ensure that contractors pursue warranty claims?*

EXPLANATION

If equipment is under warranty, FTA requires that there be a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the subrecipient, grantee, and FTA. There should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow up on unpaid claims. It is the FTA grantee's responsibility to ensure subrecipients contractors and lessees comply with this requirement.

REFERENCE

2 CFR Part 200, Subpart D

49 CFR 18.37 and 18.40

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

SOURCES OF INFORMATION

Review the state/program management plans, technical assistance manuals, and oversight questionnaires for warranty recovery requirements and oversight procedures for subrecipients, contractors and lessees. During subrecipient site visits, review warranty claims to learn how timely and aggressively warranty claims have been pursued and collected. Compare the records of claims submitted with claims settled.

DETERMINATION

The grantee is deficient if its subrecipient(s), or its contractor(s) does not have a warranty recovery system, does not have records documenting that warranty claims are pursued, or is not pursuing warranty claims diligently. (**DEFICIENCY CODE 191**: Inadequate oversight of contracted or subrecipient maintenance activities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that warranty claims are pursued and evidence of its implementation.

4. AMERICANS WITH DISABILITIES ACT (ADA)

BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 (ADA) provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

AREAS TO BE EXAMINED

1. *Staff Resources*
2. *Complaints/Lawsuits*
3. *Bus and Rail Vehicles*
4. *Facilities*
5. *Subrecipient Oversight*
6. *Service Provisions*
7. *Training*
8. *Maintenance of Accessible Features*
9. *Route-Deviation Service*
10. *ADA Complementary Paratransit Service*
11. *Rail Service*
12. *Ferry Service*

REFERENCES

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

1. FAST Act, Section 3000
2. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
4. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
5. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
6. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
7. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
8. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

USEFUL WEBLINKS

FTA ADA Website

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

ADA Standards for Transportation Facilities

Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities

Project ACTION

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

U.S. Department of Justice ADA Homepage

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

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

ADA CIRCULAR

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

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

OVERSIGHT

When a public entity enters into a contractual or other arrangement with a private entity to operate fixed-route; demand-response service, including ADA complementary paratransit; rail; or other services, the public entity is responsible for ensuring that the contractor meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself, including the requirements for vehicle acquisition and service provision; with certain exceptions for subrecipients receiving only Section 5310 funds.

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- there are repeat ADA deficiencies in Comprehensive Reviews, and/or ADA reviews
 - previous Comprehensive Review ADA deficiencies are still open
 - previous ADA compliance review findings are still open or “unhappy closure” letters issued by the FTA Office of Civil Rights
 - ADA issues have been identified in FTA’s Oversight Assessment Tool (OAT)
 - the FTA Office of Civil Rights has identified compliance issues through complaint investigations or other sources
 - the grantee does not appear to have both sufficiently and adequately trained staff and/or resources in place to implement ADA requirements
 - the grantee has constructed or altered a facility (or is actively planning to do so) and appears to have a poorly defined process and/or insufficient technical resources for preparing specifications for an ADA-compliant facility, or appears to rely solely on state/local building codes, inspections and/or certificates of occupancy
 - the grantee does not meet the basic requirements for ADA complementary paratransit in terms of service area, hours/days of service, and response time; fails to distinguish ADA complementary paratransit from other types of service; or lacks policies and procedures for tracking and monitoring on-time performance, trip denials, and missed trips
 - the grantee has made major changes in service delivery since the last review
1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Americans with Disabilities Act (ADA) reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA?*
 2. *Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?*
 3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings?*
 4. *Are any oversight review, investigation, or audit findings currently open?*
 5. *Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?*
 6. *What deficiencies or potential deficiencies have been identified by the Federal Transit Administration (FTA) Office of Civil Rights through complaint investigations, compliance reviews, and other sources?*
 7. *Have any ADA complaints been filed with FTA?*

EXPLANATION

If the prior Comprehensive Review had deficiencies in the area of ADA, compliance issues may still exist because a grantee did not implement the corrective actions properly.

FTA regional office staff completes an OAT on each grantee annually that focuses on several areas of importance for FTA. Items identified in the ADA portion of the OAT could indicate additional issues in this area.

The FTA Office of Civil Rights conducts on-site assessments of grantees' compliance with U.S. Department of Transportation (US DOT) ADA requirements for fixed-route lift/ramp use and maintenance, stop announcements and route identification, ADA complementary paratransit, and rail station accessibility. It also investigates complaints of noncompliance received from individuals who believe they have been subject to disability discrimination prohibited by the ADA. These activities can result in deficiencies requiring corrective actions on the part of the grantee, which are detailed in complaint resolution letters, corrective action letters, and compliance review findings transmitted to the grantee.

It is important to note that compliance reviews, as well as complaints, may have been closed with outstanding deficiencies for which corrective action is still required. The FTA Office of Civil Rights has termed such ADA compliance review closures as "unhappy closures." Each "unhappy closure" letter will describe those findings that have been resolved, as well as list those that are still outstanding. The Comprehensive Review serves as the means by which corrective action(s) implementation are reviewed and verified.

REFERENCE

49 CFR Parts 27, 37, 38 & 39
FTA C. 4710.1

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to previous findings as a result of:

- The most recent Comprehensive Review
- ADA reviews conducted in the past three years
- OAT in OTrak
- Complaints submitted to the FTA Office of Civil Rights

The prior Comprehensive Review report and worksheets, and supplemental information provided by the FTA Office of Civil Rights will provide information on any open and/or outstanding findings concerning ADA compliance. The FTA regional office's files on the grantee should contain information submitted by the grantee on the corrective actions taken. The files may also contain correspondence between the FTA regional office and the grantee concerning implementation of corrective actions.

The FTA regional civil rights officer (RCRO) will also provide additional information. This will include information regarding compliance review final reports, open findings, complaint decisions, and corrective action and/or "unhappy closure" letters issued by the FTA Office of Civil Rights, as well as details on any potential deficiencies the office has identified through media reports, Congressional inquiries, and other sources.

DETERMINATION

This information will be used to support whether an enhanced review is needed.

SUGGESTED CORRECTIVE ACTION

Not applicable.

PART A: STAFF RESOURCES

8. *Does the grantee have the capacity to ensure compliance with the ADA? Are employees trained to proficiency in ADA requirements? (To answer the questions, please complete the following table.)*

<i>Responsibility (e.g., overseeing the ADA complementary paratransit program, training, processing complaints)</i>	<i>Number of Staff</i>	<i>Number of Staff with Less Than Three Years Experience in Their Position</i>	<i>Staff Vacancies</i>	<i>Type/Frequency and Method of Training for Responsibilities</i>

EXPLANATION

The way in which the agency's ADA function is organized and staffed, along with the experience of ADA staff, should be commensurate with the agency's size and complexity. The type, frequency, and method of training provided to staff about the US DOT's ADA requirements and industry effective practices are important indicators of how prepared the grantee is to administer the technical aspects of managing FTA assets.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40

SOURCES OF INFORMATION

Review organizational information, and training programs/information provided by the grantee. Consult the RCRO for any indications of past or current problems with staffing, including insufficient number of trained staff.

DETERMINATION

Input into the enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

PART B: COMPLAINTS

9. *What are the grantee's procedures for tracking, resolving, and responding to ADA-related complaints?*
 - a. *Is the process for filing a complaint sufficiently advertised to the public, such as on the grantee's website?*
 - b. *How does the grantee ensure its complaint procedures are accessible to and usable by individuals with disabilities?*
 - c. *What are the grantee's standards for the prompt and equitable resolution of complaints?*
 - d. *What are the grantee's procedures for promptly communicating its response, including the reasons for the response, to the complainant?*
 - e. *How is the response documented?*

f. *What are the document retention policies for complaints?*

EXPLANATION

Grantees are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. The US DOT ADA final rule, effective July 13, 2015, revised the local complaint process requirements in 49 CFR Parts 27 and 37 to require that grantees sufficiently advertise the process for filing an ADA-related complaint and communicate a response promptly to any individual filing a complaint. The grantee is not required to respond to all complaints in writing, but rather must ensure the response can be documented internally. Grantees must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. If the grantee does not operate service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

REFERENCES

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

SOURCES OF INFORMATION

Review the grantee's website and other public materials for information on filing an ADA-related complaint. Obtain and review the ADA complaint policy, if written. Discuss the procedures with the grantee. Review ADA complaint files and logs to ensure that copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years are retained.

DETERMINATION

The grantee is deficient if there is no advertised process for filing an ADA-related complaint, or it lacks internal procedures for promptly resolving complaints and communicating responses to complainants. The grantee is also deficient if fails to retain copies and summaries of complaints for the required timeframes. (**DEFICIENCY CODE 324:** Insufficient ADA complaint process)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit confirmation that it is sufficiently advertising the process for filing a complaint (e.g., information on its website).

Direct the grantee to develop and implement a process for promptly resolving complaints and communicating its response to the complainant in a means that can be documented.

Direct the grantee to develop and implement a process for retaining copies of ADA complaints for at least one year and summaries for five years.

PART C: BUS AND RAIL VEHICLES

10. *Were all new or used bus or rail vehicles purchased or leased for use in fixed-route service since the last Comprehensive Review accessible?*
11. *For used vehicles acquired or leased that do not meet accessibility standards under 49 CFR Part 38, provide documentation of good faith efforts meeting the requirements of 49 CFR 37.73(c), 37.81(c) or 37.87(c).*
12. *Since the last Comprehensive Review, has the grantee or a subrecipient remanufactured any existing buses or rail vehicles (or acquired any remanufactured buses or rail vehicles) for use in fixed-route service?*

- a. *If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs?*
 - b. *If no, provide the results of the engineering analysis demonstrating a significant adverse impact on the integrity of the vehicle as required under 49 CFR 37.75(c), 37.83 (c), or 37.89(c).*
13. *If the grantee or a subrecipient contracts for fixed-route service, including commuter bus service, how does the grantee ensure that the buses used for the service are accessible?*
14. *Since the last Comprehensive Review, has the grantee or a subrecipient purchased or leased any new inaccessible vehicles for demand-response service, including route-deviation service? If yes:*
 - a. *Provide the grantee's documented analysis of equivalent service and the date of the analysis.*
 - b. *Was a certification of equivalent service filed prior to each acquisition of inaccessible vehicles?*
 - c. *How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?*
15. *How does the grantee ensure that subrecipients comply with the US Department of Transportation (US DOT) ADA requirements for the acquisition of accessible vehicles?*

EXPLANATION

49 CFR Part 37 includes specific requirements for the acquisition of accessible vehicles by public and private entities. 49 CFR Part 38 contains accessibility standards for transportation vehicles. Grantees must comply with the requirements, as must all contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under several FTA programs. Private for profit entities are eligible subrecipients under Sections 5310, 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, are to follow the rules for public entities. For subrecipients that are private entities that operate service for the general public, consult the FTA Office of Civil Rights Program Manager for Policy and Technical Assistance in FTA's Headquarters Office for technical assistance.

All new bus and rail vehicles purchased or leased by public entities operating fixed-route service must be accessible and must comply with the standards found in 49 CFR Part 38 of the US DOT ADA regulations.

All used bus and rail vehicles must be accessible. Inaccessible used bus and rail vehicles may only be purchased or leased if, after making demonstrated good faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good faith efforts are defined in 49 CFR 37.73(c) and 37.81(c) as including at least the following steps:

- An initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities
- A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers
- Advertising in trade publications and contacting trade associations

The entity must keep records documenting good faith efforts for three years.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part 38.

When an entity contracts for fixed-route service, including commuter bus service, all of the buses acquired and used in the service must be accessible. The contractor must meet the entity's obligations as it "stands in the shoes" of the entity and the entity cannot contract away its obligations to provide accessible service.

Public entities operating demand-response service for the general public must purchase or lease accessible vehicles unless they can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. The service for the general public for people with and without disabilities must be provided in the most integrated setting feasible and must be equivalent with respect to response time, fares, geographic service area, hours and days of service, any restrictions or priorities based on trip purpose, availability of information and reservation capability, and any constraints on capacity or service availability. Grantees must ensure that contractors using non-accessible vehicles in contracted demand-response service provide equivalent service.

Before procuring any inaccessible vehicle for demand-response service, the entity must file a certification of equivalent service with FTA. Grantees must file a certification of equivalent service for each procurement of inaccessible vehicles. A state must obtain certifications from subrecipients that are public entities. Appendix C to 49 CFR Part 37 of the US DOT ADA regulations includes a copy of the certification of equivalent service. The grantee must monitor its service to ensure that equivalent service exists; that is, there is an equal opportunity for each individual with a disability to use the transportation service and that the service provided to individuals with disabilities and those without disabilities meet the equivalent service characteristics described above. The grantee must document its analysis.

Vanpool systems operated by public entities or in which public entities own, purchase, or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

Grantees must ensure that subrecipients comply with the US DOT ADA requirements when acquiring new, used, or remanufactured vehicles, or when remanufacturing vehicles. The grantee must ensure that subrecipients meet the service characteristics and provide equivalent service prior to acquiring inaccessible vehicles for use in general public demand-response service.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.37 and 18.40

49 CFR 37.7

49 CFR 37.23

49 CFR 37.31

49 CFR Part 37, Subpart D

49 CFR Part 37, Subpart E

49 CFR Part 37, Appendix C

49 CFR Part 38

FTA C. 4710.1, Ch. 4, Sections 7.3, 7.4, 7.5 and 7.6, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review grants to determine whether accessible or inaccessible vehicles were acquired and if the grantee has filed the certification of equivalent service with FTA. While on site, discuss each instance in which an inaccessible vehicle was acquired since the last Comprehensive Review. For each procurement of inaccessible vehicles, review the supporting documentation. For vehicles used in demand-response service, documentation includes the certification of equivalent service. For acquisition of used vehicles, this includes documentation of good faith efforts to obtain an accessible used vehicle meeting all of the requirements of 49 CFR 37.73(c) (for non-rail vehicles) or 37.81(c) (for rail vehicles). For remanufactured vehicles, documentation includes an engineering analysis demonstrating that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle.

For demand-response service, discuss how the grantee monitors equivalent service. For each procurement of inaccessible vehicles, determine whether the conditions permitting the acquisition of an inaccessible vehicle were met, and ensure that the grantee filed the certification of equivalent service found in Appendix C to 49 CFR Part 37.

If subrecipients have acquired inaccessible vehicles, review supporting documentation, including procurement documents, documentation of good faith efforts to acquire accessible vehicles, and certifications of equivalent service.

DETERMINATION

The grantee is deficient if it acquired new vehicles for use in fixed-route service that are not accessible. The grantee is deficient if it acquired used vehicles for use in fixed-route service that are not accessible and did not document the required good faith efforts to acquire accessible vehicles. The grantee is deficient if remanufactured vehicles for use in fixed-route service were not made readily accessible to people with disabilities, including those who use wheelchairs, and the grantee did not document the results of an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle. The grantee is deficient if contractors or subrecipients do not acquire and use accessible vehicles for fixed-route service. The grantee is deficient if it acquired inaccessible vehicles for general public demand-response service and did not file a certification of equivalent service. The grantee is deficient if it acquired inaccessible vehicles for general public demand-response service and does not monitor its service to ensure that service meeting the characteristics of equivalent service is provided. (**DEFICIENCY CODE 186:** Vehicle accessibility standards deficiency)

The grantee is deficient if it does not ensure that subrecipients comply with the US DOT ADA requirements for acquisition of accessible vehicles, including the provision of equivalent service. If the grantee is a state, it is deficient if it did not obtain a certification of equivalent service from a public-entity subrecipient acquiring an inaccessible vehicle for demand-response service. (**DEFICIENCY CODE 8:** Insufficient oversight of ADA vehicle accessibility requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to make inaccessible new vehicles for use in fixed-route service accessible or replace them with accessible vehicles.

Direct the grantee to either produce evidence of good faith efforts consistent with 49 CFR 37.73(c) to purchase inaccessible vehicles for fixed-route service or cease use of inaccessible used vehicles for fixed-route service and replace them with accessible vehicles.

Direct the grantee to submit the engineering analysis showing making the vehicles accessible would have had a significant adverse effect on the structural integrity of the vehicle, make the vehicles accessible, or cease use of the vehicles in fixed-route service and replace them with accessible vehicles.

Direct the grantee to submit a valid equivalent service certification or acquire accessible vehicles for use in demand-response service.

Direct the grantee to direct its contractors or subrecipients to use accessible vehicles for fixed-route service.

Direct the grantee to provide evidence that equivalent service is provided, require contractors or subrecipients to use accessible vehicles, or provide sufficient vehicles to meet equivalent service requirements.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that contractors or subrecipients acquire accessible vehicles and for ensuring that subrecipients or contractors meet the specific required conditions that permit the acquisition of inaccessible vehicles prior to acquiring them.

Direct the state to submit to the FTA RCRO a procedure for obtaining a certification of equivalent service from Sections 5307 and 5311 subrecipients acquiring inaccessible vehicles for demand-response service

PART D: FACILITIES

- 16. If the grantee or subrecipient constructed or altered any facilities since the last Comprehensive Review, how did the grantee ensure that the facility meets the appropriate accessibility requirements under US DOT ADA regulations?*
- 17. For facilities constructed by the grantee or a subrecipient that did not meet the requirements of 49 CFR 37.9 and 37.41, provide documentation sufficient to support the determination that the facility was made accessible to the maximum extent feasible as defined under 37.41(b)*
- 18. For facilities altered by the grantee or subrecipient that did not meet the requirements of 49 CFR 37.9 and 37.43, provide documentation to support the determination that the facility was made accessible to the maximum extent feasible as defined under 37.43(b).*
- 19. For facilities altered by the grantee or subrecipient, where an area containing a primary function as defined in 49 CFR 37.43(c) was altered, and for which the path of travel to and from the altered area is not accessible and was not otherwise replaced or altered, provide documentation that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope as defined in 37.43 (e).*
- 20. When subrecipients construct or modify facilities, how does the grantee ensure that subrecipients comply with US DOT ADA requirements for accessible transportation facilities as incorporated into 49 CFR Part 37?*

EXPLANATION

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9, as required by 49 CFR 37.41. Under 49 CFR 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. "Structurally impracticable" is defined in 49 CFR 37.41(b)(1) as "those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features."

If the entity alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. If the altered portion includes the path of travel, the path of travel must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. 49 CFR 37.43(b) defines "to the maximum extent feasible" as "the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration."

If the area being altered contains a primary function, such as a station platform, an additional requirement is triggered to make the path of travel to and from the altered area accessible, unless the cost of doing so is disproportionate to the cost of the alterations to the primary function area. The regulations define "disproportionate" as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The US DOT ADA regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility elements to provide greatest access.

An entity must provide documentation sufficient to support that it has made the facility (or altered portion(s) of the facility) accessible to the maximum extent feasible or that alterations required but not made to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

Grantees must ensure that subrecipients comply with US DOT ADA requirements when constructing or altering a facility. If there are parties other than the grantee or subrecipients responsible for portions of the facility, the grantee must ensure that they also comply with the US DOT ADA requirements.

Note that there are differences between the standards required under US DOT ADA regulations and those issued by other Federal agencies; and state, county, and municipal building codes cannot be relied upon to ensure compliance with US DOT ADA requirements.

REFERENCES

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

SOURCES OF INFORMATION

Examine grants for new and altered facility projects. During the site visit, discuss with the grantee construction or alteration of any facilities and inspect those facilities. Ensure that the documents for architectural and engineering services are consistent with and reference the US DOT ADA requirements.

For grantees that have undertaken alterations to an area that serves a primary function and have not made the path of travel accessible due to disproportionate cost (exceeds 20 percent of the total alteration cost), examine supporting documentation for this decision, including the cost calculation to show why accessibility of the path of travel was not achieved. If the altered area itself is not accessible, examine documentation supporting the infeasibility of meeting specific requirements.

Review and discuss subrecipient oversight procedures. Obtain an understanding of who performs the oversight and at what stages of the facility design and construction the oversight occurs.

DETERMINATION

The grantee is deficient if the new facilities do not comply with the standards referenced in 49 CFR 37.9 and the conditions of 49 CFR 37.41(b) are not met. The grantee is deficient if alterations do not comply with the standards referenced in 37.9, and/or it does not have documentation supporting the reasons for not making alterations fully accessible. (**DEFICIENCY CODE 30:** Facility accessibility standards deficiency)

The grantee is deficient if it has not ensured that subrecipients and other parties that construct or modify facilities comply with the US DOT ADA requirements. (**DEFICIENCY CODE 60:** Insufficient oversight of facility accessibility requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a schedule for making the necessary modifications to bring the facility into compliance.

Direct the grantee to submit to the FTA RCRO documentation supporting the reasons for not making facility alterations fully accessible.

Direct the grantee to submit to the FTA RCRO procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

For noncompliant new construction or alterations and paths of travel, the FTA regional office and headquarters will determine corrective actions.

PART E: SERVICE PROVISIONS

21. *What are the grantee's procedures and policies, including those prescribed in bus operator training manuals, for the following US DOT ADA requirements:*

- a. (1) *Making stop announcements on fixed-route vehicles, and (2) providing an effective means of route identification at stops served by multiple vehicles and multiple routes?*
 - i. *How does the grantee ensure that operators are following these policies?*
 - ii. *How does the grantee monitor performance of vehicle operators and, where appropriate, the annunciator system?*
 - iii. *Requesting that persons sitting in priority seats and any fold-down seats over the securement area vacate those seats when a person with a disability needs to use them?*
 - iv. *Transport of any wheelchair that does not exceed the capacities of the vehicle and its equipment (lifts/ramps)?*
 - v. *Lift/ramp deployment at any stop?*
 - vi. *Service to persons using respirators, concentrators, or portable oxygen?*
 - vii. *Time allowed for persons with disabilities to board/disembark a vehicle?*
- 22.** *In what accessible formats is information regarding transportation services available?*
- 23.** *How are US DOT ADA service requirements, including those listed above, communicated to employees, contractors, and lessees?*
- 24.** *How does the grantee monitor employees, contractors, and lessees for adherence to these requirements or otherwise enforce their implementation, including personnel disciplinary actions?*
- 25.** *Does the grantee make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices? Does it provide a means, accessible to and usable by individuals with disabilities, to request a modification to the grantee's policies and practices?*

EXPLANATION

The US DOT ADA regulations (49 CFR 37.161-169) detail specific requirements for bus and rail service. (For ferry service requirements see Question Part K: Ferry Service.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how the entity enforces their implementation.

- a. Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request. The US DOT ADA regulations supersede any union agreement that prevents the entity from requiring operators to call stops.

When more than one route serves a stop, the entity must provide an effective means by which an individual with a visual impairment or other disability waiting at a stop can identify the route on which he or she wants to travel.

Where automated stop annunciators are used, the grantee must ensure that drivers announce stops and ensure an alternative mechanism for an effective means of route identification at stops served by multiple vehicles and multiple routes when annunciators are out of service.

- b. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the entity must ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and persons with disabilities (or other seat as necessary); and (ii) individuals sitting in a fold-down or other movable seat in a wheelchair securement location. Drivers are not required to compel the person to move; however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests.
- c. US DOT's Final Rule amending 49 CFR Part 37, which went into effect October 19, 2011, prohibits public entities from setting weight or size limitations on wheelchairs it will transport that understate the weight capacity that the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The Final Rule deletes the sentence containing "common wheelchair" from Part 37, recognizing that some vehicles used in public transit can accommodate wheelchairs that do not meet the definition of "common wheelchair." Wheelchairs that exceed the weight or dimensional requirements of a "common wheelchair" can be transported on and be used on such vehicles. In such cases, the grantee must change its operating policies so as not to limit service accessibility by the term "common wheelchair."

It may be helpful for a grantee to publicize the capacities of its vehicles, so that passengers using wheelchairs can determine whether their mobility devices will fit aboard the grantee's vehicles. As long as this information does not understate the actual dimensions and design load of the vehicles in the grantee's fleet, and as long as these vehicles meet the requirements of 49 CFR Part 38, a grantee that does so is not deficient. Because the minimum standards for vehicle lifts and ramps have not changed, such a grantee may accurately report that its vehicles can accommodate wheelchairs measuring 30" x 48" and weighing up to 600 lbs. when occupied, if that represents its actual capacities. In those cases, a grantee may restrict service to wheelchairs within those dimensional and weight limitations.

- d. Entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- e. Entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- f. Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use. Entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.

The key to ensuring compliance with these policies is ensuring that all employees, contractors, and lessees are aware of them. For employees, this might be done through initial and refresher trainings. Having policies is not sufficient; the grantee must also monitor compliance with the policies. In addition to monitoring its own employees, the grantee is responsible for ensuring that contractors, and lessees meet the grantee's obligations under the US DOT ADA regulations and monitor compliance.

Effective July 13, 2015, grantees are required under 49 CFR 37.5(i)(3) to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services. The process to be used in considering requests for reasonable modifications is described in 49 CFR 37.169.

There is no specific requirement for a separate process for reasonable modifications; existing local processes may suffice. Whether a grantee relies on existing processes or develops something specific to reasonable modifications, there are some basic process requirements that must be met:

- Information on the reasonable modification process must be readily available to the public, and must be accessible
- Advance notice can be required, but flexibility is also needed to handle requests that are only practicable on the spot
- Individuals requesting modifications are not required to use the term “reasonable modification”

It should be obvious to the reviewer from public information whether and how the grantee accepts requests for reasonable modifications in policies and practices; no separate “reasonable modification policy” is required.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR 37.165-169

49 CFR 38.23(b)

FTA C. 4710.1, Ch. 2, Sections 2.3, 2.4, 2.7, 2.10 and 2.11, Ch. 6, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures pertinent to the US DOT ADA regulations. Examine if procedures include monitoring compliance with US DOT ADA requirements. Examine public information materials for details on the availability of alternative and accessible formats and for requesting reasonable modifications to policies and procedures. Review oversight documentation, including surveys, checklists, interview forms, and follow up correspondence. During the site visit, discuss compliance monitoring with the grantee. Discuss US DOT ADA service provisions during contractor site visits.

DETERMINATION

The grantee is deficient if any required policies or procedures are not in effect. The grantee is deficient if any of its policies or procedures are contrary to the US DOT ADA requirements. The grantee is deficient if it does not enforce its policies or monitor its operations. The grantee is deficient if public information is not available in accessible formats upon request. The grantee is deficient if public information on reasonable modification is not readily available or accessible. (**DEFICIENCY CODE 136**: ADA service provisions deficiencies)

The grantee is deficient if it restricts use of its vehicles using the term “common wheelchair” or to dimensions and/or combined weights that are less than the grantee’s fleet is able to accommodate. The grantee is deficient if the dimensions and/or combined weights are less than the minimum required under 49 CFR 38.23(b). (**DEFICIENCY CODE 545**: Setting weight/size limitations on wheelchairs that understate fleet capacities)

The grantee is deficient if it does not ensure that contractors and lessees meet the grantees obligations under the US DOT ADA regulations. (**DEFICIENCY CODE 646**: Insufficient oversight of ADA service provisions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO procedures for accommodating requests for public information in alternative formats.

Direct the grantee to submit to the FTA RCRO procedures for processing requests and/or public information for requesting reasonable modifications.

Note: For the following corrective actions, please be specific to the service provision deficiencies found during the site visit.

Direct the grantee to submit documentation to the FTA RCRO that policies and public materials have been revised and required service provisions have been implemented. Provide evidence of monitoring the implementation of these provisions.

Direct the grantee to submit documentation to the FTA RCRO that policies and public materials have been revised and required service provisions. Provide evidence of monitoring the implementation of these provisions.

Direct the grantee to submit to the RCRO procedures for monitoring its operations for compliance with the ADA service provisions.

Direct the grantee to submit to the RCRO procedures for ensuring that contractors and lessees comply with the ADA service provisions.

PART F: TRAINING

26. *How does the grantee ensure that personnel, contractors, and lessees are trained to proficiency so that they operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*

EXPLANATION

The US DOT ADA regulations require that each fixed-route or demand-response service operator ensure that personnel are trained to proficiency, as appropriate, for their duties. This training is required so that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The US DOT ADA regulations do not specify an acceptable course or frequency of training. The entity must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient. The training must be appropriate to the duties of each employee and must address both technical requirements and human relations.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR 37.173

FTA C. 4710.1, Ch. 2, Section 2.9, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review training materials (new hire and refresher) and handbooks, along with bulletins and other materials provided to personnel. Review complaint records for potential problem areas. Review contracts and leases for ADA training requirements. Assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors and lessees are “proficient,” and what, if any, consequences result if these standards are not met.

DETERMINATION

The grantee is deficient if it has not trained its personnel to operate vehicles and equipment safely and/or has not provided sensitivity training on interacting with persons with disabilities. The grantee is deficient if it does not ensure that its personnel operate vehicles and equipment safely and/or if the grantee does not ensure that its personnel properly assist individuals with disabilities. (**DEFICIENCY CODE 169:** ADA training not adequate)

The grantee is deficient if it does not ensure that contractors or lessees have trained personnel to operate vehicles and equipment safely and/or provided sensitivity training on interacting with persons with disabilities. (**DEFICIENCY CODE 667:** Insufficient oversight of ADA training)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a revised training program and a schedule for retraining its personnel.

Direct the grantee to submit to the FTA RCRO procedures for monitoring the training programs of contractors and lessees.

PART G: MAINTENANCE OF ACCESSIBLE FEATURES

27. *How does the grantee ensure that accessible elements of transit facilities, such as elevators, ramps, and accessible routes, are maintained in operative condition?*

28. *When an elevator is out of service, how does the grantee accommodate individuals who rely on the elevator?*
29. *Where automated stop annunciator systems are used, how does the grantee ensure that the annunciator system is maintained in working condition?*
30. *How does the grantee ensure that stop announcements are made when automated stop annunciator systems are inoperative or malfunctioning?*
31. *How does the grantee ensure that vehicles with inoperative lifts or ramps are not placed into service?*
32. *What is the policy with regard to lift and ramp failures while the vehicle is in service?*
 - a. *Are operators required to report failures immediately?*
 - b. *Is alternative accessible service provided to persons with disabilities as required?*
 - c. *Are lifts and ramps repaired within the timeframes required by the US DOT ADA regulation prior to returning the vehicle to service?*
 - d. *How does the grantee know?*
 - e. *Are sufficient accessible spare vehicles available to enable the grantee, contractors, and lessees to meet the requirements?*

EXPLANATION

Entities must maintain in operative condition those features of vehicles and facilities that are required to make them accessible to and usable by persons with disabilities, including wheelchair users. The requirement for maintenance of accessible features applies to passenger facilities for ferry systems. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage, and systems to facilitate communications with persons with vision or hearing impairments. Accessibility features must be repaired promptly if they are damaged or out of order. (Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited.) When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

Public entities are required to have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operational. If drivers are reporting in-service lift/ramp failures immediately as required, the frequency of in-service lift/ramp failures may be an indicator of the adequacy of one aspect of such procedures. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement for regular and frequent maintenance checks.

Public entities and private entities operating service under contract to a public entity must ensure that operators report immediately any in-service lift and ramp failures. The vehicle with the inoperable lift or ramp must be removed from service before the beginning of the next service day and the entity must repair the lift or ramp before the vehicle is returned to service.

In the event that there is no spare vehicle available and the entity would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than three days (if the entity serves an area of over 50,000 population) or five days (if the entity serves an area of 50,000 or less population). After these times have elapsed, the vehicle must go into the shop, not to return to service until the lift is repaired. Even during the three- or five-day period, if an accessible spare bus becomes available at any time, it must be used in place of the bus with the inoperative lift or an inaccessible spare that is being used in its place.

In any case in which a vehicle is operating on a fixed route with an inoperative lift (including in-service failures), and the headway to the next accessible vehicle exceeds 30 minutes, the grantee must promptly (i.e., within 30 minutes) provide alternative transportation to persons with disabilities who are unable to use the vehicle.

The grantee must monitor its compliance with these US DOT ADA maintenance requirements, including the requirements to take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature and to provide alternative service for in-service lift and ramp failures. In addition to monitoring its own operations, the grantee is responsible for ensuring that contractors and lessees meet the requirements.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR 37.161-163

FTA C. 4710.1, Ch. 2, Sections 2.3, Ch. 6, Section 6.2, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review ADA maintenance and operations policies. While in the maintenance facility, note whether the grantee has and is following maintenance procedures for wheelchair lifts, ramps, and other accessibility equipment. Review reports on elevator and lift availability, if available. Spot check maintenance records to determine how long elevators, lifts, ramps, or other equipment may have been out of service. Review policies for notifying the public and accommodating individuals when an elevator in a facility is inoperable. Review policies for providing alternative transportation when a vehicle lift is out of service and policies for effectively accommodating individuals when an elevator in a facility is inoperable.

Review monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if it does not maintain accessibility features in operative condition, does not repair them promptly when they are damaged or out of order, and/or does not have a means to serve individuals with disabilities who would otherwise use those features while they are out of service. The grantee is deficient if it has not established a system of regular and frequent maintenance checks of vehicle lifts and ramps. The grantee is deficient if records show that it either does not follow its maintenance system or does not maintain the accessibility equipment properly. The grantee is deficient if operators do not report lift or ramp failures immediately. The grantee is deficient if it does not remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee is deficient if it places a bus with an inoperable lift or ramp back in service, in lieu of repairing it (after the time has elapsed). The grantee is deficient if it does not provide alternative accessible service to individuals with disabilities within 30 minutes in any case when a vehicle with an inoperable lift or ramp is in service on a route with headways greater than 30 minutes to the next accessible vehicle. (**DEFICIENCY CODE 273**: Violation of procedures to ensure maintenance of accessible features)

The grantee is deficient if it does not ensure that contractors and lessees comply with the above mentioned ADA maintenance requirements. (**DEFICIENCY CODE 104**: Insufficient oversight of ADA maintenance requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a maintenance program for accessibility features specifically addressing the deficiencies found.

Direct the grantee to submit to the FTA RCRO a system of maintenance checks for lifts or ramps on buses.

Direct the grantee to submit to the FTA RCRO procedures for reporting immediately a lift or ramp failure on a vehicle in service.

Direct the grantee to submit to the FTA RCRO procedures for removing and repairing buses with inoperable lifts and ramps within the required timeframes and for ensuring that such buses are not returned to service before the repairs are completed.

Direct the grantee to submit to the FTA RCRO procedures for providing alternative service within 30 minutes on routes with headways greater than 30 minutes when a vehicle lift or ramp fails while in service and/or when a vehicle with an inoperable lift or ramp is used in service.

In the case of stations, direct the grantee to submit to the FTA RCRO procedures for notifying the public and accommodating individuals who rely on accessibility features (e.g., elevators) when those features are out of service.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that contractors and lessees comply with ADA maintenance requirements.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that contractors and lessees comply with ADA requirements regarding in-service lift or ramp failures.

PART H: ROUTE-DEVIATION SERVICE

33. *If the grantee provides route-deviation service as its method for general public demand-response service, what are the policies for deviating and how is the public informed of the policy?*

34. *If the grantee provides route deviation only to paratransit-eligible persons, how does the service meet all of the criteria for complementary paratransit as required under 49 CFR Part 37, Subpart F?*

EXPLANATION

The US DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand response, for which ADA complementary paratransit is not required. One key factor to consider in determining whether a transit system is fixed route or demand response is if an individual must request the service in some way, typically by making a phone call in advance. With fixed-route service, no action is needed to access the service - if a person is at the bus stop at the time the bus is scheduled to appear, then the person can use that service. In contrast, with demand-response service, the individual typically must make a phone call in order to ride the bus. A system that permits user-initiated deviations from routes generally fits the definition of demand-response service.

To be considered demand response, the service must deviate for the general public, not just persons with disabilities. If deviations are restricted to a particular group, the service ceases to be a form of demand-response service for the general public. Systems must provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for people without disabilities as specified in 49 CFR 37.77.

In limited circumstances, a grantee may be able to provide both ADA complementary paratransit service and fixed-route service using the same vehicle. In these situations, the fixed-route bus would go off route (or “deviate”) only for people with disabilities who have been determined to be ADA paratransit eligible. In this scenario, service to such persons must be provided according to the same requirements in Subpart F of 49 CFR Part 37 for complementary paratransit (e.g., service area, response time, fares, hours and days of service, absence of capacity constraints and absence of trip purpose restrictions).

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR Part 37 Appendix D to 37.3

Disability Law Guidance re: Paratransit Requirements for Section 5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005

FTA C. 4710.1, Ch. 7, Section 7.5.4

SOURCES OF INFORMATION

Review schedules, timetables, system maps, the website, and other public information to ensure that the service is promoted as general public route deviation service. Discuss with the grantee during the site visit.

DETERMINATION

The grantee is deficient if its route-deviation service does not deviate for the general public. The grantee is deficient if it does not advertise the availability of the route-deviation service. (**DEFICIENCY CODE 280:** ADA complementary paratransit exception issue)

The grantee is deficient if it is deviating only for persons with disabilities and advertising the service as “ADA complementary paratransit” without meeting the requirements of Subpart F of 49 CFR Part 37. (**DEFICIENCY CODE 73: ADA complementary paratransit service deficiencies**)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to deviate for the general public and submit to the FTA RCRO public information and other documentation to demonstrate that general public route-deviation service has the characteristics of demand-response service.

Direct the grantee to update and submit to the FTA RCRO public information and other documentation to demonstrate that general public route-deviation service has the characteristics of demand-response service.

If the grantee is indicating it is using the fixed-route service to provide both ADA complementary paratransit service and fixed-route service using the same vehicle without clearly meeting the requirements in Subpart F of 49 CFR Part 37, direct the grantee to submit details on the service to substantiate compliance with Subpart F with a continued comingled service or through a separate paratransit system.

PART I: ADA COMPLEMENTARY PARATRANSIT SERVICE

35. *If the grantee provides fixed-route service (bus or rail, except commuter bus or rail, or university service), demonstrate that complementary paratransit service serves all origins and destinations within the minimum ADA complementary paratransit service area and during all days and hours as fixed-route service. (Please answer the questions by completing the following table.)*

	Fixed Route	ADA Complementary Paratransit
Service days		
Service hours		
Geographic areas covered		
Fare(s)		

EXPLANATION

Each public entity operating a fixed-route system must provide paratransit to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. This requirement also applies to all Section 5311 subrecipients, including those that are private nonprofit entities. The requirement to provide complementary paratransit service does not apply to intercity bus, commuter bus and rail, or university service.

Commuter bus service is fixed-route bus service characterized by service predominately in one direction during peak periods, with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, limited attempts to comprehensively cover a service area, restricted purposes of travel, or a coordinated relationship to another mode of transportation. An entity operating commuter bus service must be able to demonstrate the rationale for characterizing the service as such.

49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an

institution of higher education would be required to have a formal arrangement with the transit operator.

ADA complementary paratransit must run during the same hours and days as the corresponding non-commuter fixed-route service. The ADA service area at a minimum includes all origins and destinations within $\frac{3}{4}$ mile corridors on each side of each fixed route. Within the core service area, any small areas not inside a corridor but surrounded by corridors also must be served. Outside the core service area, the entity may designate corridors with widths of up to $1\frac{1}{2}$ miles on each side of the fixed route, based on local circumstances. For rail systems (except commuter rail), the service area consists of a circle with a radius of $\frac{3}{4}$ mile around each rail station for trips provided between origins and destinations in different station service areas. At end stations, the entity may designate circles up to $1\frac{1}{2}$ miles. The entity may also provide additional service. The entity is not required to provide paratransit service in areas it does not have the legal authority to operate, but the entity is expected to cross jurisdictional boundaries unless there is a legal barrier to the entity providing service on the other side of the boundary.

The existence of ADA complementary paratransit must be clearly distinguished from any other type of demand-response service that may also be provided.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR Part 37.25

49 CFR 37.121-131

49 CFR Part 37 Appendix D to Section 37.3

Disability Law Guidance re: Paratransit Requirements for Section 5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005

FTA C. 4710.1, Ch. 8, Sections 8.4.1, 8.4.2, 8.4.3, and 8.4.4

SOURCES OF INFORMATION

Review schedules, timetables, system maps, and other material on the grantee's website to determine whether the grantee offers ADA complementary paratransit service. Review schedules, timetables, system maps, and other material to determine whether the ADA complementary paratransit service is provided during the same hours and days as the fixed route and within the minimum ADA service area. In particular, check off-peak hours (early mornings, late nights, and weekends) to make sure there are not times when fixed-route service is provided and complementary paratransit service is not available. If there appear to be particular fixed routes that do not have complementary paratransit service, look at the characteristics of those routes to determine if they meet the definition of commuter bus or university service. Do not rely solely on grantee assertions that a particular route represents commuter bus or university service.

If the grantee provides other demand-response service, review public information to ensure that the service is clearly distinguished from ADA complementary paratransit service.

DETERMINATION

The grantee is deficient if it operates fixed-route service that is not commuter or university service and does not provide ADA complementary paratransit service. (**DEFICIENCY CODE 536:** ADA complementary paratransit service not provided)

The grantee is deficient if the ADA complementary paratransit service does not operate the same days and hours as fixed-route service, within $\frac{3}{4}$ -mile corridors on each side of each fixed route, within $\frac{3}{4}$ -mile radius of each rail station, or within the whole core service area. (**DEFICIENCY CODE 73:** ADA complementary paratransit service deficiencies)

The grantee is deficient if ADA complementary paratransit service is not clearly distinguished from any other type of demand-response service. (**DEFICIENCY CODE 73:** ADA complementary paratransit service deficiencies)

SUGGESTED CORRECTIVE ACTION

Note: for the following corrective actions, please be specific to the ADA complementary paratransit service deficiencies found during the site visit.

Direct the grantee to submit to the FTA RCRO a plan for implementing ADA complementary paratransit service.

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

Direct the grantee to modify its public materials to clearly distinguish ADA complementary paratransit service and any other type of demand-response service.

36. *What changes to the grantee's ADA complementary paratransit service (i.e., change in no-show/late cancellation policy, change in fare payment methods, implementation of door-to-door, curb-to-curb, or origin-to-destination service) have been implemented since the last Comprehensive Review?*

37. *What changes to the grantee's ADA complementary paratransit eligibility processes have been made since the last Comprehensive Review?*

EXPLANATION

Changes in policies, procedures, or service delivery may indicate potential issues or may have been implemented to address issues that were identified.

REFERENCES

Input into enhanced review

SOURCES OF INFORMATION

Review the answers to determine if there are potential risks that indicate an enhanced review module is needed. Review public information, including the website, for information on service changes.

DETERMINATION

Input into enhanced review

38. *Since the last Comprehensive Review, how did the grantee change its complementary paratransit delivery (e.g., change or add contractors, enter into a delegated management agreement with a public or private entity, combine service with another agency, change from in-house to contracted operation or vice-versa, or otherwise change its business model)?*

39. *How does the grantee ensure that its ADA complementary paratransit eligibility process meets the requirements of 49 CFR 37.123 and 37.125, including those below?*

- a. *Eligibility decisions are made within 21 days of receipt of a complete application. For those applications not processed within 21 days of receipt, the grantee provides presumptive eligibility for the applicant to schedule and use paratransit service beginning on the 22nd day until such time that the written determination is issued.*
- b. *Persons who are denied eligibility or given conditional or temporary eligibility are given a written notice with specific reasons for the decision and notice of their right to appeal.*
- c. *The appeals process adheres to the US DOT ADA regulations (applicants have 60 days to inform the grantee that they intend to appeal the determination; grantee may require that the applicant submit a form indicating the intent to appeal; lengthy narrative justifying the need to appeal cannot be required; opportunity to be heard, separation of functions, appeal decision within 30 days; and written notification of decision with reason for it).*
- d. *If a decision is not made within 30 days of completing the appeals process, transportation is provided until and unless a decision to deny the appeal is issued.*

40. *Do the grantee's procedures for providing ADA complementary paratransit service to out-of-town visitors recognize that visitors may or may not have documentation of eligibility from another transit system?*
41. *How soon after presenting the necessary documentation are visitors able to use the grantee's paratransit system?*

EXPLANATION

Each entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. Eligibility is to be strictly limited to certain categories of individuals, as described in 49 CFR 37.123(e) of the US DOT ADA regulations:

- Any person with a disability who is unable to board, ride, or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device)
- Any person with a disability who could ride an accessible vehicle but the route is not accessible or the lift does not meet ADA standards
- Any person with a disability who has a specific impairment-related condition that prevents the person from traveling to or from a boarding/ disembarking location

Individuals may be ADA paratransit eligible on the basis of a temporary or permanent disability. There are many ways that the grantee can determine eligibility. The process may include a functional evaluation or testing of applicants. Verification of disability from a physician or health professional may be part of the process; however, a diagnosis of a disability in and of itself does not establish eligibility. What is needed is a determination of whether, as a practical matter, the individual can independently use the regular fixed-route transit service.

- a. The entity must process a completed application within 21 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service on the 22nd day until and unless the entity denies the application. The entity is permitted to require passengers to be recertified at reasonable intervals.
- b. Conditional eligibility must account for all factors that may prevent a given individual from using the accessible fixed-route system, including traveling to/from fixed route stop/stations. In many cases, conditional eligibility will be required based on environmental conditions, such as when snow prevents a wheelchair user from traveling to and from a bus stop. However, the process must also recognize that there may be trip-specific conditions that prevent an individual from using the fixed-route system as well. For example, a wheelchair user may be able to use the fixed-route system for regular travel between home and work, but may require paratransit service when traveling to areas where the interaction of a lack of pedestrian infrastructure and the applicant's disability prevents him or her from reaching a bus stop. This individual would therefore be determined conditionally eligible for paratransit service and could use paratransit for trips to and from those areas. The grantee is not required to implement conditional eligibility. If the grantee elects not to implement conditional eligibility, it must grant applicants who can use fixed routes in certain situations unconditional eligibility.

The applicant must be given a written decision conveying the determination and information on the right to an appeal. The written determination denying eligibility and those granting less than unconditional eligibility cannot just state that it has been determined that the applicant can use fixed-route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed-route transit is not sufficient. The reasons I must specifically convey the evidence in the matter and relate it to the eligibility criteria.

For people granted eligibility, the documentation of eligibility shall include at least the following information:

- The individual's name
- The name of the transit provider
- The telephone number of the entity's paratransit coordinator

- An expiration date for eligibility
 - Any conditions or limitations on the individual's eligibility, including the use of a personal care attendant
- c. The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant is not required to submit a written justification prior to the hearing, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that this written notice be filed within 60 days of the denial of a person's application. The process must include a hearing to present information and "separation of authority" between those hearing the appeal and the person who made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.
- d. The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

Service must be provided to visitors. A visitor can become eligible in one of two ways:

- The visitor can present documentation from his or her "home" jurisdiction's ADA complementary paratransit system that he or she is eligible. The local provider will give "full faith and credit" to the identification card or other documentation from the other entity.
- The visitor can present, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional) and, if required by the local provider, proof of visitor status (i.e., proof of residence somewhere else). Once the documentation is presented and is satisfactory, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed-route transit system, that is, the local provider cannot require functional testing.

The entity is not required to provide more than 21 days of service within a 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

Granting visitor eligibility is a fairly simple and quick process enabling individuals to contact the host agency to learn what is required and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described above, transit agencies are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. FTA envisions this as a process that can often be completed the same day or no more than one day later.

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.40
 49 CFR 37.121-125
 49 CFR Part 37 Appendix D to 37.121-125
 FTA C. 4710.1, Ch. 9, Sections 9.1, 9.2, 9.3, 9.4, 9.5, 9.7 and 9.9

SOURCES OF INFORMATION

Review information provided to the public that describes the ADA complementary paratransit services and the eligibility process. Discuss with the grantee how applications are processed and how eligibility determinations are made. Spot check recent application files and the determination letters issued to ensure that the grantee or subrecipient processed them within 21 calendar days. If not, determine whether and how applicants are informed that they can schedule and use the ADA paratransit service on the 22nd day until such time that the application is denied. Discuss the appeals process and spot check files for recent appeals and appeal decision letters to ensure that the process meets the regulatory requirements. Collect and review sample eligibility (including denial and conditionally eligible and temporarily eligible) and appeal decision letters. Discuss the grantee's process for providing paratransit service to visitors.

DETERMINATION

The grantee is deficient if it does not have an eligibility process for determining ADA complementary paratransit eligibility. The grantee is deficient if it has not ensured that determinations are made within 21 calendar days of

receipt of a completed application and applicants are not treated as eligible and provided service starting on the 22nd day, until the application is processed and a determination is made. The grantee is deficient if it does not provide a written notice of its determination that meets the respective requirements explained in Appendix D to 49 CFR 37.125. (**DEFICIENCY CODE 33:** Improper ADA complementary paratransit eligibility determination process)

The grantee is deficient if it does not notify applicants in writing of their right to appeal or if the appeals process does not include all required elements. The grantee is deficient if the entity requires that the notice to appeal be filed less than 60 days from the date of the written decision denying the application or granting conditional or temporary eligibility. The grantee is deficient if it does not provide paratransit service in instances when the appeals decision takes longer than 30 days after completing the appeals process. The grantee is deficient if it requires the actual appeal (not the notice to appeal) to be made in writing, and/or if it requires that notifications of intent to appeal contain additional information beyond the applicant's statement that an appeal is being made. (**DEFICIENCY CODE 50:** Appeals process not properly implemented)

The grantee is deficient if it does not provide paratransit service to visitors or does not have a process for providing service to visitors. (**DEFICIENCY CODE 73:** ADA complementary paratransit service deficiencies)

SUGGESTED CORRECTIVE ACTION

Note: for the corrective action, please be specific to the ADA complementary paratransit service deficiencies found during the site visit.

Direct the grantee to submit revised procedures and determination letters to the FTA RCRO for its eligibility determinations, appeals process, and/or visitors' policy to meet the regulatory requirements.

42. Does the ADA complementary paratransit service provided by the grantee meet the following regulatory requirements:

- a. *Is the base mode of service door-to-door or curb-to-curb? If curb-to-curb, does the grantee ensure origin-to-destination service is provided when necessary?*
- b. *Is service provided to at least one other individual accompanying an eligible passenger? If the eligible passenger travels with a personal care attendant (PCA), is service provided to at least one other individual in addition to the PCA?*
- c. *What hours and days are requests for reservations accepted? How are reservations accepted when the administrative office is closed?*
- d. *Does the fare for complementary paratransit service exceed more than twice the regular fixed-route fare?*

EXPLANATION

- a. The regulations specify "origin-to-destination" service. The basic mode of service can be designated as door-to-door or curb-to-curb. If the entity's basic mode of service is curb-to-curb, the entity must have policies and procedures in place to provide assistance from the vehicle to the first doorway for customers who need additional assistance to complete the trip. The entity cannot charge individuals needing door-to-door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5.
- b. ADA complementary paratransit must be provided to at least one other individual accompanying an eligible individual. If a personal care attendant (PCA) accompanies an individual, the service must be provided to the PCA and at least one additional individual accompanying the ADA eligible individual, if requested. Additional companions must be provided service if space is available, unless doing so would displace other ADA paratransit eligible individuals.
- c. Requests for reservations must be accepted during normal business hours on a "next-day" basis (not 24 hours in advance) on all days prior to days of service (e.g., weekends, holidays). Reservations for next-day service must be taken during administrative office hours. Reservations can be accepted using mechanical means (e.g., answering machines).

- d. The ADA complementary paratransit fare cannot exceed twice the non-discounted fare for a trip of similar length, at a similar time of day, on the fixed-route system. Companions can be charged the same fare as the eligible individual with whom they are traveling. A fare cannot be charged for PCAs.

Under the FAST Act, any paratransit system currently coordinating complementary paratransit service for more than 40 fixed-route agencies shall be permitted to continue using an existing, tiered, distance-based coordinated paratransit fare system, if the fare for the existing, tiered, distance-based coordinated paratransit fare system is not increased by a higher percentage than any increase to the fixed-route fare for the largest transit agency in the complementary paratransit service area.

REFERENCES

- Fast Act Section 3023
- 2 CFR Part 200, Subpart D
- 49 CFR 18.40
- 49 CFR 37.5
- 49 CFR 37.123-133
- US DOT Disability Law Guidance on Origin-to-Destination Service
- FTA C. 4710.1, Ch. 8, Sections 8.3, 8.4.5, and 8.4.6, Ch. 9, Section 9.8

SOURCES OF INFORMATION

Review public information regarding ADA complementary paratransit service, including the grantee’s website. Review internal operating policies that describe how trips are reserved and scheduled. Ensure that the service characteristics are consistent with the regulatory requirements.

DETERMINATION

The grantee is deficient if the ADA complementary paratransit service does not provide origin-to-destination service. (**DEFICIENCY CODE 307:** Failure to provide origin-to-destination service)

The grantee is deficient if the ADA complementary paratransit service does not meet the US DOT ADA requirements. (**DEFICIENCY CODE 73:** ADA complementary paratransit service deficiencies)

SUGGESTED CORRECTIVE ACTION

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

- 43.** *How does the grantee monitor its ADA complementary paratransit service to ensure that there is no lack of access to make or cancel trip reservations?*
- 44.** *Are restrictions placed on the number of trips an eligible passenger may reserve?*
- 45.** *Are waiting lists used for non-subscription trips?*
- 46.** *Provide the grantee’s definition of trip denials, on-time performance, missed trips, and excessively long trips for ADA complementary paratransit service.*

	Definition	Reviewer Response
Trip denials		
On-time performance		
Missed trips		
Excessively long trips		

47. Provide data on the trip denial rate, on-time performance rate, number of missed trips, and number of excessively long trips for ADA complementary paratransit service for the current and previous two years.

	FY14	FY15	FY16
Trip Denial rate			
On-time performance rate			
Number of missed trips			
Number of excessively long trips			

48. How are operational data confirmed for accuracy?

49. Do the data indicate a potential “pattern or practice” of capacity constraints?

50. If the grantee provides other service beyond or in addition to that required by the US DOT ADA regulations, are data tracked separately for ADA complementary paratransit service and the other service?

EXPLANATION

The US DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pick-ups, missed trips, or excessively long trips). “Pattern or practice” in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the grantee, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, grantees should have a definition of ADA trip denial, missed trip (i.e., trip missed by the grantee), on-time performance, and excessively long trip. The grantee’s definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) and late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Grantees are required to plan and budget for 100 percent of demand for next-day service. The grantee is deficient if it intentionally plans to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow grantees to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the grantee cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity’s inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the “return” trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

Grantees should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, the entity must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA trips separately from non-ADA trips.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.131(b)
49 CFR 37.131(f)
49 CFR Part 37 Appendix D to Section 37.131
FTA C. 4710.1, Ch. 8, Section 8.5

SOURCES OF INFORMATION

Review the definitions for denials, on-time performance, missed trips, and excessively long trips. Review the performance data. Discuss how ADA complementary paratransit service is monitored.

DETERMINATION

The grantee is deficient if the data reveal a pattern or practice of trip denials, untimely pickups, missed trips, or excessively long trips. The grantee is deficient if it has no provisions to accommodate peaks in demand. The grantee is deficient if it does not monitor its ADA complementary paratransit service for capacity constraints. The grantee is deficient if it does not monitor ADA and non-ADA paratransit service separately. (**DEFICIENCY CODE 109**: Limits or capacity constraints on ADA complementary paratransit service)

The grantee is deficient if it is not tracking as a denial trips provided outside the one-hour window, and is not tracking as two denials round trips rejected by a rider if one portion of that trip cannot be scheduled. (**DEFICIENCY CODE 121**: Inadequate tracking of trip denials)

SUGGESTED CORRECTIVE ACTION

Note: for the following corrective actions, please be specific to the ADA complementary paratransit service deficiencies found during the site visit.

Direct the grantee to submit to the FTA RCRO a plan for increasing capacity or taking other measures to reduce demand (e.g., eliminate service that exceeds ADA requirements or modify the fixed-route service area or other characteristics).

Direct the grantee to submit to the FTA RCRO procedures for monitoring its ADA complementary paratransit service for patterns or practices of capacity constraints.

Direct the grantee to monitor ADA and non-ADA paratransit service separately for patterns or practices of capacity constraints.

Direct the grantee to submit to the FTA RCRO procedures for tracking ADA trip denials correctly.

51. If the grantee uses a no-show policy or a no-show/late cancellation policy:

- a. *How does the grantee define a no-show and/or a late cancellation?*
- b. *Does the policy(ies) require that the vehicle arrive within the agreed-upon pickup window?*
- c. *What is the service suspension policy(ies) for no-shows?*
- d. *How does the grantee determine whether or not no-shows are due to circumstances beyond the rider's control?*
- e. *What are the thresholds for a cancellation before it is considered a no-show?*
- f. *Are penalties assessed for no-shows? If so, what are they?*
- g. *How does the grantee determine whether a rider has engaged in a pattern or practice of missing scheduled trips?*

- h. *What is the process for appealing proposed service suspensions?*
- i. *How did the grantee determine the length of the proposed suspensions period(s)? Are the lengths of the suspension periods reasonable?*

EXPLANATION

Under 49 CFR 37.125(h), a grantee may establish an administrative procedure to suspend, *for a reasonable period of time*, the provision of complementary paratransit service to ADA eligible individuals who establish a *pattern or practice* of missing scheduled trips.

As explained in Appendix D to this section of the regulation, a “pattern or practice” involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity’s no-show policy must therefore be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Any suspensions must be “for a reasonable period of time.” Suspension of service for 30 days for a first “offense,” for example, is not “reasonable.” A reasonable suspension for a first instance of a pattern or practice of no-shows might be a few days to a week. Subsequent offenses may justify longer suspensions, but FTA generally considers suspensions longer than 30 days to be excessive.

Only no-shows that are under the rider’s control may be counted against the rider. No-shows caused by reasons beyond the rider’s control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider’s control. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

Systems may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have voluntarily and mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

Section 37.125(g)(2) obligates transit agencies to inform riders that they have the right to appeal the proposed suspension (with an option for an in-person appeal), consistent with the appeals process outlined in §37.125(g) This means including instructions on the appeal process, and how to request an appeal. Under §37.125(h)(3), suspensions are stayed pending the outcome of the appeal.

It is important to note that 49 CFR 37.125(h) *permits* an entity to establish a no-show policy; it does not require one to do so. A grantee is therefore not deficient if it does not have a no-show policy and does not suspend riders based on no-shows.

REFERENCES

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

SOURCES OF INFORMATION

Review no-show/late cancellation policies, records of any actions taken, and any appeals. Discuss the policy(ies) with the grantee during the site visit.

DETERMINATION

The grantee is deficient if it does not make information available to riders regarding the no-show policy, including the proper procedure for cancelling trips, the reasons and length of suspensions, and the appeals process. The grantee is deficient if it suspends riders who do not demonstrate a true pattern or practice of no-shows (consult with the FTA Office of Civil Rights as needed to ascertain the reasonableness of proposed service suspensions). The grantee is deficient if service is suspended for more than a reasonable period of time (consult the FTA Office of Civil Rights as needed to ascertain the reasonableness of proposed suspension periods). The grantee is deficient if it counts no-shows not under the rider's control or caused by operator error against the rider (consult the FTA Office of Civil Rights as needed). The grantee is deficient if it imposes any penalty for trips cancelled more than two hours prior to the pickup time provided to the passenger. The grantee is deficient if it assesses financial penalties for no-shows (consult the FTA Office of Civil Rights as needed). The grantee is deficient if it does not allow riders to contest no-shows or does not have a process for appealing proposed suspensions prior to the grantee imposing them. (**DEFICIENCY CODE 316**: Insufficient no-show policy)

SUGGESTED CORRECTIVE ACTION

Consult the FTA Office of Civil Rights' Program Manager for Policy and Technical Assistance and the RCRO to determine appropriate corrective action required for these deficiencies. Potential corrective actions are:

Direct the grantee to submit to the FTA RCRO information to be made available to riders regarding the no-show policy, including the proper procedure for cancelling trips, the reasons and length of suspensions, and the appeals process.

Direct the grantee to submit to the FTA RCRO a revised no-show policy to only propose suspending riders who have established a pattern or practice of missing scheduled trips.

Direct the grantee to submit to the FTA RCRO documentation on how it determines whether or not the length of a suspension period is reasonable.

Direct the grantee to submit to the RCRO documentation it is has ceased counting no-shows that are not under the rider's control against the rider.

Direct the grantee to submit to the RCRO documentation that it counts only those cancellations made less than two hours before the scheduled pickup as a no-show, and only on the same basis as a no-show (i.e., trips cancelled "late" due to circumstances beyond the rider's control cannot be counted).

52. *If a grantee contracts for all or a portion of its ADA complementary paratransit service or relies on another public entity(ies) to provide the service, how does it ensure that the contractor(s) or provider(s) meets the requirements of 49 CFR Part 37 Subpart F?*

EXPLANATION

When a public entity enters into a contractual or other arrangement with a private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the contractor meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself. Where a transit agency relies on another public entity to provide paratransit service on its behalf, the transit agency remains responsible for meeting the requirements of 49 CFR Part 37 Subpart F. In other words, the transit agency must ensure that the service provided on its behalf meets all of the requirements that the transit agency would be required to meet if the transit agency provided the service directly. The transit agency must have policies and procedures in place to monitor the performance of such service to ensure that these requirements are met. The transit agency is not permitted to defer to the public entity operating the service.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 27.7
49 CFR 37.23
FTA C. 4710.1, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review contracts and interagency agreements for ADA requirements. Review contract management procedures.

Review monitoring procedures and documentation of monitoring activities. Review oversight files and the policies and procedures of the contractors and any other public entities. Discuss ADA policies and procedures with the grantee and contractors/ providers.

DETERMINATION

If the grantee does not oversee its contractor(s) or the public entity that provides ADA complementary paratransit service, it is deficient. (**DEFICIENCY CODE 165:** Insufficient oversight ADA complementary paratransit)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO procedures for ensuring that the contractor(s) or public entity comply with the requirements of 49 CFR 37 Subpart F.

PART J: RAIL SERVICE

- 53. How does the system ensure at least one accessible car per train?*
- 54. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), what procedures are used to ensure that all passengers wanting to board or alight at that single boarding point are able to do so?*
- 55. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), what procedures are followed to ensure dwell times are sufficient to permit boarding and disembarking by persons with disabilities?*
- 56. For commuter rail stations altered or constructed after February 1, 2012, is accessible boarding provided to each accessible car in the train?*
- 57. For light rail systems that provide level boarding, are between-car barriers provided where vehicles are operated in trains consisting of more than one car?*

EXPLANATION

All rail operators are required to ensure that new stations comply with ADA requirements for new construction. This includes a requirement that the rail-to-platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. US DOT ADA regulations provide for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level boarding, and the grantee lists alternate methods of boarding that may be used. There is no such exception for rapid rail; all newly constructed rapid rail stations must provide level-entry boarding. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the grantee may be in violation of the US DOT ADA regulations. Further, if a rail operator undertakes any alterations to a station (other than key station requirements), those alterations must also be accessible per the US DOT ADA standards.

Under the US DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. An accessible car is not usable if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars.

New and altered commuter and intercity rail stations are required to comply with a new performance standard that requires either level boarding or an effective means of providing accessible boarding to each accessible car in each train.

The performance standard of section 49 CFR 37.42 requires that passengers with disabilities have access to all accessible cars available to passengers without disabilities in each train using a station. If all wheelchair locations are

occupied by other wheelchair users in cars where the doors normally open at a station, FTA expects the rail operator to double-stop, reposition a portable wayside lift, or deploy car-borne lifts or move a lift, where necessary, in order to provide transportation to a wheelchair user in an unoccupied wheelchair location. Entities must ensure adequate time for individuals with disabilities to board or disembark from a vehicle.

Under 49 CFR 38.85, where light rail vehicles operate in a high-platform, level-boarding mode, devices or systems must be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices. Some systems have had success with platform-mounted bollards, but this requires a high degree of precision on the part of the operator to properly position the train.

US DOT ADA regulations do not define what constitutes a “high platform.” However, because the hazard of falling to the track bed exists wherever level boarding is used, a light rail system operating trains of more than one car where level boarding is provided is required to have between-car barriers as stipulated in the US DOT ADA regulations.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 27.7(b)(6)
49 CFR 37.9
49 CFR 37.42
49 CFR 37.93
49 CFR Part 37 Appendix D to 37.93
49 CFR 37.167
49 CFR 38.71(b), 38.85, 38.91(c) & 38.111(b)
ADA Standards for Transportation Facilities
US DOT Final Rule Adopting new Accessibility Standards—Effective November 29, 2006
US DOT Disability Law Guidance on Level Boarding
ADA Accessibility Guidelines (ADAAG)
FTA C. 4710.1, Ch. 3, Section 3.8, Ch. 4, Sections 4.3 and 4.5

SOURCES OF INFORMATION

System and/or station plans and associated documentation must indicate any factors relating to exceptions from full level-boarding requirements on a station-by-station basis. Determine if the grantee (or its subrecipient(s)) altered or constructed new stations and, if level boarding is not provided, document the specific factors for each station that render level boarding structurally and/or operationally infeasible. During the site visit, verify that all trains have at least one accessible car by observing or riding the service. For newly constructed commuter and intercity rail stations that do not provide for level boarding, the grantee will have a letter approving the method of accessible boarding provided as required under 49 CFR 37.42.

DETERMINATION

The grantee is deficient if the entity has constructed new stations that do not comply with US DOT ADA standards in effect at the time of construction, or has not substantiated an exception from the level boarding/platform gap requirements on a station-by-station basis. The grantee is deficient if it has undertaken alterations to a station and has not complied with US DOT ADA standards in effect at the time of alteration. (**DEFICIENCY CODE 30:** Facility accessibility standards deficiency)

The grantee is deficient if it does not provide at least one accessible car per train. The grantee is deficient if each train does not align with an accessible boarding location where single-point, station-based access is provided. The grantee is deficient if, when all wheelchair locations are occupied aboard an accessible car aligning with a station-based, single-point means of accessible boarding, it does not reposition the train to permit accessible boarding of other accessible cars. (**DEFICIENCY CODE 252:** One-car-per-train rule deficiency)

The grantee is deficient if it is operating light rail trains of more than one vehicle in a level-boarding mode and does not provide between-car barriers. (**DEFICIENCY CODE 782:** Lacking between-car barriers)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO documentation supporting platform related exceptions. The FTA regional office and headquarters will determine corrective actions for noncompliant new construction or alterations and operational deficiencies.

Direct the grantee to submit to the FTA RCRO procedures for complying with the one-car-per-train rule.

Direct the grantee to submit to the FTA RCRO a plan for providing between-car barriers.

PART K: FERRY SERVICE

- 58. Are limitations placed on the number of persons with disabilities who may board?*
- 59. Is medical documentation, advance notice, or other information requested for individuals with disabilities?*
- 60. Are higher fares, surcharges, or other fees are charged persons with disabilities?*
- 61. What is the policy for determining how reasonable modifications will be made to accommodate individuals with disabilities, and the basis for determining whether specific modifications would fundamentally alter the nature of the service?*
- 62. If transportation service is provided to and from a ferry, is the transfer service accessible?*
- 63. Does the grantee provide assistance as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/ claim areas?*
- 64. How does the grantee ensure that assistance is promptly provided to passengers with disabilities who are not able to board or disembark without assistance?*
- 65. How does the grantee effectively provide briefings and other safety-related information to passengers with hearing or vision impairments? What written materials are provided in alternative formats?*
- 66. Has the grantee restricted persons with wheelchairs (power and manual) and mobility aids such as walkers, crutches, canes, braces, or similar devices from using any areas that are open to pedestrians?*
- 67. Does the grantee make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal?*
- 68. Does the CRO have power to overrule the decisions of any other personnel (with the exception of the master of the vessel with respect to safety matters)?*

EXPLANATION

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," which became effective November 10, 2010. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Accessibility of landside facilities are addressed by Subpart D. Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the US DOT ADA regulations. Requirements for assistance and services to passengers with disabilities are contained in Subpart F.

Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with

another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

49 CFR 39.21(b)(2) requires public operators of passenger vessels to make reasonable modifications in policies, practices, or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.

If a passenger vessel operator provides, contracts for, or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.

The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.

Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance, and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs, or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.

Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers. Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information, and equipment in locations that passengers with disabilities can readily access and use.

Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices, or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in-person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS) must be available so that persons with hearing impairments are able to communicate readily with the CRO. The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies, or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or do not provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Part 39 Subparts B, C, D, F, & G
FTA C. 4710.1, Ch. 10
Use of "Segways" on Transportation Vehicles

SOURCES OF INFORMATION

Review policies regarding serving passengers with disabilities, fares for surcharges, contracts with ferry shuttle services, and an organization chart showing the designation of a CRO. Review policies relating to responsibilities of

the CRO. Discuss with the grantee what modifications to policies were made to comply with 49 CFR Part 39. For modifications not made, discuss the basis for determining how they would fundamentally alter the nature of the service. Discuss procedures for making safety briefings available in alternative formats.

DETERMINATION

The grantee is deficient if any required procedures are not in effect. The grantee is deficient if there are policies or procedures that are contrary to the US DOT ADA requirements. The grantee is deficient if policies are not enforced or internal operations are not monitored. (**DEFICIENCY CODE 174:** ADA ferry service deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence that policies have been rescinded that: limit the number of persons with disabilities on a vessel; require medical documentation; require advance notice; require passengers to travel with another person; subject passengers with disabilities to restrictions that do not apply to other passengers; or impose higher fares, surcharges or other fees.

Direct the grantee to submit to the FTA RCRO a plan for providing reasonable modifications to policies and practices for its ferry services.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that transfer service is accessible to and usable by persons with disabilities.

Direct the grantee to submit to the FTA RCRO its procedures for ensuring that assistance is provided as needed to passengers with disabilities in boarding and disembarking, moving between the terminal and the boarding point, and accessing key functional areas of the terminal.

Direct the grantee to submit to the FTA RCRO its procedures for providing briefings and safety-related materials in alternative formats.

Direct the grantee to submit to the FTA RCRO procedures for permitting individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids.

Direct the grantee to submit to the FTA RCRO documentation of the availability and responsibilities of its CROs, including the ability to override any other personnel.

PART L: SUBRECIPIENT OVERSIGHT

69. *How does the grantee ensure that subrecipients comply with the following US DOT ADA requirements?*

- a. Service provisions*
- b. Training*
- c. Maintenance of accessibility features*
- d. Route-deviation service*
- e. ADA complementary paratransit service*
- f. Rail service*
- g. Ferry service*
- h. Complaint procedures*

EXPLANATION

The grantee must monitor subrecipients to ensure that they comply with US DOT ADA requirements. While FTA does not prescribe specific monitoring activities, it expects grantees to develop and implement effective systems for monitoring and ensuring compliance with US DOT ADA requirements. If the grantee is a pass-through entity, FTA expects the grantee to ensure that those entities providing service directly have procedures for processing ADA complaints (see question 9). For potential oversight questions, refer to the related section in this guide.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
FTA C. 4710.1, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review the state/program management plans, subrecipient agreement, training program, monitoring procedures and documentation of monitoring activities. Discuss the policies, program, and procedures with the grantee during the site visit. Review oversight files and the policies and procedures for the subrecipient to be visited during the site visit. Discuss ADA policies and procedures during the subrecipient site visit.

DETERMINATION

(DEFICIENCY CODE 646: Insufficient oversight of subrecipients for service provisions)

(DEFICIENCY CODE 647: Insufficient oversight of subrecipients for ADA training)

(DEFICIENCY CODE 648: Insufficient oversight of subrecipients for maintenance of accessibility features)

(DEFICIENCY CODE 649: Insufficient oversight of subrecipients for route deviation)

(DEFICIENCY CODE 650: Insufficient oversight of subrecipients for ADA complementary paratransit service)

(DEFICIENCY CODE 651: Insufficient oversight of subrecipients for rail service)

(DEFICIENCY CODE 652: Insufficient oversight of subrecipients for ferry service)

(DEFICIENCY CODE 653: Insufficient oversight of subrecipients for ADA complaint procedures)

SUGGESTED CORRECTIVE ACTION

Note: for the following corrective action, please be specific to the oversight deficiencies found during the site visit.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that subrecipients comply with the regulatory requirements.

5. TITLE VI

BASIC REQUIREMENT

The grantee must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The grantee must ensure that all transit services and related benefits are distributed in an equitable manner.

AREAS TO BE EXAMINED

1. *Approved Title VI Program*
2. *Public Information and Complaint Procedures*
3. *Siting of Facilities*
4. *Limited English Proficiency (LEP)*
5. *Outreach*
6. *Subrecipient Monitoring*
7. *Program-specific requirements*

REFERENCES

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

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 21, "Nondiscrimination in Federally-assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964"
4. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
5. FTA Circular 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"
6. Federal Register: April 15, 1997 (Vol. 62, Number 72, pp. 18377-18381) "U.S. Department of Transportation (US DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations"
7. Executive Order 13166 August 11, 2000: "Improving Access to Services for Persons with Limited English Proficiency"
8. Federal Register: December 14, 2005 (Vol. 70, Number 239, pp. 74087-74100) "US DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"
9. Civil Rights Restoration Act of 1987

USEFUL WEBLINKS

FTA Title VI page

FTA Civil Rights Training Materials

FTA Civil Rights Video Training Series

US DOT Limited English Proficiency (LEP) Guidance

Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs

Title VI Frequently Asked Questions

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

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- the Title VI program in the FTA Electronic Award and Management System (EAMS) shows the grantee does not appear to understand Title VI requirements
 - OTrak shows repeat Title VI deficiencies in the last Comprehensive Review or shows Title VI deficiencies in the last two Comprehensive Reviews
 - there are comparable or repeat Title VI deficiencies in between Comprehensive Reviews and Title VI reviews
 - previous Title VI deficiencies are still open
 - Title VI issues have been identified in FTA's Oversight Assessment Tool (OAT)
 - The FTA Office of Civil Rights has identified compliance issues through complaints or other sources
 - the number of complaints in the FTA Office of Civil Rights or at the grantee level is out of proportion to the size of the grantee's operation
 - the grantee does not demonstrate that it has adequate Title VI expertise
 - the grantee has not submitted a program and has not been in communication with the FTA regional civil rights officer (RCRO)
 - the grantee is planning or constructing a new fixed guideway system or New Starts project
 - the grantee recently reached a threshold triggering additional requirements in Chapter IV of FTA C. 4702.1B (50 or more fixed-route vehicles in peak service/located in a UZA of 200,000 or more in population)
1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Title VI Reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of Title VI?*
 2. *Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year (FFY)?*
 3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies related to Title VI?*
 4. *Are any Title VI deficiencies currently open?*
 5. *If a Title VI compliance review is scheduled for the current FFY, what information prompted the review?*
 6. *Are any issues related to Title VI indicated in the Oversight Assessment Tool (OAT)?*
 7. *Have Title VI complaints been filed with Federal Transit Administration (FTA) against the grantee?*

EXPLANATION

If the prior Comprehensive Review had deficiencies, issues may still exist if the grantee did not implement the corrective actions properly.

The FTA Office of Civil Rights conducts on-site assessments of grantees' compliance with Title VI requirements. During the scoping process, the Title VI Team from the FTA Office of Civil Rights will inform the review team of any outstanding deficiencies and other potential deficiencies identified through website reviews, media reports, and other sources that require follow up. Information on complaints may also be obtained from the FTA Office of Civil Rights.

FTA regional office staff completes an annual OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the Title VI area of the OAT could indicate issues in this area.

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak pertaining to previous deficiencies and corrective actions as a result of:

- The most recent Comprehensive Review
- A Title VI compliance review conducted in the past three years
- Current OAT in OTrak
- Complaints submitted to the FTA Office of Civil Rights

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

8. *Has the grantee submitted a Title VI program to FTA in the Electronic Award and Management System (EAMS)? If yes, when does the concurrence expire?*
9. *If no, is the grantee working with the FTA RCRO on its submission? If the program has expired, what is the explanation?*
10. *Has the grantee recently reached a threshold triggering additional requirements in Chapter IV of FTA C. 4702.1B (50 or more fixed-route vehicles in peak service/located in an urbanized area (UZA) of 200,000 or more in population)?*
11. *If the grantee is located in a UZA under 200,000 in population and operates 50 or more fixed-route vehicles in peak demand, does it provide any service into an area of 200,000 or more?*

EXPLANATION

Every three years all direct grantees must submit a Title VI program that documents their compliance. (Prior to October 1, 2012, metropolitan planning organizations (MPOs) submitted every four years.) All programs submitted after October 1, 2012 must comply with Chapter IV of FTA C. 4702.1B. The general reporting requirements for all grantees are largely the same as before. The new Environmental Justice (EJ) circular (FTA C. 4703.1) addresses some EJ issues that were under the prior Title VI circular. Also, many of the changes will not be required until the grantee submits its next Title VI program. One requirement that grantees must follow as of October 1, 2012 is to conduct an equity analysis for the siting of any transit facility.

Program-specific requirements associated with the preparation of service and/or fare equity analysis have also changed. The threshold under 4702.1A required all transit providers in a geographic area with a population of 200,000 or more to conduct an analysis. Under the revised FTA C. 4702.1B, certain requirements apply to all fixed-route transit providers. However, transit providers that operate 50 or more fixed-route vehicles in peak service and are located in an UZA of 200,000 or more in population have additional requirements, including preparation of service and/or fare equity analysis as outlined in the chart below. Grantees that only operate demand response service are exempt from program specific requirements.

The major changes in program-specific reporting are that grantees must now provide both a demographic analysis of the service area and customer demographic and travel patterns based on passenger surveys. As previously required, grantees are required to collect and report demographic data and to evaluate fare and service changes, with the evaluations being included in the Title VI program submissions to FTA.

A listing of grantees that are considered to be in a UZA of 200,000 or more in population and that operate 50 or more vehicles in fixed-route peak service is provided on FTA's Title VI website.

Further, FTA has established a policy that all civil rights programs must be uploaded to the EAMS. This submission is to be 60 days prior to the expiration date of the program. A list of the program due dates for FTA grantees is posted on FTA's Civil Rights website, and can be cross referenced to the EAMS.

REFERENCES

FTA C. 4702.1B, Ch. III, Section 4; and Ch. IV, Ch. V, and Ch. VI
FTA's Title VI website

SOURCES OF INFORMATION

Review Title VI program submission information in the EAMS and information provided by the RCRO. Review the listing of grantees that are considered to be in a UZA of 200,000 or more in population and that operate 50 or more vehicles in fixed-route peak service on FTA's Title VI website.

Requirement	Transit Providers that operate fixed-route service	Transit Providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population
Set system-wide standards and policies	Required	Required
Collect and report data	Not required	Required: <ul style="list-style-type: none"> • Demographic and service profile maps and charts • Survey data regarding customer demographic and travel patterns
Evaluate service and fare equity changes	Not required	Required
Monitor transit service	Not required	Required

DETERMINATION

If the grantee recently reached the threshold triggering additional requirements or meets one of the threshold elements, but not both, use this as input into an ERM.

The grantee is deficient if it has not submitted a Title VI program or failed to submit the program 60 days prior to the program's expiration date. The grantee is deficient if the current Title VI program has expired and it has not submitted a program update or requested and received an extension for its program submission. The grantee is deficient if it is listed on FTA's website as being in a UZA with a population of 200,000 or more and operating 50 or more vehicles in fixed-route peak service, but does not include complete information required by Chapter IV of C. 4702.1B. (**DEFICIENCY CODE 664:** Title VI program not submitted or expired)

The grantee is deficient if it has not uploaded its program to the EAMS. (**DEFICIENCY CODE 665:** Title VI program not uploaded to the EAMS)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to upload the required Title VI program to the EAMS and notify the FTA RCRO that the program has been uploaded.

12. Describe the resources utilized in the implementation of the Title VI program in terms of personnel, responsibility, and experience. Does the grantee provide technical training to employees?

<i>Responsibility</i>	<i>Number of Staff</i>	<i>Number of Staff with Less Than Three Years Experience in Their Position</i>	<i>Staff Vacancies</i>	<i>Type/Frequency and Method of Training for Responsibilities</i>

EXPLANATION

The way in which the agency’s Title VI function is organized and staffed, along with the experience of Title VI staff, should be commensurate with the agency’s size and complexity.

The type, frequency, and method of training provided to staff about FTA requirements and industry best practices are important indicators of how well-prepared the grantee may be to comply with requirements.

REFERENCES

None

SOURCES OF INFORMATION

Review the Title VI program, organizational charts, and training programs/information provided by the grantee. Consult the RCRO for any indications of past problems with staffing.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

13. *How does the grantee implement the procedures in its Title VI plan for identifying, investigating, and tracking complaints?*

14. *How do these procedures afford the public due process for resolving complaints?*

EXPLANATION

FTA requires its grantees to maintain, as part of their records, a description of the agency’s Title VI investigative process. FTA C. 4702.1B states that, “recipients and subrecipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to the public upon request.”

The process for filing a complaint should be easy to understand for the general public and not include unnecessary obstacles. The grantee should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the grantee. Although the complainant may not refer to Title VI in the complaint to the grantee, the grantee should be able to identify and classify this type of complaint as a Title VI complaint.

Most grantees have a well-established process and schedule for receiving, acknowledging, and screening complaints, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints as long as it provides an adequate process for complaints.

REFERENCE

49 CFR Part 21.9(b)
FTA C. 4702.1B, Ch. III, Section 6

SOURCES OF INFORMATION

Review the grantee's instructions for filing complaints and its procedures for receiving, investigating, and tracking complaints in its Title VI submission. During the site visit, verify implementation. Request a copy of Title VI complaints received since the last review. Ask the grantee who or what office receives complaints and how staff is trained to identify complaints of discrimination under Title VI. Compare the provided complaint material to the information reported to FTA in the last Title VI program submission and/or last review.

DETERMINATION

The grantee is deficient if it cannot provide information on how it receives, identifies, and investigates Title VI complaints and/or if the grantee cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin. The grantee is deficient if the process for filing a complaint includes unnecessary timeframes or barriers or requires the complainant to enter into any agreements with the grantee prior to complaint resolution. The grantee is deficient if the complaints, lawsuits, and/or investigations are not resolved in a timely manner, adequately, and appropriately reported in the subsequent Title VI program. (**DEFICIENCY CODE 594:** Title VI complaints not addressed properly)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a written document that describes its procedures for investigating and tracking Title VI complaints.

15. *How does the grantee notify the public of its rights under Title VI?*

EXPLANATION

Grantees and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Grantees and subrecipients shall at a minimum, disseminate information by posting a Title VI notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. Grantees should also post Title VI notices at stations or stops, and/or on transit vehicles. FTA C. 4702.1B, Ch.III, Section 5 b(1) also includes additional effective practices for notice dissemination for grantees to consider.

The notice shall include:

- A statement that the agency operates programs without regard to race, color, or national origin
- A description of the procedures that members of the public should follow in order to request additional information on the grantee's Title VI obligations
- A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the grantee

Notices detailing a grantee's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed, and be consistent with the circular and the grantee's language assistance plan.

REFERENCES

49 CFR 21.9(d)
FTA C. 4702.1B, Ch. III, Section 5
FTA C. 4702.1B, Appendix B

SOURCES OF INFORMATION

Review the grantee's Title VI program for a description of how this notification requirement is implemented. During the site visit, review marketing materials and postings on vehicles and public facilities. If the grantee's Title VI plan does not describe dissemination of the notice beyond the minimum requirement (on the agency's website and in

public areas of the agency's office(s), including the reception desk, meeting rooms, etc.) and the grantee does not, in practice, disseminate the notice in other ways, ask the grantee for an explanation of how its distribution efforts are appropriate for its agency. Review a copy of the materials that the grantee uses to inform the public of its rights under Title VI.

DETERMINATION

The grantee is deficient if it has not disseminated a Title VI notification. The grantee is deficient if the Title VI notice is missing required elements. If the agency does not provide a translation as needed and consistent US DOT LEP Guidance, it is deficient. The grantee is deficient if its procedures are not conducted in accordance with its approved Title VI program. (**DEFICIENCY CODE 203:** Title VI public notification deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO documentation of having notified the public of its rights under Title VI.

Direct the grantee to submit to the RCRO a revised Title VI notification and verification that the document has been disseminated.

Direct the grantee to submit to the RCRO procedures to provide translation for Title VI information as needed.

16. *What steps has the grantee taken to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for limited English proficiency (LEP) persons?*

17. *How did the results of the four-factor analysis influence the steps taken?*

18. *How does the grantee train employees to provide timely and reasonable language assistance, even those that may not be apparent from the four-factor analysis?*

EXPLANATION

The US DOT published revised LEP guidance for its recipients on December 14, 2005 (Federal Register, Vol. 70, no. 239, pp. 74087–74100, December 14, 2005). FTA C. 4702.1B states that grantees shall document the steps undertaken to implement the US DOT LEP Guidance necessary to provide “meaningful access” on the basis of four factors:

- (1) the number and proportion of LEP persons served or encountered in the eligible service population
- (2) the frequency with which LEP individuals come into contact with the program
- (3) the nature and importance to people's lives of the program, activity, or service provided
- (4) the resources available to the recipient for LEP outreach and the associated costs

FTA C. 4702.1B provides information on how a transit system can analyze information to address the four factors.

FTA C. 4702.1B requires grantees to develop an implementation plan to address the identified needs of the population it serves. The plan should:

- Identify LEP individuals who need language assistance
- Develop language assistance measures
- Address staff training
- Detail how to provide notice to LEP persons
- Address procedures for monitoring implementation and updating the plan.

Grantees are required to ensure meaningful access to LEP persons. FTA grantees ensure meaningful access by developing and carrying out a Language Assistance Plan (LAP). FTA grantees must develop a LAP to ensure

compliance with the requirement. Grantees have considerable flexibility in developing a plan, but at a minimum it must:

- Include the results of the four factor analysis, with a description of the LEP population(s) served
- Describe how it provides language assistance services by language
- Describe how LEP persons are notified about the availability of language assistance
- Describe how it monitors, evaluates and updates the language access plan, and
- Describe how it trains employees to provide timely and reasonable language assistance.

The plan needs to be based on the results of the Four Factor analysis. FTA will determine, at the time the grantee submits its Title VI program or subsequent to a complaint investigation or compliance review, whether a grantee's plan is sufficient to ensure meaningful access and thus ensure that the grantee is not engaging in discrimination on the basis of national origin.

REFERENCES

Executive Order 13166

Limited English Proficiency (LEP): A Federal Interagency Website

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

US DOT LEP Guidance

LEP Handbook for Public Transportation Providers

FTA C. 4702.1B, Ch. III, Section 9

SOURCES OF INFORMATION

Review documentation of how the agency has analyzed the four factors presented in the US DOT LEP Guidance. Determine whether the agency developed and implemented a LAP. Review examples of language assistance measures that have been implemented, including a listing of vital documents.

DETERMINATION

The grantee is deficient if it has not prepared a LAP and has not received an exemption from FTA. (**DEFICIENCY CODE 289**: Lacking a language assistance plan)

Even if the grantee has taken specific actions to provide language assistance, the grantee is deficient if it has not conducted the four factor analysis. (**DEFICIENCY CODE 11**: Lacking assessment or provisions for LEP persons).

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO a LAP.

Direct the grantee to submit to the RCRO the completed four factor analysis, along with a list of language assistance it has provided or intends to provide, based on the analysis and a timeline for providing this assistance.

19. How did the grantee ensure inclusive public participation of minority and LEP populations into its public participation procedures?

EXPLANATION

The content and considerations of Title VI, the Executive Order on LEP, and the US DOT LEP Guidance shall be integrated into each grantee's established public participation plan or process. An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

Grantees have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate. Grantees should make these determinations based on a demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available. Efforts to involve minority and LEP populations in public participation activities can include both comprehensive measures, such as placing public notices at all transit stations, stops, and vehicles, as well as targeted measures to address linguistic, institutional, cultural, economic, historical, or other barriers that may prevent minority and LEP persons from effectively participating in a grantee's decision-making process.

Some effective practices to promote inclusive public involvement include:

- Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities
- Employing different meeting sizes and formats
- Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities
- Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations, including audio programming available on podcasts
- Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments

REFERENCES

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

SOURCES OF INFORMATION

Review the grantee's procedures for outreach in its Title VI program submission. Verify that these procedures have been implemented by reviewing public involvement activities conducted since the last review and a description of the methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. Review public hearings, planning activities and program of projects development.

DETERMINATION

The grantee is deficient if it has conducted public outreach activities since the last review but cannot demonstrate that it implemented the public involvement strategies listed in its Title VI program or the bulleted list above. The grantee is deficient if it did not conduct any, or untimely, public outreach during the development of its Title VI policies and procedures, or a service or fare equity analysis. (**DEFICIENCY CODE 45:** Title VI Public outreach deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide to the RCRO inclusion policies and procedures that have been changed to comply with its Title VI program and the Title VI requirements. Also, require the grantee to document the implementation of these requirements for any upcoming activities where public participation is required.

20. *How does the grantee monitor that all of its subrecipients comply with Title VI requirements?*

21. *How does the grantee collect and maintain Title VI plans from all of its subrecipients?*

EXPLANATION

The grantee is responsible for ensuring that all of its subrecipients comply with the Title VI requirements. If the subrecipients are not in compliance with all Title VI requirements, then the primary grantee is not in compliance with Title VI. In order to ensure the primary recipient and subrecipient are in compliance with the Title VI requirements, the primary recipient shall undertake the following activities:

- Document its process for ensuring that all subrecipients are complying with the general reporting requirements, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed-route vehicles it operates in peak service
- Establish a timeframe to collect Title VI programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI programs may be electronic, at the option of the primary recipient.
- Compile and provide, upon request, a list of all subrecipients.

When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this oversight responsibility, with a special caveat for MPOs receiving planning funds through State DOTs.

REFERENCE

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

SOURCES OF INFORMATION

During the site visit, discuss the grantee's procedures, along with documentation that the procedures have been implemented. Review the grantee's monitoring tools and the oversight files on any subrecipients to be visited. For a subrecipient that is also a direct recipient of FTA funds, review the supplemental agreement between the designated and direct recipient.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the RCRO a document that describes the measures it will take to monitor subrecipients for compliance with applicable Title VI requirements. When appropriate, direct the grantee to also provide evidence of assistance such as providing subrecipients sample notices to the public informing beneficiaries of their rights under US DOT's Title VI, procedures on how to file a Title VI complaint, and the grantee's complaint form; sample procedures for tracking and investigating Title VI complaints filed with a subrecipient, and when the primary recipient expects the subrecipient to notify the primary recipient of complaints received by the subrecipient; demographic information on the race and English proficiency of residents served by the subrecipient; and any other recipient-generated or obtained data, such as travel patterns, surveys, etc., that will assist subrecipients in complying with Title VI.

- 22.** *Has the grantee constructed transit facilities such as storage facilities, maintenance facilities, operations centers, etc., since October 1, 2012, or does it plan to in FFY 2017? If yes:*
- a. Was a Title VI equity analysis completed, or when is it anticipated to be completed?*
 - b. If an analysis has not been or is not anticipated to be completed, what factors led to this conclusion?*
 - c. If an analysis has been completed, how did the grantee conduct the equity analysis and how did the impacts across various sites affect the final decision for location?*

EXPLANATION

FTA C. 4702.1B describes the requirements for complying with the regulation in 49 CFR Section 21.9(b)(3), which states, "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part."

For purposes of this requirement, "facilities" does not include bus shelters, as these are transit amenities and are covered in FTA C. 4702.1B Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc.

The grantee is required to complete a Title VI equity analysis during the planning stages with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Grantees must engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

If a grantee conducted an analysis during the NEPA process, then this can be utilized towards the Title VI equity analysis requirement, as long as the NEPA analysis encompasses the necessary information required in a Title VI equity analysis. However, if a facility exempted from the Title VI equity analysis, due to the assumption it will be analyzed during the NEPA process, does not in fact trigger NEPA, then said facility will require a Title VI equity analysis.

When evaluating locations of facilities:

- Grantees should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result.
- Analysis should be done at the Census tract or block group, where appropriate, to ensure that proper perspective is given to localized impacts.
- If the grantee determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the grantee may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The grantee must show how both elements are met. In order to make this showing, the grantee must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

REFERENCES

49 CFR 21.9

FTA C. 4702.1B, Ch. III, Section 13

SOURCES OF INFORMATION

Review information received from the grantee in response to this question for itself or subrecipients. If completed, review the Title VI equity analysis to determine that all requirements have been met. Review correspondence with residents, public meeting documentation, and other documents related to siting decisions.

DETERMINATION

The grantee is deficient if it should have conducted an equity analysis but did not, or if it did not conduct the analysis in accordance with Chapter III of FTA C. 4702.1B. (**DEFICIENCY CODE 293:** Failure to comply with Title VI determination of site or location of facilities requirements)

SUGGESTED CORRECTIVE ACTION

For facilities still in the process of siting, direct the grantee to meet Title VI requirements before proceeding to making a siting decision. For facilities that were sited after October 1, 2012 for which the analysis was not completed, consult with the RCRO to discuss the corrective action.

23. *What processes does the grantee use to evaluate if it is distributing funds in a nondiscriminatory manner?*

24. *How does the State DOT analyze the overall allocation of the benefits and burdens of transportation investments in light of Title VI considerations?*

EXPLANATION

State DOTs must have a basis for certifying their compliance with Title VI. The State DOT must have a demographic profile of the service area that includes identification of the locations of socioeconomic groups, including low-income and minority populations, along with how it uses that data. Examples of this analysis can include:

- A demographic profile of the service area that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI
- A statewide transportation planning process that identifies the needs of low-income and minority populations
- An analytical process that identifies the benefits and burdens of the State's transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced

In addition to demographic data showing a profile of the service area and how its FTA funds are distributed, the Title VI Circular includes information that should be evaluated in order for the State DOT to determine its compliance with, and efforts regarding, Title VI principles. These include:

- Efforts to receive applications from agencies serving predominantly minority and low-income populations
- Fair and equitable competitive selection or annual program of projects processes
- Maintenance of the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities

REFERENCE

FTA C. 4702.1B, Ch. V
FTA C. 4703.1

SOURCES OF INFORMATION

Review the State DOT's most recent Title VI program submission. The State DOT should be able to provide recent demographic and analytical data to support its certification that it is in compliance with Title VI.

DETERMINATION

The State DOT is deficient if it cannot provide the analytical information on which it has based its certification. (**DEFICIENCY CODE 90:** No existing basis for Title VI certification of equitable distribution)

SUGGESTED CORRECTIVE ACTION

Direct the State DOT to provide the RCRO the analytical data on which it is certifying its compliance with Title VI.

25. *Identify the grantee's system-wide service standards for each fixed-route mode of service.*

26. *Do the grantee's system-wide service standards include measures for: vehicle load, vehicle headway, on-time performance, and service availability?*

27. *What is the grantee's system-wide service policy for each specific fixed-route mode of service it provides, and the policy for transit amenities and vehicle assignment for each mode?*

EXPLANATION

All grantees that operate fixed-route services must set system-wide service standards and policies necessary to avoid discriminatory service design or operational decisions. Policies must be set for each mode. These standards and policies must address how service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets. The standards must be comprehensive and apply agency-wide. Service policies are developed to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. Service policies differ from service standards in that they are not necessarily based on a quantitative threshold.

REFERENCES

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

SOURCES OF INFORMATION

Review the service standards in the Title VI program and obtain a list of service standards and service policies that the agency has adopted and a description of how the agency defines its standards and policies.

DETERMINATION

The grantee is deficient if it cannot document that system-wide service standards and policies in its Title VI program submission are reflective of overall agency policies. The grantee is also deficient if it has not established any system-wide standards and policies, or if they are not comprehensive. (**DEFICIENCY CODE 246:** Title VI Service standards and/or policies lacking)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO a document that describes its plans for adopting system-wide service standards and policies and provides a timeline for doing so, along with a copy of the adopted standards and policies.

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

- 28. What steps have been taken to establish major service change, disparate impact, and disproportionate burden policies?***
- 29. What public participation was offered in the development of the major service change, disparate impact, and disproportionate burden policies?***
- 30. When were the major service change definition, disparate impact policy, and disproportionate burden policy approved by the Board or governing entity?***
- 31. For fare, fare media (including transfers), and major service changes since the last Comprehensive Review, did the grantee conduct applicable equity analysis following FTA C. 4702.1B?***
- 32. For any fare, fare media, or major service changes planned for the next two FFYs, what was the date of the equity analysis, or when is it anticipated to be completed?***

EXPLANATION

Under FTA C. 4702.1B, transit providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population shall evaluate major service and any fare and fare media (including transfers) changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. After October 1, 2012, this requirement no longer applies to grantees with fewer than 50 peak period vehicles, although all grantees are still required to comply with Title VI regulations that prohibit disparate impact discrimination and should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color or national origin.

FTA requires grantees subject to this requirement to develop a definition of a major service change* and to conduct a service equity analysis for all major service changes. The updated FTA C. 4702.1B requires written procedures for the conduct of service and fare equity analyses, a disparate impact policy, and a disproportionate burden policy to be part of the Title VI program. The policies and procedures developed to address the service and fare equity requirement must also discuss when and how a transit agency will assess the compounding effects from prior service and fare changes. (Note: The inclusion of prior service and/or fare changes depends in the nature of the agency, the proximity of the changes, and other specific factors. An agency must determine what will be a reasonable timeframe and analyze for compounding effects.)

These policies and procedures require public participation during the development stages and are to be formally adopted once the governing board approves them.

Fare change equity analyses are required for all fare or fare medium changes. A fare and service change equity analysis must be adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The circular provides extensive guidance on how to conduct fare and service equity analyses. The updated FTA C. 4702.1B requires grantees to use tables similar to those found in Appendix K of the circular for service or fare actions that were implemented after April 1, 2013. Any fare or equity analysis conducted needs to be included in the next submission of the grantee's Title VI program.

Transit providers may use decennial Census data to develop maps and charts until the next decennial Census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether, and to what extent, transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats.

Upon completion of a service or fare equity analysis, the grantee shall brief its board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). The transit provider shall submit documentation such as a board resolution, copy of meeting minutes, or similar documentation as evidence of the board or governing entity or official's consideration, awareness, and approval of the analysis.

This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions (see Public Comment on Fare and Service Changes section). Section 5307 requires a public comment process before raising a fare or carrying out a major reduction of transportation service. For purposes of Title VI, grantees to which this requirement applies must perform an equity evaluation for "major service changes" (both increases and reductions), as locally defined, and fare changes (both increases and reductions).

Note: Though the circular delineates the procedures large fixed-route transit providers must undertake when planning a service and/or fare change, all fixed-route transit providers are required by Title VI to ensure that all service and fare changes are equitably undertaken, regardless of the provider's size. Agencies not meeting the higher threshold are still required to have some means to ensure that its service and/or fare changes comply with the protections afforded by Title VI.

REFERENCES

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

SOURCES OF INFORMATION

Review FTA's Title VI website for a listing of grantees to which this requirement applies.

Review the grantee's prior Comprehensive Review report describing service and fares, and compare this with information received from the grantee. Inquire of the FTA regional office if there have been any fare or major service changes since the last review.

Obtain a list of service, fare, and fare medium changes that have occurred since the last review and a description of the nature of the changes. Review a description of the methodology used to determine the impact of the service and fare changes. Review the Title VI program to determine what documentation has been submitted on fare and equity analyses that have occurred. Additionally, review any documentation related to any service and fare technical assistance provided by FTA. On site, examine fare and equity analyses that have not been submitted to determine if the requirements have been met.

DETERMINATION

The grantee is deficient if it has not defined a major service change. It is also deficient if it has not developed written procedures for conducting fare and service equity analyses. The grantee is deficient if there was no public participation in the development of the policies and procedures. The grantee is deficient if the developed policies and procedures are not board approved and/or there is no documentation demonstrating the board's or governing entity or official's consideration, awareness, and approval of the policies. (**DEFICIENCY CODE 304:** Inadequate written fare and service change equity analysis policies and procedures)

The grantee is deficient if the analytical assessment is not adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The grantee is deficient if it has not established a methodology and/or conducted an analysis of any service changes, under the pretense that none of the changes constituted “major service changes” for the purpose of Title VI. The grantee is deficient if its procedures are not conducted in accordance with its approved Title VI program. If a grantee did not conduct an analysis of a past service or fare change, consult with the FTA Office of Civil Rights for a determination. (**DEFICIENCY CODE 230:** Impact of fare and/or service changes not adequately examined)

The grantee is deficient if there is no documentation of briefing board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). (**DEFICIENCY CODE 546:** Impact of fare and/or service changes not reviewed by governing body)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO procedures for major service change policy, disparate impact policy, or disproportionate burden policy, and/or procedures to implement these policies. Direct the grantee to submit to the RCRO board approval of applicable policies, procedures or equity analysis. Direct the grantee to undertake public participation that provides the public a forum to comment and become informed about the policies and procedures and their ramifications.

Direct the grantee to submit to the RCRO a document that describes a methodology to analyze the impacts of future fare and major service changes.

33. *If the grantee operates 50 or more fixed-route vehicles in peak service and is located in a UZA of 200,000 or more in population and initiated or plans to initiate new fixed guideway service or service under the New Starts or Small Starts programs, when was the service and fare equity analysis completed or when is it anticipated to be completed?*

EXPLANATION

Transit providers that have implemented or will implement a New Start, Small Start, or other new fixed guideway capital project shall conduct a service and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of “major service change.” All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis.

The service equity analysis shall include a comparative analysis of service levels pre-and post- the New Start, Small Start, or other new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project. Public outreach held regarding the project will also be included.

REFERENCES

FTA C. 4702.1B, Ch. IV, Section 7(c)

SOURCES OF INFORMATION

For grantees that have New Start, Small Start, or new fixed guideway service, discuss with the RCRO if any fare or service equity analysis has been submitted or request the information from the grantee.

If applicable, review the Title VI equity analysis to determine that all requirements have been met. Review public outreach documentation.

DETERMINATION

The grantee is deficient if all the requirements have not been met. (**DEFICIENCY CODE 310:** New Starts or new fixed guideway service and equity analyses not completed)

SUGGESTED CORRECTIVE ACTION

For projects still in the planning process, or not within six months of starting revenue service, direct the grantee to provide documentation to the RCRO on how it will meet Title VI requirements. For projects completed after October 1, 2012 without complete analyses, consult the RCRO to discuss the corrective action.

34. *How did the grantee collect and analyze demographic data showing the extent to which members of minority groups were beneficiaries of programs receiving FTA financial assistance?*

- a. When were demographic and service profile maps and charts last updated?*
- b. When was the last survey conducted to provide input into demographic ridership and travel patterns?*

35. *When did the grantee update the required maps prior to proposed service reductions or eliminations?*

EXPLANATION

Demographic and Service Profile Maps and Charts. Transit providers shall prepare demographic and service profile maps and charts after each decennial Census and prior to proposed service reductions or eliminations. Transit providers may use decennial Census data to develop maps and charts until the next decennial Census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether and to what extent transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats. FTA requires transit providers to prepare the following maps and charts:

- A base map of the transit provider's service area that overlays Census tract, Census block or block group, traffic analysis zone (TAZ), or other locally available geographic data with transit facilities - including transit routes, fixed guideway alignments, transit stops and stations, depots, maintenance and garage facilities, and administrative buildings—as well as major activity centers or transit trip generators, and major streets and highways.
- A demographic map that plots the information listed above and also shades those Census tracts, blocks, block groups, TAZs, or other geographic zones where the percentage of the total minority population residing in these areas exceeds the average percentage of minority populations for the service area as a whole. Demographic maps shall also depict those Census tracts, blocks, block groups, TAZs, or other geographic zones where the percentage of the total low-income population residing in these areas exceeds the average percentage of low-income populations for the service area as a whole.

Demographic Ridership and Travel Patterns. Grantees shall collect information on the race, color, national origin, English proficiency, language spoken at home, household income, and travel patterns of their riders using customer surveys. Transit providers shall use this information to develop a demographic profile comparing minority riders and non-minority riders, and trips taken by minority riders and non-minority riders. Demographic information shall also be collected on fare usage by fare type amongst minority and low-income users, in order to assist with fare equity analyses. The demographic information shall be displayed in tabular format.

FTA C. 4702.1B provides further information and guidance on how to prepare these maps, collect data, and incorporate information from customer surveys. Note that FTA C. 4702.1B requires that grantees conduct a new survey by December 2013 if the previous survey is more than five years old.

REFERENCES

49 CFR 21.9(b)

FTA C. 4702.1B, Ch. IV, Section 5

SOURCES OF INFORMATION

Review the Title VI program submission for demographic maps and overlays, results of customer surveys, or information on procedures to collect and analyze demographic data of beneficiaries. Review information on site to determine if maps were updated prior to proposed service reductions or eliminations.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO documentation of updated maps and overlays, the results of customer surveys, or additional information in accordance with the applicable requirements of the circular.

36. How and how often does the grantee monitor the service it provides to identify any disparities in the level and quality of service provided to different demographic groups?

37. How does the grantee implement and monitor its policy on siting of transit amenities?

38. If it was determined that disparities existed, what corrective actions did the grantee take?

EXPLANATION

FTA C. 4702.1B requires grantees that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population to monitor services in a specific way. Fixed-route transit providers who meet the threshold shall:

- Select a sample of minority and non-minority routes from all modes of service provided. The sample shall include routes that provide service to predominantly minority areas and non-minority areas
- Assess the performance of each minority and non-minority route in the sample for each of the transit provider's service standards and service policies
- Compare the transit service observed in the assessment to the transit provider's established service policies and standards
- Analyze any route that exceeds or fails to meet the standard or policy, depending on the metric measured to determine why the discrepancies exist, and take steps to reduce the potential effects
- Evaluate transit amenities policy to ensure amenities are being distributed throughout the transit system in an equitable manner
- Develop a policy or procedure to determine whether disparate impacts exist on the basis of race, color, or national origin, and apply that policy or procedure to the results of the monitoring activities
- Brief and obtain approval from the transit providers' policy-making officials regarding the results of the monitoring program
- Submit the results of the monitoring program as well as documentation to verify the policy board's or governing entity's consideration, awareness, and approval of the monitoring results to FTA every three years as part of the Title VI program

Monitoring shall be conducted, at a minimum, once every three years and should be comprehensive in nature.

REFERENCES

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

SOURCES OF INFORMATION

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

DETERMINATION

The grantee is deficient if it has no acceptable procedures for monitoring service or cannot document that it has monitored service within the past three years. The grantee is deficient if its procedures are not conducted in accordance with its approved Title VI program. (**DEFICIENCY CODE 111:** No procedure for monitoring level or quality of service)

The grantee is deficient there is not documentation of the briefing and approval of its policy-making officials regarding the results of the monitoring program. (**DEFICIENCY CODE 547:** Board review of Title VI monitoring not evident)

The grantee is deficient if its monitoring identified disparities in the level and quality of service provided to minority and non-minority users, but it did not take corrective action. (**DEFICIENCY CODE 96:** Title VI disparities not corrected)

SUGGESTED CORRECTIVE ACTION

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

The following questions address program-specific requirements for MPOs that are direct or primary recipients of FTA funding.

- 39. What processes does the metropolitan planning organization (MPO) use to identify and consider the mobility needs of minority populations within the planning process?***
- 40. What process does the MPO use to analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes?***
- 41. Does the MPO provide demographic data assistance to member agencies, when needed, and is there a process in place to identify when such assistance is needed?***
- 42. Does the MPO have a process in place to ensure that member agencies are providing minority communities full opportunities to engage in the transportation planning process?***

EXPLANATION

An MPO that receives funding directly from FTA for its own activities is a direct recipient, and therefore must develop a Title VI Program and report Title VI compliance to FTA for those activities. As a direct recipient, an MPO may also pass through funds to subrecipients. When an MPO receives funds directly from FTA and then passes funds through to subrecipients, the MPO becomes a primary recipient under the DOT Title VI regulations and is responsible for monitoring the compliance of its subrecipients with Title VI, unless that subrecipient is also an FTA direct recipient.

In its regional transportation planning role, an MPO is to include in its Title VI submission a description of the procedures by which the mobility needs of minority populations are identified and considered within the planning process. Documentation that this has been done should be available from the MPO.

All MPOs are responsible for conducting planning activities that comply with 49 U.S.C. Section 5303, Metropolitan Transportation Planning, as well as subpart C of 23 CFR part 450, Metropolitan Transportation Planning and Programming, for a specified metropolitan planning area. In that role, where necessary, MPOs are to provide member agencies with regional data to assist them in identifying minority populations in their service area.

As part of its region planning activity, an MPO is to ensure that members of minority communities are provided with full opportunities to engage in the transportation planning process. This includes actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

REFERENCES

FTA C. 4702.1B, Ch. VI

SOURCES OF INFORMATION

Review the MPO's Title VI program submission. Review documentation that the MPO has analyzed the impacts of the distribution of Federal and State public transportation funds. Review documentation of how the MPO works with member agencies to provide demographic data assistance. Review documentation that the MPO has evaluated engagement opportunities for minority communities in the planning process.

DETERMINATION

The grantee is deficient if it has not analyzed the impacts of public transportation funding distribution, if it has not offered or provided (when requested) demographic assistance to member agencies, or has not evaluated planning engagement opportunities for minority communities. (**DEFICIENCY CODE 789:** MPO Title VI deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the RCRO an analysis of the impacts of public transportation funding distribution.

Direct the grantee to submit to the RCRO documentation of outreach to member agencies for demographic data assistance.

Direct the grantee to submit to the RCRO an evaluation of planning engagement opportunities.

6. PROCUREMENT

BASIC REQUIREMENT

Grantees use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 49 CFR Part 18, (repealed effective December 26, 2014), 2 CFR Part 1201, incorporating 2 CFR Part 200 (specifically Sections 200.317-200.326), and Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidance."

Federal Transit Administration (FTA) Emergency Relief Program

A grant awarded under Section 5324 (Emergency Relief Program), 5307 or 5311 that is made to address an emergency defined under subsection Section 5324(a)(2) is subject to the terms and conditions the Secretary determines are necessary. For the initial set of grants awarded for Hurricane Sandy under this program, referred to as "Category 1, 2, 3," FTA waived some requirements. These programmatic waivers were described in the February 6, 2013 Federal Register notice (78 FR 02729) and were specific to planning, Buy America, and procurement.

AREAS TO BE EXAMINED

1. ***Procurement Policies and Procedures***
2. ***Third Party Contracts***
3. ***Bus Testing***
4. ***Buy America***
5. ***Suspension/Debarment***
6. ***Lobbying Certification***

APPLICABILITY OF REQUIREMENTS

Where FTA funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, FTA Circular 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA Circular 4220.1F does not apply to wholly locally-funded capital procurements.

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

Please note that FTA Circular 4220.1F will be updated in fiscal year (FY) 2017 in order to incorporate the provisions of the Super Circular, 2 CFR Part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and the Super Circular, the Super Circular controls.

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

- Provide full and open competition
- Include all applicable FTA clauses
- Comply with the Brooks Act if the state does not have a statute governing the procurement of architectural and engineering (A&E) services
- Prohibit geographic preferences
- Comply with the five- and seven- year limitation on purchases of rolling stock or replacement parts
- Award only to responsible contractors
- Comply with Buy America

- Comply with debarment and suspension
- Comply with restrictions on lobbying

Instrumentalities of the state are considered state agencies.

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

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

COMPLIANCE

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

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

REFERENCES

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

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

2 CFR Part 200 contains certain notable changes to FTA grants management. The Super Circular increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 49 CFR 18.36(d)). The simplified acquisition threshold is periodically adjusted for inflation. The micro-purchase threshold, which also is adjusted periodically for inflation, increased from \$3,000 to \$3,500 effective October 1, 2015.

Similarly, the Buy America public interest waiver, which exempts “small purchases” from Buy America regulations, increased to \$150,000 per the adoption of 2 CFR Part 200. Effective October 1, 2015, the small purchase waiver was incorporated into the statute in 49 USC 5323(j)(13), and now applies to purchases of not more than \$150,000 and will not automatically increase when the simplified acquisition threshold increases. Per the statute, the small purchase waiver applies to *purchases* of not more than \$150,000. The waiver is based on the total cost of the contract, including labor and options, and may be used for purchases of not more than \$150,000 even if the total cost of the project is in excess of \$150,000.

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

Procurement

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. Fixing America's Surface Transportation (FAST) Act, Pub. Law No. 114-94.
3. Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. Law No. 112-141
4. 2 CFR Part 1201, incorporating 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
5. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
6. FTA Circular 4220.1F, "Third Party Contracting Guidance"
7. FTA Circular 5010.1D, "Grant Management Requirements"
8. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Grant Application Instructions"
9. FTA Master Agreement

Emergency Relief Program

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

Buy America

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

Federal Motor Vehicle Safety Standards

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

Bus Testing

18. 49 CFR Part 665, "Bus Testing"

Suspension/Debarment

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

Lobbying

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

USEFUL WEBLINKS

FTA Procurement Frequently Asked Questions

FTA Emergency Relief Fact Sheet

FTA Buy America Website

Bus Testing Website

National RTAP ProcurementPRO

System for Award Management (SAM)

ENHANCED REVIEW TRIGGERS

Consider an enhanced level of review if:

- the grantee had significant and/or repeat procurement deficiencies in a prior review
 - the grantee was slow to implement prior corrective actions related to procurement deficiencies
 - there are ongoing concerns that previously implemented corrective actions are not being maintained
 - procurement issues have been identified in FTA's Oversight Assessment Tool (OAT)
 - the grantee does not demonstrate it has adequate procurement expertise or organizational structure
 - procurement policies and procedures are out of date or incomplete
 - the grantee has undertaken or is undertaking a project or procurement of the type and complexity it has not managed before, or that necessitates additional emphasis
 - the grantee has had significant change orders to FTA-funded procurements
 - the grantee has had bid protests
 - the grantee has submitted Buy America waiver requests, or there have been Buy America concerns
1. *Have any oversight reviews audits, or investigations of the grantee conducted since the last Comprehensive Review (including Procurement System Reviews (PSRs), Buy America audits, Financial Management Oversight Reviews (FMOs), and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of procurement or Buy America?*
 2. *Are any oversight reviews audits, or investigations scheduled during this Federal fiscal year?*
 3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings?*
 4. *Are any oversight review, investigation, or audit findings currently open?*
 5. *If a PSR has been requested for the upcoming year, what triggered the review request (e.g., new grantee, known procurement)?*
 6. *Are any issues related to procurement indicated in the Oversight Assessment Tool (OAT)?*

EXPLANATION

Areas of past non-compliance with FTA procurement requirements deserve special attention during the scoping phase.

Procurement System Reviews (PSRs), Financial Management Oversight Reviews (FMOs), and Buy America audits are discretionary, in-depth oversight reviews used by FTA when grantees are considered to have higher risk. The PSR and FMO can be "full scope" reviews in which all aspects of a grantee's procurement and financial management practices are studied and tested, or more tailored reviews.

It is also important to know if a PSR, FMO, or Buy America audit has been requested but not yet conducted. If a review has been requested, determine the reasons for such a review (from the FTA regional or headquarters program office).

The Government Accounting Office (GAO) and US DOT Office of Inspector General (US DOT OIG) periodically conduct independent audits. Audits may be of a grantee, but often are programmatic audits addressing a national issue (e.g., spare ratios and extended warranties), where the grantee may have had a specific part of its operation audited. Audit findings should be resolved within one year. Determine if the grantee has been the subject of any of these special audits and if there are any relevant procurement findings.

FTA regional office staff completes an annual OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the procurement area of the OAT could indicate issues in this area.

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by FTA regional and program offices and OTrak pertaining to previous findings as a result of:

- The most recent Comprehensive Review
- Any PSR, FMO, or Buy America audit conducted in the past three years
- Current OAT in OTrak
- Any GAO or OIG audits/investigations
- Any internal, state, or local audits (obtain from grantee).

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

7. *Does the grantee appear to have an appropriate organizational structure, including sufficient staff levels, for procurement? Does the grantee provide technical training to procurement employees? (To answer the questions, please complete the following table. Please add more rows if necessary.)*

<i>Responsibility (in addition to procurement, include those responsible for Buy America and coordination with DBE)</i>	<i>Number of Staff</i>	<i>Number of Staff with Less Than Three Years Experience in Their Position</i>	<i>Staff Vacancies</i>	<i>Type/Frequency and Method of Training for Responsibilities</i>

8. *How does the grantee organize and structure procurement functions and personnel to support Federal Transit Administration (FTA)-funded procurements (e.g., separate department within organization; split responsibility between transit staff and procurement office; etc.)?*

9. *How does the grantee manage FTA-related procurement functions: centralized with one department establishing, monitoring, and overseeing policies and procedures, or decentralized, allowing other internal departments/staff to purchase goods and or services using FTA funds?*
10. *If the procurement function is decentralized, how does the grantee ensure that FTA-funded procurements are in compliance with FTA requirements?*
11. *How do procurement personnel collaborate with users in the development of specifications and choosing the method for procurement?*

EXPLANATION

The way in which the grantee's procurement function is organized and staffed, along with the experience of procurement staff, should be commensurate with the agency's size and complexity and the type and complexity of procurements that it conducts.

FTA grantees are obligated to maintain adequate technical capacity to carry out projects and comply with the Common Grant Rule and the Super Circular. As such, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization.

The type, frequency, and method of training provided to staff about FTA requirements and industry best practices are important indicators of how well-prepared the grantee may be to comply with applicable requirements.

REFERENCES

None

SOURCES OF INFORMATION

Review organizational information and charts and training programs/information provided by the grantee.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

PART A: POLICIES AND PROCEDURES

12. *What policies and procedures guide Federal Transit Administration (FTA)-funded procurements?*
13. *How do the policies or procedures address full and open competition for all transactions under the following methods of procurement?*
 - a. *Micro-Purchases (\$3,000 or less prior to October 1, 2015; \$3,500 or less effective October 1, 2015)*
 - b. *Small Purchases (more than \$3,000 but not more than \$100,000 - see note regarding this threshold under the references section.)*
 - c. *Sealed Bids/Invitation for Bid (IFB)*

d. *Competitive Proposals/Request for Proposals (RFP)*

e. *Revenue Contracts*

EXPLANATION

The Common Grant Rule and the Super Circular require grantees to have written procurement procedures, and by implication, the Common Grant Rule and Super Circular for non-state governmental grantees require written procurement procedures as a condition of self-certification.

Grantees must conduct procurement transactions in a manner providing full and open competition. Grantees are prohibited from restricting competition in federally supported procurement transactions. Some situations that restrict competition include, but are not limited to: unreasonable qualification requirements, unnecessary experience requirements, excessive bonding, noncompetitive pricing practices between firms, noncompetitive awards to firms on retainer, organizational conflicts of interest, “brand name” only specifications, or any arbitrary action in the procurement process.

Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.

For procurements exceeding the Federal simplified acquisition threshold (currently \$150,000), sealed bids or competitive proposals are generally required.

- Sealed Bids/IFB – Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.
- Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the responsive and responsible bidder whose offer is most advantageous to the grantee, with price and other factors considered. Grantees must identify their evaluation factors and indicate the relative importance that each has towards the award.

Revenue contracts are those in which the grantee or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the grantee should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the grantee is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the grantee to determine appropriate procedures, as necessary.

If a grantee uses its FTA assistance to support specific *preventive maintenance contracts* that are separate and distinct from its other maintenance or operations contracts, and if, through its accounting procedures, a grantee can allocate and trace all its Federal assistance for capital preventive maintenance to those separate and distinct preventive maintenance contracts, then FTA Circular 4220.1F applies only to those specific FTA-assisted contracts. If, however, the grantee applies its Federal capital assistance for preventive maintenance as a percentage of its total maintenance costs, and the grantee cannot allocate all of its Federal assistance for capital maintenance to specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, then FTA Circular 4220.1F applies to all the grantee’s preventive maintenance contracts, even if specific maintenance or operations contracts were initially financed wholly without FTA assistance.

REFERENCE

- 49 U.S.C. Sections 5325(a) and (h)
- 2 CFR 200.317
- 2 CFR 200.318(a)
- 2 CFR 200.319(a)

2 CFR 200.320(a), (b), (c), (d)
49 CFR 18.36(c)(1)
49 CFR 18.36(d)(1)(2)(3)
48 CFR 2.1
FTA C. 4220.1F, Ch. VI, Section 1
FTA C. 4220.1F, Ch. VI, Sections 3.a-f
FTA C. 4220.1F, Ch. II, Section 2.b.(4)

SOURCES OF INFORMATION

Before the site visit, review the grantee's written procurement policies. During the site visit, review procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted competitively and appropriately. Records for phone solicitations may be examined when appropriate.

DETERMINATION

The non-state grantee is deficient if it does not have written procurement policies and/or procedures or if its policies do not reflect 4220.1F. (**DEFICIENCY CODE 22**: Procurement policies and procedures not evident) (**DEFICIENCY CODE 740**: Procurement policies not current/complete)

The grantee is deficient if it has not provided for full and open competition (has placed restrictive requirements on prospective bidders). (**DEFICIENCY CODE 37**: Lacking full and open competition for one or more methods of procurement)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office procurement procedures that ensure full and open competition in all procurement transactions. The grantee must cease immediately any practice that is in violation of FTA guidelines.

14. How do the grantee's written procurement policies or procedures address employee standards of conduct?

EXPLANATION

Non-state grantees are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards should:

- Preclude any employee officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or administration of a contract supported with FTA assistance. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.
- Include information that the grantee's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The grantee may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- Provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, agents, board members, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

REFERENCES

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

SOURCES OF INFORMATION

Review the grantee's standards of conduct to determine if these required elements are included.

DETERMINATION

The grantee is deficient if it does not have a written policy that addresses standards of conduct in the award and administration of a contract. The grantee is deficient if any required item of such a policy is missing. (**DEFICIENCY CODE 91**: No written standards of conduct)

15. What are the procedures for ensuring that the grantee analyzes acquisitions in order to identify, evaluate, and mitigate potential organizational conflicts of interest?

EXPLANATION

FTA expects grantees to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate potential conflicts before contract award.

An organizational conflict of interest occurs when any of the following circumstances arise:

- *Lack of impartiality or impaired objectivity.* When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the grantee due to other activities, relationships, contracts, or circumstances.
- *Unequal access to information.* The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- *Biased ground rules.* During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

REFERENCES

2 CFR 200.318(c)(2)

49 CFR 18.36(c)

FTA C. 4220.1F, Ch. II, Section 2

FTA C. 4220.1F, Ch. IV, Section 2(h)

SOURCES OF INFORMATION

Review the grantee's procurement procedures to determine how this element is addressed. Review selected procurement files in accordance with records sampling procedures for evidence that the grantee analyzes procurements for organizational conflicts of interest.

DETERMINATION

The grantee is deficient if there is no evidence that it analyzes potential organizational conflicts of interest or a conflict of interest is identified. (**DEFICIENCY CODE 200:** Potential conflict of interest)

SUGGESTED CORRECTIVE ACTION

If serious conflicts of interest are identified, advise the FTA regional counsel.

Direct the grantee to provide the FTA regional office procedures that describe how potential conflicts of interest will be avoided.

16. Does the grantee have written protest procedures?

17. If any bid protests were received since the last Comprehensive Review:

- What was being procured and how was FTA made aware of the protest?*
- What was the result of said protest? Was it sustained or withdrawn?*

EXPLANATION

Non-state grantees must have written protest procedures to handle and resolve protests of procurement actions. A grantee is to notify FTA when it receives a third party contract protest and keep FTA informed about the status of the protest. It is recommended that grantees provide this information in its next quarterly Milestone Progress Report, and at its next Project Management Oversight review, if any. When a grantee denies a bid protest, FTA expects the grantee to inform the FTA Regional Administrator or the FTA Associate Administrator for the program office depending on where the grant is being administered.

REFERENCE

2 CFR 200.318(k)

SOURCES OF INFORMATION

Review the grantee's procurement policies and procedures to determine if there are written protest procedures. Review grantee responses to this question and information from FTA. If there have been any protests during the review period, review documentation related to the procurement (e.g., disclosure to FTA, written protest decisions, etc.).

DETERMINATION

The grantee is deficient if it does not have written protest procedures. The grantee is deficient if written protest procedures exist, but are not followed. (**DEFICIENCY CODE 152**: No written protest procedures)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office written protest procedures.

PART B: PROCUREMENT DEVELOPMENT

18. *How does the grantee ensure that it conducts solicitations in a manner that ensures:*

- a. proper use of vendor pre-qualification practices?*
- b. proper use of specifications and "brand names"?*
- c. proper justification for sole source procurements?*
- d. proper justification for single bid awards?*

EXPLANATION

Grantees must conduct procurement transactions in a manner providing full and open competition. If a grantee uses its FTA assistance to support specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, and if, through its accounting procedures, a grantee can allocate and trace all its Federal assistance for capital preventive maintenance to those separate and distinct preventive maintenance contracts, then FTA Circular 4220.1F applies only to those specific FTA-assisted contracts. If, however, the grantee applies its Federal capital assistance for preventive maintenance as a percentage of its total maintenance costs, and the grantee cannot allocate all of its Federal assistance for capital maintenance to specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, then FTA Circular 4220.1F applies to all the grantee's preventive maintenance contracts, even if specific maintenance or operations contracts were initially financed wholly without FTA assistance.

Except for small and micro purchases, proposals and/or bids must be publicly solicited from an adequate number of sources. Grantees are prohibited from restricting competition in federally supported procurement transactions.

- a. Grantees are not required to prequalify potential bidders. However, grantees that place such a requirement on potential bidders must adhere to FTA's requirements. If a grantee requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Grantees must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.
- b. Grantees must ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Descriptions must not contain features that unduly restrict competition. Detailed product specifications should be avoided. "Brand name or equal" descriptions should be avoided unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The grantee must identify the salient characteristics of the named brand that offerors must provide. When using a “brand name” specification, the grantee does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics.

- c. When the grantee requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the grantee may make a sole-source award. In the case of a sole-source award, the grantee should prepare a written cost analysis and justification. The property or services are available from one source if one of the conditions described below is present:
- Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the grantee only from one source and in the past has not been available from another source.
 - Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee’s needs.

A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and the grantee needs to follow the requirements of FTA Circular 4220.1F when Federal funds are used to pay for these services.

- d. With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the grantee should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

REFERENCES

2 CFR 200.319(a)

49 CFR 18.36(c)

FTA C. 4220.1F, Ch. II, Section 2

FTA C. 4220.1F, Ch. III, Section 3

FTA C. 4220.1F, Ch. VI, Sections 1, 2, and 3

SOURCES OF INFORMATION

Review the grantee’s procurement procedures to determine how these elements are addressed and how grantee personnel are involved in third party procurement actions. Review selected procurement files in accordance with records sampling procedures for evidence that the grantee:

- Does not use prequalification practices which are inappropriately restrictive
- Uses specifications for products, services, or materials that were clear and concise and did not inappropriately include unjustified and restrictive brand names
- Included in the solicitation the identification of all requirements that the offerors must fulfill and all other factors used in evaluating bids or proposals
- Properly identified all sole-source and single-bid awards and provides appropriate justification documentation for non-competitive procurements

DETERMINATION

The grantee is deficient if its list of prequalified firms is out-of-date, to the extent that full and open competition is impeded. The grantee is deficient if potential bidders are precluded from qualifying during the solicitation period. (**DEFICIENCY CODE 181**: No adequate prequalification criteria)

The grantee is deficient if it uses unsupported noncompetitive specifications or statements of work. (**DEFICIENCY CODE 346**: Insufficient solicitation elements)

The grantee is deficient if it does not have the appropriate documentation in the files to support the basis for a non-competitive award. The grantee is deficient if professional services have not been bid competitively. The grantee is deficient if it has used "brand name" only specifications inappropriately or it does not have the appropriate justification for sole-source or single-bid awards. (**DEFICIENCY CODE 290**: Lacking required justification(s) and documentation for non-competitive award(s))

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation demonstrating that deficiencies identified in its prequalification process have been corrected. For the next procurement, submit to FTA documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office procedures to ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to provide the FTA regional office revised procurement procedures that ensure full and open competition in all procurement transactions.

Direct the grantee to submit to the FTA regional office evidence of an implemented policy to ensure that future sole source procurements are properly documented. Where contracts are ongoing, require the grantee not to exercise any options, or possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with Federal requirements. For the next procurement, submit to FTA documentation that the required process was implemented.

19. *How does the grantee ensure that it avoids the use of geographic preferences?*

20. *If the grantee is participating in US DOT's pilot program for Contracting Initiatives, which projects have been approved?*

EXPLANATION

Grantees are prohibited from specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA grantee from limiting its bus purchases to in-state dealers.

Exceptions expressly mandated or encouraged by law include the following:

- A&E Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use does not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).
- Licensing. A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in an area affected by a major disaster or emergency.

Construction Hiring

Section 418 of the fiscal year (FY) 2015 Appropriations Act and Section 415 of the Consolidated Appropriations Act, 2016, Public Law 114-113 (FY 2016 Appropriations Act) prohibit FTA from using FY 2015 or FY2016 funds to implement, administer, or enforce the prohibition of geographic preferences under 49 CFR 18.36(c)(2), (now 2 CFR 200.319(b)) for **construction hiring purposes**. "**Construction hiring purposes**" means hiring of the construction labor workforce for a construction project. Section 418 applies to all FTA grants, including grants funded under the Hurricane Sandy Emergency Relief and TIGER programs. Grantees are asked to provide the FTA Regional Office notice of using local hiring preferences on construction projects.

Pilot Program

On March 6, 2015, US DOT announced an initiative to permit, on an experimental basis, FTA grantees and subrecipients to utilize various contracting requirements that generally have been disallowed due to concerns about adverse impacts on competition. This initiative, being initially carried out as a pilot program was extended until March 6, 2017.

Unless accepted into the pilot program, FTA grantees may not include local hiring or geographic preferences in FTA-funded projects, except for construction hiring purposes and other exceptions described above.

REFERENCES

2 CFR 200.319(b)
49 CFR 18.36(c)
FTA C. 4220.1F, Ch. II, Section 2
FTA C. 4220.1F, Ch. VI, Sections 1 and 2
Section 418 of the FY 2015 Appropriations Act
Section 415 of the Consolidated Appropriations Act, 2016
FTA presentation on Geographic-Based Hiring Preferences

SOURCES OF INFORMATION

Review the grantee's procurement procedures to determine that there are no in-state or local geographic preferences. Review selected procurement files in accordance with records sampling procedures for evidence that the grantee does not use geographic preferences, except when allowed by U.S.C. Section 5325(i) for Licensing, Major Disaster & Emergency Relief services, and *some* A&E Services. Review information from the regional office on grantee's participation in US DOT's pilot program Contracting Initiative.

DETERMINATION

The grantee is deficient if it has used geographic preferences in any procurement (other than hiring preferences for construction projects) for other than one of the exceptions. The grantee is deficient if it is using hiring preferences on non-construction contracts, but it has not been approved to participate in the pilot program. The grantee is deficient if the use of geographic preferences in A&E procurements restricted competition. (**DEFICIENCY CODE 57**: Improper use of geographic preferences)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to cease using inappropriate geographic preferences in FTA-funded procurements and submit to the FTA regional office documentation of a revised procurement process that prohibits the improper use of geographic preferences. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

21. How does the grantee demonstrate that it avoids duplicative or unnecessary purchases?

EXPLANATION

Grantees' procedures must provide for a review of procurements to avoid purchasing unnecessary or duplicative items. During such a review, consideration should be given to consolidating or breaking out procurements or any other appropriate means to obtain a more economical purchase. Authority to initiate purchases should be limited to relatively few individuals. All purchase requests typically would be reviewed and/or approved by one person, designated as the purchasing agent for a given department at a large grantee or for the entire organization for a small grantee. The value of a purchase may determine the procedures that the grantee follows, with more scrutiny as the dollar value of the purchase increases.

REFERENCES

2 CFR 200.318(d)
49 CFR 18.36(b)
FTA C. 4220.1F, Ch. II, Section 2
FTA C. 4220.1F, Ch. IV, Section 1, b., c., e.
FTA C. 4220.1F, Ch. VI

SOURCES OF INFORMATION

Review the grantee's procurement procedures to determine how the grantee avoids duplicative or unnecessary purchases. Review the grantee's list of procurements for any potential duplicative purchases.

DETERMINATION

The grantee is deficient if it is lacking procedures for reviewing the need for procurements. The grantee is deficient if such procedures exist, but are not followed. (**DEFICIENCY CODE 112**: No procedures for ensuring most efficient and economic purchase.)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office procedures that include adequate review of procurements to avoid unnecessary or duplicative purchases. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

22. How does the grantee ensure that it performs an independent cost estimate (ICE) before receiving bids or proposals?

EXPLANATION

The ICE is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is, to assist in performing the cost or price analysis. An ICE is the starting point for conducting a cost or price analysis. It is required for all procurements regardless of dollar amount. An ICE is completed prior to receipt of bids or proposals. It can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications, and prior data. The word "independent" does not imply that it is performed by someone other than the grantee. This could be the case, however, if the grantee does not have the expertise for a large complex procurement.

The ICE is especially critical whenever there is no price competition (e.g., for architect-engineer procurements during serial price negotiations), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert the grantee when all competitors are submitting unreasonably high or low cost proposals.

REFERENCES

2 CFR 200.323(a)
49 CFR 18.36(f)
FTA C. 4220.1F, Ch. VI, Section 6

SOURCES OF INFORMATION

Review the grantee's procurement procedures to determine if they address the development of an ICE. Review selected procurement files in accordance with records sampling procedures for evidence that the grantee developed an ICE prior to receipt of bids or proposals, based on the specific requirements of the solicitation and market factors, as applicable.

DETERMINATION

The grantee is deficient if it has not conducted independent cost estimates. (**DEFICIENCY CODE 340**: Lacking independent cost estimate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office documentation that it has updated its procurement process to include development of independent cost estimates prior to receipt of bids or proposals. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

- 23.** *How does the grantee ensure that applicable clauses and certifications are included in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000? In intergovernmental agreements and subrecipient agreements, if applicable?*
- 24.** *How are FTA clauses reviewed for applicability to specific types of contracts?*
- 25.** *Does the grantee use a standard set of clauses and contract terms and conditions, known as boilerplates? Who is responsible for determining the appropriate use of these?*

EXPLANATION

Grantees are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.326 and Appendix II to 2 CFR Part 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1F discusses Federal requirements that affect a recipient's acquisitions.

Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on-line procurement tool that assists grantees in developing procurement packages. Using ProcurementPRO, can assist a grantee in developing a procurement package that includes federally required clauses.

Grantees may not modify their own contracts after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. Grantees may, however, modify its state's GSA-type contracts to add Federal clauses when they issue orders against those state contracts.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract as is described in Exhibit 6 at the end of this document. Procurements above the micro-purchase threshold must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA guidelines is not sufficient to meet this requirement. A checklist of required clauses is provided in Exhibit 6.1, Part A. The checklist provides a citation from the FTA Master Agreement for each required clause. Exhibit 6.1, Part B lists certifications, reports, and forms that are required for Disadvantaged Business Enterprise (DBE), Buy America, debarment, and suspension, and lobbying. Exhibit 6.1, Part C lists other required items to assist in determining whether the grantee's policies and procedures are actually being followed. The applicability of FTA clauses to different types of procurements is shown in Exhibit 6.2. Note that the construction of ferry vessels using Federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable.

In addition to other requirements for specific clauses and certifications, grantees are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding \$100,000. Signed certifications regarding lobbying must be obtained by the grantee from subrecipients and contractors. Subrecipients retain their contractors' certifications and contractors retain subcontractors' certifications. The grantee is responsible for ensuring that they fulfill the requirements in applicable direct procurements exceeding \$100,000.

Grantees are required to include a debarment and suspension clause in agreements and procurement solicitations that exceed \$25,000.

REFERENCES

2 CFR 200.326
29 CFR Parts 4 and 5
41 CFR Parts 50-201 and 50-206, Amendments to Federal Contract Labor Laws by the Federal Acquisition Act Streamlining Act of 1994; Final Rule
49 CFR 18.36(i)(1-13)
49 CFR 18.36(j-o)
49 CFR Part 20
FTA C. 4220.1F, Ch. IV, Section 2, and Appendix D
FTA Master Agreement, Section 16
FTA Third Party Contracting FAQs
National RTAP ProcurementPRO

SOURCES OF INFORMATION

Before the site visit, review written procurement procedures. During the site visit, examine procurement files for inclusion of required clauses. Note that this also includes reviewing the grantee's compliance with Buy America, suspension/ debarment, and lobbying.

DETERMINATION

The grantee is deficient if it has not included any FTA-required clauses in contracts, intergovernmental agreements, or subrecipient agreements. (**DEFICIENCY CODE 129:** No FTA clauses) The reviewer should not find the grantee deficient if it missed some clauses that should have been included. However, refer the grantee to exhibits 6.1 and 6.2 and any other resource that may assist it in determining the applicability of clauses in the future. Failure to include the Buy America clause is covered under questions 37-38, below.

The grantee is deficient if it has not included the lobbying certification in its agreements and procurement solicitations that exceed \$100,000. (**DEFICIENCY CODE 12:** Lobbying certifications not included in agreements/procurement solicitations)

The grantee is deficient if it has not obtained the proper certifications from contractors and subrecipients awarded contracts or agreements that exceed \$100,000. (**DEFICIENCY CODE 40:** Lobbying certifications not signed by subgrantees, contractors, or subcontractors)

The grantee is deficient if it has not included the debarment and suspension clause in its agreements and procurement solicitations that exceed \$25,000. (**DEFICIENCY CODE 494:** Debarment and suspension clause not included in agreements/procurement solicitations)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office revised procurement procedures that address inclusion of all FTA-required third party contract clauses. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

4PART C: PROCUREMENT AWARD AND MANAGEMENT

26. *Since the last Comprehensive Review, has the grantee conducted any procurements that involved a method of procurement not previously used, or that were of a type and size not previously managed (including procurement of vehicles)? Please describe.*

27. *What is the grantee's most recently awarded, FTA-funded:*

- a. architectural and engineering (A&E) procurement?*
- b. rolling stock procurement?*
- c. piggyback procurement?*

28. *Identify any FTA-funded sole source or single bid procurements conducted since the last Comprehensive Review.*

29. *Identify any change orders over \$100,000 on FTA-funded contracts since the last Comprehensive Review.*

EXPLANATION

New methods of procurement, significantly large or complex procurements, and large change orders require additional emphasis and oversight, as do A&E, rolling stock, piggyback, sole source, and single bid procurements.

REFERENCES

None

SOURCES OF INFORMATION

Review the procurement listing and additional information provided by the grantee, along with information provided by the FTA regional office.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

30. *List any of the following types of FTA-funded procurements anticipated for the next three years:*

- a. *A&E*
- b. *rolling stock*
- c. *piggyback*
- d. *those that involve a method or type not previously managed by the grantee*

31. *Is the grantee planning or constructing a New Start or Small Start project? Is the grantee considering or in the process of implementing a significantly large, complex, or unique project relative to the grantee's size?*

EXPLANATION

New methods of procurement and significantly large or complex procurements require additional emphasis, as do A&E, rolling stock, and piggyback procurements.

REFERENCES

None

SOURCES OF INFORMATION

Review information provided by the FTA regional office, information on planned projects in the Electronic Award and Management System (EAMS), and responses from the grantee on planned projects and procurements.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

32. *As part of its evaluation of bids and proposals prior to award, when does the grantee perform a cost or price analysis? Who performs this analysis?*

EXPLANATION

Grantees must perform cost or price analyses in connection with every procurement; after receiving bids, but before awarding a contract. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. A cost analysis must be performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements, unless price reasonableness can be established based on market prices. Price analysis (i.e., using catalog or market prices) may be performed for all other procurements.

REFERENCES

2 CFR 200.323(a)
49 CFR 18.36(f)(1)

SOURCES OF INFORMATION

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine the extent to which the grantee conducts cost and/or price analysis, paying particular attention to sole source procurements

DETERMINATION

The grantee is deficient if it has not conducted a cost or price analysis for every procurement action. (**DEFICIENCY CODE 271**: Lacking required cost/price analysis)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office documentation that it has updated its procurement process to include performing cost and price analysis for every procurement action including contract modifications. For the next procurement, submit to FTA documentation that the required analysis was implemented.

- 33.** *As part of its evaluation of bids and proposals prior to award, how does the grantee determine whether a contractor is responsible and able to perform the work?*
- a. *What criteria are used?*
 - b. *When is the determination of responsibility made?*
 - c. *Who makes the determination?*

EXPLANATION

49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is determined by the grantee after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the grantee that it qualifies as “responsible” and that its proposed subcontractors also qualify as “responsible.”

Factors to consider when making responsibility determinations include:

- Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- Debarment and Suspension. Is neither debarred nor suspended from Federal programs under US DOT regulations, “Non-procurement Suspension and Debarment.”
- Affirmative Action and DBE. Is in compliance with the Common Grant Rule’s Affirmative Action and US DOT’s Disadvantaged Business Enterprise requirements.
- Public Policy. Is in compliance with the public policies of the Federal government, as required by 49 U.S.C. Section 5325(j)(2)(B).
- Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
- Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations.
- Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities.

- Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- Performance Record. Is able to provide a satisfactory current and past performance record.

REFERENCES

49 U.S.C. Section 5325(i)
 2 CFR 200.318(h)
 49 CFR 18.36(b)(8)
 FTA C. 4220.1F, Ch. VI, Section 8.b

SOURCES OF INFORMATION

Review grantee responses to this question as input into the scoping meeting. During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine the extent to which the grantee makes responsibility determinations prior to awarding contracts, including correspondence between the grantee and its contractors for evidence of determinations.

DETERMINATION

The grantee is deficient if there is no evidence it makes responsibility determinations prior to award. (**DEFICIENCY CODE 344**: Responsibility determination deficiencies) Note that although a grantee may not have written procedures addressing these determinations specifically, overall procurement procedures combined with a grantee's business practices may ensure that adequate determinations are being made.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit to FTA documentation that the required process was implemented.

34. *As part of its evaluation of bids and proposals prior to award, how does the grantee determine whether its third party contractors or subcontractors are suspended, debarred, ineligible, or voluntarily excluded from participation in Federally assisted transactions or procurements?*
35. *If the grantee does not have evidence documenting a search of the System for Award Management (SAM) to identify debarred or suspended bidders, does a search of SAM for the procurements selected confirm that the entity awarded is not debarred or suspended.*
36. *Subsequent to awarding a contract, has the grantee discovered that a contractor was listed in the SAM as an excluded party? If yes, when did the grantee inform FTA in writing of this information?*

EXPLANATION

Each grantee is required to ensure, to the best of its knowledge and belief, that none of its principals, affiliates, third party contractors, and subcontractors is 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, grantees must verify that the bidder 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.

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 grantee to print the screen with the results of the search to include in the grant or procurement file, or to have a checklist noting when the SAM was reviewed.

2 CFR Part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The grantee should have a similar review process for its principals as it does for its contractors and subrecipients regarding suspension and debarment.

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

REFERENCES

2 CFR 180.300
FTA Master Agreement, Section 4.b
System for Award Management (SAM)

SOURCES OF INFORMATION

Review the grantee's written procurement procedures to determine how the grantee determines that it is not awarding contracts to debarred or suspended contractors or individuals. During the site visit, review contract and subrecipient files to verify if this determination is being made by the grantee before entering into any third party contracts. Ask the grantee if it has become aware of any situation in which an excluded party is participating in a covered transaction. If so, obtain a copy of the grantee's written notification to the FTA regional office.

DETERMINATION

The grantee is deficient if it has not verified that excluded parties are not participating prior to applicable awards or actions. (**DEFICIENCY CODE 183**: No verification that excluded parties are not participating)

The grantee is deficient if it has not promptly informed the FTA regional office in writing after becoming aware that an excluded party is participating in a covered transaction. (**DEFICIENCY CODE 189**: Excluded parties participating in covered transactions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. For the next procurement, submit to FTA documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office documentation of an implemented process to promptly notify that same office in writing of any excluded party's participation

37. Has the grantee requested any waivers from Buy America requirements since the last Comprehensive Review?

EXPLANATION

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to a general waiver, contain Buy America provisions. General waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software. The FAST Act amended 49 USC 5323(j)(13) to include a specific general waiver for purchases of not more than \$150,000. On September 16, 2016, FTA's Chief Counsel issued a Dear Colleague letter providing guidance on the interpretation and implementation of this section.

If a grantee's bidder or offeror certifies that it cannot comply with the Buy America requirements, then the grantee must request, receive, and retain a waiver from the FTA Chief Counsel's Office before it may award a contract to that bidder or offeror. It should be noted that the Buy America rules apply to utility work that is within the scope and budget of an FTA funded project. Buy America applies to the entire project, including contracts funded with non-Federal funds.

REFERENCES

49 USC 5323(j)
49 CFR part 661
FTA September 16, 2016, Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the grantee on Buy America waivers that have been applied for.

DETERMINATION

Input to enhanced review determination

38. *How does the grantee ensure compliance with Buy America provisions in all procurements of utility work, rolling stock end products, steel and iron end products, and manufactured end products, except for products with a waiver?*

EXPLANATION

Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America requirements applicable to rolling stock procurements are discussed in more detail in Part D, Revenue Rolling Stock Procurements.

The small purchase waiver is now included in 49 USC 5323(j)(13) and provides that the term "small purchase" means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. The statutory language is clear that the small purchase waiver applies to purchases of \$150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

For all procurements more than \$150,000, the grantee shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate. Grantees should include only the applicable Buy America certification. Inclusion of both certifications for both rolling stock and non-rolling stock procurements is discouraged and may result in confusion on the part of the contractor as to the applicable Buy America requirements.

Grantees may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other grantees to make the contracts eligible for Federal funding. Grantees may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. The grantee should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

If a bidder or offeror cannot certify compliance with Buy America requirements, the grantee must seek a waiver of the Buy America statute before it may award the contract to the bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not

of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

The Buy America waiver for minivans was rescinded on December 3, 2012.

REFERENCES

49 USC 5323(j)(2) & (j)(13)

49 CFR 661.6

49 CFR 661.7

49 CFR 661.12

49 CFR 661.13

September 16, 2016 Dear Colleague Letter

FTA Buy America Website

SOURCES OF INFORMATION

Review the grantee's written procurement procedures. On site, discuss the procedures for incorporating Buy America provisions in procurements and obtaining certifications from vendors. Select a sample of procurements and review the files for evidence that Buy America requirements have been met. Focus on procurements of vehicles and other procurements of steel, iron, or manufactured products greater than the \$150,000 threshold. Review IFBs and RFPs to determine if Buy America provisions were included. Examine bid responses and executed contracts to determine if properly executed Buy America certifications were obtained and retained by the grantee.

DETERMINATION

The grantee is deficient if it did not include Buy America provisions in solicitations. (**DEFICIENCY CODE 138:** Buy America provision not in solicitation and/or contract)

The grantee is deficient if it did not obtain signed Buy America certifications from vendors as part of the vendor's bid or proposal. (**DEFICIENCY CODE 156:** Contract files lacking Buy America certifications)

The grantee is deficient if it awarded the contract to a contractor who certified non-compliance with Buy America and did not obtain a waiver from FTA. (**DEFICIENCY CODE 790:** Contract awarded without waiver)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office revised procurement procedures that require the grantee to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, direct the grantee to provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, direct the grantee to submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

Direct the grantee to submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements

39. *How does the State conduct architectural and engineering (A&E) procurements?*

40. *If it has a statute prescribing a formal procedure for the procurement of A&E services, do the procedures provide for full and open competition?*

41. *If it does not have such a statute, did the State use competitive proposal procedures based on the Brooks Act when procuring A&E services with FTA funds?*

42. *What are the State's procedures for awarding work under on-call type A&E contracts?*

EXPLANATION

When using FTA assistance to contract for A&E services, states are required to use competitive proposal procedures based on the Brooks Act or an equivalent qualifications-based requirement adopted before August 10, 2005. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services which lead to construction. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the State may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the State determines is fair and reasonable.

Unless FTA determines otherwise in writing, a state or its subrecipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects states and their subrecipients to use the procurement method appropriate for the services having the greater cost, even though the other necessary services would not typically be procured by that method.

States may make multiple awards to cover needs for various disciplines under an "on-call" type of contract. Typically, these contracts would not be used to procure design and engineering work for major projects. Large projects should be competed separately, with the most highly qualified A&E firm chosen for that specific project. On-call contracts would be suited for smaller jobs that would be too expensive (administratively) to compete individually. If a state simply wants multiple A&Es under contract so that they do not have to compete future projects when they are defined, and intend to assign the work without further competition to one of the firms under contract, FTA does not believe that this meets the 49 U.S.C. Section 5325(b) requirements for a qualifications based selection.

Solicitations for on-call awards must describe how the work will be assigned, and not leave the process undefined. For example, if company A is initially evaluated as being the best for geothermal work, then all such work should be given to that company as tasks are defined, assuming the company can perform within the timeframes required for the task. The procurement officials should not leave it to someone's judgment later to withhold work from company A and give it to company B based on a subjective judgment that B would be better than A for this job even though A was evaluated first initially. The selected companies also should not be allowed to update their qualifications during the term of the contract and so be rated higher than they were initially. There should be a finite period for these contract awards, after which a new round of qualifications-based awards would be made.

REFERENCES

2 CFR 200.320(d)(5)
49 CFR 18.36(d)(1)(2)(3)
FTA C. 4220.1F, Ch. VI, Sections 1 and 3.f
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Review State statutes, the state management plan and other documentation of procurement procedures for a discussion of procedures for contracting for A&E services. Review the list of procurements provided in advance of the review for procurements that would likely require these types of procedures. On site, discuss with the State, and evaluate procurement files to determine what procedures were used.

DETERMINATION

The State is deficient if the procedures for procuring A&E services do not provide for full and open competition. The State is deficient if it does not have its own statute and it did not follow the Brooks Act when using FTA assistance to contract for A&E services or has used qualifications-based procedures when not appropriate. (**DEFICIENCY CODE 349**: Qualifications-based procurement deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office procedures for following the Brooks Act when using FTA assistance to contract for A&E services. Direct the State to provide documentation of corrective action implementation and training on new procedure(s). For the next procurement, submit to FTA documentation that the required process was implemented.

43. *What is the grantee's process for following Federal requirements when procuring A&E services?*

44. What are the grantee's procedures for awarding work under on-call type A&E contracts?

EXPLANATION

A&E services must be procured using a qualifications-based process in accordance with the Brooks Act. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that lead to construction. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the grantee may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the grantee determines is fair and reasonable.

Unless FTA determines otherwise in writing, a grantee may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects the recipient to use the procurement method appropriate for the services having the greater cost, even though the other necessary services would not typically be procured by that method.

Grantees may make multiple awards to cover needs for various disciplines under an "on-call" type of contract. Typically, these contracts would not be used to procure design and engineering work for major projects. Large projects should be competed separately, with the most highly qualified A&E firm chosen for that specific project. On-call contracts would be suited for smaller jobs that would be too expensive (administratively) to compete individually. If a grantee simply wants multiple A&Es under contract so that they do not have to compete future projects when they are defined, and intend to assign the work without further competition to one of the firms under contract, FTA does not believe that this meets the 49 U.S.C. Section 5325(b) requirements for a qualifications-based selection.

Solicitations for on-call awards must describe how the work will actually be assigned, and not leave the process undefined. For example, if company A is initially evaluated as being the best for geothermal work, then all such work should be given to that company as tasks are defined, assuming the company can perform within the timeframes required for the task. The procurement officials should not leave it to someone's judgment later to withhold work from company A and give it to company B based on a subjective judgment that B would be better than A for this job even though A was evaluated as most qualified initially. The selected companies should also not be allowed to update their qualifications during the term of the contract and so be rated higher than they were initially. There should be a finite period for these contract awards, after which a new round of qualifications-based awards would be made.

REFERENCES

49 USC 5325(b)
2 CFR 200.320(d)(5)
49 CFR 18.36(d)(3)
FTA C. 4220.1F, Ch. VI, Section 1
FTA C. 4220.1F, Ch. VI, Sections 3.f
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

In accordance with records sampling procedures, examine procurement files of A&E services for compliance with the Brooks Act.

DETERMINATION

The grantee is deficient if it does not follow the Brooks Act when using FTA assistance to contract for A&E services or has used qualifications-based procedures when not appropriate. (**DEFICIENCY CODE 349:** Qualifications-based procurement deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for following the Brooks Act when using FTA assistance to contract for A&E services. For the next procurement, submit to the FTA regional office documentation that the required process was implemented

45. If the grantee used liquidated damage clauses in any of its procurements:

- a. *How was the damage rate specified in the solicitation and contract?*
- b. *If the grantee assessed and recovered liquidated damages, were those funds credited back to the project?*

EXPLANATION

Grantees are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if weight requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be punitive. They may not be used to impose a penalty or limit or restrict competition, or used in situations where delayed performance will not affect the grantee adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of the damages assessed.

The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise.

Liquidated damages should not be utilized as a substitute for other contract performance requirements. Grantees are required to maintain a contract administration system to ensure that they and their third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders. There are methods that may be more appropriate than liquidated damages to incentivize or enforce contractor performance.

REFERENCE

49 U.S.C. 5307(d)(1)(E)
FTA C. 4220.1F, Ch. IV, Section 2.b

SOURCES OF INFORMATION

Examine selected contract files, in accordance with records sampling procedures, for liquidated damages clause(s). Determine how the dollar value of liquidated damages was calculated by the grantee and how it was presented in the solicitation documents to prospective bidders/proposers. These types of clauses typically are found in large procurements of vehicles and equipment or in construction contracts.

DETERMINATION

The grantee is deficient if a liquidated damages rate is not specified in the solicitation documents but is included in a resulting contract. The grantee is deficient if it cannot provide a reasonable explanation regarding expected damages as a result of late completion and an appropriate mathematical basis for the dollar value of the liquidated damages. The grantee is deficient if it assessed liquidated damages, but did not credit these funds back to the project account. (**DEFICIENCY CODE 315**: Improper use of liquidated damage clause)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office a written procedure for the correct use of liquidated damages clauses. If clauses are in existing contracts improperly, direct the grantee to modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages. Direct the grantee to obtain prior FTA regional office approval before awarding the next contract with a liquidated damage clause.

46. *Identify time and materials contracts the grantee has entered into using FTA funds.*
47. *How did the grantee determine that a time and materials contract was the only method suitable for the procurement?*
48. *For time and materials contracts, did the grantee specify a ceiling price?*

EXPLANATION

Time and materials contracts are listed as a restricted type of procurement. They are contracts in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a time and materials type contract is an indeterminate amount. As such, grantees are not permitted

to use FTA funds for time and materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time and materials type contracts are used, grantees must specify a ceiling price that the contractor shall not exceed, except at its own risk.

REFERENCES

2 CFR 200.318(j)(1)
49 CFR 18.36(b)(10)
FTA C. 4220.1F, Ch. VI, Section 2.c.(2)(b)

SOURCES OF INFORMATION

Refer to information provided by the grantee. If the grantee indicates that it has used time and materials contracts involving FTA funds, examine procurement files for these contracts (in accordance with records sampling procedures) for documentation supporting the grantee's decision to use a time and materials contract and to ensure the contract specified a ceiling price.

DETERMINATION

The grantee is deficient if FTA funds were used in a time and materials contract and the files do not support the grantee's decision or the contract does not specify a ceiling price. (**DEFICIENCY CODE 281**: Improper time and materials contract)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time and materials contracts. Require the grantee to obtain prior FTA regional office approval before entering into the next time and materials contract

49. *Identify any FTA-funded equipment obtained since the past Comprehensive Review through a piggyback, state-led, or joint procurement method.*

EXPLANATION

Recipients of FTA financial assistance are required by 49 U.S.C. Section 5325(a) and 2 CFR 200.319 to use full and open competition when making purchases, including vehicle purchases. Usually a grantee fulfills this requirement by one of three procurement methods: (1) conducting a stand-alone procurement for a finite number of vehicles; (2) jointly procuring a finite number of vehicles with one or more grantees; or (3) accepting the assignment of another grantee's contractual right to purchase a finite number of vehicles (aka "piggybacking"). One common requirement in all methods is that the number of vehicles to be purchased is based on the grantee's actual needs and is advertised with the solicitation. Thus, all respondents to the solicitation can provide a bid price based on the number of vehicles to be purchased as well as other salient factors contained in the solicitation. When the contract is formed, the grantee commits to purchasing vehicles at the agreed upon price and the vendor commits to furnishing the vehicles at that price. Prior to October 1, 2015, grantees were not permitted to purchase vehicles from another state's schedule. Effective October 1, 2015 section 3019 of, the FAST Act now permits grantees to purchase rolling stock and related equipment from another state's schedule.

Joint procurements

A joint procurement is a method of contracting in which two or more grantees agree from the outset to use a single solicitation document and enter into a single contract with a vendor. The parties to a joint procurement may be from more than one state. FTA encourages the use of joint procurements when combining requirements into a larger order can result in a more advantageous contract for the participating recipients. FTA's current guidance does not require the needs of each joint procurement participant to be separately written into the contract. And, as with regular procurements, a joint procurement may take the form of an indefinite delivery/indefinite quantity contract (ID/IQ) if it contains "total minimum and total maximum" terms.

Participation in a joint procurement does not relieve any recipient of the responsibilities it would have if it were procuring goods or services by itself. Recipients that participate in a joint procurement must adhere to all applicable Federal requirements, including the prohibition against using Federal money to procure unneeded items.

A joint procurement may not be used as an opportunity to improperly expand the scope of a federally assisted contract. A contract has been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

FTA has determined that grantees may not purchase items from certain buying cooperatives such as the National Joint Powers Alliance (NJPA) and the Houston-Galveston Area Council (HGAC). The FTA regional office should be consulted before entering into any agreements with such organizations. The FAST Act created a pilot program to allow nonprofit organizations to enter into cooperative procurement contracts for rolling stock and related equipment. FTA is in the process of developing the pilot program.

Piggybacking

For reasons of economy, FTA permits the assignment of unneeded contract rights, sometimes called “piggybacking.” FTA discourages the assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has inadvertently acquired contract rights in excess of its needs due to changed circumstances or honest mistakes.

Intentionally procuring excessive quantities using Federal money is a violation of the Super Circular. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the Super Circular’s general purpose of full and open competition in federally assisted procurements.

While it has become increasingly popular for grantees to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A grantee that obtains contractual rights through assignment may use them after first determining that the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The grantee need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the grantee to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the grantee seeking the assignment to review the original contract to be sure that the quantities the assigning grantee acquired, coupled with the quantities the acquiring grantee seeks, do not exceed the amounts available under the assigning grantee’s contract. Otherwise, the purchase is a “tag-on” and is considered an improper sole source procurement.

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar items to be permissible changes.

Vehicles added to the base or option amounts originally specified are called “tag-ons.” Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

If a grantee is using another grantee’s procurement contract for purchasing revenue vehicles (i.e., “piggybacking”), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the grantee must review the audit and prepare its own signed certifications.

State-led procurements

States are accorded substantial deference under 49 CFR 18.36(a) and 2 CFR 200.317 in the policies and procedures used in state procurements. By this authority, a state may follow the same policies and procedures it uses for procurements from its non-Federal funds, so long as it ensures that every purchase order or similar contract includes any clauses required by Federal law. Many states use this authority to create purchasing schedules by which the state and its subsidiaries may acquire goods.

Prior to enactment of the FAST Act (December 4, 2015), FTA grantees located outside of a state’s borders (out-of-state grantees) were not permitted to purchase rolling stock or related equipment from that state’s schedule. Joint procurements (and in limited circumstances piggybacking) were the only forms of FTA-funded contracts permitted among grantees from different states.

REFERENCES

Section 3019 of FAST Act
2 CFR 200.317
49 CFR 18.36(a)
FTA C. 4220.1F, Ch. V Section 3
FTA C. 4220.1F, Ch. V Section 7(a)(2)(b)(1)
FTA C. 4220.1F, Ch. IV Section 1(c)(1)
FTA C. 4220.1F, Ch. V Section 4
FTA C. 4220.1F, Ch. V Section 7(a)(2)(a)
FTA C. 4220.1F, Ch. V Section 7(a)(2)
FTA C. 4220.1F, Ch. IV Section 1(b)(2)(b)
FTA Administrator's Policy Letter March 8, 2013
FTA Chief Counsel Policy Letter July 8, 2013

SOURCES OF INFORMATION

Refer to information obtained from the grantee for any piggyback, state-led, or joint procurements conducted since the last Comprehensive Review. Review the file of a piggyback procurement, if applicable. Review the contract and correspondence between the two agencies involved in the piggyback arrangement to ensure that the original procurement contains an assignability clause and meets FTA requirements (e.g., competitive award, required clauses included, required certifications filed, cost/price analysis conducted, five- or seven-year contract term, etc.). Ask the grantee if any changes to the vehicle were required and determine if these changes were within the original scope.

DETERMINATION

The grantee is deficient if it cannot document that the original award contains an assignability clause, vehicles are still available for assignment, or FTA requirements were met. The grantee is deficient if it conducted a "tag-on" purchase. The grantee is deficient if changes were beyond the original contract scope. The grantee is deficient if it used FTA funds for an ineligible piggyback, joint, or state-led procurement prior to the FAST Act allowing applicable methods. (**DEFICIENCY CODE 231**: Improper piggyback purchase)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with piggybacking, state-led, or joint procurement procedures that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to provide revised procedures that address the requirements for a piggyback, state-led, or joint procurement and continue the process in accordance with Federal regulations, or possibly terminate the agreement for convenience, if an improper piggyback procurement is in process. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

PART D: REVENUE ROLLING STOCK PROCUREMENTS

50. *Since the last Comprehensive Review, identify any contracts for revenue rolling stock and replacement parts that include ordering periods exceeding five years in total length including base and options for bus procurements or seven years for rail procurements.*

EXPLANATION

Grantees must not enter into contracts for revenue rolling stock and replacement parts with a period of performance exceeding five years for bus procurements inclusive of options, extensions, or renewals, and seven years for rail procurements. The five- and seven-year rules do not mean the grantee must obtain delivery, acceptance, or even fabrication in five or seven years. The grantee, may not exercise the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

REFERENCES

49 U.S.C. 5325(e)(1)
FTA C. 4220.1F, Ch. IV, Section 2.e.(10)

SOURCES OF INFORMATION

During the site visit, in accordance with records sampling procedures, examine procurement files for rolling stock and replacement part contracts to ensure that these meet the five- and seven-year contract term restriction. Review any waiver requests and/or approvals.

DETERMINATION

The grantee is deficient if a revenue rolling stock contract represents more than the five or seven years' requirements. (**DEFICIENCY CODE 240**: Contract(s) period of performance exceeds limitation)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office revised procurement procedures that include the five- and seven-year restriction on the period of performance for rolling stock and replacement part contracts supported with FTA funds. Direct the grantee to provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract that exceeds the five- or seven-year restriction. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

51. When does the grantee obtain the bus testing report (Altoona testing) showing the bus model purchased meets FTA's bus testing requirements?

EXPLANATION

The grantee must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service, including, but not limited to, new bus and van models using alternative fuels such as methanol, ethanol, compressed natural gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting test report prepared on the bus model before the final acceptance of the first vehicle. Effective October 31, 2016, the effective date of the revision to 49 CFR Part 665, recipients must certify that the bus models submitted to Altoona following the effective date received a passing score before FTA funds can be spent on that vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA grantees in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

REFERENCES

49 CFR Part 665
FTA C. 9030.1E, Ch.V Section 11.f
Bus Testing Website

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for a copy of the Altoona Bus Test Report for the specific make/model purchased. For bus models submitted to Altoona October 31, 2016 and after, the grantee is deficient if a copy of the Altoona Bus Test Report indicating that the vehicle received a passing test score is not in the grantee's procurement files.

Review the grantee's procurement procedures for a discussion of bus testing. On site, discuss the process for obtaining a copy of the test report.

DETERMINATION

The grantee is deficient if a copy of the Altoona Bus Test Report is not in the grantee's procurement files. (**DEFICIENCY CODE 317**: Deficiency with bus model testing requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to obtain the Altoona Bus Test Report for the specific make/model purchased and provide a copy of it and procedures for obtaining the report for future bus purchases to the FTA regional office. If the vehicle has not

been tested and the grantee has taken delivery of the vehicle(s), notify the FTA regional office immediately. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

52. *How does the grantee conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?*

53. *How does the grantee verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages?*

EXPLANATION

A grantee purchasing revenue service rolling stock with Federal funds must conduct pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, and Federal Motor Vehicle Safety Standards (FMVSS). The grantee is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the grantee to complete two certifications (Buy America and Purchaser's Requirements) at the pre-award stage and three certifications (Buy America, Purchaser's Requirements, and FMVSS) at the post-delivery stage.

A procurement of small buses and vans which totals not more than \$150,000 is not subject to the general Buy America requirements of 49 CFR Part 661. This waiver does not exempt rolling stock from the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR Part 663.

Pre-Award Audits and Certifications

Grantees may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

If a grantee is using another grantee's procurement contract for purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the grantee must review the audit and prepare its own signed certification.

Compliance with purchaser's specifications: The grantee must complete a pre-award purchaser's requirements certification verifying that the manufacturer's bid specifications comply with the grantee's solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-award certification may be based on the grantee's determination that the vendor is responsive and responsible. The requirement to conduct an audit for compliance with purchaser's requirements and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold. The pre-award audit is required before a grantee enters into a formal contract with a supplier.

Post Delivery Audits and Certifications

Compliance with Purchaser's Specifications: The grantee must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. This must be completed before a bus title is transferred to the grantee or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the grantee's visual inspections and road tests and, if required, the resident inspector's monitoring of the final assembly process and final report of manufacturing activities. The requirement to conduct an audit for compliance with purchaser's requirements and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold.

Grantees are required to have a resident inspector during final assembly process if they meet the following criteria:

- Grantee is purchasing any number of rail vehicles
- Grantee is in an urbanized area with a population of more than 200,000 and is purchasing more than 10 buses
- Grantee is in an area with a population of 200,000 or less and is purchasing more than 20 buses

FTA does not require in-plant inspectors for any number of unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the requirement for multiple grantees. The inspector may not be an agent or employee of the manufacturer. The inspector must prepare a report providing accurate records of all vehicle construction activities and summarizing how the construction and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Compliance with Buy America: Required post-delivery certification includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts, the cost (actual or percent of total) of such components and subcomponents and the country of origin; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent of domestic content of the vehicle.

The grantee or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

FMVSS: The grantee must complete, at the post-delivery stage, a certification that the grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stages a certification that the vehicles comply with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571). The requirement to conduct an audit for compliance with FMVSS and sign a certification applies to all purchases of revenue rolling stock, even those below the Federal simplified acquisition threshold.

REFERENCES

49 USC 5323(m)
49 CFR Part 571
49 CFR Part 661
49 CFR Part 663
FTA C. 9030.1E, Ch. V Section 11.e
FTA Buy America Website
Buying Used Buses
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for copies of pre-award and post-delivery audits, certifications, and review and inspection forms demonstrating that the grantee ensured the manufacturer complied with all vehicle specifications, including Buy America.

Review the grantee's procurement procedures for a discussion of pre-award and post-delivery audits. On site, discuss the process for completing the pre-award and post-delivery audits and certifications. If an in-plant inspector was required, discuss how the requirement for an in-plant inspector was fulfilled. Identify the organization providing the in-plant inspector, e.g., the grantee, the subrecipient, or third party contractor to the grantee or subrecipient.

DETERMINATION

The grantee is deficient if it did not conduct all of the required audits for revenue rolling stock procurements. The grantee is deficient if it ordered a group of vehicles from a multi-year procurement before the pre-award audit was conducted. (**DEFICIENCY CODE 253:** Pre-award and/or post-delivery audits not performed)

The grantee is deficient if it conducted the required pre-award and post-delivery audits and documented the procedures but did not sign all required certifications. (**DEFICIENCY CODE 265:** Pre-award and/or post-delivery certifications lacking)

The grantee is deficient if it did not provide for an independent in-plant inspector during manufacture of the vehicles when required or did not prepare a report documenting the construction of the vehicles and how they meet the bid specifications. (**DEFICIENCY CODE 360:** Vehicles purchased without in-plant inspectors as required)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit documentation to the FTA regional office that the procurement complied with Buy America, FMVSS, and purchaser's requirements.

Direct the grantee to submit to the FTA regional office procedures for pre-award and post-delivery review and inspection. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office the certifications for the procurement reviewed and procedures for completing the applicable pre-award and post-delivery audits certifications for future revenue rolling stock procurements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds for the next revenue rolling stock procurement.

Direct the grantee to submit to the FTA regional office procedures for conducting pre-award audits for options and/or multi-year contracts so that future procurements will comply with this requirement. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office the inspector's report before drawing FTA funds for the next procurement requiring in-plant inspectors.

54. How does the grantee ensure that transit vehicle manufacturers have complied with Disadvantaged Business Enterprise (DBE) requirements?

EXPLANATION

As part of their DBE program, all grantees must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. Only those TVMs listed on FTA's certified list or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. The grantee is required to include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23).

A list of certified TVMs that have submitted required DBE information to FTA is available at the FTA website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list>. However, this list is not exclusive and grantees should consult with FTA to verify the status of TVMs not currently on the website. Prior to award, evidence that this website has been checked or evidence of communication with FTA's Office of Civil Rights to validate TVM certification, should be included in applicable procurement files. FTA has instructed TVMs to submit to grantees a copy of their FTA approval letters along with the TVM certifications.

The TVM definition is codified at 49 CFR 26.5. Note that producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered to be TVMs. Further, to the extent to which a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retro-fitting, that remanufacturer is considered a TVM. Again, only certified TVMs are eligible to bid on FTA-assisted procurements. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered TVMs.

REFERENCES

49 CFR 26.49
FTA C. 9030.1E, Ch. V Section 11.h
FTA's DBE Website

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for signed TVM certifications and evidence that a TVM was eligible to bid, either a signed approval letter or evidence of certification by FTA.

DETERMINATION

The grantee is deficient if it does not include, where applicable, a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out of

date (References Part 23 instead of Part 26). The grantee is deficient if it cannot provide evidence that it ensured that the manufacturer was an eligible TVM. (**DEFICIENCY CODE 272**: No TVM certification)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a signed TVM certification from the manufacturer and procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs at the time of solicitation.

Direct the grantee to submit to the RCRO an updated TVM certification template to be used in future revenue rolling stock procurements. Direct the grantee to submit to the FTA regional office a copy of the signed form with the next revenue rolling stock procurement.

PART E: EMERGENCY RELIEF PROCUREMENTS

55. *Provide a list (noting scope and dollar amount) of change orders to FTA Emergency Relief grant projects.*

56. *Did procurements funded with FTA Emergency Relief grants comply with 4220.1F?*

EXPLANATION

Grantees use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 49 CFR Part 18 (specifically Section 18.36), 2 CFR Part 200, and FTA Circular 4220.1F, "Third Party Contracting Guidance."

A change order is an order authorized by the grantee directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Change orders must be approved by authorized grantee officials. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Grantees must develop an ICE and perform a cost or price analysis in connection with every procurement action, including contract modifications/change orders. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

To be eligible for FTA assistance under the grantee's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

REFERENCES

2 CFR 200
49 CFR 18.36
FTA C. 4220.1F, Ch. III, Section 3
FTA C. 4220.1F, Ch. VII, Section 2
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Review procurement files of Emergency Relief-funded projects and refer to Question **Error! Reference source not found.**

DETERMINATION

The grantee is deficient if Section 5324-funded procurements are not in compliance with applicable requirements of FTA Circular 4220.1F, if not otherwise waived. (**DEFICIENCY CODE 583**: Section 5324 project procurement deficiencies)

The grantee is deficient if it does not have adequate supporting documentation for change orders to Section 5324-funded projects. (**DEFICIENCY CODE 584**: Insufficient documentation for Section 5324 change orders)

SUGGESTED CORRECTIVE ACTION

Work with the FTA regional office to develop corrective actions for any deficiencies found.

Direct the grantee to submit change order procedures to the FTA regional office.

PART F: CONTRACT ADMINISTRATION

57. How does the grantee define “contract administration?”

- a. *Does the grantee have written procedures describing the activities associated with contract administration?*
- b. *How is contract administration provided within the grantee’s organization? For example, once a contract is awarded (or purchase order issued), how does the grantee ensure the terms and conditions of the contract are met by the contractor and by the grantee?*
- c. *How does the grantee inform staff of their contract administration responsibilities? What formal training is provided?*
- d. *Which personnel are responsible for overseeing grantee contract administration activities?*
- e. *Do the contract administration activities include evaluating contractor performance?*
- f. *If yes, how is the evaluation completed and documented, what office or job position receives the evaluation, and how does the grantee utilize the information?*
- g. *How are contract changes managed and recorded? Are there written procedures?*

EXPLANATION

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

Many FTA grantees assign contracting duties to technical, financial, or management personnel. If the grantee lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the grantee, FTA expects the grantee to acquire the necessary services from sources outside the grantee’s organization. When using outside sources, the grantee should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment or would result in unfair competitive advantage.

REFERENCE

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

SOURCES OF INFORMATION

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

Review selected contract files, in accordance with records sampling procedures, for evidence that vendors and contractors are being monitored to ensure they perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. Note any records of inspections and approvals for catalogue cuts or material source/composition required, deliverables provided or services performed for evidence that the grantee is making sure vendors and contractors adhere to contract requirements. Note correspondence between the grantee and its contractors for evidence of ongoing contract administration.

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

DETERMINATION

The grantee is deficient if non-performance of contractors is a persistent problem, or the grantee cannot provide any evidence of a contract administration system. (**DEFICIENCY CODE 64:** No contract administration system)

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

If contractors have not performed according to the terms and conditions of their contracts, the grantee may be deficient depending on the extent to which it has taken remedial action. If contract administration appears to be an organizational problem (i.e., deficiencies in a contractor's performance with respect to maintenance, procurement, ADA, drug and alcohol, etc.), a deficiency in the technical area also may be warranted.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office documentation of an adequate contract administration system and/or evidence of remedial actions taken against contractors that have not performed in accordance with the terms and conditions of their contracts. Direct the grantee to provide the FTA regional office with documentation that it has implemented its contract administration system. Direct the grantee to revise its contract administration system.

58. *Demonstrate that contract amendments and change orders were approved by the appropriate authorized official(s).*

59. *Demonstrate that contract amendments and change orders were determined to be fair and reasonable via use of an ICE and cost or price analysis.*

60. *Demonstrate that contract amendments and change orders were consistent with the contract's base scope.*

EXPLANATION

A change order is an order authorized by the grantee directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Change orders must be approved by authorized grantee officials. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Non-state grantees must develop an ICE and perform a cost or price analysis in connection with every procurement action, including contract modifications/change orders. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

To be eligible for FTA assistance under the grantee's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

REFERENCES

2 CFR 200.318(b)
49 CFR 18.36(b)(2)
FTA C. 4220.1F, Ch. III, Section 3
FTA C. 4220.1F, Ch. VII, Section 2
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Review selected contract files, in accordance with records sampling procedures, for approvals and justifications for any change orders issued. Consider the effect of change orders on existing contract clauses and other thresholds. Ensure that any change orders include clauses required by the new cumulative contract value. If necessary, ensure that the grantee obtained signed Buy America and lobbying certifications with the change order.

DETERMINATION

The grantee is deficient if it does not have adequate supporting documentation for change orders. (**DEFICIENCY CODE 277**: Insufficient documentation to support change orders) If the grantee did not consider the effect of change orders on other requirements (clauses, Buy America, lobbying), note the deficiency.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit change order procedures to the FTA regional office. For the next change order, submit to the FTA regional office documentation that the required process was implemented.

61. How does the grantee demonstrate that it only uses advance payments after receiving written approval from the FTA regional office?

62. How does the grantee demonstrate that it obtained title to the property or took alternative measures to protect FTA's interests if progress payments have been made?

EXPLANATION

FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A grantee may use its local funds for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The grantee may use FTA assistance to support progress payments, provided the grantee obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the grantee's financial interest in the progress payment.

REFERENCES

49 CFR 26.29

FTA C. 4220.1F, Ch. IV, Sections 2. b(5)(b) and (c)

FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Review selected contract files, in accordance with records sampling procedures, for:

- Evidence that grantee obtained FTA approval before making any advance payment(s)
- Evidence that the grantee took appropriate measures to protect the government's financial interests before making any progress payment(s)

DETERMINATION

The grantee is deficient if it has used advance payments without prior FTA approval. The grantee is deficient if it has made progress payments but has not obtained adequate security for those payments and does not have sufficient written documentation to substantiate the work for which payment was made. (**DEFICIENCY CODE 309**: Improper advance/progress payments)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to cease immediately any advance/progress payment practice that violates FTA guidelines. Direct the grantee to report immediately to the FTA regional office any improper advance payments with an explanation of the circumstances surrounding the payments. Direct the grantee to submit documentation that it has prepared required approvals and justifications missing from the files and that it has developed a process to ensure that future files are complete. Direct the grantee to submit to the FTA regional office procedures for obtaining prior FTA approval

for advance payments. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

Direct the grantee to submit to the FTA regional office procedures for obtaining adequate security and or sufficient written documentation to substantiate the work for progress payments. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

63. *What FTA-funded contracts contain option clauses?*

64. *What process did the grantee use to evaluate the options at the time of the initial bid?*

65. *What is the process used to exercise an option?*

EXPLANATION

Grantees may include options in contracts. If a grantee chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement.

A grantee also must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award, and the grantee must determine that the option price is better than prices available in the market or the option is the more advantageous offer at the time it is exercised.

If the option quantities on a rolling stock or replacement parts purchase appear to exceed the grantee's reasonably foreseeable needs, the grantee may be in violation of the five- or seven-year limitation.

REFERENCES

49 U.S.C. 5307(d)(1)(E)

FTA C. 4220.1F, Ch.VI, Section 7.b and Ch. V, Section 7.a(1)

SOURCES OF INFORMATION

At the site visit, review selected contracts and other procurement documents to determine whether options and periods of contract exceed the limits and whether options were priced, and those prices evaluated prior to executing. In some cases, the grantee may have assigned options to another party (i.e., "piggy-backing"). In these cases, ensure that the options available to the grantee have been reduced by the number assigned to the other party and that the original quantities were based on the grantee's foreseeable need.

DETERMINATION

The grantee is deficient if the options were not evaluated with the initial bid and were exercised. The grantee is deficient if options were assigned improperly to another grantee. The grantee is deficient if options are not priced. The grantee is deficient if the options were established appropriately but were exercised without the requisite price analysis. The grantee is deficient if the contract quantities were not based on the grantee's foreseeable needs. (**DEFICIENCY CODE 302:** Improper use of options)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide to the FTA regional office a written assurance that it will not exercise the options unless FTA approval is granted for instances where options that may violate the requirements have not been exercised.

Direct the grantee to develop procedures for complying with FTA requirements when exercising options if the review has found that the grantee has exercised options that were not evaluated and priced initially, or were assigned improperly to another grantee. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

Consult the FTA regional counsel if the contract quantities were not based on the grantee's foreseeable needs.

66. *Where do the grantee's written procurement policies or procedures address records retention systems?*

67. Does the grantee maintain a written record of procurement history?

EXPLANATION

Grantees must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

REFERENCE

2 CFR 200.318(i)
49 CFR 18.36(b)(9)
FTA C. 4220.1F, Ch. III, Section 3.d(1)

SOURCES OF INFORMATION

At the site visit, examine procurement files for evidence of each of the items mentioned above. For most grantees, the procurement file will be the official record of the procurement history.

DETERMINATION

The grantee is deficient if its procurement records do not contain a significant history for each procurement that was examined. (**DEFICIENCY CODE 130**: No written record of procurement history)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected.

PART G: PROCUREMENT OVERSIGHT

68. If the grantee contracts for services funded with Federal monies and/or has the grantee passed through FTA funds to a subrecipient:

- Did the grantee include competitive procurement requirements in its contract or subrecipient agreement?*
- How does the grantee monitor the procurement process of the contractor and/or subrecipient to ensure all Federal requirements are met?*

EXPLANATION

When a grantee contracts out a portion of its federally funded operation or passes through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient. Typically, this requirement would apply to any third party or subrecipient agreement in which the contractor or subrecipient performs primary project activities normally performed by the grantee directly. In such circumstances, the procurement process of the contractor/subrecipient should meet Federal requirements contained in the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. Furthermore, a grantee needs to have a mechanism to ensure contractor/subrecipient compliance.

Subrecipients of states that are public entities and contractors must comply with FTA requirements that apply to states. Subrecipients of states that are private nonprofit or for profit entities must comply with all the FTA requirements of FTA C. 4220.1F. FTA considers all metropolitan planning organizations (MPOs), even those

incorporated as a nonprofit organization under state law, to be “local governments.” Consequently, MPOs must comply with the FTA requirements that apply to states.

The following procurement requirements apply to states and their public entity subrecipients and contractors:

- Comply with its own procurement regulations
- Conduct all procurements in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services, if the State has not adopted a statute governing the procurement of such services before August 10, 2005
- Award to only responsible contractors possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract
- Ensure that every purchase order and contract executed using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations
- Do not enter into any contract for rolling stock with a period of performance for ordering exceeding five years inclusive of options without prior FTA approval
- Comply with Buy America requirements, including pre-award and post-delivery requirements
- Comply with debarment and suspension requirements
- Comply with lobbying requirements
- Comply with piggybacking requirements

In addition to the requirements that apply to states, FTA C. 4220.1F requirements that apply to private nonprofit or for-profit entities include, but are not limited to, the following:

- Maintain a written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
- Have written procurement policies and procedures
- Have written protest procedures to handle and resolve disputes relating to the award of contracts
- Have procedures for settlement of contract issues/disputes
- Analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest
- Review procurement requests to avoid duplicative or unnecessary purchases
- Incorporate a clear and accurate description of the material, product, or services being procured; identify all requirements that offerors must fulfill; and identify evaluation factors in solicitations
- Develop an ICE before receiving bids or proposals
- Conduct a contract cost or price analysis for every procurement

- Evaluate options at the time of bid award, exercise the options at the agreed upon terms, and determine that the option price is better than current market prices before exercising the options
- Maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders
- Maintain a written record of procurement history

FTA C. 4220.1F contains a complete list of third party contracting requirements.

Some grantees provide written guidelines or standard terms and conditions to subrecipients and contractors for direct procurements. Some grantees review subrecipients' and contractors' direct procurements, particularly for vehicles, equipment and construction. Such reviews, which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The grantee is not required to review each subrecipient's procurement to ensure compliance with Federal requirements. The grantee may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

REFERENCE

2 CFR 200.331(d)

2 CFR 200.328

49 CFR 18.37

49 CFR 18.40

FTA Master Agreement, Section 3

FTA C. 4220.1F

SOURCES OF INFORMATION

Review contracts and subrecipient agreements in accordance with records sampling procedures to ensure that they contain FTA third party procurement requirements. Determine how applicable contract clauses are implemented and who on the grantee staff monitors the contractor/subrecipient operations, including procurement. Determine how the grantee monitors adherence to the requirements. Ask how the grantee monitors the procurement process of a contractor/subrecipient and examine written reports or audit reports of the process. During a site visit to a subrecipient or a contractor, review a sample of procurement records.

DETERMINATION

The grantee is deficient if the subrecipient agreement or contract does not include procurement requirements. (**DEFICIENCY CODE 255:** Subrecipient's and/or third party contractor's procurement process deficient)

The grantee is deficient if it does not monitor subrecipients or contractors making direct procurements with FTA assistance for compliance with the requirements. (**DEFICIENCY CODE 278:** Insufficient oversight of procurement)

SUGGESTED CORRECTIVE ACTION

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

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

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
All FTA-Assisted Third Party Contracts and Subcontracts		
No Federal government obligations to third parties by use of a disclaimer		§2.m
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§10.a
Federal changes		§2.g
Civil Rights (EEO, Title VI & ADA)		§13
Incorporation of FTA Terms	Per FTA C. 4220.1F	§17.a
Energy Conservation		§30
Awards Exceeding \$10,000		
Termination provisions	49 CFR Part 18 Not required of states	§12
Awards Exceeding \$25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000 – see Note)		
Buy America	When tangible property or construction will be acquired	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§44
Awards Exceeding \$100,000 by Statute		
Lobbying		§3.d
Clean Air		§17.n
Clean Water		§17.n
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c
Construction Activities		
Davis Bacon Act	Except for contracts <\$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market	§28.a

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
Copeland Anti-Kickback Act Section 1 Section 2	All Contracts >\$2,000	§28.a
Contract Work Hours & Safety Standards Act	Contracts >\$100,000	§28.a
Bonding for construction activities exceeding \$100,000	5% bid guarantee; 100% performance bond; and Payment bond equal to: <ul style="list-style-type: none"> • 50% for contracts < \$1 M • 40% for contracts > \$1 M, but < \$5 M • \$2.5 M for contracts > \$5 M Not required of states	§17.q
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§26.b
Special DOL Clause	Contracts >\$10,000	§13.c(3)
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000	§28.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§28.d
Charter Service Operations		§32
School Bus Operations		§33
Drug and Alcohol Testing	Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects	§40.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§19
Rights in Data and Copyrights		§20
Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§13.d
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§13.d
Recycled Products	Contracts for items designated by EPA, when procuring \$10,000 or more per year	§17.m
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g
Assignability Clause	Piggyback procurements	§17.a

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
State Requirements		
Special Notification Requirements for States		§42

Note: On December 19, 2014, a joint interim final rule was published, implementing for all Federal award-making agencies the final guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (commonly referred to as the “Super Circular”), which was published by the Office of Management and Budget (OMB) on December 26, 2013. The Super Circular consolidates eight existing grant-related circulars into one set of uniform regulations located in Title 2 of the CFR.

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

2 CFR Part 200 contains certain notable changes to FTA grants management. The Super Circular increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the FAR. This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 18 CFR 36(d)).

Similarly, the Buy America public interest waiver exempts “small purchases” from Buy America regulations, which incorporated by reference a provision from US DOT’s Common Grant Rule (49 CFR 18.36(d)) that set that threshold at \$100,000 or less. This threshold continues to apply for all grants obligated on or before December 25, 2014. On December 26, 2014, however, US DOT’s Common Grant Rule in 49 CFR Part 18 was replaced with a new regulation, 2 CFR Part 1201, which incorporates by reference OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and contains a higher threshold for simplified acquisitions.

Therefore, for grants obligated on or after December 26, 2014, the threshold is raised to match the simplified acquisition threshold set by 2 CFR 200.88, which incorporates by reference the Federal Acquisition Regulation at 48 CFR 2.1 (definitions), and currently is set at \$150,000. This amount will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the project and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$20,000 each under a single purchase order, the \$200,000 contract would make the procurement subject to Buy America Requirements, 49 CFR 661.7.

Exhibit 6.2
REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE***
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	§17.p(4)
Transit Vehicle Manufacturer Certification	Procurements of railcars or buses and modified mass produced vans	§13.d(3)
Buy America Certification	Projects >\$100,000 that contain steel, iron or manufactured products (see note)	§16.a
Pre-Award Audit	Rolling stock procurements	§17.p(3)
Pre-Award Buy America Certification	Rolling stock procurements>\$100,000 (see note)	§17.p(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)
Post-Delivery Audit	Rolling stock procurements	§17.p(3)
Post-Delivery Buy America Certification	Rolling stock procurements >\$100,000 (see note)	§17.p(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§17.p(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§17.p(3)
Excluded Parties Listing System search	Procurements > \$25,000	§3.b
Lobbying Certification	Procurements > \$100,000	§3.d
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$100,000 where contractor engages in lobbying activities	§3.d

**Exhibit 6.3
OTHER REQUIRED ITEMS (NON-STATE GRANTEES ONLY)**

REQUIREMENT	COMMENTS	FTA C. 4220.1F REFERENCES
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch. VI, §3.i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

Exhibit 6.4
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)	>\$100,000 (see Note)
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	

Exhibit 6.4
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	
Bonding (not required of states)				>\$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met

Exhibit 6.4
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over \$2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
ADA Access	A&E	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

***FTA MASTER AGREEMENT: The fiscal year 2017 FTA Master Agreement is under development. Pending transportation legislation may result in additional changes to the agreement. The anticipated release date is late calendar year 2016. Once it is finalized and released, FTA will update the relevant citations and provide grantees with revised sections through their respective regional FTA office and Comprehensive reviewer.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

BASIC REQUIREMENT

The grantee must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

AREAS TO BE EXAMINED

1. *DBE Program*
2. *DBE Goals*
3. *Certification*
4. *Good Faith Efforts*
5. *DBE Reporting*
6. *Transit Vehicle Purchases*
7. *Recordkeeping and Monitoring*

REFERENCES

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

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

USEFUL WEBLINKS

FTA DBE Website

Official Questions and Answers for DBE Program Regulation (49 CFR 26)

Enhanced Review Triggers

The following are potential triggers:

- the prior Comprehensive Review had deficiencies in the DBE area
 - a DBE Compliance Review, Unified Certification Program (UCP) Review, or Procurement System Review (PSR) identified weaknesses or has open deficiencies related to DBE
 - the grantee has entered into a DBE conciliation agreement with FTA
 - there are recent or active DBE fraud investigations, lawsuits, or settlement activities with the grantee's FTA-funded projects
 - DBE issues have been identified in FTA's grantee Oversight Assessment Tool (OAT)
 - there are complaints or protests in this area against the grantee
 - the grantee does not have a DBE program on file with FTA and the amount of FTA funding indicates that the grantee meets the threshold for a DBE program
 - the grantee's submission of its three-year goal was late or incomplete
 - the grantee's semi-annual reports have been late or the FTA regional civil rights officer (RCRO) has identified issues with submissions
 - the grantee is a certifying entity in its state's UCP and certification issues have been identified
 - the grantee does not demonstrate it has adequate expertise or resources to implement the program
 - the grantee's goal achievement for the past three completed fiscal years did not meet the applicable overall annual goal.
 - the grantee did not achieve its overall goal for FY 2015 (and/or FY 2016 if completed) and did not complete a shortfall analysis
 - the grantee is one of the top 50 grantees, did not achieve its overall goal for FY 2015 (and/or FY 2016 if completed) and the shortfall analysis was not submitted, was submitted late, or was incomplete
 - the grantee is one of the top 50 grantees, and has received an FTA Shortfall Corrective Action letter for the most recently completed fiscal year
1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Disadvantaged Business Enterprise (DBE) reviews, Unified Certification Program (UCP) reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of DBE?*
 2. *Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year (FFY)?*
 3. *If conducted, has a recent (since the last Comprehensive Review) PSR identified any issues related to DBE in the "Other Matters" section?*
 4. *If the grantee has entered into a DBE conciliation agreement with the Federal Transit Administration (FTA), what progress has been made towards satisfying the terms of that agreement?*
 5. *Did the grantee experience difficulty resolving or closing any DBE oversight review, investigation, or audit deficiencies or findings (e.g., late or insufficient submissions)?*
 6. *Are any deficiencies or findings currently open?*

7. *Are any issues related to DBE indicated in the grantee Oversight Assessment Tool (OAT)?*
8. *Have DBE complaints been filed with FTA against the grantee? If yes, have all such complaints been resolved?*
9. *Has the grantee or FTA received any bid protests related to DBE issues?*

EXPLANATION

In addition to Comprehensive Reviews, FTA periodically conducts DBE and UCP reviews of selected grantees and investigates complaints filed against grantees. Additionally, US DOT's Office of Inspector General (OIG) or other Federal or local agencies may conduct investigations or file lawsuits relating to DBE activity. If one of these reviews, investigations, or lawsuits was conducted, review the report, identify any open deficiencies or issues, and discuss with the FTA RCRO or appropriate staff.

PSRs are discretionary, in-depth oversight reviews used by FTA when grantees are considered to have higher risk. The PSR can be a "full scope" review in which all aspects of a grantee's procurement practices are studied and tested; a "follow-up" review; or a more tailored review of one or more procurement areas. While conducting a review, issues related to DBE may be identified in the report.

If it appears, from the investigation of a complaint or the results of a compliance review, that a grantee is in noncompliance with the DBE regulation, FTA can send a written notice advising that there is reasonable cause to find the grantee in noncompliance. The notice states the reasons for this finding and directs the grantee to reply within 30 days concerning whether they wish to begin conciliation. Conciliation agreements set forth the measures the grantee must take to ensure compliance, and may require quarterly reporting.

FTA regional office staff completes an annual grantee OAT for each grantee that focuses on several areas of importance for FTA. Items identified in the DBE area of the OAT could indicate issues in this area.

Any person who believes that the DBE regulation has been violated may file a written complaint. Bid protests relating to DBE, while not complaints, could also trigger an enhanced review.

REFERENCES

49 CFR 26.103(d)

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak for:

- DBE deficiencies in the most recent Comprehensive Review
- A DBE review, UCP review, or PSR conducted in the past three years
- DBE conciliation agreements
- Current OAT in OTrak
- Protests or complaints received by FTA related to DBE issues

DETERMINATION

A grantee is deficient if it is not complying with the terms of its DBE conciliation agreement. (**DEFICIENCY CODE 777**: Non-compliance with DBE conciliation agreement)

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a timeline for, and evidence of completion of, remaining conciliation agreement conditions.

10. *Has the grantee submitted a DBE program to FTA?*

11. *If no, does it appear that the grantee met the threshold for submitting a program to FTA?*

12. *If the grantee submitted a DBE program to FTA, was it submitted on time?*

a. *Was the program uploaded to the FTA Electronic Award and Management System (EAMS)?*

b. *Has FTA approved the program?*

EXPLANATION

Written DBE programs are required for FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year. Contracting opportunities are counted in the aggregate, and include FTA-funded purchase orders, capital projects, professional services, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan-funded projects, and contracting activities of subrecipients. Micro-purchases are counted toward this threshold.

The DBE program plan is not an annual submission and grantees do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted to FTA for approval. Grantees (particularly new grantees) that do not meet the threshold are not required to develop a written DBE program. FTA has established a policy that all civil rights programs must be submitted using the FTA Electronic Award and Management System (EAMS).

A grantee that is required to have a written program and is part of a local government may be allowed to submit a single plan to the Federal Highway Administration (FHWA) if it receives more funding from FHWA than from FTA. The grantee still must submit transit-specific overall three-year agency goals to FTA, if applicable.

REFERENCES

49 CFR 26.21

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the grantee's DBE program in the EAMS.

DETERMINATION

A grantee is deficient if it has \$250,000 of FTA funds in contracting opportunities and a program has not been submitted by the time of the site visit and/or the grantee has not responded to FTA's request for additional information. (**DEFICIENCY CODE 41**: No approved DBE program)

If a program had not been uploaded to the EAMS, the grantee is deficient. (**DEFICIENCY CODE 590**: DBE program not uploaded to the EAMS)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop, revise, and/or upload its DBE program to the EAMS and notify the FTA RCRO once completed.

13. *Were the overall DBE goals submitted to FTA by August 1 preceding the designated submission year?*

14. *Do the projects/work areas discussed in the goal correspond to programmed projects in current grants?*

15. *Does the grantee have a zero percent DBE goal?*

EXPLANATION

For grantees that meet the threshold described in Questions 8-12, overall three-year goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. DBE goals must be partially based on an assessment of the availability of DBEs or potential DBEs. Grantees are not allowed to simply rely on past participation or past goal methodologies when they establish their goal.

On rare occasion, a grantee may submit a zero percent DBE goal. It is important for grantees to consider all contracting opportunities funded with its FTA capital, operating, and planning grants during its goal-setting process. The regulation defines a contract as any legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.

Grantees that are using DBE directories and Census data in goal setting that are concerned that these sources do not accurately reflect the number of potential DBEs in their area should seriously consider supplementing the number of firms in these sources for the purposes of goal-setting. This could be done by carefully examining lists of DBEs and MBE/WBEs (Minority Business Enterprises/Women Business Enterprises) from other sources, such as other state or local transportation agencies (if the contracting opportunities are comparable), to determine whether they contain firms which could be considered ready, willing, and able DBEs. These additional steps should be for the purpose of goal setting only. In order to actually be included in a UCP Directory, an otherwise eligible firm must take the additional steps of going through the certification process.

A *race-conscious* measure or program is one that is focused specifically on assisting only DBEs, most commonly expressed as a DBE contract goal. A *race-neutral* measure or program is one that is, or can be, used to assist all small businesses, but is also used to obtain DBE participation.

Grantees must actively engage the DBE community to facilitate participation, whether they are operating programs with race-conscious and race-neutral measures or they are operating a solely race-neutral program. Lack of DBE participation in past cycles should not be used as the sole reason to justify lowering DBE goals or outreach. Grantees who are unable to meet their goal using race-neutral means alone must establish contract goals per 49 CFR 26.51(d).

REFERENCES

49 CFR 26.5
49 CFR 26.45
Tips for Goal-Setting

SOURCES OF INFORMATION

Review information provided by the FTA regional office, the grantee's DBE program, and current and previous goal submissions in the EAMS. Review grant-funded project information in the EAMS.

DETERMINATION

The grantee is deficient if overall DBE goals were not submitted to FTA by August 1 (or by another date established by FTA based on an extension request). (**DEFICIENCY CODE 100**: DBE goal not submitted or submitted late to FTA)

The grantee is deficient if overall DBE goals exclude "reasonably anticipated contracting opportunities." (**DEFICIENCY CODE 548**: DBE goal submission not complete)

The grantee is deficient for lowering DBE goal values in subsequent cycles without considering alternative measures such as race-conscious measures. (**DEFICIENCY CODE 548**: DBE goal submission not complete)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to upload its DBE program to the EAMS and notify the FTA RCRO once completed.

Direct the grantee to submit to the FTA RCRO its overall three-year DBE goal, or adjusted goal, and implement a procedure to ensure that future goals will be submitted by August 1.

For incomplete goal submissions, direct the grantee to reevaluate its overall goal and submit the results of this reevaluation to the FTA RCRO.

16. Has the grantee submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually and by the required due dates?

17. For each of the past three completed Federal fiscal years, what has been the grantee's goal achievement? (Complete Exhibit 7.1 at the end of this section.) Is it below the overall goal established in the applicable goal submittal?

18. If the grantee exceeded its overall goal using contract goals in fiscal years 2015 and 2016, did it reduce its use of contract goals in the following year?

EXPLANATION

Each grantee that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in the EAMS. The report addresses the contracting opportunities of the grantee and its subrecipients. Reports are due by June 1 (for the period covering October 1–March 31) and by December 1 (for the period covering April 1–September 30). A revised reporting form was provided in the DBE Final Rule, which became effective November 3, 2014. This form is to be used for all reports due June 1, 2015 and after.

DBE reports must be entered in the EAMS DBE reporting module and comments from FTA on those reports must be addressed.

To compare the annual DBE achievement of a grantee to its overall applicable goal, review both semi-annual reports for the fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by adding the total dollars awarded to DBEs (cells 8C and 9C totaled for both reports) divided by the total prime contract dollars awarded (cell 8A for both reports). NOTE: The reporting form to be used starting June 1, 2015 includes a line 10. For reports using the new form, the annual percentage awarded to DBEs is calculated by dividing the contents of cell 10C by cell 8A.

If the grantee obtains DBE participation that exceeds its overall goal for two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), the grantee must reduce use of contract goals proportionately in the following year.

REFERENCE

49 CFR 26.11
49 CFR 26.51(f)(4)
DBE Semi-Annual Reporting Form
FTA DBE Training Website

SOURCES OF INFORMATION

Examine the DBE files and the EAMS for correspondence regarding semi-annual report submittals. Verify that semi-annual reports are submitted in the EAMS. Discuss any issues the RCRO has identified with the timeliness or adequacy of DBE reporting.

Compare the last three year's reports to the applicable overall goals and how the attainment was achieved (e.g. race-neutrally or race-consciously).

Note to reviewers: Due to the transition from TEAM, some December 1, 2015 reports may not be readily available. Work with the RCRO to determine if these reports can be retrieved. It is possible that these reports may have to be requested from the grantee.

DETERMINATION

The grantee is deficient if it has not submitted the reports semi-annually, has not submitted them timely, is not using the electronic module in the EAMS or has not addressed FTA's comments on reports. (**DEFICIENCY CODE 327:** DBE uniform reports not submitted semi-annually or FTA comments not addressed)

The grantee is deficient if it has obtained DBE participation that exceeds its overall goal for two consecutive years through the use of contract goals but has not reduced the use of contract goals proportionately in the following year. (**DEFICIENCY CODE 778:** No proportionate reduction of race-conscious goals)

Determinations regarding the adequacy of semi-annual reports are made based on information in Question 54.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) in the EAMS, address comments made by FTA, and notify the FTA RCRO once completed. Direct the grantee to submit to the FTA RCRO an implemented procedure to ensure that future reports are submitted on time and FTA comments are addressed.

Direct the grantee to submit to the FTA RCRO procedures to proportionately reduce the use of race-conscious goals if it is exceeding its goals using race-conscious means.

19. Describe the resources utilized in the management of the DBE program in terms of personnel, responsibility, and experience. Does the grantee provide technical training to employees? (To answer the questions, please complete the following table.)

Responsibility	Number of Staff	Number of Staff with Less Than Three Years Experience in Their Position	Staff Vacancies	Type/Frequency and Method of Training for Responsibilities

20. Who or what department reviews DBE activity at the project level? How is this communicated to the DBE Liaison Officer (DBELO)?

21. How does the DBELO coordinate with the grantee’s procurement representatives on issues such as contract goal-setting, race-neutral measures, inclusion of required contract clauses, and contract administration?

EXPLANATION

In its Notice of Proposed Rulemaking of May 2010, US DOT called attention to the last section of 49 CFR 26.25, which requires that the recipient have adequate staff to administer the DBE program. It also noted that, “In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of Federal law that the DBE program be adequately staffed to ensure compliance with 49 CFR Part 26.”

Several areas of the DBE regulation require coordination and integration with other grantee areas of responsibility. These areas include grantee project and contract management staff, which often have the opportunity to observe and collect information on day-to-day use of DBEs by primes, and procurement staff, which often have a lead role in implementing requirements such as race-neutral measures and the small business element of the DBE program. Close coordination with the DBELO on these matters is crucial to successful compliance with the DBE regulation.

49 CFR Part 26 requires the inclusion of several contract clauses in DOT-funded procurements, including prompt payment and a non-discrimination clause. Each contract a grantee signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: “The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract,

which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.”

This text of this clause was modified in November 2014. The previously-required clause was similar and did not include the bulleted examples.

REFERENCES

49 CFR 26.25

49 CFR 26.13

SOURCES OF INFORMATION

Review the DBE program, organizational information, and training programs/information provided by the grantee. Consult the FTA RCRO for any indications of past problems with staffing. The non-discrimination clause is included in the clause checklist of the *Procurement* section of the review.

DETERMINATION

A staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. Non-inclusion of clauses required by 49 CFR Part 26, such as the non-discrimination clause noted above and prompt payment and return of retainage clauses could indicate inadequate coordination with a grantee's procurement personnel. Consult with the FTA RCRO prior to making this deficiency. (**DEFICIENCY CODE 303**: Inadequate resources and/or coordination to administer DBE program)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of all corrective actions taken to designate and/or coordinate DBE responsibilities properly.

22. *Describe responsibilities of additional personnel from other departments in the agency who contribute to the development or implementation of the program.*

23. *Is the grantee's DBELO the person listed in the DBE program? To whom does the DBELO report?*

EXPLANATION

For grantees that meet the threshold requiring that they have a DBE program, the grantee's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. It means that the DBELO must not be required to get anyone's consent or sign-off or "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

Care should be taken to avoid conflicts when assigning the DBELO as a collateral duty assignment. The DBELO performs an oversight function. If, for example, the procurement director is made the DBELO on a collateral duty basis, there may be a potential conflict of interest. If such an arrangement exists, the grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

REFERENCE

49 CFR 26.25

SOURCES OF INFORMATION

Examine the DBE program submissions and the organizational chart of the agency for the name and reporting relationship of the DBELO. The current DBELO should also be listed in the agency's contact information in the EAMS. During the site visit, confirm current staff assignments. An organizational chart can indicate reporting relationships. A job description for the DBELO can confirm responsibilities and reporting relationships.

DETERMINATION

The grantee is deficient if the DBELO cannot demonstrate direct and independent access to the CEO. The grantee is also deficient if the DBELO's position presents a conflict of interest relative to the individual's line of work and function in the organization. (**DEFICIENCY CODE 5:** Inadequate designation of DBE Officer)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of corrective actions implemented to designate DBE responsibilities properly.

24. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION

Grantees are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. A typical organizational change has been a revision to the position of the DBELO and the resulting reporting relationship to the CEO. FTA considers this to be a significant change to a grantee's DBE program that should be communicated to the FTA RCRO for approval.

REFERENCE

49 CFR 26.21

SOURCES OF INFORMATION

Review the information gathered from the above questions along with interviews on site. Review a current organizational chart and job description for the DBELO to determine if the DBE program on file with FTA is current.

DETERMINATION

The grantee is deficient if organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or resubmitted to FTA. (**DEFICIENCY CODE 264:** DBE policy not updated)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to upload an update of its DBE program to the EAMS for approval and notify the FTA RCRO once completed.

25. *What is the process that the grantee has in place to ensure that both its own direct FTA-funded contracting activities and those of its subrecipients are incorporated into overall agency goal-setting?*

26. *In setting its most recent overall goal, how did the grantee conduct a consultative process, as detailed in 49 CFR 26.45(g)1?*

27. *Prior to submission of the goal to FTA, did the grantee publish a notice of the goal? Does the website posting of the current goal remain on the grantee's website for the three-year duration of the goal?*

28. *If the grantee plans to meet DBE goals using race-conscious methods in the 9th circuit or where use of race-conscious methods are otherwise limited, when was a disparity study conducted?*

29. If the grantee plans to meet the DBE goal using only race-neutral measures, has it achieved its goal in the past two fiscal years? If not, is there any evidence to support the use of race-conscious means?

EXPLANATION

In establishing an overall three-year goal, grantees must provide for public participation. This public participation must include the following steps in this order:

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing the proposed overall three-year goal. *Prior to the DBE Final Rule, which became effective November 3, 2014*, the requirement was to inform the public that the proposed goal and its rationale were available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice was to be published in general circulation media, minority-focused media, and trade association publications.

The DBE Final Rule, which became effective November 3, 2014, now requires that the grantee posts on its website a notice announcing the proposed overall goal before submission to FTA. The notice may also be posted in any other sources (e.g., minority-focused media, trade association publications). The website notice of the goal is to remain posted on the grantee's website for the three-year duration of the goal. If a grantee chooses to do goal notice postings in addition to posting on its website, it must inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at the grantee's principal office and include a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent.

If the grantee is in the 9th circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, or Washington), a disparity study or similar analysis is required before race-conscious goals can be established. Neighboring recipients may have already conducted disparity studies that contain relevant information, and this evidence must be considered during goal setting.

Grantees in the 9th circuit who have failed to achieve their DBE goal, should examine all evidence to determine whether contract goals are appropriate. While grantees are not required to conduct a disparity study, they must consider evidence presented in disparities studies conducted by other grantees within their geographic market area/jurisdiction.

REFERENCES

49 CFR 26.45

Western States Paving Company Case Q&A

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the grantee's DBE program and goal submission in the EAMS. Review additional information provided by the grantee.

DETERMINATION

The grantee is deficient if it has not exhibited due diligence to consult with interested parties during its goal-setting process or adequately provided an opportunity to comment on its overall goal. The grantee is deficient if the notice of its goal (for any goal due on August 1, 2015 and after) is not posted on its website. For any goal submitted on August 1, 2015 or after, the grantee is not deficient if it did not publish the notice of its goal in media other than on its website. (**DEFICIENCY CODE 279:** DBE public participation process deficiencies)

The grantee is deficient if it uses race-conscious measures in the 9th circuit without having evidence to support their use. The grantee is deficient if it does not use race-conscious measures in the 9th circuit, has not achieved its goals, and has not considered other available disparity studies that may support race-conscious goals (e.g., disparity studies conducted by other recipients in the recipient's jurisdiction). (**DEFICIENCY CODE 549:** Insufficient evidence to support the use or non-use of race-conscious goals.)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA RCRO a timeline for facilitating public participation, including a schedule for consultative meetings and a timeline for issuing a public notice on its website for future cycles.

Direct the grantee to submit to the FTA RCRO an examination of disparity studies and other evidence within its area to determine if setting race-conscious goals can be supported, if in the 9th circuit. If applicable, suggest that a new disparity study be considered.

30. *If the grantee's DBE reports for FY2016 indicate that the grantee's awards to DBEs were less than the overall goal applicable to that year, did the grantee conduct the required shortfall analysis and corrective action plan?*

31. *If the grantee is one of the top 50 transit grantees:*

- a. When did it provide the shortfall analysis and corrective action plan to the FTA regional civil rights officer?*
- b. Did the FTA issue a shortfall corrective action letter to the grantee based on its review of the shortfall analysis?*
- c. Did the FTA issue a reasonable cause letter or enter into a conciliation agreement based on reporting or achievements?*

EXPLANATION

Beginning with reports for FY 2011, if the awards and commitments shown on a grantee's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that three-year period, it must do the following:

- Analyze in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year
- Establish specific steps and milestones to correct the problems identified in the analysis and to enable the grantee to meet fully the goal for the new fiscal year

The 50 largest transit agencies as determined by the FTA must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions described above for review. All other grantees must retain the analysis and corrective actions in their records for three years and make it available to FTA upon request for review.

If the shortfall analysis submitted by a grantee is not sufficient, FTA may issue a Shortfall Corrective Action letter or a reasonable cause notification. If the latter, the grantee can enter into a conciliation agreement.

REFERENCE

49 CFR 26.47
49 CFR 26.103
FTA DBE Website

SOURCES OF INFORMATION

Review the answer to Question 17. FTA's DBE website contains the list of top 50 transit agencies. Review analysis submissions by applicable grantees. When on site, review the analysis if it has not been submitted.

DETERMINATION

The grantee is deficient if its achievements were less than its overall goal, and the analysis was not conducted. The grantee is deficient if it is required to submit the analysis and corrective action plan to FTA and did not. The grantee is deficient if it has not addressed deficiencies in its shortfall analysis, as identified by FTA. (**DEFICIENCY CODE 308:** DBE goal achievement analysis and corrective action plan not completed or not submitted, or deficiencies not addressed)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO the required analysis for the missing year(s) and a corrective action plan, along with a written process to ensure future shortfall analyses are completed timely. Direct the grantee to submit documentation to the FTA RCRO to demonstrate that it has implemented a corrective action plan establishing specific steps and milestones to correct the problems identified in the analysis, or to correct issues identified in an FTA Shortfall Corrective Action letter.

32. *Is providing DBE information in response to a contract with a DBE goal an issue of responsiveness or responsibility?*

33. *Identify all contracts the grantee awarded to firms that did not meet the specified DBE contract goal. How did the grantee determine if “good faith efforts” were sufficient? At what point did the grantee make the good faith efforts determination?*

EXPLANATION

Not every FTA-funded contract is required to have a DBE goal. The grantee has the discretion to determine if the bidder must present information on DBEs proposed to meet the goal as part of bid responsiveness (provided at the time of bid) or no later than seven days after bid opening as a matter of responsibility. The seven days shall be reduced to five days beginning January 1, 2017. The DBE Final Rule, which became effective November 3, 2014, included the limitations on the number of days for responsibility.

Note: In 49 CFR Part 26, *days* is defined as calendar days. In computing any period of time, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday.

Prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the grantee must determine whether the efforts the firm made to obtain DBE participation were “good faith efforts” to meet the goal. Examples of efforts the grantee may consider include whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities, or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, named DBEs must be certified to do the scopes of work that they are contracted to perform.

REFERENCES

49 CFR 26.53 and Appendix A
49 CFR 26.5

SOURCES OF INFORMATION

During the site visit, ask the grantee to explain its methods for determining “good faith efforts.” During the review of the procurement area, if any solicitations include a DBE contract goal, document the goal and the DBE commitment stated in the award documents. Document if the provision of DBE information is a matter of responsiveness or responsibility. Determine how the grantee verifies that DBEs are certified for the type of work they are being named for prior to award. For a procurement where the awarded DBE amount is less than the goal stated in the solicitation, examine the grantee’s documented good faith efforts review.

DETERMINATION

The grantee is deficient if it allows provision of DBE information in response to a bid with a DBE goal to be provided as part of responsibility, but allows more than seven days after bid opening for the bidder to provide the information. (**DEFICIENCY CODE 775:** Inadequate timeframe for DBE responsibility determination)

The grantee is deficient if it cannot describe the methods for, or applicable procurement files do not include documentation of, the consideration of “good faith efforts.” The grantee is deficient if it does not verify that DBEs are certified to perform the type of work they are being named for prior to award. (**DEFICIENCY CODE 654:** Inadequate good faith efforts determinations)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to revise its procurement procedures to limit the amount of time that the bidder is allowed to demonstrate responsibility to five days.

Direct the grantee to submit to the FTA RCRO a method for determining “good faith efforts” in compliance with the regulation and/or evidence that it has included documentation in applicable procurement files.

34. *For each transit vehicle award since November 3, 2014, when did the grantee provide notification of this award to the FTA Office of Civil Rights?*

35. *If the grantee or a subrecipient set a project-specific DBE goal on a transit vehicle procurement when did it receive FTA approval?*

EXPLANATION

For transit vehicle awards made November 3, 2014 and after, FTA grantees are required to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted by using the online Transit Vehicle Award Reporting Form located on FTA’s Civil Rights DBE Webpage. The online reporting form was initiated in June 2016. Prior to that, grantees were to communicate awards made November 3, 2014 and after to their FTA RCRO. If the grantee issues a contract for transit vehicles that includes a base order and subsequent options, the grantee is to submit the information for the base number of vehicles and subsequently for each order of vehicle options awarded. The grantee should be submitting this information for itself and for subrecipients that are procuring transit vehicles with funds that it passes through to them.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Grantees may, *with FTA prior approval*, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of having TVMs certify their compliance.

REFERENCES

49 CFR 26.49

SOURCES OF INFORMATION

During the site visit, review FTA-funded transit vehicle procurement files.

DETERMINATION

The grantee is deficient if it did not report a transit vehicle award that occurred November 3, 2014 and after to FTA Office of Civil Rights within 30 days of making an award. (**DEFICIENCY CODE 774:** Unreported transit vehicle purchases)

The grantee is deficient if it included DBE goals on an FTA-funded transit vehicle purchase prior to receiving approval from FTA. (**DEFICIENCY CODE 655:** Unapproved DBE goals on transit vehicle purchases)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO an implemented process to ensure that notifications of award for future FTA-funded transit vehicle purchases are provided within 30 days of award.

Direct the grantee to submit to the FTA RCRO an implemented process to ensure that future FTA-funded transit vehicle purchases do not include DBE goals unless approval has been obtained from FTA.

36. *What portion of its overall contract goal did the grantee project meeting race neutrally?*

37. What steps has the grantee taken to implement the race-neutral measures noted in its goal submission?

38. How has this increased DBE participation on FTA-funded projects?

EXPLANATION

Grantees are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing)
- Providing technical assistance and other services
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate)
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low
- Ensuring distribution of the UCP directory to the widest feasible universe of potential prime contractors
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

Grantees include information on their race-neutral measures in the DBE program plan. Additionally, in their overall goal submission, grantees must include the projection of the portions of the overall goal they expect to meet through race-neutral means and the basis for that projection. If a grantee projects meeting part of their goal through race-neutral means and the remainder through contract goals, they must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

REFERENCES

49 CFR 26.51

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the grantee's DBE program, goal submission, and reports in the EAMS. In particular review the trend of the portion of the overall goal that the grantee is achieving through race-neutral means. Review additional information provided by the grantee.

DETERMINATION

The grantee is deficient if it is not meeting the race-neutral portion of its overall goal and cannot provide documentation of implementing the measures it described in its goal submission or DBE program plan. (**DEFICIENCY CODE 656**: Inadequate implementation of race-neutral measures)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO an implementation plan for race-neutral measures and evidence that these measures have been implemented.

39. *How has the grantee implemented the element in its DBE program for fostering small business participation?*

40. *How has implementation of the small business element improved DBE participation?*

EXPLANATION

By February 28, 2012, grantees were to submit an element to their DBE program for fostering small business participation. This element, required by a February 2011 change to the DBE regulation, must include provisions to structure contracting requirements to facilitate competition by small business. Grantees must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements, that may preclude small business participation in procurements as prime contractors or subcontractors.

As part of this program element grantees may include, but are not limited to, the following strategies:

- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g. \$1 million)
- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts
- To meet the race-neutral portion of overall agency goal, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform

REFERENCE

49 CFR 26.39

SOURCES OF INFORMATION

Examine regional office information for correspondence regarding DBE program submissions for this requirement. Review program submissions in the EAMS. Review information provided by the grantee to demonstrate implementation of small business participation strategies. Review information in DBE reports to see if there has been any noticeable increase in DBE participation.

DETERMINATION

The grantee is deficient if a program element addressing the fostering of small businesses has not been submitted. The grantee is deficient if it is not implementing small business strategies as described in its program. (**DEFICIENCY CODE 312**: Small business element not submitted and/or implemented)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a DBE program element that addresses the fostering of small business. Direct the grantee to submit to the FTA RCRO evidence of implementing its small business participation strategies.

41. *What prompt payment and return of retainage clauses are included in FTA-funded procurements?*
42. *How does the grantee monitor and enforce these clauses?*
43. *Since the last review, how many times have DBE subcontractors notified the grantee of issues related to prompt payment and/or return of retainage?*
44. *What steps were taken to address these issues?*

EXPLANATION

Grantees that meet the threshold requiring a DBE program must have a contract clause that requires prime contractors to pay all subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee.

Grantees must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The grantee must use one of the following methods to comply with the return of retainage requirement:

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors
- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed
- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after grantee's payment to the prime contractor

For purposes of the retainage requirement, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the grantee. When a grantee has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

A grantee's DBE program must provide appropriate means to enforce prompt payment. The grantee should be able to document implemented processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE

49 CFR 26.29

SOURCES OF INFORMATION

Review the grantee's DBE program plan for clauses and methods described for monitoring and enforcement. During the site visit, examine procurement files for the inclusion of appropriate prompt payment and return of retainage clauses and policies. Review contract administration or contract compliance documentation for verification of the grantee's implementation of monitoring and enforcement.

DETERMINATION

The grantee is deficient if it has not included appropriate prompt payment and return of retainage clauses in its contracts. The grantee is deficient if it does not have and/or has not implemented an active monitoring and enforcement process for ensuring prompt payment and return of retainage. (**DEFICIENCY CODE 268:** Grantee not ensuring prompt payment)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO documentation of efforts to ensure compliance with prompt payment and return of retainage requirements.

45. *How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled?*
46. *What enforcement mechanisms does the grantee use for DBE requirements?*
47. *Since the last review, how many times has the grantee provided written consent to contractors allowing termination or substitution of a DBE firm after contract award?*
48. *Since the last review, how many times has the grantee been notified by a DBE subcontractor that it was not receiving work committed to it?*
49. *What actions did the grantee take?*
50. *What process is used to determine whether the DBE firm is performing a commercially useful function?*

EXPLANATION

Recent investigations by the OIG have raised concerns about the administration of DBE programs. Grantees must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local laws). These mechanisms must be set forth in the grantee's DBE program.

For all contracts, grantees must have mechanisms in place to monitor compliance with prompt payment and inclusion of required clauses. They must also be able to verify the commercially useful function of DBEs on all projects so that accurate reporting can be accomplished, including reporting for race-neutral achievements.

For contracts with a DBE goal, a grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Prior to awarding a contract with a DBE goal to a contractor, the grantee is required to collect from the awardee:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation of each DBE firm participating
- Written documentation of the bidder/offeror's commitment to use the DBE subcontractor whose participation it submits to meet a contract goal
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

This information forms the DBE commitment (not goal) of the awarded contract. The grantee should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

In February 2011, the regulation added the requirement that grantees must require that a prime contractor not terminate or substitute a DBE subcontractor listed on a contract with a DBE goal without good cause and prior written consent from the grantee. Details on what constitutes good cause is contained in 49 CFR 26.53(f). A grantee's written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the grantee) in writing of its intent to request substitution or termination and allows the DBE five days to respond. Grantees must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The contractor must submit documentation requested by the grantee for these efforts within seven days, which may be extended for an additional seven days if necessary at the request of the contractor. The grantee provides a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Unless the grantee's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The grantee should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 26.37

49 CFR 26.53

49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the grantee's DBE program to identify the methods that the grantee states it will use to monitor contractors and subrecipients. At the site visit, have the grantee provide examples of actual monitoring activities/reports from the past three years. Have the grantee provide documentation related to removals of DBEs on projects with DBE contract goals.

DETERMINATION

The grantee is deficient if it cannot demonstrate how it is monitoring its contractors and subrecipients. (**DEFICIENCY CODE 162**: Grantee does not monitor DBE compliance)

The grantee is deficient if the grantee does not implement procedures for termination or substitution in accordance with 49 CFR 26.53(f). (**DEFICIENCY CODE 657**: Grantee does not implement DBE termination/substitution provisions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures for contractors and subrecipients and evidence of implementation (if applicable).

Direct the grantee to submit to the FTA RCRO implemented procedures for ensuring good cause and due process for termination or substitution of DBEs.

51. How does the grantee monitor projects to ensure that DBEs are actually performing the work committed to at the time of contract award?

52. How often does the grantee review contracting records for compliance with DBE requirements?

53. How does the grantee monitor worksites for compliance with DBE requirements?

54. What documentation does the grantee have of monitoring activities?

EXPLANATION

Investigations by the OIG have raised concerns about the administration of DBE programs. Specifically, it has been found that DBE-certified firms are serving as "fronts" for ineligible firms. A grantee's responsibility for monitoring DBE participation does not end with the certification process.

Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local laws). These mechanisms must be set forth in the grantee's DBE program. For contracts with an DBE goal, a grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Monitoring is important for both race-conscious and race-neutral contracts to ensure accurate counting for required semi-annual reports.

In February 2011, the regulation added the requirement that the grantee include a written certification that it has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph

refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

REFERENCE

49 CFR 26.37

SOURCES OF INFORMATION

Review the grantee's DBE program to identify the methods that the grantee states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, ask the grantee to provide examples of actual monitoring activities/reports from the past three years. At the site visit, review contract files for evidence of on-site monitoring and written certifications for recent contracts with DBE contract goals.

DETERMINATION

The grantee is deficient if it cannot demonstrate how it is monitoring that DBEs are actually performing the stated work. The grantee is deficient if it does not perform on-site and contract document monitoring and make a written certification that the monitoring activities have occurred. (**DEFICIENCY CODE 162:** Grantee does not monitor DBE compliance)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO documentation that it has implemented a monitoring process to ensure that DBEs are actually performing the stated work.

This process must include review of contracting records and site visits. Direct the grantee to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures.

Direct the grantee to submit to the FTA RCRO the implemented process for making written certifications of monitoring.

55. *What are the procedures used to ensure that semi-annual DBE reports are complete and include all FTA-funded contracting activity of the grantee and any applicable subrecipients?*

EXPLANATION

Each grantee that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in the EAMS. The report addresses the contracting opportunities of the grantee and its subrecipients. It includes information on awarded and completed contracts; *those that included DBE participation, as well as those that did not*. Information for TVM procurements is not included in these reports.

REFERENCE

49 CFR 26.11

DBE Semi-Annual Reporting Form

SOURCES OF INFORMATION

Review information from Question 1. During the site visit, obtain information on how grantee and subrecipient contracting activities are included in the grantee's reports. Examine documentation and procedures for the latest report submission to demonstrate that DBE reporting information on awards (lines 8 and 9) is reconciled to grantee procurement records.

DETERMINATION

The grantee is deficient if its reports do not include all applicable FTA-funded contracting activity undertaken by itself and any subrecipients and the grantee cannot demonstrate how these reports are reconciled to procurement records. (**DEFICIENCY CODE 329:** DBE uniform reports do not include required information)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) in the EAMS.

Direct the grantee to notify the FTA RCRO once submitted.

Direct the grantee to submit to the FTA RCRO an implemented procedure to ensure future reports are submitted on time.

Direct the grantee to submit to the FTA RCRO procedures for including all applicable FTA-funded contracting activity, including the activity of subrecipients, in future reports and inform the FTA RCRO of the implementation of these procedures with the submission of the next semi-annual report. This may include submission of supporting documentation demonstrating how procurement records reconcile with DBE reports.

56. Does the grantee certify DBEs under its State's UCP?

EXPLANATION

The regulation requires that all DOT grantees participate in a UCP within their State. Even if a grantee does not certify DBEs, it is required to be signatory to its State's UCP agreement. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in their program.

REFERENCE

49 CFR 26.81

SOURCES OF INFORMATION

Review information regarding the grantee's participation in a UCP. Obtain a copy of the signed UCP agreement.

DETERMINATION

The grantee is deficient if it is not participating (through at least being signatory to the grantee's agreement) in the UCP. (**DEFICIENCY CODE 343**: Not participating in a UCP)

If a grantee indicates that it certifies DBEs as part of the UCP, use the *DBE Certification Questions* at the end of this section.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters (see address below) a description of how it will participate in the UCP, along with copies of signed UCP agreements.

FTA DBE Technical Lead, 1200 New Jersey Ave., SE, East Bldg., 5th Floor, Washington, DC 20590.

57. When did the State submit to the US DOT Office of the Secretary (OST), Departmental Office of Civil Rights the report on DBEs in the State's UCP Directory?

EXPLANATION

The state department of transportation in each UCP must report to the OST Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- Women
- Socially and economically disadvantaged individuals (other than women)
- Individuals who are women and are otherwise socially and economically disadvantaged individuals

These reports are to be submitted to DBE@dot.gov.

REFERENCES

49 CFR 26.11(e)

SOURCES OF INFORMATION

During the site visit, review evidence that the grantee ensured that this report was submitted.

DETERMINATION

The State is deficient if it does not have documentation that the UCP report was submitted by January 1, 2015.
(**DEFICIENCY CODE 776:** Insufficient monitoring of submission of annual UCP report)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA RCRO the required report, along with an implemented process to ensure that future reports are submitted on time.

DBE Certification Questions

Supplement for grantees that certify DBEs in the UCP

Note: In addition to the FTA RCRO, corrective actions to deficiencies related to certification questions should be submitted to: FTA DBE Technical Lead, 1200 New Jersey Ave., SE, East Bldg., 5th Floor, Washington, DC 20590.

Initial Certifications

58. Does the grantee use the Uniform Certification Application Form issued by the US DOT in October 2014, including the instructions and document checklist?
59. Does the grantee use the required personal net worth (PNW) form issued by the Department in October 2014? If supplemental forms are used, were they approved by the concerned operating administration?
60. How does the grantee verify the accuracy of the PNW form by analyzing documents such as: financial statements of all business entities related to the applicant, applicant's business and personal income tax returns and related schedules, personal property and equipment lease documents, promissory notes or financing instruments, and trust agreements?
61. Prior to certification, does the grantee conduct site visits to both the applicant firm's principal place of business and to a job site, if the firm is working at both sites during the time of the eligibility investigation
62. Prior to certification, how does the grantee verify DBE firm ownership and control by:
 - a. determining whether a potential DBE is an independent business by scrutinizing relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources?
 - b. considering whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm?
 - c. examining the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm?
 - d. considering factors such as the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice?
 - e. verifying that proof of investment and capitalization to the firm is contained in the record?
 - f. ensuring that disadvantaged owners share in the risk and are entitled to the profits and loss commensurate with their ownership interest?
63. If the grantee enters information directly into the UCP directory, does it include the North American Industry Classification System (NAICS) codes of DBEs in the UCP directory?
64. Have there been issues identified with DBE certifications of the grantee? Does a search of US DOT's DBE Appeals database show a pattern of the grantee's certification decisions being reversed or remanded to the grantee by US DOT?

EXPLANATION

The correct instructions, form, and document checklist to be used for DBE certification are located at US DOT's website. A revised certification application form and a new PNW form was provided in the DBE Final Rule, which became effective November 3, 2014. Certifying grantees are to use these documents unmodified unless such modifications were approved by US DOT. Recipients are not to request PNW forms from owners that are not claiming social and economic disadvantage, nor should they request PNW forms from persons who are not listed as comprising 51 percent or more of the ownership percentage of the applicant firm.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. Grantees must analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing. The grantee must review all information on the form prior to making a decision about the eligibility of the firm. Grantees may request clarification of information contained in the application at any time in the application process.

Grantees, or the UCP, may have written procedures that guide their analysis of information relating to PNW and business ownership and control. If these procedures exist, the grantee should be following them. If no procedures exist, grantees should be able to demonstrate during certification file review what they examine and how it informs their determinations.

An on-site visit to the firm's principal place of business must be conducted. On-site visits to job sites must be conducted if there are such sites on which the firm is working at the time of the eligibility investigation in the grantee's local area. If the DBE is located out of state, the grantee must obtain evidence that a certification site visit was conducted prior to the initial certification.

The regulations give specific guidance on determining eligibility based on group membership or individual disadvantage, business size, ownership, and control. 49 CFR 26.69 and 26.71 provide specific instructions on making ownership and control determinations.

The UCP DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

49 CFR Part 26 section 26.85 (f)(1) required the US DOT Departmental Office of Civil Rights (DOCR) to develop an online, centralized repository of transportation-related denied, decertified or rejected DBEs and Airport Concessionaire DBE (ACDBE) applicants. Accordingly, DOCR maintains a database of decertified DBEs, denials and appeal decisions. If US DOT determines (based on an appeal) that the grantee's certification decision was unsupported or inconsistent with the regulation, it reverses the grantee's decision. If the record is incomplete or unclear US DOT may remand the record to the grantee with instructions seeking clarification or augmentation of the record before making a finding. These reversals and remands are also recorded in the DOCR database. A significant number of grantee's decision reversals or remands could indicate issues related to DBE certification procedures.

REFERENCE

49 CFR 26.61-26.91

US DOT DBE Certification Form

DOT PNW Form

DOCR Database of Decertified DBEs, Denials and DBE Appeal Decisions

SOURCES OF INFORMATION

Obtain a listing of DBEs certified by the grantee within the past two years. Obtain a copy of the grantee's DBE application (likely available on the grantee's or UCP's website) and instructions to verify that the correct form is being used by comparing it with the US DOT form noted in the above explanation. If the grantee has written procedures that guide its analysis of PNW or ownership and control, review these in context of the questions asked in this section. Review two DBE certification files to confirm that the certification procedures are in place.

Review the UCP directory to determine if NAICS codes for DBEs are being listed.

Search the DOCR Appeals database for the grantee to assess frequency of reversed or remanded determinations by the grantee.

Review information provided by the FTA regional office and OTrak pertaining to:

- DBE certification deficiencies in the most recent Comprehensive Review
- DBE certification deficiencies in a DBE or UCP review conducted in the past three years
- DBE certification deficiencies in the current OAT in OTrak
- Protests or complaints received by FTA related to DBE certification issues

DETERMINATION

The grantee is deficient if it certifies DBEs and is not using the correct forms. (**DEFICIENCY CODE 345**: DBE certifications not adequate)

The grantee is deficient if it certifies DBEs and has procedures for analyzing PNW and/or ownership and control but has not followed the procedures, or in lieu of written procedures cannot demonstrate how it takes into account relevant information for making informed determinations on PNW and ownership and control. (**DEFICIENCY CODE 345**: DBE certifications not adequate)

The grantee is deficient if it certifies DBEs but does not include their NAICS codes on the UCP directory. (**DEFICIENCY CODE 322**: DBE directory does not include NAICS codes)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence that it has implemented standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR 26.61-26.91 and that it has updated the DBE program to reflect the new procedures.

Direct the grantee to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters implemented procedures to ensure that DBE directory information contains all applicable NAICS codes.

Annual Affidavits of No Change

65. *Does the grantee obtain annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation?*

66. *Does the grantee notify DBEs when they have not submitted their annual affidavits on time and determine whether the firm is unwilling to cooperate under §26.109(c)?*

EXPLANATION

Every year on the anniversary of the date of their certification, certified DBEs must provide, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that the DBE continues to meet Small Business Administration (SBA) business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the firm's size and gross receipts (e.g., submission of Federal tax returns). If a certified DBE fails to provide this affidavit in a timely manner, it can be deemed to have failed to cooperate under §26.109(c).

REFERENCE

49 CFR 26.83(j)

SOURCES OF INFORMATION

Examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted. Review the process the grantee implements to obtain annual affidavits.

DETERMINATION

The grantee is deficient if it does not obtain annual affidavits from certified DBEs. (**DEFICIENCY CODE 345:** DBE certifications not adequate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence that it has implemented a process to obtain annual affidavits of no change from certified DBEs and that it has updated its DBE program to reflect new procedures.

Denials and Removals of Eligibility

67. *For firms deemed not to be eligible DBEs, were applicable certification denial and decertification (removal of eligibility) procedures followed?*

- a. Do denial decisions explain the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the decision?*
- b. For decertifications, does the grantee provide written notice to the firm proposing to find it ineligible, setting forth the reasons for the proposed determination?*
- c. Do ineligibility notices offer the firms an opportunity for an informal hearing, at which they could respond to the reasons for the proposed removal of eligibility in-person and provide information and arguments concerning why it should remain certified?*
- d. If a hearing was held for an ineligibility decision, was a complete verbatim record of the proceeding maintained?*
- e. If there was a decision to remove a firm's eligibility, did the grantee ensure separation of functions of personnel as specified in 26.87(e)?*
- f. Was the decision to remove a firm's eligibility based on one of the grounds specified in 26.87(f)?*
- g. If decertifications occurred, was there written notice provided to the firm explaining the decision and reasons for it, specifically referencing the evidence in the record that supports each reason for the decision?*
- h. Do notices of ineligibility inform the firm of the consequences of the decision and the availability of an appeal to U.S. DOT under 26.89?*

68. *Does the grantee report complete denials and ineligibility determination information to the US DOT Department Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database?*

EXPLANATION

When a grantee denies a request by a firm, which is not currently certified to be certified as a DBE, it must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request. When a grantee makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to US DOT.

Once certified, a DBE remains certified until and unless it is decertified, using the procedures set forth in 49 CFR 26.87. If a grantee or US DOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, the grantee must provide written notice to the firm that it proposes to find it ineligible, setting forth the

reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

When a grantee notifies a firm that there is reasonable cause to remove its eligibility, the grantee must follow certain procedures, such as:

- Giving the firm an opportunity for an informal hearing
- Maintaining a complete record of the hearing, if held
- Ensuring that the decision in a proceeding to remove a firm's eligibility is not made by (or report to) an office and personnel that took part in actions to remove the firm's eligibility
- Ensuring that the decision-maker is an individual who is knowledgeable about the DBE certification requirements.

The grantee must base a decision to remove a firm's eligibility only on one or more of the following grounds:

- Changes in the firm's circumstances since the certification of the firm by the grantee that render the firm unable to meet the eligibility standards of this part
- Information or evidence not available to the grantee at the time the firm was certified
- Information relevant to eligibility that has been concealed or misrepresented by the firm
- A change in the certification standards or requirements of the USDOT since the firm was certified
- The decision to certify the firm was clearly erroneous
- The firm has failed to cooperate (see 26.109(c))
- The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see 26.73(a)(2))
- The firm has been suspended or debarred for conduct related to the DBE program. The notice required must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures detailed above.

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility and may appeal the removal to US DOT under 49 CFR 26.89.

Following the grantee's decision, it must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the decision under 26.87(j) and of the availability of an appeal to the US DOT under 26.89. Copies of the notice must be sent to the complainant in an ineligibility complaint or the concerned operating administration that had directed the grantee to initiate the proceeding.

When a firm's application is denied or a firm's certification is removed, the grantee must make an entry in the DOCR's Ineligibility Determination Online Database. The grantee must enter the following information:

- The name of the firm
- The name(s) of the firm's owner(s)
- The type and date of the action
- The reason for the action.

REFERENCES

49 CFR 26.85-87

SOURCES OF INFORMATION

Obtain a listing of DBEs denied and removed by the grantee within the past two years. Review two DBE denials and two removals to confirm that the certification procedures are in place.

Search the DOCR Decertification and Denials database to verify that the appropriate entries have been made for the reviewed firms.

DETERMINATION

The grantee is deficient if it has denied or decertified DBEs but has not followed the appropriate procedures as defined in 49 CFR 26.86 or 49 CFR 26.87. (**DEFICIENCY CODE 345**: DBE certifications not adequate)

The grantee is deficient if it does not enter denials and decertifications into the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database as applicable. (**DEFICIENCY CODE 791**: DBE denials/decertifications not entered into DOCR database)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for correct denial and decertification processes.

Direct the grantee to submit to the FTA RCRO the procedures for entering denial and decertification information into Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database.

Interstate Certification

69. *If the grantee accepts a DBE certified out of state without further procedures:*

- a. *Did it verify a copy of the firm's certification notice from the home state (State A)? See §26.85(b)*
- b. *Did it verify that a valid certification was obtained from State A before certifying the firm? See §26.85(b)*

70. *If the grantee chooses not to accept the original certification from State A pursuant to §26.85(c), did it receive all of the supporting documentation such as:*

- a. *Affidavits of no changes; see §26.83(j)*
- b. *Notices of Changes; see §26.83(i)*
- c. *Notices and correspondence with home state concerning status of application, and status as an applicant in other states;*
- d. *Evidence of decertification from other states;*
- e. *A letter of appeal from the firm; and*
- f. *Sworn affidavit indicating that all information is complete.*
- g. *If the on-site review is more than three years old, the sworn affidavit should verify that the information in the on-site report is true and correct.*

71. *If the grantee denied an out-of-state firm:*

- a. *Did it specify an appropriate good cause reason per 26.85(d)?*

- b. *Did it provide the firm with notice, stating the specific reasons why the firm did not meet the requirements?*
- c. *Along with the notice, did it provide an opportunity for the firm to respond in writing or to request an in-person meeting with the grantee?*
- d. *If a meeting was requested, did the grantee schedule the meeting within 30 days of receiving the firm's request?*
- e. *Did the grantee issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later?*

EXPLANATION

In February 2011, US DOT implemented a new section of the DBE regulation (49 CFR 26.85 – Interstate Certification) providing information on how UCPs were to handle certification requests for out of state firms that were currently certified by their home state UCP. The UCPs were instructed to either accept the determination of the applicant's home state UCP and list the firm in its directory, or perform a series of processes (with required timeframes) that include making a determination of good cause that the home state's certification was erroneous or should not apply to their state.

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A and before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

In any situation in which State B chooses not to accept State A's certification of a firm the applicant firm must provide the following information to State B.

- A complete copy of the application form, all supporting documents, and any other information submitted to State A or any other state related to the firm's certification. This includes affidavits of no change (see §26.83(j)) and any notices of changes (see §26.83(i)) submitted to State A, as well as any correspondence with State A's UCP or any other recipient concerning your application or status as a DBE firm.
- Any notices or correspondence from states other than State A relating to the firm's status as an applicant or certified DBE in those states. For example, if the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform State B of this fact and provide all documentation concerning this action to State B.
- Any certification appeals with DOT (see §26.89), with the letter of appeal and DOT's response to State B.
- An affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that all the information required by 49 CFR 26.85(c) has been submitted and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A. If the on-site report from State A supporting the firm's certification in State A is more than three years old, as of the date of application to State B, State B may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

When State B receives from an applicant firm all the above information required, within seven days it must contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. State A must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is considered to be in noncompliance.

If a grantee denies an out of state firm certification it must specify an appropriate good cause reason per 26.85(d) The permissible good cause reasons are as follows:

- Evidence that state A's certification was obtained by fraud;
- New information, not available to State A at the time of its certification, showing the firm does not meet all eligibility criteria;
- State A's certification was factually erroneous or was inconsistent with the requirements of the regulation;
- State Law of state B requires a result different from that of the state law of State A; or
- Information provided by the applicant firm did not meet the requirements of §26.85(c).

REFERENCES

49 CFR 26.85

SOURCES OF INFORMATION

Review the grantee's process for interstate certifications. Review two applications and files of DBEs from out of state to determine how they were processed. Review information (e.g., files, correspondence, UCP directory).

DETERMINATION

The grantee is deficient if it has not implemented the requirements in 49 CFR 26.85 on interstate certifications. (**DEFICIENCY CODE 560:** Interstate certification deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for correct interstate certification processes.

8. LEGAL

BASIC REQUIREMENT

The grantee must be eligible and authorized under state and local law to request, receive, and dispense Federal Transit Administration (FTA) funds and to execute and administer FTA-funded projects.

Grantees must comply with Restrictions on Lobbying requirements.

AREAS TO BE EXAMINED

1. *Designation of Recipient*
2. *Changes in Law and Litigation Affecting Recipient Status*
3. *Restrictions on Lobbying*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 49 CFR Part 20, "New Restrictions on Lobbying"
4. FTA Master Agreement
5. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
6. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
7. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
8. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
9. FTA Electronic Award and Management System

1. *Is the grantee a designated recipient for 5307 grants? 5310 grants? 5339 grants?*
2. *Is the appropriate documentation of designation on file with the Federal Transit Administration (FTA)?*

EXPLANATION

The term “designated recipient” means: (i) an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation. The state or designated recipient receives and apportions the amounts within the urbanized area (UZA) to the state, regional authorities, or to other public agencies.

Designations must be made for the Sections 5307, 5310, and 5339 programs.

In UZAs with 200,000 or more population, joint designation is made by the Governor, responsible local officials, and publicly owned operators of mass transportation services of a single recipient (to the extent possible) and any statewide or regional agency or instrumentality responsible under state law for the provision of service. Documents designating recipients must include concurrence by the Governor or agent with authority delegated by the Governor; concurrence of publicly owned operators of mass transportation in the area; certified resolution of the officials authorized to establish policy for the metropolitan planning organization (MPO) concurring in the designation; and an opinion of counsel. More than one entity can be designated.

In UZAs with less than 200,000 population, the state is the designated recipient for Sections 5307, 5310, and 5339 funds. The Governor may designate small urbanized areas as recipients of Section 5307 but not Section 5310 or 5339 funds. Required documents include a letter from the Governor to FTA and an opinion of counsel.

The designations remain in effect until amended or rescinded. For Section 5307 assistance, the grantee must be a designated recipient or have a “split letter” signed by the designated recipient and direct recipient. For Sections 5310 and 5339 assistance, the designated recipient must apply for the funds. The Governor may transfer any part of the State’s apportionment under subsection (d)(1) “National Distribution” to supplement amounts apportioned to the State under the rural areas (Section 5311) or UZAs (Section 5307) formula programs. Section 5307 grantees may apply directly for funds transferred to the 5307 program.

A direct recipient is an eligible entity authorized by a designated recipient or state to receive Section 5307 funds directly from FTA. Once an agency has been authorized to apply to FTA as a direct recipient, it is not necessary to repeat this authorization upon each future allocation of program funds. The designated recipient must inform FTA of the arrangement in an annual “split letter,” which establishes the allocation of Section 5307 funds.

Under MAP-21, the Section 5310 program no longer provides a single apportionment to the State. However, it now provides apportionments specifically for large and small UZAs and rural areas, and requires new designations in large UZAs.

REFERENCES

Former 49 U.S.C. 5307 (a)(2)
Current 49 U.S.C. 5302 (4)
FAST Act, Section 3000
FTA C. 5100.1, Ch. II, Sections 4 and 5
FTA C. 9030.1E, Ch. II, Section 6, 7, and 8; Ch. VI, Section 1.a (1)
FTA C. 9070.1G, Ch. III, Sections 1 and 2

SOURCES OF INFORMATION

Review the FTA Electronic Award and Management System (EAMS) to see whether the grantee is a designated or direct recipient.

DETERMINATION

If designation letters are not available, prior to making a determination, verify this with the regional office.

The grantee is deficient if it does not have the required documentation of designation on file with the FTA regional office. (**DEFICIENCY CODE 65:** Officials do not have requisite authority)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the FTA regional office to provide the required documentation of designation.

3. *Since the last Comprehensive Review, describe any changes in local or state laws and/or litigation that have affected or will affect the grantee's ability to receive grants or perform projects.*
4. *For any of these changes, provide information on when and how FTA's regional counsel was advised.*

EXPLANATION

The grantee is required to notify the FTA regional counsel of any change in local or state law and/or pending litigation that may significantly affect the grantee's eligibility to receive grants or ability to perform projects in accordance with the terms of the Master Agreement. Any significant change in status requires a new Opinion of Counsel.

REFERENCES

FTA Master Agreement, Section 3.j. and 38.a
FTA C. 5100.1, Ch. V, Section 1.a(1)(a)
FTA C. 9030.1E, Ch. VI, Section 1.a(1)(a)
FTA C. 9300.1B Ch. II, Section 9.a

SOURCES OF INFORMATION

Determine if the grantee has notified the FTA regional counsel of any changes in local or state laws and/or litigation in a timely manner. This type of notification may be in the form of a letter or e-mail correspondence. Obtain and review authorizing legislation to determine whether the grantee's legal status has or will change.

During the site visit, discuss any changes in local or state laws and/or pending litigation since the last Comprehensive Review.

DETERMINATION

The grantee is deficient if it has not notified FTA of changes in local or state laws. (**DEFICIENCY CODE 155:** Changes in Local or State laws)

The grantee is deficient if it has not notified FTA of pending litigation that may significantly affect the grantee's eligibility to receive grants or its ability to perform projects in accordance with the terms of the Master Agreement. (**DEFICIENCY CODE 185:** Pending litigation)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional counsel the applicable information and a process to ensure timely notification in the future.

5. *Provide detailed information on any lobbying activities funded with non-Federal funds, and documentation that proper Office of Management and Budget (OMB) Standard Form LLL disclosures have been made and filed with FTA.*
6. *If subrecipients, contractors, and subcontractors used non-Federal funds for lobbying activities, provide documentation that proper disclosures have been made and filed with the grantee on OMB Standard Form LLL.*

EXPLANATION

The use of Federal funds for lobbying is prohibited. If lobbying services are procured with non-Federal funds, the grantee is required to submit the disclosure form, Office of Management and Budget (OMB Standard Form LLL (Rev.7-97).

Activities that are required to be disclosed include the hiring of any third party (i.e., lobbyist) for the purposes of attempting to influence a covered Federal action. Disclosure is not required for activities performed by the grantee's own regularly employed officers and employees. Covered Federal action means any of the following Federal actions:

- Awarding of any Federal contract or subcontract exceeding \$100,000
- Making of any Federal grant or subgrant exceeding \$100,000
- Making of any Federal loan exceeding \$150,000
- Entering into any Federal cooperative agreement exceeding \$100,000
- Extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement exceeding \$100,000 or of a loan exceeding \$150,000

Updates to OMB Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a "covered Federal action"
- A change in the person(s) attempting to influence such action
- A change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

Any subrecipient, contractor, and subcontractor in receipt of a grant or contract exceeding \$100,000 is subject to the same disclosure and updating requirements as the grantee. The grantee must obtain an OMB Standard Form LLL or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should be reported.

REFERENCES

49 CFR Part 20
OMB Standard Form LLL (Rev. 7/97)

SOURCES OF INFORMATION

The reviewer should confirm with the FTA regional counsel if the grantee has submitted OMB Standard Form LLL disclosures and updates as required. During the site visit, verify details of lobbying activities. For grantees that have subrecipients, contractors, or subcontractors, discuss the process for receiving the disclosures and updates.

DETERMINATION

The grantee is deficient if it did not file an OMB Standard Form LLL and/or a quarterly report for an event that should have been reported. (**DEFICIENCY CODE 77:** Grantee did not submit OMB Standard Form LLL/quarterly update)

The grantee is deficient if it did not obtain an OMB Standard Form LLL or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should have been reported. (**DEFICIENCY CODE 116:** Subgrantee, contractor, or subcontractor did not submit OMB Standard Form LLL/quarterly update)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation as required and to develop and/or document the process to ensure timely reporting in the future.

9. SATISFACTORY CONTINUING CONTROL

BASIC REQUIREMENT

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

FTA Emergency Relief Program

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

AREAS TO BE EXAMINED

1. *Real Property*

- a. Use
- b. Excess property
- c. Disposition
- d. Oversight
- e. Flood Insurance

2. *Equipment*

- a. State procedures
- b. Non-state grantee procedures
- c. Oversight
- d. Leases
- e. Use
- f. Disposition
- g. Insurance proceeds
- h. Emergency Relief
- i. Fixed-route bus spare ratio
- j. Contingency fleet
- k. Rail fleet management plan

APPLICABILITY

Under 49 CFR 18.32(b), and 2 CFR 200.313(b), a state will use, manage, and dispose of equipment acquired under a grant by the State in accordance with state laws and procedures. Therefore, grantees that are a state or receive FTA funds as a subrecipient to a state follow state, not FTA, equipment management procedures.

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. 49 CFR Part 602, "Interim Final Rule"

6. FTA Master Agreement
7. FTA Circular 5010.1D, "Grant Management Requirements"
8. FTA Circular 5100.1, "Bus and Bus Facilities Program: Guidance and Application Instructions"
9. FTA Circular 7050.1, "Federal Transit Administration Guidance on Joint Development"
10. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
11. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
12. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
13. FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions"
14. FTA Circular 9070.1G, "Enhanced Mobility for Seniors and Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
15. FTA Circular 9300.1B, "Capital Program Guidance and Application Instructions"
16. May 29, 2013, Federal Register Notice
17. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Emergency Relief Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

PART A: REAL PROPERTY

1. *Does the grantee or a subrecipient use any Federal Transit Administration (FTA)-funded real property for non-transit purposes (i.e., incidental use)?*
2. *If the grantee or subrecipient uses any FTA-funded real property for non-transit purposes, provide documentation that FTA approval was obtained. How does the grantee maintain continuing control over the property, and demonstrate that the property is also being used for transit purposes (if applicable) that the costs of the use are recovered, and the revenues applied to transit planning, capital, or operating expenses?*

EXPLANATION

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

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

FTA's written approval is required for incidental use of real property. If the incidental use is implemented as described in the grant application, FTA approval of the grant constitutes approval of the incidental use. The property must continue to be needed and used for an FTA project or program, and the incidental use cannot compromise safety or continuing control over the property. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenue, non-profit uses are permitted, under certain circumstances, with FTA approval.

REFERENCES

2 CFR 200.307(e) and 200.311
49 CFR 18.25 (g) and 18.31
FTA Master Agreement, Section 18.f
FTA C. 5010.1D, Ch. I, Section 5.hh and Ch. IV, Section 2.i

SOURCES OF INFORMATION

Examine grantee files or the Electronic Award and Management System (EAMS) for correspondence regarding incidental use. Review a sample lease agreement to ensure that it enables the grantee to maintain continuing control of the property/facility. During the site visit, if incidental use of project property/facility is observed, ask the grantee to provide documentation that FTA approved the incidental use. Review budgets or financial reports to ensure that proceeds are used to support the transit program.

DETERMINATION

The grantee is deficient if FTA did not approve the incidental use, the incidental use interferes with transit purposes, the grantee does not maintain continuing control over the leased real property, or the grantee does not use revenues for transit purposes. (**DEFICIENCY CODE 25**: Violation of incidental use requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to obtain FTA approval for any unapproved incidental uses and to submit to the FTA regional office procedures for obtaining prior FTA approval for future incidental uses.

Direct the grantee to submit documentation to the FTA regional office that it has ceased incidental uses that interfere with transit purposes.

Direct the grantee to submit to the FTA regional office procedures for maintaining satisfactory continuing control over real property used for incidental purposes.

Direct the grantee to submit documentation to the FTA regional office that it has applied lease income to transit purposes.

3. *Since the last Comprehensive Review, did the grantee or a subrecipient remove real property from the service originally intended at the time of grant approval or put property to additional or substitute uses?*
4. *Does the grantee or a subrecipient have any excess FTA-funded real property? Has the excess property inventory and utilization plan been prepared or updated?*
5. *Since the last Comprehensive Review, did the grantee or a subrecipient dispose of any FTA-funded real property?*
6. *If the grantee or a subrecipient disposed of any FTA-funded real property, provide documentation of FTA prior concurrence with the method of disposition. Was FTA reimbursed for its share of disposition proceeds, if required?*

EXPLANATION

Grantees are required to notify FTA when property is removed from the service originally intended at grant approval or if property is put to additional or substitute uses.

If FTA-funded real property is no longer needed for any transit purpose, the grantee or subrecipient is required to prepare or update an excess property inventory and utilization plan. The plan should identify and explain the reason for excess property. FTA Circular 5010.1D describes that the inventory list should include such things as: property location, summary of any conditions on the title, original acquisition cost, Federal participation ratio, FTA grant number, appraised value and date, description of improvements, current use of the property, and anticipated or proposed disposition or action. Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the grantee and made available upon request and during an FTA review.

49 CFR Part 18, 2 CFR Part 200, FTA Master Agreement, and FTA C. 5010.1D have requirements for removing assets from transit service. Grantees must request FTA instructions on proper procedures for disposition of real property. Depending on the approved method of disposition, the grantee may be required to reimburse FTA.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.31
FTA Master Agreement, Section 19.i
FTA C. 5010.1D, Ch. IV, Section 2.j

SOURCES OF INFORMATION

Ask the grantee to provide a list of real property removed from the service originally intended or put to additional or substitute uses since the last review. Ask the grantee to provide a copy of all notifications to FTA of any change from the approved use of FTA-funded real property. Ask the grantee to provide excess property utilization plans and documentation of disposition of FTA-funded property. Discuss during the site visit. Verify that the excess real property utilization plan is up-to-date.

DETERMINATION

The grantee is deficient if it did not notify FTA when real property was removed from the service originally intended or when property was put to additional or substitute uses. (**DEFICIENCY CODE 69:** Real property use issues)

The grantee is deficient if it or a subrecipient has excess real property and has not prepared a written plan for disposing of it or if the plan does not include all the elements required by FTA C. 5010.1D. The grantee is deficient if the plan is out of date. (**DEFICIENCY CODE 84:** Lacking excess real property utilization inventory/plan out of date)

The grantee is deficient if it did not obtain prior FTA approval for the method of disposition of FTA-funded real property or did not reimburse FTA for its share of disposition proceeds. (**DEFICIENCY CODE 99**: Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to inform the FTA regional office of real property that has been removed from service or put to additional or substitute uses without FTA approval and to submit to the FTA regional office procedures for notifying FTA when FTA-funded real property has been removed from service or put to additional or substitute uses.

Direct the grantee to submit to the FTA regional office a written excess real property utilization plan or an update to the existing plan.

Direct the grantee to submit to the FTA regional office information on the method of disposition of real property for which it did not obtain prior FTA approval and procedures for obtaining FTA approval for the method of disposition of FTA-funded real property.

Direct the grantee to work with the FTA regional office to determine proceeds owed FTA from the disposition of FTA-funded real property.

7. How does the grantee monitor use of FTA-funded real property by contractors and lessees?

8. How does the grantee monitor use of FTA-funded real property by subrecipients?

EXPLANATION

The grantee must ensure that subrecipients, contractors, and lessees use FTA-funded real property for project purposes. Examples of monitoring procedures include annual certifications of use, site visit inspections, or deed restrictions. Title to real property acquired under a grant will vest with the grantee or the subrecipient. The FTA interest in real property continues until disposition.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
FTA Master Agreement, Section 26
FTA C. 5010.1D, Ch. IV, Section 2.i
FTA C. 9045.1, Ch. VI, Section 7
FTA C. 9050.1, Ch. VI, Section 7
FTA C. 9070.1G, Ch. VI, Section 21

SOURCES OF INFORMATION

Review subrecipient agreements, contracts, or lease agreements for requirements imposed on the use of FTA-funded real property. Review oversight procedures, such as reports or site visit checklists. On site, discuss the procedures with the grantee.

DETERMINATION

The grantee is deficient if it does not monitor the use of FTA-funded real property by subrecipients, contractors, or lessees. (**DEFICIENCY CODE: 04**: Inadequate control of real property)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for monitoring the use of FTA-funded real property by subrecipients, contractors, or lessees.

9. If the grantee or a subrecipient has any buildings located in an area that has been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, has the grantee or subrecipient complied with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a(a), with respect to any project activity involving construction, or an acquisition having an insurable cost of \$10,000 or more?

10. Have any FTA Emergency Relief funds been used to repair or replace a facility which was not properly insured and that was located in a special flood hazard area?

EXPLANATION

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

Grantees shall not use grant funds for any activity in an area delineated as a “special flood hazard area” or equivalent, as labeled in FEMA’s most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain, in accordance with Executive Order 11988.

REFERENCES

Executive Order 11988
49 U.S.C. 5324
Conditions of Award for FTA Public Transportation Emergency Relief Programs
May 29, 2013 Federal Register Notice

SOURCES OF INFORMATION

Review information provided by the grantee to determine if any construction projects or acquisitions over \$10,000 since the last Comprehensive Review are covered by NFIP. If so, review insurance coverage information provided by the grantee.

DETERMINATION

The grantee is deficient if it or a subrecipient is required to have flood insurance, and does not have adequate coverage. (**DEFICIENCY CODE 586**: Flood insurance insufficient)

The grantee is deficient if FTA Emergency Relief funds were used to repair or replace a facility that was located in special flood hazard area and it was not properly insured. (**DEFICIENCY CODE 578**: Flood insurance deficiencies for Section 5324-funded projects)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide documentation of adequate flood protection to the FTA regional office.

Direct the grantee to work with the FTA regional office to determine if and what amount of funds should be returned to FTA.

PART B: EQUIPMENT

11. What procedures does the State follow to manage and maintain control over FTA-funded equipment and ensure its continued use?

EXPLANATION

Under the common grant rule, states may use, manage, and dispose of equipment acquired under an FTA grant according to state law and procedures. States are free to adopt the procedures established in 49 CFR Part 18 (or for grants awarded on or after December 26, 2014, 2 CFR Part 200), for other public body recipients or use them as a guide in developing state procedures for equipment use, management, and disposition, but they are not required to do so. States may use the same procedures for private and non-profit subrecipients as for public body subrecipients, so long as those procedures are consistent with the applicable regulations. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA-funded equipment.

Examples of procedures used by states to maintain control over FTA-funded equipment operated by subrecipients include:

- **Equipment inventories.** Many states use inventories to track how many vehicles and other equipment a subrecipient has, including those not purchased with FTA or state assistance. Many states require subrecipients to provide an equipment inventory with each application. Some states reconcile the subrecipients' inventories to the State's inventory.
- **Annual vehicle use certifications.** Many states require subrecipients to submit annual vehicle use certifications. The certifications are particularly important for tracking vehicles acquired by subrecipients that generally do not apply for assistance on an annual basis. The State can use the certifications to update the State's inventory.
- **Periodic reporting of vehicle use.** Many states require periodic reports of vehicle use (miles, hours, passengers, trip purpose) to ensure that vehicles are used in accordance with program requirements and are not underused.
- **Retention of or liens on titles.** The State or the subrecipient may hold title to the vehicles acquired with FTA assistance. When subrecipients hold title to FTA-funded vehicles, FTA recommends that states place a lien on the title. Either the State or subrecipient must hold title to any vehicle leased to public bodies or nonprofit organizations.
- **Disposition requirements.** States use disposition procedures to ensure vehicles are used until the end of their useful lives, to ensure vehicles that are no longer needed by a subrecipient can be transferred to another subrecipient, and to ensure that proceeds are used as like-kind exchange or used for transit purposes.
- **Lease restrictions.** States use lease restrictions to control vehicles that are used and maintained by entities other than subrecipients.
- **Productivity standards.** States use productivity standards to ensure that vehicles serve a minimum number of riders. States may transfer vehicles that are underused.
- **Site visits.** States use site visits to visually inspect vehicles to ensure their continued use in transit service.
- **Insurance.** Most states have insurance requirements. Insurance coverage for equipment purchased with FTA funds must be adequate to protect the Federal interest in the vehicle within the useful life determined by the State.

REFERENCES

2 CFR 200.313(a) and 200.313(b)
49 CFR 18.32(a), and 18.32(b)
FTA C. 5010.1D, Ch. II, Section 3.a
FTA C. 9040.1G, Ch. V, Sections 3 and 4
FTA C. 9045.1, Ch. VI, Sections 4, 5, 6, and 7
FTA C. 9050.1, Ch. VI, Sections 4, 5, 6, and 7
FTA C. 9070.1G, Ch. VI, Sections 4, 5, 7, and 8

SOURCES OF INFORMATION

Review the state management plan(s) for procedures on how the State tracks, controls, and monitors equipment controlled by subrecipients. Review application package(s), subrecipient agreements, and other documents such as sales records and financial reports and other requirements. Review oversight tools, such as site visit questionnaires, periodic reports, annual vehicle use certifications, title liens, disposition requirements, lease restrictions, and insurance requirements. Review the State's equipment inventory and document the data elements tracked. On site, confirm the procedures with the State.

Examine grant files for approval of like-kind exchange of rolling stock or retention of the proceeds from the sale of assets. Review the list of FTA-funded equipment removed from transit service since the last review. Obtain a list of equipment disposed of before the end of useful life and associated proceeds. During the site visit, follow up with the State on the use of disposition proceeds.

DETERMINATION

The State is deficient if it does not have or implement procedures for maintaining control of FTA-funded equipment or the procedures are inadequate to maintain satisfactory continuing control of FTA-funded equipment, that is, ensure that the equipment is used for project purposes throughout its useful life. (**DEFICIENCY CODE 120:** Inadequate property control system)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office revised procedures for maintaining control over FTA-funded equipment and evidence that the procedures have been implemented.

12. What are the State's useful life standards for rolling stock?

13. For rolling stock purchased with Section 5309 do the State's standards meet or exceed FTA's standards?

14. For rolling stock purchased with Section 5339 assistance for Section 5307 grantees, do the State's standards meet or exceed FTA's standards?

EXPLANATION

FTA delegates to the states the responsibility for establishing and implementing useful life standards for vehicles purchased with Sections 5310, 5311, 5316, or 5317 assistance. States must meet or exceed FTA's useful life standards for vehicles purchased with Sections 5307 and 5309 assistance. For vehicles purchased with Section 5339 assistance, States follow their own standards when the vehicles are purchased for Section 5311 subrecipients and FTA standards when purchased for Section 5307 subrecipients.

Most states have adopted FTA's useful life standards for all vehicles, regardless of funding source. Many states have adopted stricter (longer) useful life standards for vehicles. A table with useful life standards appears later in this section.

FTA requires grantees to use vehicles purchased with FTA funds for at least their minimum normal useful lives. Only time spent in normal service can be counted towards meeting the standards. Time spent stockpiled or otherwise unavailable for regular transit duty does not count towards meeting the standards. The State should have a mechanism to adjust the service life of any FTA-funded vehicle that is removed from service for an extended period of time.

REFERENCES

FAST Act, Section 3017

2 CFR 200.313(b)

49 CFR 18.32(b)

FTA C. 5010.1D, Ch. IV, Section 3

FTA C. 9040.1G, Ch. V, Section 3.c

FTA C. 9045.1, Ch. VI, Section 4.b

FTA C. 9050.1, Ch. VI, Section 4.b

FTA C. 9070.1G, Ch. VI, Section 4.c

FTA C. 9300.1B, Ch. III, Section 7.b

SOURCES OF INFORMATION

Review the state management plan, the subrecipient agreements, and other documentation for minimum useful life standards for vehicles. Confirm the requirements with the State.

DETERMINATION

The State is deficient if it has not established its own minimum useful life standards for Sections 5310, 5311, 5316, and 5317 vehicles. (**DEFICIENCY CODE 154:** Useful life standards not established)

The State is deficient if it has not adopted useful life standards for Section 5309- or 5339- funded vehicles that meet or exceed FTA requirements. (**DEFICIENCY CODE 170:** Useful life standards not followed)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit to the FTA regional office an updated state management plan(s) that includes state useful life standards.

Direct the State to submit to the FTA regional office adopted useful life standards that meet or exceed FTA requirements for Section 5309- or 5339- funded vehicles.

15. Demonstrate that the grantee's equipment records provide the required information.

a. <i>Description</i>	
b. <i>I.D. number</i>	
c. <i>Acquisition date</i>	
d. <i>Cost</i>	
e. <i>Federal percentage</i>	
f. <i>Grant number</i>	
g. <i>Useful life</i>	
h. <i>Location</i>	
i. <i>Use and condition</i>	
j. <i>Disposition action</i>	
k. <i>Vested title</i>	

16. Has the grantee updated its records to account for any Hurricane Sandy, or other natural disaster, damage and the disposition of damaged or destroyed assets?**EXPLANATION**

FTA defines equipment as all tangible, nonexpendable, personal property (i.e., equipment and rolling stock, both revenue and non-revenue) that has a service life of more than one year and an acquisition and installation cost of \$5,000 or more per unit. A grantee may use its own definition of equipment, provided that such definition includes at least all equipment defined above. A grantee must keep records of FTA-funded equipment that include the following required information:

- Description
- I.D. number
- Acquisition date
- Cost
- Federal percentage
- Grant number
- Location
- Use and condition
- Disposition action
- Vested title
- Useful life

A grantee's records must include leased assets funded with FTA dollars and equipment purchased or used by subrecipients. These records must include all of the required information.

Many grantees have computerized databases for property records. It is acceptable if no single report shows all the required data as long as the grantee can demonstrate that the records are complete.

If the use and condition or disposition action of any FTA-funded assets changed because of Hurricane Sandy, or other natural disaster, the grantee is to update its property and equipment records.

REFERENCES

49 U.S.C. 5307 and 5334
FAST Act, Section 3004
2 CFR Part 200, Subpart D
49 CFR 18.32
FTA C. 5010.1D, Ch. IV, Section 3.k

SOURCES OF INFORMATION

Review a sample of the grantee's property and other records to ensure that all required information is included. Be aware that some required data elements may be tracked in another system. For example, information on useful life may be included in grantee depreciation schedules or in other fixed asset accounting records. During the site visit, verify that full records are maintained on site. Review recent grant purchases in the EAMS Milestone Progress Reports (MPRs) to verify inclusion of newly acquired assets in property records.

DETERMINATION

The grantee is deficient if equipment records are missing required information or if the records are not current. (**DEFICIENCY CODE 58**: Inadequate equipment records)

The grantee is deficient if equipment records are missing required information or if the records are not current based on damage from Hurricane Sandy or other natural disaster. (**DEFICIENCY CODE 579**: Inadequate equipment records for items damaged by Hurricane Sandy)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office updated records with the required information.

17. What are the dates of the last two physical inventories of FTA-funded equipment and rolling stock? During the onsite portion of the review, documentation will be examined to substantiate that the results of the inventory were reconciled and equipment records updated.

EXPLANATION

FTA requires grantees to conduct a physical inventory of FTA-funded equipment and rolling stock and to reconcile the results to equipment records at least once every two years. The inventory should be done by someone other than the person responsible for the equipment records. Once the inventory results are reconciled, the equipment records need to be updated.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.32
FTA C. 5010.1D, Ch. II, Section 3, and Ch. IV, Section 3.k

SOURCES OF INFORMATION

Review fixed-asset procedures. Review the grantee's records for evidence that the biennial inventory was completed and inventory results were reconciled to equipment records. Review annual financial audit reports and any internal audit reports to learn if any discrepancies have been identified. Financial reports will show any changes in the book value of property and may reflect adjustments for missing equipment.

DETERMINATION

The grantee is deficient if it has not conducted a biennial physical inventory of all FTA-funded equipment within two years of the site visit. (**DEFICIENCY CODE 89**: No evidence of physical inventory)

The grantee is deficient if a physical inventory of FTA-funded equipment has been conducted but results have not been reconciled to records. (**DEFICIENCY CODE 107**: Inventory results not reconciled to equipment records)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office evidence that it has conducted a physical inventory of FTA-funded equipment and that the inventory results have been reconciled to equipment records, along with procedures for conducting a biennial physical inventory.

Direct the grantee to submit to the FTA regional office evidence that the physical inventory of FTA-funded equipment has been reconciled to records, along with procedures for reconciling the biennial physical inventory to records.

18. What system does the grantee have in place to prevent loss, damage or theft of FTA-funded property, equipment, and rolling stock?

19. How does the grantee investigate and document any loss, damage, or theft of FTA-funded property, equipment and rolling stock?

EXPLANATION

FTA requires grantees to have a control system to prevent loss, damage, or theft of equipment. Typically, grantees tag all FTA-funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers. Tags are not required. Additional control procedures include secure storage, surveillance systems, fencing, security forces, and insurance. Any loss, damage, or theft must be investigated and documented by the grantee.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.32

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

SOURCES OF INFORMATION

Review asset management and security procedures. Review insurance coverage. Ask the grantee to describe and demonstrate the safeguards that are in place to prevent loss, damage, or theft.

DETERMINATION

The grantee is deficient if it has not investigated and documented any loss, damage, or theft of FTA-funded property. (**DEFICIENCY CODE 120:** Inadequate property control system)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation of any loss, damage, or theft of FTA-funded property and equipment and an adequate control system to prevent loss, damage, or theft of FTA-funded equipment.

20. How does the grantee maintain control of FTA-funded equipment and rolling stock operated by contractors or lessees?

21. How does the grantee monitor use of FTA-funded equipment by subrecipients?

22. If the grantee leases FTA assets to private operators, provide documentation of prior concurrence obtained from FTA. Verify that the leases include the required provisions.

23. If the grantee is a designated recipient of Section 5310 funds, do leases of Section 5310-funded vehicles contain the terms and conditions that must be met for providing transportation service to seniors and persons with disabilities?

24. If the grantee is a designated recipient of Section 5310 funds, did the grantee agree to the leases of Section 5310-funded vehicles in writing?

EXPLANATION

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

operates the assets on behalf of the grantee or subrecipient and provides transportation as described in the grant application.

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

If the grantee is not a state, for any equipment provided or leased to contractors, lessees, or subrecipients, the grantee must:

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

All grantees, including states, must follow FTA requirements for return or use of disposition proceeds.

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

Grantees may lease FTA-funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the grant application, FTA approval of the grant constitutes approval of the lease. When FTA-funded equipment and rolling stock is leased to a private operator, the lease should contain the following provisions:

- A requirement for the lessee to operate the project property to serve the best interest and welfare of the grantee and the public. The terms and conditions for operation of service imposed by the grantee shall be evidenced in a service agreement.
- A requirement for the lessee to maintain project property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the project sponsor. The project sponsor and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the project equipment.
- A cross reference to a service agreement. A default under the lease is a default under the service agreement and vice versa.
- A requirement that the leased property may not be subleased without grantee written approval and may not be otherwise encumbered without FTA written approval.

FTA has established specific requirements for leases of Section 5310 vehicles. The lease must contain the terms and conditions that must be met in providing transportation service to seniors and persons with disabilities. The designated recipient must agree in writing to the lease between the Section 5310 subrecipient and the lessee. The vehicle may be used for incidental purposes only after grant needs have been met. The designated recipient and subrecipients are responsible for ensuring that adequate control is exercised over use of the leased equipment. Either the designated recipient or the subrecipient must retain title to the vehicle.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.32

FTA C. 5010.1D, Ch. II, Section 3, and Ch. IV, Sections 3.e(1) and 3.j(1)

FTA C. 9070.1G, Ch. VI, Section 6

SOURCES OF INFORMATION

Review documentation of control over contractor, lessee, and subrecipient operated equipment. Review equipment records and physical inventory records to ensure that FTA-funded equipment operated by contractors, lessees, or subrecipients is included. Review a lease of an FTA-funded asset to a private operator to ensure that it includes the required provisions. Determine if the grantee obtained prior FTA approval for leases of FTA-funded equipment to private operators. Review fixed-asset procedures.

Review the state/program management plan and subrecipient agreements for the grantee's policy regarding the lease of Section 5310-funded vehicles and its procedures for monitoring subrecipients' leases. Review sample leases. Review a Section 5310 lease to ensure that it was approved in writing by the designated recipient and contains the required terms and conditions. Discuss with the grantee its current policies and procedures.

DETERMINATION

The grantee is deficient if procedures, leases, subrecipient agreements and/or service agreements do not provide for property use and control. (**DEFICIENCY CODE 120:** Inadequate property control system)

The grantee is deficient if it does not have FTA concurrence for leasing FTA-funded assets to private operators or if the lease does not include the required provisions. The grantee is deficient if leases of Section 5310-funded vehicles do not contain the required provision or it does not approve the leases in writing. (**DEFICIENCY CODE 180:** Lease issues)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for improved control of equipment operated by contractors, lessees, or subrecipients.

Direct the grantee to obtain approval for leases of FTA-funded assets to private operators and submit to the FTA regional office procedures for obtaining prior FTA approval before leasing FTA-funded assets to private operators.

Direct the grantee to submit to the FTA regional office amended leases of FTA-funded assets to private operators that include the required terms and conditions and procedures for including the terms and conditions in future leases.

Direct the grantee to submit to the FTA regional office amended leases of Section 5310-funded vehicles that include the terms and conditions that must be met in providing transportation service to seniors and people with disabilities and procedures for including the terms and conditions in future leases.

Direct the grantee to submit to the FTA regional office written approvals of leases of Section 5310-funded vehicles and procedures for approving leases of Section 5310-funded vehicles in writing.

25. *Did the grantee notify FTA when it or a subrecipient withdrew equipment with remaining useful life from project use or applied it to a different use? If yes, documentation will be examined during the review.*
26. *Did the grantee or a subrecipient dispose of any FTA-funded equipment or supplies since the last Comprehensive Review? If yes:*
 - a. *When did FTA provide prior concurrence in the method of disposition for equipment removed from service before the end of service life?*
 - b. *When was FTA reimbursed for its share of proceeds, if required?*
 - c. *For retained proceeds, how did the grantee apply the proceeds to reduce the gross project cost?*
27. *Did the grantee apply insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock?*

28. If the grantee applied insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock, how were the insurance funds recorded in financial records and when (if required) were funds equal to the remaining Federal interest in the lost, damaged, or destroyed project property returned to FTA?

EXPLANATION

The grantee must use project property (equipment, rolling stock, etc.) for appropriate project purposes for the duration of the useful life of that property. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee may be required to return the Federal assistance expended on that property. The grantee must notify FTA immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the grantee made in the grantee agreement or cooperative agreement for the project.

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

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

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

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

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

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

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

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

FTA delegates to the states the responsibility for establishing and implementing useful life standards for vehicles purchased with Section 5310, 5311, 5316, or 5317 assistance and Section 5339 assistance awarded to Section 5310 or 5311 subrecipients.

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

Item	FTA-Defined Service Life
35'-40' heavy duty and articulated transit bus	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus (bus chassis)	7 years or 200,000 miles
25'-35' light-duty transit bus (body on truck chassis vehicles)	5 years or 150,000 miles
Other vehicles (small buses, regular and specialized vans)	4 years or 100,000 miles
Rail vehicles	25 years
Fixed guideway steel-wheeled trolley	25 years
Fixed guideway electric trolleybus	15 years
Passenger ferry	25 years
Other ferries without refurbishment	30 years
Other ferries with refurbishment	60 years
Railroad or highway structure	50 years
Most other buildings and facilities (concrete, steel and frame construction)	40 years

Note: A heavy-duty transit bus is built as a bus whereas a medium-duty bus is built on a truck chassis.

REFERENCES

49 U.S.C. 5334
 FAST Act, Sections 3004, 3005, 3006, 3007, 3017
 FTA Master Agreement, Section 21
 FTA C. 5010.1D, Ch. IV, Section 3.I and Appendix D
 FTA C. 9030.1E, Ch. V, Section 11.a and b
 FTA C. 9040.1G, Ch. V, Section 3.d
 FTA C. 5100.1, Ch. IV, Section 8
 FTA C. 9300.1B, Ch. III, Section 7.b(1)

SOURCES OF INFORMATION

Examine grant files for approval of like-kind exchange of rolling stock or retention of the proceeds from the sale of assets. Review the list of FTA-funded equipment and/or supplies removed from transit service since the last review. Verify that the grantee followed proper disposal procedures. Examine fleet availability reports and maintenance records for indications that vehicles have been out of service for an extended period. Examine sales records and financial reports. Review records documenting how fair market value was arrived at for any equipment not sold competitively. Check for unused, parked buses during facility tours.

DETERMINATION

The grantee is deficient if FTA-funded equipment has been removed from service prematurely without FTA approval. The grantee is deficient if it has not reimbursed FTA proportionately for the depreciated value of items that have not yet reached the end of service life and has not received permission for a like-kind vehicle exchange. The grantee is deficient if it has not reimbursed FTA proportionately for items valued greater than \$5,000 that have reached the end of service life and has not obtained approval for retaining the proceeds. The grantee is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds \$5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds. The grantee is deficient if it has neither applied insurance proceeds to the cost of replacing the lost, damaged, or destroyed property nor returned to FTA an

amount equal to the remaining Federal interest in the lost, damaged, or destroyed property. (**DEFICIENCY CODE 99:** Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a list of equipment prematurely removed from service and procedures for notifying FTA of any premature removal of equipment from service.

Direct the grantee to work with the FTA regional office for reimbursement of FTA's share of disposed property or to obtain approval for retaining the proceeds to apply to another capital project. Direct the grantee to submit to the FTA regional office procedures for reimbursing FTA for disposition proceeds or applying the proceeds to another capital project.

Direct the grantee to work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. Direct the grantee to submit to the FTA regional office procedures for addressing insurance proceeds.

29. *Did the grantee dispose of any FTA-funded equipment or supplies because of damage from Hurricane Sandy? If yes:*

- a. When was FTA reimbursed for its share of proceeds, if required?*
- b. For retained proceeds, how did the grantee apply the proceeds to reduce the gross project cost?*

30. *If applicable, did the grantee apply insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock eligible for funding under the Emergency Relief Program?*

31. *If the grantee applied insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock eligible for funding under the Emergency Relief Program, how were the insurance funds recorded in financial records and when (if required) were funds equal to the remaining Federal interest in the lost, damaged, or destroyed project property returned to FTA?*

EXPLANATION

If the grantee disposes of a previously FTA-funded asset that was damaged during Hurricane Sandy, or other natural disaster, and receives more than \$5,000 for the asset, the grantee must promptly notify FTA and reimburse FTA for its proportionate share in accordance with FTA C. 5010.1D.

As authorized by 49 U.S.C. 5324(d)(1) and FTA C. 5010.1D, FTA's useful life requirements do not apply to any assets that were destroyed or seriously damaged as a result of Hurricane Sandy and were taken out of service prior to the end of their useful lives.

If a grantee receives an insurance settlement that is not entirely allocable to specific losses, FTA may require the grantee to allocate a percentage of the settlement to response, recovery, and resiliency projects funded by FTA in proportion to the amount of damage that is eligible for funding under the Emergency Relief Program relative to the overall damage sustained by the transit agency. FTA will publish further guidance regarding the treatment of insurance proceeds.

REFERENCES

49 U.S.C. 5324

2 CFR Part 200, Subpart D

49 CFR 18.32

FTA C. 5010.1D, Ch. IV, Section 3.k

Conditions of Award for FTA Public Transportation Emergency Relief Programs

May 29, 2013 Federal Register Notice

SOURCES OF INFORMATION

Review information provided by the grantee and the FTA regional office on property and equipment damaged or disposed of as a result of Hurricane Sandy, or other natural disaster. Review property records and disposition records.

DETERMINATION

The grantee is deficient if it has not reimbursed FTA proportionately for items valued greater than \$5,000 that have reached the end of service life and has not obtained approval for retaining the proceeds. The grantee is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds \$5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds. The grantee is deficient if it has neither applied insurance proceeds to the cost of replacing the lost, damaged, or destroyed property nor returned to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed property. (**DEFICIENCY CODE 589**: Disposal deficiencies for property damaged by Hurricane Sandy or other natural disaster)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the FTA regional office for reimbursement of FTA's share of disposed property or to obtain approval for retaining the proceeds to apply to another capital project.

Direct the grantee to work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

32. For fixed-route buses operated in urban service (NTD motorbus category), complete the following table:

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

33. For fixed-route buses operated in urban service, does the spare ratio exceed FTA's 20 percent guideline for bus fleets of 50 or more revenue vehicles?

34. For fixed-route buses operated in urban service of fewer than 50 buses, does the spare ratio appear reasonable?

EXPLANATION

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

Calculate the spare ratio, as follows:

- a. Total number of revenue vehicles. Count the whole fleet; the spare ratio is not calculated for each vehicle type or location. Do not include buses delivered for future expansion, that have been replaced but are in the process of being disposed of, are part of a contingency fleet, are historic and used for parades or public relations, or have been converted to non-transit use (e.g., mobile offices). Whether vehicles are locally-funded, FTA-funded, or have exceeded their service life are not relevant factors.

- b. Number of vehicles required for maximum service. Use the revenue vehicle count during the peak season of the year on the week and day that maximum service is provided, excluding atypical days and one-time special events.
- c. Number of spare vehicles (a minus b)
- d. Spare ratio (c divided by b)

REFERENCE

2 CFR Part 200, Subpart D
 FAST Act, Section 3017
 49 CFR 18.32
 FTA C. 5010.1D, Ch. IV, Section 3.i
 FTA C. 5100.1, Ch. IV, Section 8.c
 FTA C. 9030.1E, Ch. V, Section 11.c
 FTA C. 9300.1B, Ch. III, Section 7.b(2)

SOURCES OF INFORMATION

Review the fleet status report in the EAMS and discuss the report with the FTA regional office during the desk review. Ask the grantee to provide a rolling stock roster. Check pull-out logs or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. Ask for a printout from the scheduling software or other dispatch records documenting the peak of the peak. Review equipment records for a listing of the fleet. If the spare ratio is more than 20 percent, ask the grantee to explain the reasons why, such as overall age of the fleet, different types of technologies, unique weather operating conditions, etc.

DETERMINATION

The grantee is deficient if the active urban fixed-route bus fleet is 50 or more vehicles and the spare ratio is more than 20 percent of the peak fleet. The grantee is deficient if the active fixed-route bus fleet is less than 50 vehicles and the grantee is unable to provide a satisfactory explanation, such as overall age of the fleet, different types of technologies, or unique weather or operating conditions, for an unreasonable spare ratio. (**DEFICIENCY CODE 161:** Excessive fixed-route bus spare ratio)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for reducing the spare ratio to 20 percent. The plan should include a spreadsheet listing, for each bus type, the number of buses, and, for each year until the spare ratio reaches 20 percent, the number of buses to be disposed of, the number of buses to be added, the projected peak requirement, and the projected spare ratio. The plan should include detailed justifications for years in which spare ratios exceed 20 percent.

If the grantee submits a plan for reducing its spare ratio that cannot be completed within 90 days, direct the grantee to report progress in MPRs.

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

EXPLANATION

Buses may be stockpiled in an inactive contingency fleet in preparation for emergencies. No bus may be stockpiled before it has reached the end of its service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should identify the contingency vehicles, storage location(s) and maintenance activities. The plan should be updated as necessary to support the continuation of a contingency fleet.

REFERENCES

2 CFR Part 200, Subpart D
 FAST Act, Section 3004
 49 CFR 18.32
 FTA C. 5100.1, Ch. IV, Section 8.c
 FTA C. 9300.1B, Ch. III, Section 7.b (3)

DETERMINATION

The grantee is deficient if it has a contingency fleet but no current contingency plan. (**DEFICIENCY CODE 179:** Lacking contingency plan/plan out-of-date)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA regional office a plan for its contingency fleet.

36. *If the grantee is a rail operator, does the rail fleet management plan include the required elements and does it reflect the current operating environment? Complete the following table.*

<i>Required Elements</i>	<i>Page Number</i>
<i>Operating policies</i>	
<i>Peak requirements</i>	
<i>Maintenance/overhaul program</i>	
<i>System and service expansions</i>	
<i>Railcar procurements/schedules</i>	
<i>Spare ratio justification</i>	

EXPLANATION

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

- Operating policies
- Peak requirements
- Maintenance/overhaul program
- System and service expansions
- Railcar procurements/schedules
- Spare ratio justification

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

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.32
 FTA C. 5010.1D, Ch. IV, Sections 3.i and k

SOURCES OF INFORMATION

Check that the rail fleet management plan is on file in the FTA regional office. If it is, check with the grantee to ensure that it is current and reflects the current operating environment. If it is not on file, request the plan from the grantee. Review the plan to ensure that it contains the required elements.

DETERMINATION

The grantee is deficient if it has not prepared a plan, or the plan is missing required elements or is out of date. (**DEFICIENCY CODE 196:** Lacking rail fleet management plan/plan out of date) No determination is made of the adequacy of the required plan elements.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a revised or updated rail fleet management plan that includes all required elements.

10. PLANNING/PROGRAM OF PROJECTS

BASIC REQUIREMENT

The grantee must participate in the transportation planning process in accordance with Federal Transit Administration (FTA) requirements, Fixing America's Surface Transportation (FAST) Act, and the metropolitan and statewide planning regulations. Each recipient of a Section 5307 grant shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

AREAS TO BE EXAMINED

1. *Metropolitan Planning Process*
2. *POP Public Participation Requirements*
3. *State Management of the Planning Programs*

REFERENCES

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

1. 23 U.S.C. Section 134, Federal Aid Highways, "Metropolitan Transportation Planning"
2. 49 U.S.C. Chapter 53, Federal Transit Laws
3. FAST Act, Section 3000
4. 23 CFR Part 450, "Planning Assistance and Standards"
5. Federal Register, Docket Number FTA-2013-0029, Document Number: 2014-12163, Pages 31214-31219
6. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
7. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
8. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

USEFUL WEB LINKS

Metropolitan and Statewide Planning

Major Policy and Planning Issues

Planning Index: A to Z

Planning Certification Reviews

Transportation Planning Newsletter

Transportation Planning Capacity Building

National Transit Institute (NTI) Courses

1. *If the grantee is located in a designated Transportation Management Area (TMA) (population 200,000 or more):*
 - a. *When was the last Planning Certification Review (PCR) completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA)?*
 - b. *Did the grantee participate in the review?*
 - c. *Are there any outstanding corrective actions from the PCR that pertain to the grantee?*
2. *If the grantee is not in a TMA (population under 200,000), are there any outstanding corrective actions from the metropolitan planning or statewide planning findings that pertain to the grantee?*

EXPLANATION

The FTA and Federal Highway Administration (FHWA) conduct Planning Certification Reviews (PCRs) of metropolitan planning organizations (MPOs) in Transportation Management Areas (TMAs) (population 200,000 or more) at least every four years. The Planning Certification Review (PCR) process includes input from participants in the planning process, including the grantee. The Comprehensive Review verifies the status of corrective actions from the PCR that pertain to the grantee.

FTA and FHWA assess the metropolitan planning processes and make a metropolitan planning finding. All states, at the time of an update to or amendment of the statewide transportation improvement program (STIP), must self-certify that the transportation planning process is being carried out in accordance with all applicable statutes and regulations. Subsequently, FTA and FHWA jointly make a statewide planning finding as the basis for approving the STIP update or amendment. The finding lists all concerns with the performance of planning processes in all urbanized (and non-urbanized) areas throughout the state.

REFERENCE

None

SOURCES OF INFORMATION

Determine if the grantee is located in a TMA for planning purposes. Obtain and review a copy of the PCR report. Discuss issues with the FTA regional office. The PCR report may also be available on the MPO's website. Note when the review was completed, what the corrective actions were, and if they pertain to the grantee. At the site visit, ask the grantee about its participation in the PCR and discuss any findings that pertain to the grantee. Discuss with the FTA regional office any issues that the grantee considers to be outstanding.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

3. *How does the grantee participate in the Metropolitan Planning Organization (MPO) planning process?*
4. *Is the grantee a voting member of the MPO policy board?*
5. *What is the date of the agreement with the MPO that specifies cooperative procedures for carrying out transportation planning and programming?*

EXPLANATION

An MPO is designated for each urbanized area with a population of 50,000 or more individuals (as determined by the Bureau of the Census) to carry out the metropolitan transportation planning process. The MPO is composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation

in the region. Typically, the MPO comprises a policy committee of local elected officials and a technical advisory committee of the senior transportation planning staff of the participating agencies. MAP-21, which became effective October 1, 2012, stipulates that MPOs in TMAs include transit officials on their policy board. There was a two-year window for making this change, where necessary.

The planning regulations require the MPO, the state(s), and the public transportation operator(s) to cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the state(s), and the public transportation operator(s) serving the metropolitan planning area. Written agreements are required to address at least: 1) the grantee's responsibilities, 2) the development and sharing of information for financial plans and 3) the development of the annual listing of obligated projects. If the grantee intends to rely on the MPOs' public involvement process to meet Section 5307 public involvement requirements, FTA encourages it to state so in the agreement.

REFERENCE

23 U.S.C. Section 134
49 U.S.C. 5303
49 U.S.C. 5304
FAST Act, Section 3003
23 CFR 450.306, 310, 314, 324, 332, and 326
FTA C. 9030.1E, Ch. V

SOURCES OF INFORMATION

Review the PCR and the grantee's and MPO's websites for information regarding policy board composition. Review the written agreement between the MPO and the grantee.

DETERMINATION

The grantee is deficient if it does not have an agreement with the MPO. The grantee is deficient if the agreement does not address the grantee's responsibilities, the development and sharing of information for financial plans, or the development of the annual listing of obligated projects. (**DEFICIENCY CODE 480**: No current agreement or deficiencies in agreement with MPO)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with a schedule for providing a fully executed agreement that specifies the cooperative procedures for carrying out transportation planning and programming and addresses at least the grantee's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.

6. *Does the grantee rely on the MPO's public participation process to satisfy its public participation requirements for the program of projects (POP)?*

If yes:

- a. Does the MPO have an adopted public participation plan? What is the date of the document?*
- b. Does the public notice for the Transportation Improvement Plan (TIP) state that public notice of public participation activities and time established for public review of and comments on the TIP will satisfy POP requirements?*
- c. Does the agreement with the MPO state whether the grantee will rely on the MPO's public participation process?*

If no:

- d. Does the grantee make available to the public information on amounts available to the recipient under Section 5307, and the POPs it proposes to undertake?*

- e. *How does the grantee develop proposed POPs in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals?*
- f. *Are proposed POPs published in a manner that affords citizens, private transportation providers, and local elected officials an opportunity to examine their content and to submit comments on the proposed program and the performance of the grantee?*
- g. *How is an opportunity for a public hearing provided?*
- h. *How does the grantee ensure that proposed POPs provide for coordination of mass transportation services assisted by other Federal sources?*
- i. *Identify any comments or complaints filed as a result of the publication of the POPs. How were such comments considered in preparing the final POPs?*
- j. *How are the final POPs made available to the public?*

EXPLANATION

Both the planning regulations and Section 5307 require public participation. The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that provides complete information, timely public notice, and reasonable public access to key decisions, and supports early and continuing involvement of the public in developing plans and Transportation Improvement Plan (TIP). (The grantee's projects must be programmed in the TIP to be eligible for funding.) Section 5307 grantees also have specific requirements for public participation related to the Program of Projects (POP). POP public participation requirements do not apply to funds flexed into a Section 5307 grant.

FTA allows a grantee to rely on the locally adopted public participation requirements for the TIP in lieu of the process required in the development of the POP if the grantee has coordinated with the MPO and ensured that the public is aware that the TIP development process is being used to satisfy the POP public participation requirements. To comply with the latter requirement:

- a. The MPO must have an adopted public participation plan.
- b. The public notice for the TIP must have an explicit statement that public notice of public participation activities and time established for public review of and comments on the TIP will satisfy the POP requirements. The grantee may rely on the MPO public participation process for the TIP even when notices are published less than annually.
- c. FTA encourages grantees to state in the agreement with the MPO that it relies on the public participation process for the TIP to satisfy Section 5307 public involvement requirements for the POP.

If the grantee relies on its own process to satisfy POP public participation requirements, it must:

- a. Make available to the public information concerning the amount of funds available under the Section 5307 program and the POP that the grantee proposes to undertake with such funds.
- b. Develop a proposed POP in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals.
- c. Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, representatives of welfare recipients and low-income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to comment on it and on the performance of the grantee. If the service area includes a significant number of persons with limited English proficiency, the grantee should distribute the notice to these populations. (see the Title VI section of this guide).

- d. Provide an opportunity for a public hearing to obtain the views of citizens on the proposed POP. Most grantees include in the public notice an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or grantee policies make the public hearing mandatory.
- e. Ensure that the proposed POP provides for the coordination of Section 5307 public transportation projects with transportation projects assisted with other Federal sources. Coordination may occur at many levels, from simple information sharing to total consolidation of services. Participation in the public transportation-human services planning process satisfies this requirement.
- f. Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP.
- g. Make the final POP available to the public. If the proposed POP is not amended, including a statement that the proposed program will be the final program, unless amended, satisfies the requirements regarding the final POP.

Where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate processes for the different areas involved.

REFERENCES

23 CFR 450.314, 316, 324 and 326
FTA C. 9030.1E, Ch. V

SOURCES OF INFORMATION

At the site visit, discuss how the grantee handles the public participation requirements. If the grantee relies on the public participation process for the TIP, review the TIP public notices to ensure that they state that public notice of public participation activities and time established for public review of and comments on the TIP will satisfy the POP requirements. The grantee may need to obtain the documentation from the MPO in preparation for the site visit. It is recommended that a representative of the MPO participate in the discussion during the site visit. The TIP notices often may be found on the MPO's website.

If the grantee is publishing a separate notice of its POP, review public notices for the past three years. Ask the grantee to describe the consultative process and how coordination was ensured as the POP was developed. Review written comments received by the grantee, transcripts of public hearings, and internal reports that address the comments.

DETERMINATION

The grantee is deficient if it relies on the public involvement process for the TIP to meet public participation requirements for the POP, and:

- The MPO does not have an adopted public participation plan. (**DEFICIENCY CODE 55:** Elements missing in POP public participation procedures), or
- The public notices for the TIP do not have an explicit statement that public notice of public participation activities and time established for public review and comments on the TIP will satisfy the POP requirements. (**DEFICIENCY CODE 93:** POP public notice deficiencies)

The grantee is deficient if it is responsible for publishing the POP, and:

- The grantee has failed to publish a POP, has failed to provide sufficient detail in the announcement, has failed to offer an opportunity for a public hearing, has failed to communicate to a significant population of non-English speaking individuals, or the final POP is not made available to the public. (**DEFICIENCY CODE 93:** POP public notice deficiencies)
- The grantee does not develop a proposed POP in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, ensure that the proposed POP provides for the coordination of Section 5307 public transportation projects with transportation projects assisted with other Federal sources, or consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals. (**DEFICIENCY CODE 132:** Other POP public participation deficiencies)

SUGGESTED CORRECTIVE ACTION

If the grantee is relying on the MPO for public participation activities, direct it to work with the MPO to include the required language in the TIP notice. The due date of the corrective action will depend on the next publication date. Before the next notice is due to be published, direct the grantee to submit to the FTA regional office proposed public notice language with the required statement. After the notice is published, direct the grantee to submit a copy of the published notice.

If the grantee publishes a separate POP and there are public notice deficiencies, direct the grantee to make appropriate changes, e.g., change the wording of the announcement to indicate where the POP is available for review or to include sufficient detail describing the POP. Since the publication of the POP is an annual event, the due date of the corrective action will depend upon the next publication date. Before the next POP is due to be published, direct the grantee to submit to the FTA regional office proposed public notice language. After the POP is published, direct the grantee to submit a copy of the published notice.

If the grantee publishes a separate POP and there are deficiencies with the development process, direct the grantee to submit to the FTA regional office a revised consultative process and evidence that the new process was implemented.

7. What is the state's process for involving the transit providers in the planning process, e.g., State Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP) development, project selection, public transportation-human services planning process, etc.?

EXPLANATION

The planning regulations require cooperation or coordination by the State with transit operators or non-metropolitan local officials with responsibility for transportation. The representation of transit providers in urbanized areas on the MPO policy board is also required. Participation in the public transportation-human services planning process helps satisfy this requirement.

REFERENCE

23 CFR 450.208, 218, 222, 326, and 332

Federal Register, Docket Number FTA-2013-0029, Document Number: 2014-12163, Pages 31214-31219

FTA C. 8100.1C, Chapter 2

SOURCES OF INFORMATION

Review the state management plan(s), state financial records, or other documents for information on how transit providers and non-metropolitan local officials are involved in the local planning and project selection processes. Discuss how transit operators and transit officials are represented and involved in metropolitan and non-metropolitan planning organizations. Determine whether transit providers and local officials participate in the public transportation-human services planning process.

DETERMINATION

The State is deficient if it does not involve transit providers or non-metropolitan local officials in the planning process. (**DEFICIENCY CODE 779**: Lacking involvement by transit providers and/or local officials in State)

SUGGESTED CORRECTIVE ACTION

Direct the State to submit a process for involving public transit providers and/or local officials in the planning process.

11. PUBLIC COMMENT ON FARE INCREASES AND MAJOR SERVICE REDUCTIONS

BASIC REQUIREMENT

Section 5307 grantees are expected to have a written, locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

AREAS TO BE EXAMINED

1. *Existence and Application of a Locally Developed Process*
2. *Oversight*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

1. *Does the grantee have a process for soliciting and considering public comments prior to a fare increase or a major service reduction? If yes:*
 - a. *What is considered to be a “major” service reduction?*
 - b. *How are public comments solicited?*
 - c. *How are comments considered in the decision-making process?*
 - d. *How is the process documented?*
2. *Since the last Comprehensive Review, has the grantee raised a fare or reduced service? If yes:*
 - a. *Was the reduction considered major?*
 - b. *Was the locally developed process followed? If not, what was done differently?*

EXPLANATION

Section 5307 grantees certify annually that they have a locally developed process to solicit and consider public comment prior to raising a fare or implementing a major reduction in public transportation service. Grantees are expected to have a written policy that describes the public comment process. The grantee is responsible for defining a major service reduction. This can be defined as a standard, such as elimination of a route or reduction of “X” percent of service hours or miles.

The policy should provide an opportunity for a public hearing or meeting for any fare increase or major service reduction. It should describe how such meetings will be conducted and how the results will be considered. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. Some grantees offer an opportunity for public comment for all fare and service changes. This meets the requirement.

REFERENCE

49 U.S.C. Ch. 53, Section 5307 (d)(1)(I)
Fast Act, Section 3004
FTA C. 9030.1E, Ch. VI, Section 1.a (12)

SOURCES OF INFORMATION

Obtain and review a copy of the grantee’s policy. The policy may be a separate stand-alone document or part of a larger set of administrative procedures of the agency or local government.

Obtain and review a description of any fare increases or major service reductions implemented by the grantee since the last review. Compare current fares with the fares described in the grantee’s previous Comprehensive Review report. Note effective dates, the process used to solicit public comment, and the dates of public meetings, if any, to discuss the changes. Review transcripts from public hearings, minutes of board meetings, and staff summaries or other internal memoranda that document whether the public participation process was followed and how comments were considered.

Review internal working documents that show the original plans proposed by the grantee compared to the actual plans that were implemented. Compare changes in these plans to public hearing transcripts and other sources documenting public participation and how the grantee demonstrated consideration of public comments.

DETERMINATION

The grantee is deficient if it does not have a written policy for soliciting and considering public comments prior to a fare increase or a major service reduction. (**DEFICIENCY CODE 13:** Locally developed public comment process not evident)

The grantee is deficient if the process does not address fare increases, define a threshold for what constitutes a major service reduction, describe the process for soliciting public comments, or specify how comments will be considered. (**DEFICIENCY CODE 27:** Deficiencies in public comment process as defined)

The grantee is deficient if it increased fares or implemented a major service reduction but did not solicit public comment. (**DEFICIENCY CODE 63**: Local public comment process not followed)

The grantee is deficient if it did not consider the comments received in the implementation of the final plan. (**DEFICIENCY CODE 75**: Public comments not considered adequately) Note that it is not necessary for the grantee to have changed its original plans.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a written policy for soliciting and considering public comments prior to a fare increase or major service reduction that addresses fare increases, defines a major service reduction, describes how public comment will be solicited, and specifies how comments will be considered.

Direct the grantee to submit to the FTA regional office an amended process to solicit public comment for fare increases and major service reductions.

Direct the grantee to submit to the FTA regional office an amended process that incorporates consideration and documentation of public comment.

3. *Do Section 5307 subrecipients have a process for soliciting and considering public comments prior to a fare increase or a major service reduction?*
4. *How are Section 5307 subrecipients' processes documented?*
5. *How does the grantee ensure that the Section 5307 subrecipients comply with public comment process requirements?*

EXPLANATION

The grantee must ensure that Section 5307 subrecipients have a process for obtaining public comment for fare increases and major service reductions. Either the grantee or its subrecipients are expected to have a written policy that describes the public comment process. The grantee must also ensure that subrecipients follow the process and consider public comment when they raise fares or implement major service reductions.

REFERENCES

49 U.S.C. Ch. 53, Section 5307 (d)(1)(I)
Fast Act, Section 3004
2 CFR Part 200, Subpart D
49 CFR 18.37
FTA C. 9030.1E Ch. VI, Section 1.a (12)

SOURCES OF INFORMATION

Review oversight mechanisms and correspondence. Discuss on site. Review the policy and files for subrecipients. Discuss the policy and recent subrecipient fare increases and/or major service reductions. Discuss the requirement during the subrecipient site visit.

DETERMINATION

The grantee is deficient if it does not ensure that Section 5307 subrecipients have and follow processes for obtaining and considering public comment for fare increases and major service reductions. (**DEFICIENCY CODE 105**: Insufficient oversight of fare increases and major service reductions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office procedures for ensuring that Section 5307 subrecipients have and follow processes for obtaining public comment for fare increases and major service reductions.

12. HALF FARE

BASIC REQUIREMENT

For fixed-route service supported with Section 5307 assistance, fares charged seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

AREAS TO BE EXAMINED

1. *Half Fares*
2. *Proof of Eligibility*
3. *Internal and Public Information*
4. *Oversight*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. 49 CFR Part 609, "Transportation for Elderly and Handicapped Persons"
6. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

USEFUL WEBLINKS

Medicare Eligibility

1. *What is the full fare?*
2. *What is the half fare?*
3. *During what hours are half fares available (all hours or off peak hours only)?*
4. *Are there any 5307-funded fixed-route services not included in the half fare program?*

EXPLANATION

Fares charged seniors, persons with disabilities, and Medicare cardholders during off peak hours for Section 5307-funded fixed-route service must not be more than half the fare charged during peak hours. If there are services such as neighborhood circulator and shuttle services with fares that are different from the grantee's fare for its regular local service, separate half fares are needed for each type of service.

The requirement is applicable to:

- All fixed-route services and non-charter service to sporting events, that operate in both peak and off peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the grantee directly, by a contractor, by a subrecipient, or by another entity that leases facilities and/or equipment from the grantee
- Any express and commuter service that operates beyond peak hours
- Fixed-route services for which the grantee has not defined peak hours
- Fixed-route services that operate with reduced fares in both the peak and off-peak

This requirement is not applicable to:

- Demand responsive services, including route deviation services
- Services that operate only during peak hours, such as express and commuter service
- Services that operate only in the off peak hours (e.g., lunchtime circulators and non-charter weekend service to sporting events)
- Services funded with other FTA assistance that do not use Section 5307-funded equipment or are not operated out of Section 5307-funded facilities

A "senior" is defined by FTA as "an individual who is 65 years of age or older." Grantees are permitted to use a definition that extends this fare to younger (e.g., 62 and over) persons. Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility."

Medicare is available for people age 65 or older, younger people with disabilities, and people with end stage renal disease (permanent kidney failure requiring dialysis or transplant).

The grantee determines its peak hours. Peak hours can be seasonal. If the grantee determines it is not large enough, or demand is not strong enough, to identify or justify peak hour service, then its entire service should be defined as "off peak." In this instance, the grantee has two options:

- Review ridership data and determine the peak ridership hours and develop a policy for half fare, or
- Choose not to determine a peak period and offer half fares during all hours.

REFERENCES

49 U.S.C. Section 5307(d)(1)(D)
 Fast Act, Section 3004
 49 CFR 609.23
 FTA C. 9030.1E, Ch. VI, Section 1.a (6)

SOURCES OF INFORMATION

Review the grantee's published and online fare information, half-fare application documentation, and other marketing materials. Common examples are the system map, pocket timetables, signs within the system (e.g., decals on fare boxes, ticket vending machine decals and menus, signs in stations, and car cards on vehicles) and the website. Other sources are brochures describing the fare structure and the reduced fare program, and application forms for the reduced fare program or special identification (ID) cards. In addition to information available to the general public, documents such as fare policies/tariffs and internal policy memoranda may also describe the program.

If the grantee limits half fares to off peak hours, verify that the definition of "off peak" is reasonable. For example, if the grantee has both peak and off peak fares in its overall fare structure, the off peak time periods for the general public and the half fare program should be defined consistently. Ensure that the grantee has not limited acceptance of a Medicare card to seniors only.

DETERMINATION

The grantee is deficient if it charges more than one half the peak hour fare during off peak hours. (**DEFICIENCY CODE 3:** Fares more than one half)

The grantee is deficient if it does not provide a half fare for a service that it should. (**DEFICIENCY CODE 32:** Half fares not extended to all required services)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan and schedule for implementing a half fare program and documentation that it has implemented a half fare program.

Direct the grantee to provide the FTA regional office with a plan and schedule for correcting its half fare program and documentation that it has implemented the corrective action.

5. *For the half fare, what proof of eligibility is required at time of boarding for seniors?*
6. *For the half fare, what proof of eligibility is required at time of boarding for persons with disabilities?*
7. *For the half fare, what proof of eligibility is required at time of boarding for Medicare cardholders?*
8. *If a special identification card is accepted as the sole basis for determining some or all eligibility, what are the procedures for obtaining the card?*
9. *What, if any, additional information does the grantee require from a Medicare cardholder?*

EXPLANATION

The half fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. Examples of proof of eligibility include a driver's license, Medicare card, special identification card, and Americans with Disabilities Act (ADA) eligibility card. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

A grantee is not required to accept a Medicare card at time of boarding for the passenger to receive the half fare if the grantee requires passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility for obtaining the identification card. Obtaining a special identification card must be relatively easy. For example, though not strictly prohibited, requiring individuals to travel to a single office, which may be inconveniently located, is not consistent with the intent of this requirement. The location(s) should be accessible by transit.

In order to ensure that the person presenting a Medicare card is the authorized individual, the grantee may request proof of identity (a form of ID with a photograph). There is no specific prohibition against this, provided the grantee is not asking for further proof of eligibility from the Medicare cardholder but is only checking the identity of the Medicare cardholder.

REFERENCES

49 U.S.C. Section 5307(d)(1)(D)
Fast Act, Section 3004
49 CFR Part 609.23
FTA C. 9030.1E, Ch. VI, Section 1.a (6)

SOURCES OF INFORMATION

Review public informational materials (described above) and application materials for special identification cards for a description of the process and the identification necessary to qualify for half fare. Discuss the application procedures with the grantee to ascertain whether the program is implemented properly.

DETERMINATION

The grantee is deficient if the location(s) for obtaining a special ID card are not accessible by transit, open during convenient hours, and publicized. If the grantee does not require a special identification card, it is deficient if it does not accept a Medicare card at time of boarding for the passenger to receive the half fare. The grantee is deficient if it does not accept the Medicare card as a means to obtain a special identification card. (**DEFICIENCY CODE 67:** Half fare procedures deficient)

The grantee is deficient if it requires more than a Medicare card, beyond proof of identity, as proof of eligibility for half fares. (**DEFICIENCY CODE 74:** Additional information required from Medicare cardholders)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit a plan to the FTA regional office for making passengers aware of any need for a special identification card and enabling identification cards to be easily obtained, along with documentation that the plan has been implemented.

Direct the grantee to submit documentation to the FTA regional office that it accepts a Medicare card as proof of eligibility for the half fare program.

10. How has the grantee informed its employees and the public that half fares are available?

EXPLANATION

A policy is not effective unless it is communicated to those who will carry it out and to those who can take advantage of it. Training documents and communication with operators and others responsible for implementing the fare program should demonstrate that the grantee has notified staff of the program and included the correct information.

Public information should include half fare information, if it contains fare information. For example, if a brochure says the fare to ride the bus is \$1.00, it also should say that the half fare is \$0.50 during off peak hours. It is not necessary for a grantee to list eligibility information for the half fare program wherever the half fare is posted.

Though it is not necessary to have a separate fare category for Medicare cardholders, the grantee's readily available public information must be clear that Medicare cards are accepted as proof of eligibility for the half fare program, including for persons who are not seniors.

REFERENCES

49 U.S.C. Section 5307(d)(1)(D)
49 CFR Part 609.23
FTA C. 9030.1E, Ch. VI, Section 1.a (6)

SOURCES OF INFORMATION

Review both internal and public information. Obtain and review training documents and communication with drivers (e.g., driver bulletins) and others responsible for implementing the fare program. Obtain and review system maps, route timetables, and general system fare brochures. Check other common public information items, such as the website, ticket vending machine decals and menus, station signs, and fare box decals to determine if they include the proper information for half fares.

DETERMINATION

The grantee is deficient if internal or public information regarding half fares is incomplete or does not include half fare information. (**DEFICIENCY CODE 103:** Information incomplete for half fares in general)

The grantee is deficient if half fare information is included, but Medicare eligibility is not mentioned. (**DEFICIENCY CODE 123**: Information incomplete for Medicare cardholders)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation that it has updated and redistributed the materials that did not convey the current program requirements to drivers and other operating personnel.

Direct the grantee to submit to the FTA regional office documentation that it has made information on the half fare program available where fare information is presented.

Direct the grantee to submit to the FTA regional office the revised text for its public information (e.g., maps and timetables), for the next reprint. Give grantees up to a year to reprint materials.

11. How does the grantee ensure that subrecipients operating fixed-route service supported with Section 5307 funds allow seniors, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours?

12. How does the grantee ensure that contractors, and lessees operating fixed-route service supported with Section 5307 funds allow seniors, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours?

EXPLANATION

The grantee is responsible for ensuring that subrecipients, contractors, and lessees that operate services to which the half fare requirement applies comply. The oversight program should ensure that:

- A half fare is offered for applicable services during off peak hours
- The definition of off peak hours is reasonable
- Identification requirements allow eligible persons to obtain the half fare, and internal and public fare information show the half fare and eligibility, including Medicare cardholder eligibility (It is not necessary to list eligibility information for the half fare program wherever the half fare is posted.)

REFERENCES

49 U.S.C. Section 5307(d)(1)(D)
Fast Act, Section 3004
2 CFR Part 200, Subpart D
49 CFR 609.23
49 CFR 18.37 and 18.40
FTA C. 9030.1E, Ch. VI, Section 1.a (6)

SOURCES OF INFORMATION

Review the grantee's monitoring tools, oversight files, and fare material for subrecipients, contractors, and lessees. During site visits, discuss the half fare program with the entity and review fare information on vehicles and stations, in employee training information, in brochures and other printed information, and on the entity's website.

DETERMINATION

The grantee is deficient if procedures are inadequate to ensure that subrecipients, contractors, and lessees comply with half fare requirements. (**DEFICIENCY CODE 147**: Insufficient oversight of half fare)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with half fare requirements.

13. CHARTER BUS

BASIC REQUIREMENT

Grantees are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Grantees are allowed to operate community based charter services excepted under the regulations.

AREAS TO BE EXAMINED

1. *Advisory Opinions*
2. *Cease and Desist Orders*
3. *Complaints*
4. *Charter Service*
5. *Reporting*
6. *Use of Locally Owned Vehicles*
7. *Oversight*

REFERENCES

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

1. MAP-21 Section 20017
2. FAST Act, Section 3000
3. 49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

USEFUL WEBLINKS

Charter Home Page (includes dockets, reporting forms and instructions, and other resources)

Charter Registration Website

Questions and Answers

Regulations.gov

FTA Charter Reports

1. *Did the grantee on behalf of itself or a subrecipient, contractor, or lessee request an advisory opinion from Federal Transit Administration (FTA)'s Office of Chief Counsel? If yes:*
 - a. *What was the outcome?*
 - b. *Was the advisory opinion followed?*

EXPLANATION

A grantee may request an advisory opinion from the Office of Chief Counsel on a matter regarding specific factual events only. An advisory opinion represents the formal position of FTA on a matter and obligates the grantee to follow it until it is amended or revoked. A request for an advisory opinion from a subrecipient, contractor, or lessee should be submitted to the grantee for submission to FTA. If it is submitted through the grantee, FTA will copy the grantee on the opinion.

REFERENCES

49 CFR 604.18, 604.20
Regulations.gov

SOURCES OF INFORMATION

Review information provided by the grantee and FTA's charter registration website to determine if the grantee requested an advisory opinion from the Office of Chief Counsel. Obtain information from the FTA regional counsel to answer the above two questions. If the answers are affirmative, verify the information on site. Ask the grantee to provide evidence to indicate that the advisory opinion was followed. Advisory opinions provided by FTA can be located on the FTA website at regulations.gov.

DETERMINATION

The grantee is deficient if it did not follow or ensure that the subrecipient, contractor, or lessee followed an advisory opinion. (**DEFICIENCY CODE 248:** Did not follow advisory opinion(s) from the Office of Chief Counsel)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation, along with a plan for ensuring that it or its subrecipients, contractors, or lessees follow advisory opinions from the Office of Chief Counsel.

2. *Did any registered charter provider request a cease and desist order against the grantee, subrecipient, contractor, or lessee? If yes:*
 - a. *What was the outcome?*
 - b. *Was the cease and desist order followed?*

EXPLANATION

Any interested party (a grantee or registered charter service provider) may request a cease and desist order as part of a request for an advisory opinion. Issuance of a cease and desist order against a grantee shall be considered as an aggravating factor in determining the remedy to impose against the grantee in future findings of noncompliance if the grantee provides the service described in the cease and desist order issued by the Office of Chief Counsel.

REFERENCES

49 CFR 604.22 and 604.23

SOURCES OF INFORMATION

Review information provided by the grantee and FTA's charter registration website to determine if any registered charter provider requested a cease and desist order against the grantee, a subrecipient, contractor, or lessee from the Office of Chief Counsel. Ask the grantee to provide evidence to indicate that the cease and desist order was followed.

DETERMINATION

The grantee is deficient if it did not follow or did not ensure that a subrecipient, contractor, or lessee followed the cease and desist order. (**DEFICIENCY CODE 257:** Did not follow cease and desist order from the Office of Chief Counsel)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office, documentation, along with a plan for ensuring that it or its subrecipient, contractor, or lessee will follow cease and desist orders from the Office of Chief Counsel.

3. *Did any registered charter provider, or its duly authorized representative, file a complaint with the Office of the Chief Counsel against the grantee alleging noncompliance with the charter regulation? If yes, did the grantee file an answer within 30 days of the date of the FTA notification?*

EXPLANATION

A registered charter provider or its duly authorized representative may file a Notice of Charter Service Complaint with the Office of the Chief Counsel. Unless the complaint is dismissed, FTA shall notify the grantee within 30 days after receiving the complaint that the complaint has been docketed. The grantee shall have 30 days from the date of the FTA notification to file an answer. The complainant may file a reply within 20 days. The grantee may subsequently file a reply within 20 days of the date of service of the respondent's answer.

Throughout the process, FTA deals directly with the entity against whom the complaint is filed (respondent). However, grantees are required to ensure that subrecipients, contractors, and lessees comply with the charter regulations (see questions 10 and 11).

REFERENCES

49 CFR 604.27

SOURCES OF INFORMATION

Review information provided by the grantee and FTA's charter registration website to determine if any registered charter provider or its duly authorized representative filed a complaint against the grantee with the Office of Chief Counsel. Review the information provided by the grantee to ensure that the grantee filed an answer within 30 days from the date of service of the FTA notification to file an answer.

DETERMINATION

The grantee is deficient if it did not file an answer or filed an answer after 30 days. (**DEFICIENCY CODE 267:** Deficiencies in response to FTA notification of charter complaint)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to file answers to the pending FTA notification(s) and to submit to the FTA regional office procedures for submitting the answers to FTA notifications on time in the future.

4. *How does the grantee obtain information to report all charter services provided under the exceptions for itself, contractors, and lessees?*
5. *What charter service is provided by the grantee, contractors, and lessees and under what exception(s) is it provided?*
6. *What charter service is provided by subrecipients and under what exception(s) is it provided?*
7. *How does the grantee obtain information to report all charter services provided under the exceptions for subrecipients?*

EXPLANATION

The charter service regulations apply to all grantees and subrecipients that receive Section 5307, 5309, 5310, 5311,

5316, 5317 or 5339 funds. Though the Sections 5309, 5316 and 5317 programs were repealed by MAP-21, funding remains available and therefore, the charter regulations still apply. The regulations define charter service as follows:

- (1) Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service:
 - A third party pays a negotiated price for the group
 - Any fares charged to individual members of the group are collected by a third party
 - The service is not part of the regularly scheduled service, or is offered for a limited period of time
 - A third party determines the origin and destination of the trip as well as scheduling.
- (2) Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration and:
 - A premium fare is charged that is greater than the usual or customary fixed-route fare, or
 - The service is paid for in whole or in part by a third party.

Examples of services that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the grantee does not charge a premium fare for the service and there is no third party paying for the service in whole or in part
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the grantee, the grantee charges its customary fixed-route fare and there is no third party involvement
- When a university pays the grantee a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the grantee provides the service on a regular basis along a fixed route and the service is open to the public
- When the grantee sees a need and wants to provide service for a limited duration at the customary fixed-route fare.

The charter regulations include **exemptions** and **exceptions**.

Exemptions

Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. The charter service regulation exempts the following services:

1. Transportation of Employees, Contractors, and Government Officials: Grantees are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.
2. Private Charter Operators: The prohibitions do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under the over-the-road bus accessibility program or to non-FTA-funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance.
3. Emergency Preparedness Planning and Operation: Grantees are allowed to transport their employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests for emergency preparedness planning and operations.
4. Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to grantees that use Federal financial assistance from FTA for program purposes, that is, transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities) under Section 5310, 5311, 5316, or 5317. "Program purposes" does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.

5. Emergency Response: Grantees are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.
6. Recipients in Non-Urbanized Areas: Grantees in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions

Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements. The charter regulation treats as exceptions the following community-based charter services. The grantee must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

1. Government Officials: A grantee is allowed to provide charter service (up to 80 charter service hours annually) to government officials (Federal, state, and local) for official government business, which can include non-transit related purposes, if the grantee:
 - a. Provides the service in its geographic service area
 - b. Does not generate revenue from the charter service, except as required by law.

The grantee may petition FTA for additional charter service hours.

The grantee is required to record the following information after providing such service:

- a. The government organization's name, address, phone number, and email address
 - b. The date and time of service
 - c. The number of government officials and other passengers
 - d. The origin, destination, and trip length (miles and hours)
 - e. The fee collected, if any
 - f. The vehicle number for the vehicle used to provide the service
2. Qualified Human Service Organization (QHSO): A grantee is allowed to provide charter service to a QHSO for the purpose of serving persons:
 - a. With mobility limitations related to advanced age
 - b. With disabilities
 - c. With low income

If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration website. Otherwise, the QHSO is required to register. The grantee may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service. The grantee is required to record the following information after providing such service:

- a. The QHSO's name, address, phone number and email address
 - b. The date and time of service
 - c. The number of passengers
 - d. The origin, destination, and trip length (miles and hours)
 - e. The fee collected, if any
 - f. The vehicle number for the vehicle used to provide the service
3. Leasing of Equipment and Driver: A grantee is allowed to lease its FTA funded equipment and drivers to registered charter providers for charter service only if all of the following conditions exist:

- a. The private charter operator is registered on the FTA charter registration website
- b. The registered charter provider owns and operates buses or vans in a charter service business
- c. The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider; and
- d. The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area.

The grantee is required to record the following information after leasing equipment and drivers:

- a. The registered charter provider's name, address, telephone number, and email address
- b. The number of vehicles leased, type of vehicles leased, and vehicle identification numbers, and
- c. The documentation provided by the registered charter provider in support of the four conditions discussed above.

4. No Response by Registered Charter Provider: A grantee is allowed to provide charter service, on its own initiative or at the request of a third party, if no charter provider registered on the FTA's website responds to the notice issued:

- a. Within 72 hours for charter service requested to be provided in less than 30 days, or
- b. Within 14 calendar days for charter service requested to be provided in 30 days or more.

The grantee is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the grantee of its interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

If the grantee is interested in providing charter service under this exception, the grantee shall provide email notice to registered charter providers in the grantee's geographic service area by the close of business on the day the grantee received the request unless the request was received after 2:00 p.m., in which case the notice shall be sent by the close of business the next business day. The email notice sent to the list of registered charter providers shall include:

- a. Customer name, address, phone number, and email address (if available)
- b. Requested date of service
- c. Approximate number of passengers
- d. Type of equipment requested (bus(es) or van(s))
- e. Trip itinerary and approximate duration
- f. The intended fare to be charged for the service

The grantee shall retain an electronic copy of the email notice and the list of registered charter providers that were sent email notice of the requested charter service for a period of at least three years from the date the email notice was sent. If the grantee receives an "undeliverable" notice in response to its email notice, the grantee shall send the notice via facsimile. The grantee shall maintain the record of the undeliverable email notice and the facsimile sent confirmation for three years.

The grantee is required to record the following information after providing the service:

- a. The group's name, address, phone number, and email address
- b. The date and time of service
- c. The number of passengers
- d. The origin, destination, and trip length (miles and hours)
- e. The fee collected, if any
- f. The vehicle number for the vehicle used to provide the service

If a registered charter provider indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and the grantee was willing to provide the service, then the grantee can file a complaint against the registered charter provider. A form for this is provided on the FTA website.

5. Agreement with All Registered Charter Providers: The grantee is allowed to provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the grantee's service area. The grantee is allowed to provide charter service up to 90 days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing a 90-day notice to the grantee.
6. Petition to the Administrator: The grantee may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
 - a. Events of regional or national significance. The petition shall describe how registered charter providers were consulted and will be utilized and include a certification that the grantee has exhausted all the registered charter providers in its service area. The petition must be submitted at least 90 days before the first day of the event.
 - b. Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population). The exception is only available if the registered charter providers have deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service.
 - c. Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest. The petition shall describe why the event is unique and time sensitive and would be in the public's interest.

Petitions to the Administrator are posted at regulations.gov, which can be accessed through the FTA charter website, so they are not reported in quarterly reports. The grantee shall retain a copy of the Administrator's approval for a period of at least three years.

Grantees providing charter service under the following four exceptions must report to FTA on charter activity:

- Government officials (604.6)
- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9).

Grantees must post the required records on the FTA charter website within 30 days of the end of each calendar quarter as follows:

- October 1 to December 31: January 30
- January 1 to March 31: April 30
- April 1 to June 30: July 30
- July 1 to September 30: October 30

The grantee reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA grantees for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website and appear at the end of this section.

When charter service is provided under one or more of the exceptions under this regulation, the grantee, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The grantee may maintain the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the grantee relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The grantee may exclude specific origin-to-destination information for safety and security reasons. If such information is

excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

The table below summarizes the notification, record-keeping, quarterly reporting, and other requirements applicable to each exception.

REFERENCES

- 49 CFR - 604.2 (b) – (g) and 604.3 (c)
- Appendix C (c)(18), (24), (26) and (36)
- 49 CFR 604.6 – 604.11; Appendix A
- Appendix C (a)(1), (3) and (6)
- 49 CFR 604.12
- Petitions to the Administrator
- FTA Charter Reports

SOURCES OF INFORMATION

Review the grantee’s charter procedures, if written, to ensure that they comply with the charter regulation. If the grantee has not developed written procedures, ask it to provide information on how the exceptions are communicated and implemented within the organization. Check brochures, the website, other online sources, and the local telephone listings to determine if the grantee advertises charter service. Review documents submitted as part of the financial area of the review to determine if charter revenue is noted as a source of funds. Review charter logs and the FTA charter reporting website to provide information on types of charter services provided and to ensure that the grantee submitted information for all exceptions under which it provided charter service. Review the grantee’s procedure for obtaining the information from subrecipients, contractors, and lessees for reporting to FTA.

DETERMINATION

The grantee is deficient if it operates charter service that does not comply with the requirements of the exception. (**DEFICIENCY CODE 167:** Operating charter service in violation of one or more allowed charter service exceptions)

The grantee is deficient if it did not submit information for itself, subrecipients, contractors, or lessees for all applicable exceptions on time. (**DEFICIENCY CODE 53:** Charter reporting issues)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to cease operating charter that does not comply with the requirements of the exception. If the grantee wishes to continue to provide charter service, direct it to submit to the FTA regional office procedures for ensuring that services are consistent with the exceptions allowed under the charter regulation and evidence that the procedures have been implemented.

Direct the grantee to submit missing quarterly reports in the FTA charter reporting website and to submit to the FTA regional office procedures for submitting the required information for all applicable exceptions on time.

CHARTER SERVICE EXCEPTIONS				
Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
1. Government Officials	No	Yes	Yes	None

CHARTER SERVICE EXCEPTIONS				
Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request
3. Leasing of Equipment and Driver	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area
4. No Response by Registered Charter Provider	Yes	Yes	Yes	None
5. Agreement with All Charter Providers	No	No	No	Properly executed agreements with all registered charter providers in grantee's geographic service area
6. Petition to the Administrator	Yes	No	No	Grantee must demonstrate how it contacted registered charter providers and how the grantee will use the registered charter providers in providing service to the event. Grantee must also certify that it has exhausted available registered charter providers' vehicles in the area.

8. *Does the grantee, a contractor, or a lessee provide charter service with locally owned vehicles? If yes, are the vehicles stored and maintained in a locally funded facility?*
9. *Does a subrecipient provide charter service with locally owned vehicles? If yes, are the vehicles stored and maintained in a locally funded facility?*

EXPLANATION

The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

REFERENCES

49 CFR Part 604 Appendix C (a)(8)

SOURCES OF INFORMATION

Review grantee records to ensure that the equipment is locally funded. Review the bus fleet information provided and observed during the Technical Capacity areas of the review. If the grantee operates charter service with equipment that is fully funded with local funds, review financial records to ensure that the equipment is stored in a locally funded facility and is maintained with local funds.

DETERMINATION

The grantee is deficient if it operates charter service with locally funded equipment but stores or maintains it in an FTA funded facility. It is deficient if it is unable to provide documentation to show that it has completely segregated locally funded service. (**DEFICIENCY CODE 284**: No documentation of complete segregation of charter service operated with local equipment)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for ensuring that locally owned equipment used to provide charter service is not stored and/or maintained in an FTA funded facility and there is complete segregation of charter service operated with local equipment.

10. How does the grantee ensure that contractors and lessees comply with the charter regulations?

11. How does the grantee ensure that subrecipients comply with the charter regulations?

EXPLANATION

The grantee shall ensure that any subrecipient, contractor, or lessee providing charter service operates the service in accordance with the regulation.

REFERENCES

49 CFR Part 604.16

FTA Charter Service Quarterly Exceptions Reporting Form and Instructions

SOURCES OF INFORMATION

Review oversight materials, such as reports, questionnaires, and site visit checklists. Review the subrecipient grant agreements, operating contracts, and leases to ensure that they contain the required charter bus clause. On site, discuss the oversight procedures. Discuss procedures for handling charter complaints. Review information on charter complaints filed with the grantee. During subrecipient, contractor, and lessee site visits, look for indications that charter service is operated. Ask the subrecipient, contractor, or lessee if it operates charter service and, if so, under what exception. Ask if the subrecipient, contractor, or lessee reported the information to the grantee for reporting to FTA.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients, contractors, and lessees operate charter service in accordance with the regulation. (**DEFICIENCY CODE 35**: Insufficient oversight of charter service)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the charter regulations.

Instructions for filling out the FTA Charter Exceptions Quarterly Reporting Form

There are four exceptions for which a quarterly report is required:

- government officials (Section 604.6);
- qualified human service organizations (Section 604.7);
- leasing (Section 604.8); and
- no response from a registered charter provider (Section 604.9).

The form is broken into three sections.

Section 1 – For All Exceptions

- This section is filled out for all exceptions.
- In the first column specify which exception you relied upon to perform the charter service according to the following codes:
 - o government officials - **GO**
 - o qualified human service organizations - **QH**
 - o leasing - **LE**
 - o when no registered charter provider responds to notice from a recipient - **WN**
- Fill out the name, address, phone number, and email address of the government organization, qualified human service organization, or group as appropriate.

Section 2 – For GO, QH, and WN Exceptions Only

- This section is filled out for the government officials, qualified human service organizations, and when no registered charter provider responds to notice from a recipient only.
- Provide the requested trip information as indicated.
- For vehicle numbers please list all vehicle numbers separated by semicolons. If there's not enough room to include this information, please attach a separate sheet with the required information. When doing this, please indicate the line number by referring to the number in column "A".

Section 3 – For LE Exception Only

- This section is filled out for the leasing exception only.
- For this exception supporting documentation is required.
- In column "P" list the title(s) of any documentation that supports the requirements of Section 604.8.b.3.

***It is very important that if you are reporting any LE exceptions that you print the form out and scan it as a PDF with the supporting documentation.**

FTA Charter Exceptions Quarterly Reporting Form

Section 1					Section 2							Section 3		
Exception #	Name	Address	Phone #	Email Address	Date of Service	Start Time of Service	# of Passengers	Trip Origination	Trip Destination	Trip Duration (hours)	Fee Collected (per capita or total)	Vehicle #s (separate by semicolon)	# of Vehicles	Supporting Documentation (Document Title)
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														
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14. SCHOOL BUS

BASIC REQUIREMENT

Grantees are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the Federal Transit Administration (FTA) Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. School tripper service that operates and looks like all other regular service is allowed.

AREAS TO BE EXAMINED

1. *School Bus Service*
2. *Tripper Service*
3. *Oversight*

REFERENCES

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

1. 49 CFR Part 605, "School Bus Operations"
2. "Final Policy Statement on FTA's School Bus Operations Regulations" 73 FR 53384 September 16, 2008

USEFUL WEBLINKS

FTA School Bus Operations Home Page

Questions and answers

School bus decisions

1. *Does the grantee operate exclusive school bus service? If yes:*
 - a. *Does the service qualify for one of the statutory exemptions?*
 - b. *Has the grantee received approval from the Federal Transit Administration (FTA) Administrator?*
 - c. *Does the service operate only with non-FTA-funded equipment and facilities?*

EXPLANATION

There are three statutory exemptions under which an FTA grantee may operate exclusive school bus service:

- The grantee operates a school system in the area and operates a separate and exclusive school bus service for that school system.
- Existing private school bus operators are unable to provide adequate, safe transportation at a reasonable rate.
- The grantee, a public entity, has operated the service at any time during the twelve-month period preceding August 13, 1973, or anytime during the twelve-month period preceding November 26, 1974. There are two dates under this particular exemption because this exemption is based on the dates that two separate legislative measures relating to the Federal Highway Administration (FHWA) and (then) Urban Mass Transportation Administration (UMTA) were enacted; both legislative measures independently included the school bus condition and this exemption.

A grantee wishing to engage in school bus operations must provide an opportunity for public comment, including providing written notice to all private school bus operators and publishing notice in the local newspaper.

The FTA Administrator makes the determination of whether to permit a grantee to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the grantee enters into an agreement with the Administrator.

Exclusive school bus service operated under an approved exemption must use locally owned vehicles that are not housed or maintained in an FTA-funded facility. FTA-funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

REFERENCE

49 CFR Part 605

SOURCES OF INFORMATION

Review the grantee's website to determine if school bus service is provided and if it appears to comply with the regulations. Confer with the FTA regional counsel to determine service provided and if FTA has received any school bus complaints. If the grantee operates exclusive school bus service, verify on site that the equipment is locally-funded and discuss the exemption under which the service is operated. Review the documentation of the public process and the Administrator's approval of the exclusive school bus service. Identify the equipment and facilities used in the provision of exclusive school bus service and determine whether Federal funds were used.

DETERMINATION

The grantee is deficient if it operates exclusive school bus service that is not approved by the Administrator. (**DEFICIENCY CODE 21**: Operates exclusive school bus service without FTA exception)

The grantee is deficient if it uses FTA-funded equipment or facilities in exclusive school bus service, whether or not the service qualifies for a statutory exemption. (**DEFICIENCY CODE 46**: Qualifies for school bus exception but uses FTA-funded equipment and/or facilities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to immediately cease providing exclusive school bus service that violates the statute, i.e., has not been approved by the Administrator or uses FTA-funded equipment or facilities, and provide documentation of this to the FTA regional office.

2. If the grantee provides school “tripper service,” how is the service promoted to the general public?

EXPLANATION

Grantees are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as regularly scheduled mass transportation service that is open to the public and is designed or modified to accommodate the needs of school students and personnel. Tripper service allows a grantee to:

- Utilize various fare collections or subsidy systems
- Modify the frequency of service
- Make de minimus route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools

Buses used in tripper service must:

- Be open and promoted to the public
- Not carry designations such as “school bus” or “school special”
- Stop at regular bus stops

School tripper service should operate and look like all other regular service. All routes traveled by tripper buses must be within the regular route service as indicated in the published route schedules. Schedules listing tripper routes should be on the grantee’s regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website. Demand-response service does not qualify for the “tripper service” exception.

REFERENCES

49 CFR Part 605

“Final Policy Statement on FTA’s School Bus Operations Regulations” 73 FR 53384 September 16, 2008

SOURCES OF INFORMATION

If the grantee operates school tripper service, examine route maps, brochures, timetables, and the website for inclusion of the service. Discuss school tripper service with the grantee. Verify that the service meets all of the required criteria for being open and promoted to the general public. Look at the buses used for this service when inspecting maintenance facilities.

If the grantee reports that it does not operate school tripper service, ask how students in the area are transported to school. Determine if the school district provides bus service. If not, and students ride transit buses, the grantee may be providing tripper service, but may not be identifying it as such. In such cases, ensure that the school tripper requirements are met.

DETERMINATION

The grantee is deficient if it operates school tripper service that does not meet the criteria for being open and promoted to the general public. (**DEFICIENCY CODE 71:** Tripper violations)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to discontinue directly operated school tripper service not meeting the requirements or modify the service to comply with FTA requirements.

Direct the grantee to submit documentation of compliance to the FTA regional office, including revised timetables, route maps, brochures, and website information.

3. How does the grantee ensure that subrecipients comply with school bus regulations?

4. If any subrecipients operate exclusive school bus service:

- a. Does the service qualify for one of the statutory exemptions?*

- b. *Demonstrate that approval was received from the Federal Transit Administration (FTA) Administrator.*
- c. *Demonstrate that the service operates only with non-FTA-funded equipment and facilities.*

EXPLANATION

The grantee must ensure that exclusive school bus service operated by subrecipients is provided under one of the statutory exemptions and does not involve FTA-funded equipment or facilities. The grantee must ensure that school tripper service operated by subrecipients operates and looks like all other regular service.

The grantee must also ensure that any subrecipient, contractor or lessee that provides exclusive school bus service does so with locally owned vehicles that are not housed or maintained in an FTA-funded facility.

There are three statutory exemptions under which an FTA grantee may operate exclusive school bus service:

- The grantee operates a school system in the area and operates a separate and exclusive school bus service for that school system.
- Existing private school bus operators are unable to provide adequate, safe transportation at a reasonable rate.
- The grantee, a public entity, has operated the service at any time during the twelve-month period preceding August 13, 1973, or anytime during the twelve-month period preceding November 26, 1974. There are two dates under this particular exemption because this exemption is based on the dates that two separate legislative measures relating to the Federal Highway Administration (FHWA) and (then) Urban Mass Transportation Administration (UMTA) were enacted; both legislative measures independently included the school bus condition and this exemption.

A grantee wishing to engage in school bus operations must provide an opportunity for public comment, including providing written notice to all private school bus operators and publishing notice in the local newspaper.

The FTA Administrator makes the determination of whether to permit a public transit agency to operate exclusive school bus service under one of the statutory exemptions. Upon notice of approval by the Administrator, the grantee enters into an agreement with the Administrator.

Exclusive school bus service operated under an approved exemption must use locally owned vehicles that are not housed or maintained in an FTA-funded facility. FTA-funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

REFERENCES

49 CFR Part 605

SOURCES OF INFORMATION

Review subrecipient agreements, contracts and lease agreements for the required school bus clause. Review oversight materials, such as reports, questionnaires, site visit checklists and state management plans for a discussion of school bus restrictions and oversight procedures. Ask the grantee to identify any subrecipients, contractors, and lessees operating exclusive school bus service. Ask the grantee to identify subrecipients that exclusive school bus service. During subrecipient, contractor, and lessee site visits, look for indications that exclusive school bus is operated. Ask the subrecipient, contractor, or lessee if it operates exclusive school bus service. If exclusive school is provided, ensure that it complies with the regulation.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients, contractors, or lessees comply with the regulations. (**DEFICIENCY CODE 10:** Insufficient oversight of school bus service)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the school bus regulation.

5. For any subrecipients that provide school “tripper service”, how is the service promoted to the general public?

EXPLANATION

Grantees are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as regularly scheduled mass transportation service that is open to the public and is designed or modified to accommodate the needs of school students and personnel. Tripper service allows a grantee to:

- Utilize various fare collections or subsidy systems
- Modify the frequency of service
- Make *de minimus* route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools

Buses used in tripper service must:

- Be open and promoted to the public
- Not carry designations such as “school bus” or “school special”
- Stop at regular bus stops

School tripper service should operate and look like all other regular service. All routes traveled by tripper buses must be within the regular route service as indicated in the published route schedules. Schedules listing tripper routes should be on the regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website. Demand- response service does not qualify for the “tripper service” exemption.

REFERENCES

49 CFR Part 605

SOURCES OF INFORMATION

Review subrecipient agreements, contracts and lease agreements for the required school bus clause. Review oversight materials, such as reports, questionnaires, site visit checklists and state management plans for a discussion of school bus restrictions and oversight procedures. Ask the grantee to identify any subrecipients, contractors, and lessees operating school tripper service. Ask the grantee to identify subrecipients that operate school tripper service. During subrecipient, contractor, and lessee site visits, look for indications that school tripper service is operated. Ask the subrecipient, contractor, or lessee if it operates school tripper service. If exclusive school or tripper service is provided, ensure that it complies with the regulation.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients, contractors, or lessees comply with the regulations. (**DEFICIENCY CODE 10:** Insufficient oversight of school bus service)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the school bus regulation.

15. SECURITY

BASIC REQUIREMENT

As recipients of Section 5307 funds, grantees must annually certify that they are spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

AREAS TO BE EXAMINED

1. *Security Expenditures*

REFERENCES

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

1. 49 U.S.C. Chapter 53, Federal Transit Act, Section 5302(a)(1) and 5307(d)(1), Security Expenditures
2. FAST Act Section 3000
3. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

1. *Does the grantee utilize one percent of its Section 5307 expenditures for transit security?*
 - a. *If yes, how were the funds utilized over the last three years?*
 - b. *If no, how do existing security measures meet agency needs?*
2. *If the grantee is the designated recipient in an urbanized area (UZA) where there are more than one Section 5307 grantees, what process will be used to certify that at least one percent of Section 5307 expenditures in the UZA are spent on security projects, or that the expenditures are not necessary?*

EXPLANATION

The grantee is required to certify that it is spending at least one percent of the Section 5307 funds it receives annually for transit security projects or that such expenditures are not necessary. This certification is part of the annual certifications and assurances. Grantees should provide details on security expenditures over the past three years in the attached table.

For grantees that spend the one percent, examples of appropriate security expenditures include:

- Facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.)
- Closed circuit television camera systems (at stations, platforms, bus stops, and on-board vehicles)
- Any other project intended to increase the security and safety of an existing or planned transit system

There are three reasons that grantees may have for considering the one percent security expenditure to be unnecessary:

- A recent threat and vulnerability assessment identified no deficiencies
- Transportation Security Administration (TSA)/ (FTA) Security and Emergency Management Action Items met or exceeded
- Other. For the “other” category, the typical reason is that a grantee spends sufficient local, other FTA, or Department of Homeland Security funds on security projects and, therefore, does not need to spend formula grant funds on security projects.

Regardless of the reasons for deciding not to spend Section 5307 funds on transit-related security, grantees should provide information and documentation that supports their decision.

Pursuant to MAP-21 and the issuance of FTA Circular 9030.1E, designated recipients and recipients must certify that either: (1) recipients in the urbanized area (UZA) will collectively expend at least one percent of the amount apportioned to the UZA for a fiscal year on “public transportation security projects,” or (2) that such expenditures for security projects are unnecessary. This certification may also be provided by the metropolitan planning organization in coordination with eligible recipients in the UZA.

REFERENCES

49 U.S.C. 5302(a)(1) and 5307(d)(1)(J)
 FAST Act, Section 3000
 FTA C. 9030.1E, Ch. VI, Section 1 a. (13)

SOURCES OF INFORMATION

Review grants in the FTA Electronic Award and Management System (EAMS) to identify security expenditures, whether the grantee utilizes one percent of its Section 5307 expenditures for transit security, and the reasons for not expending the one percent. Review information from the regional office to determine if there are multiple Section 5307 recipients in the UZA. Review National Transit Database (NTD) reports for the review period and look online for news articles or other publications describing security incidents.

During the site visit, review documentation that supports the expenditures reported in the security expenditures table. Discuss the reasons for not expending the one percent on security.

DETERMINATION

The grantee is deficient if it decides that expenditures for security are necessary but falls short of the one percent requirement (unless recipients in the UZA collectively expend at least one percent of the amount apportioned to the UZA). (**DEFICIENCY CODE 153**: One percent security requirement not met)

The grantee is deficient if it determines that expenditures *are* necessary, but cannot provide adequate documentation of its Section 5307 security expenditures. If the grantee is only one of the recipients of Section 5307 funds in the UZA, work with the FTA regional office to determine if a deficiency is appropriate, based on the aggregate amount of security expenditures in the UZA. (**DEFICIENCY CODE 355**: Lacking documentation of security expenditures)

The grantee is deficient if it decides that expenditures for security are *not* necessary but cannot explain or provide adequate documentation to support its decision. (**DEFICIENCY CODE 159**: Documentation lacking for decision not to expend security funds)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for meeting the one percent expenditure requirement and report on implementation of this plan.

Direct the grantee to submit to the FTA regional office a plan for documenting the amount of formula funds spent on transit security.

Direct the grantee to submit to the FTA regional office an explanation and adequate documentation on why the expenditure is not necessary.

**Exhibit 15-1
TRANSIT SECURITY EXPENDITURES**

Security Funding	FTA Section 5307 Funds		
	FY 2014	FY 2015	FY 2016
Total amount of 5307 funds expended			
Amount of 5307 funds expended on security			
Percent of 5307 funds expended on security			
Infrastructure/Capital Improvement Security Projects:			
Lighting, fencing & perimeter control			
Closed Circuit Television (CCTV) and surveillance technology			
Communications systems			
Other security-related infrastructure and capital improvements (list)			
Operating/Personnel Expenditures (for agencies in areas with populations under 200,000):			
Contracted security force			
In-house security force			
Other security-related operating expenditures (list)			

16. DRUG FREE WORKPLACE AND DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees are required to maintain a drug-free workplace for all grant-related employees and to have an ongoing drug-free awareness program. Grantees receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

AREAS TO BE EXAMINED

1. *Drug-free Workplace Act Policy and Program*
2. *Drug and Alcohol Testing Policy*
3. *Management Information System (MIS) Reporting*
4. *Random Testing Rates*
5. *Post-Accident Testing*
6. *Reasonable Suspicion Training*
7. *New Hire Data*
8. *Records Control*
9. *Monitoring Program*

REFERENCES

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

1. 41 U.S.C. Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988
2. FAST Act Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. 49 CFR Part 32 "Governmentwide Requirements for a Drug-free Workplace (Grants)"
6. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"
7. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"
8. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
9. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

USEFUL WEBLINKS

FTA Drug and Alcohol Testing Homepage

Newsletters

Drug and Alcohol MIS Reporting

Drug and Alcohol Training

Technical Assistance

Drug and Alcohol Publications

Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit

Drug and Alcohol Program Compliance Audit Questionnaires

Office of Drug and Alcohol Policy and Compliance

Release of Information Form 49 CFR Part 40 – Drug and Alcohol Testing

List of U.S. Department of Health and Human Services (HHS) Certified Laboratories

APPLICABILITY

The Drug Free Workplace Act (DFWA) applies to direct recipients but not subrecipients, contractors, or lessees.

FTA drug and alcohol testing requirements apply to grantees, subrecipients, contractors, and lessees with safety sensitive employees that receive FTA funds under Section 5307, 5309, 5311, or 5339, except where funds are used exclusively for facilities or planning and the grantee does not fund operations.

MAP-21 consolidated the Section 5316 Job Access and Reverse Commute Program (JARC) into the Section 5307 and 5311 programs. FTA intends for those recipients solely engaged in JARC activities to continue to be exempt from drug and alcohol testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4.

1. *Has the Federal Transit Administration (FTA) conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit?*
2. *Is an audit scheduled for the current Federal fiscal year?*

EXPLANATION

FTA periodically conducts drug and alcohol audits of selected grantees. Even if an audit is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked. If an audit has been recently conducted, obtain a copy of the most recent report for input into the review.

REFERENCE

None

SOURCES OF INFORMATION

Review OTrak for past drug and alcohol audits. Contact the FTA drug and alcohol program manager or the Volpe drug and alcohol project office to determine if a drug and alcohol program compliance audit is scheduled for the current Federal fiscal year or has been conducted during the past two Federal fiscal years.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

3. *How does the grantee comply with its obligations to have a written policy as prescribed in the Drug-Free Workplace Act (DFWA) that is distributed to all grant-related employees?*

EXPLANATION

The grantee is required to have and distribute to grant-related employees a written policy that states:

- The workplace is drug-free
- The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
- Employees must abide by the terms of the policy statement as a condition of employment
- If convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

The DFWA requirement applies to employees of a recipient directly engaged in the performance of work under the grant, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants, or independent contractors not on the grantee's payroll, or employees of subrecipients or contractors in covered workplaces.

The DFWA policy can be in the FTA drug and alcohol testing policy as long as it is clearly differentiated and it is extended to all applicable employees, not just safety-sensitive employees. These requirements should not be confused with FTA drug and alcohol testing requirements, which apply only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REFERENCES

41 U.S.C. Sections 701 et seq., DFWA of 1988
49 CFR 32.200 through 230

SOURCES OF INFORMATION

Obtain and review a copy of the grantee's drug-free workplace policy.

DETERMINATION

The grantee is deficient if it does not have a written DFWA policy. (**DEFICIENCY CODE 311**: No written DFWA policy).

The grantee is deficient if it has not provided written notification to its employees, has not notified all grant-related employees, has not informed employees that adherence to the policy is a condition of employment, has not informed employees of the criminal drug statute violation time frames, or has other omissions in its policy as described above. (**DEFICIENCY CODE 206**: Drug-free workplace policy lacking required elements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a written or amended DFWA policy that includes all required elements along with documentation that it has been distributed to all grant-related employees.

4. *What is the grantee's ongoing drug-free awareness program?*
5. *How does the grantee inform employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs?*

EXPLANATION

In addition to establishing and maintaining a drug-free workplace environment, the grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on an employee assistance program to provide drug-free awareness information. This procedure is acceptable, provided the material includes a drug-free workplace message.

REFERENCES

49 CFR 32.200 through 230

SOURCES OF INFORMATION

Review the written policy, employee handbooks, brochures, posters, information on bulletin boards, employee assistance program information, and other material distributed to employees.

DETERMINATION

The grantee is deficient if it does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, and the opportunities for assistance. It is deficient if it has provided such information in the past but has not provided information on an ongoing basis. (**DEFICIENCY CODE 226**: No ongoing drug-free awareness program)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office evidence that it has implemented an ongoing drug-free awareness program and informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

6. *Since the last Comprehensive Review, has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes:*
 - a. *Was such notice timely?*
 - b. *Did the grantee provide FTA timely notice of the conviction?*
 - c. *What action was taken against personnel that reported such a conviction?*

EXPLANATION

When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must

take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REFERENCE

49 CFR 32.225

SOURCES OF INFORMATION

Review information provided by the grantee and follow up during the site visit.

DETERMINATION

The grantee is deficient if it has reported a conviction or has taken personnel actions, but not within the appropriate time frames. The grantee is deficient if it reports that a conviction has occurred but did not notify FTA or take appropriate personnel actions. (**DEFICIENCY CODE 323**: Inadequate criminal drug statute violation reporting)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to report to the FTA regional office outstanding convictions and/or take appropriate personnel actions and to develop procedures to do so in the future within the required timeframes.

7. *How does the grantee ensure that safety-sensitive employees as defined by FTA are included in a drug and alcohol testing program?*
8. *If the grantee operates ferry service, are safety-sensitive employees tested randomly for alcohol under FTA authority?*

EXPLANATION

Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Safety-sensitive employees are employees that perform the following functions:

- Operate a revenue vehicle including when not in revenue service
 - Operate a non-revenue vehicle when required to be operated by a holder of a commercial driver's license (CDL)
 - Control dispatch or movement of a revenue service vehicle
 - Maintain, repair, overhaul, or rebuild a revenue service vehicle or equipment used in revenue service with the exception of:
 - (a) All maintenance contractors of grantees in UZAs under 200,000
 - (b) Subcontractors of maintenance contractors
- Note that contractors that provide maintenance services as an operations contractor **are** subject to FTA's drug and alcohol testing regulations.
- Carry a firearm for security purposes

Volunteer drivers are not subject to testing unless the volunteers are required to hold a CDL or receive remuneration in excess of expenses incurred while engaged in a safety-sensitive function.

Grantees that operate a commuter railroad regulated by Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. If the grantee operates commuter rail only, then the grantee operates solely under FRA drug and alcohol regulations.

Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard (USCG)'s chemical and alcohol testing requirements. However, those ferry operations are subject to FTA's random alcohol testing requirement for employees considered safety-sensitive by the USCG (crew members with a merchant mariner's document or under a certificate of inspection), since the USCG does not have a similar requirement. If a ferry system uses Section 5307, 5309, 5311, or 5339 funds to operate a bus or van shuttle service to and from the ferries, the shuttle service is subject to FTA drug and alcohol testing requirements.

Grantees that have employees, subrecipients, contractors, subcontractors, or lessees that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. If employees perform safety-sensitive functions for both transit and another mode, the grantee must determine which modal administration regulates the majority (>50 percent) of the employees who perform safety-sensitive functions covered under a U.S. Department of Transportation (US DOT) drug and alcohol testing program. Once determined, the employee will be subject to pre-employment and random testing under the regulatory authority of the primary modal administration. The assignment of regulatory authority for reasonable suspicion and post-accident testing will depend on the function an employee is performing at the time of the incident/accident. For example, at times when a mechanic works on transit vehicles, he or she would be subject to FTA regulations. Return-to-duty and follow-up tests will be assigned to the modal administration that generated the initial positive test.

Contractors performing safety-sensitive work, such as tire maintenance and overhaul or rebuild of vehicles, engines and parts or bodywork are subject to FTA regulations, unless the work is done on an ad-hoc (non-routine) basis. Warranty work performed by employees of the bus manufacturer is not subject to the regulations. Also, vendors from whom grantees purchase or exchange rebuilt engines or other components are not subject to the regulations unless that work is regular and on-going.

If a grantee uses taxicab companies to provide transit services (e.g., paratransit), the applicability of drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab companies and schedules and dispatches the trips, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

Police officers who, as part of their normal duties, patrol public transit facilities are not subject to FTA testing. When a grantee contracts the local police department but does not supervise the officers and the officers also respond to non-transit-related police calls, the officers are not subject to FTA's drug and alcohol rules. Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. If a grantee only operates commuter rail or ferry operations, employees or contractors that carry a firearm for security purposes are not subject to FTA drug and alcohol testing requirements.

REFERENCES

49 CFR 655.3 and 655.4

SOURCES OF INFORMATION

Review the description of safety-sensitive functions and a list of safety-sensitive positions in the drug and alcohol policy. Review MIS reports for categories of employees subject to drug and alcohol testing. On site, follow up on potential issues with designations of safety-sensitive positions.

DETERMINATION

The grantee is deficient if it has not adopted an FTA drug and alcohol testing program. (**DEFICIENCY CODE 14:** No drug and alcohol testing program)

The grantee is deficient if any safety-sensitive employees are not covered by an FTA drug and alcohol testing program. The grantee is deficient if non-safety-sensitive employees are tested under FTA authority. (**DEFICIENCY CODE 551:** FTA drug and alcohol testing program not applied to all safety sensitive positions)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit evidence to the FTA regional office that it has developed and implemented an FTA drug and alcohol testing program for all covered employees.

Direct the grantee to immediately cover safety-sensitive employees not covered by an FTA drug and alcohol testing program. Direct the grantee to submit to the FTA regional office an amended FTA drug and alcohol policy that includes the missing safety-sensitive job titles.

Direct the grantee to immediately exclude non-safety-sensitive positions from its FTA drug and alcohol testing policy. Direct the grantee to submit to the FTA regional office an amended FTA drug and alcohol policy that excludes non-safety-sensitive job titles from the list of FTA safety-sensitive job titles.

9. Do drug and alcohol testing policies include all required elements?

EXPLANATION

The grantee and its subrecipients, contractors, subcontractors, and lessees covered by 49 CFR Part 655 must have a drug and alcohol testing policy detailing the provisions of their drug and alcohol programs. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments. Note that if the grantee's drug and alcohol testing policy incorporates the DFWA requirements, the policy should also include the provisions listed in Question 3.

The following checklist identifies the minimum requirements of a drug and alcohol testing policy as defined by 49 CFR 655.15:

- (1) Proof of policy adoption by the appropriate governing body or other "final authority" with effective date indicated
- (2) Identity of the person, office, or position designated by the employer to answer questions about the anti-drug and alcohol misuse program
- (3) Categories of employees who are subject to testing
- (4) Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs
- (5) Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty (only for employers with a second-chance policy), and follow-up testing (only for employers with a second-chance policy))
- (6) Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended
- (7) Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations
- (8) Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the US DOT program:
 - (a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer after being directed to do so by the employer
 - (b) Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test)
 - (c) Fail to provide a urine specimen for any drug test or an adequate amount of saliva or breath for any alcohol test required by this part or US DOT agency regulations
 - (d) Fail to provide a sufficient amount of urine or breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
 - (e) Fail or decline to take an additional drug test the employer or collector has directed to be taken
 - (f) Fail to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) or employer as part of the drug test verification process, or employer as part of the insufficient breath procedures. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.
 - (g) Fail to sign the certification at Step 2 of the alcohol testing form
 - (h) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)
 - (i) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen
 - (j) For an observed collection, fail to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process
 - (k) Possess or wear a prosthetic or other device that could be used to interfere with the collection process

- (l) Admit to the collector or MRO that the specimen was adulterated or substituted

Instead of listing all the refusals, the policy may state that refusals to test are listed in 49 CFR Part 40, as amended, or 49 CFR 40.191, as amended, for drug tests and 49 CFR 40.261, as amended, for breath tests. The policy should then state that a copy of 49 CFR Part 40 is available upon request. However, if the policy lists any refusals to test, the policy must list all of them.

- (9) Description of the consequences for a covered employee who has a verified positive drug test result, a confirmed alcohol test with an alcohol concentration of 0.04 or greater, or refuses to submit to a test, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be referred to a substance abuse professional.
- (10) Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04
- (11) Policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 that states that if the MRO informs the agency that a negative drug test was dilute, the agency may, but is not required to, direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the grantee must not retest some employees and not others. The grantee may retest for some types of tests (e.g., pre-employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record.

The grantee is required to test for the following substances: marijuana, cocaine, opiates, phencyclidine, and amphetamines as well as alcohol. If the employer lists sub-categories under the amphetamines and opiates in its drug and alcohol policy, the list must agree exactly with 49 CFR 40.87: opiates (morphine, codeine, and 6-acetylmorphine), amphetamines (amphetamine, methamphetamine, MDMA, MDEA, and MDA).

Some grantees may have modeled their testing programs after FMCSA regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, FMCSA only covers holders of a commercial driver's license (CDL). If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

FRA regulations cover commuter rail operations.

USCG regulations cover ferry vessel operations. The policy, which would include elements required by USCG, must require employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection) to submit to random alcohol tests under FTA authority.

REFERENCES

49 CFR 40.87, 40.191, 40.197, 40.261
49 CFR Part 382
49 CFR 655.15

SOURCES OF INFORMATION

Review the grantee's drug and alcohol policy. Ensure that the policy includes the required elements, the grantee is conducting the required types of testing, and the grantee is testing for the required substances. If USCG regulations cover the grantee, limit the review of the policy to ensuring that the policy requires crew members to submit to random alcohol tests under FTA authority.

DETERMINATION

The grantee is deficient if its policy does not include all of the above provisions required by the regulations. (**DEFICIENCY CODE 28:** Drug and alcohol policy lacking required elements)

The grantee is deficient if it is not conducting the required tests. (**DEFICIENCY CODE 95:** Required types of drug and alcohol testing not being performed)

The grantee is deficient if it is not testing for the required substances. (**DEFICIENCY CODE 114:** Required drug and alcohol substances not being tested)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an amended policy that has been adopted by the governing board or other "final authority," and re-communicated to all affected employees.

Direct the grantee to immediately conduct the required tests or test for the required substances.

10. During the review period, when did the grantee submit annual calendar year Management Information System (MIS) reports for itself, contractors, subcontractors, and lessees summarizing drug and alcohol test results?

11. During the review period, when did the grantee submit annual calendar year Management Information System (MIS) reports for subrecipients summarizing drug and alcohol test results?

EXPLANATION

The grantee must prepare, maintain, and submit to FTA annual MIS reports for itself, and must ensure the timeliness and accuracy of MIS reports submitted by subrecipients, contractors, subcontractors, and lessees with safety sensitive employees summarizing drug and alcohol program testing results. The reports cover the prior calendar year. For FTA-funded ferry operations, grantees must submit the reports for random alcohol tests only. Grantees, subrecipients, contractors, subcontractors, and lessees must retain copies of the reports for five years.

Grantees must report using the Drug and Alcohol Management Information System (DAMIS). Grantees set up login information for subrecipients, contractors, and lessees. Direct recipients that are also subrecipients enter MIS directly under their own login for all operations. In some instances, FTA has allowed direct recipients who are also subrecipients of a state to report for all operations under the state's login. Contractors, subcontractors, and lessees that provide FTA-covered service to more than one grantee must break out their information so as not to double-report data. The MIS reports must be submitted by March 15 following the calendar year for which the reports were prepared.

REFERENCES

49 CFR 655.72
Drug and Alcohol MIS Reporting

SOURCES OF INFORMATION

Review copies of MIS reports submitted since the last review for the grantee and subrecipients, contractors, subcontractors, and lessees to be visited during the review. Discuss the grantee's process for reviewing MIS reports from subrecipients, contractors, subcontractors, and lessees with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15.

DETERMINATION

The grantee is deficient if the MIS reports for the grantee, subrecipient, contractor, subcontractor, or lessee were not submitted or were incorrect. (**DEFICIENCY CODE 298**: MIS reports not properly submitted)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to prepare or collect and submit all delinquent MIS forms in DAMIS, develop a procedure for timely reporting of MIS forms, and submit the new procedure, documentation of its implementation, and copies of the MIS reports to the FTA regional office.

Direct the grantee to submit amended MIS reports in DAMIS and copies of the amended reports and procedures for completing the reports correctly to the FTA regional office.

12. Were the minimum random testing rates achieved and if not, why not?

EXPLANATION

Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current minimum annual random testing rate for drugs is 25 percent of the number of safety sensitive employees. The minimum annual random testing rate for alcohol is 10 percent. Grantees may exceed the minimum testing rates. (Note that FMCSA recently lowered its minimum random testing rate for drugs. Current FMCSA minimum annual random testing rates are 25 percent for drugs and 10 percent for alcohol.)

Grantees that have a separate random pool for FTA safety sensitive employees must be able to document that they have met the required random testing rates. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing rates met or exceeded the FTA required rates.

REFERENCE

49 CFR 655.45

SOURCES OF INFORMATION

Before the site visit, review the MIS reports for the past year to determine if the grantee met the minimum testing rates. If not, follow up during the site visit. If the grantee is part of a consortium, ask the grantee to document that the consortium met the minimum rates for the past year.

DETERMINATION

The grantee is deficient if it did not meet the minimum random testing rates for the past year. (**DEFICIENCY CODE 113**: Random testing rate below required level)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan to bring the random testing rate to the required level.

13. Under what circumstances does the grantee conduct post-accident testing?

EXPLANATION

FTA requires that a US DOT post-accident test be administered under two circumstances: 1) in the event of a fatal accident and 2) in the event of a non-fatal accident.

A fatal accident is defined as an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle (non-revenue requiring a CDL or transit police), which results in the loss of a life.

A non-fatal accident is an occurrence associated with the operation of a transit revenue vehicle or ancillary vehicle, defined by the following:

- One or more individuals is immediately transported for medical treatment away from the accident
- Any rubber-tired vehicle incurs disabling damage possibly requiring a tow truck
- A rail transit vehicle or vessel is taken out of service as a result of the accident

Following a fatal accident involving a transit vehicle, grantees, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all surviving covered employees operating the vehicle at the time of the accident and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident.

Following a nonfatal accident involving a transit vehicle, grantees, employers, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all covered employees operating the vehicle and any other covered employee whose performance may have contributed to the accident unless the employer determines that the operator's performance can be completely discounted as a contributing factor to the accident. A decision not to test, following an accident meeting FTA thresholds, is made using the best information available at the time of the decision and must be documented in detail, including the decision-making process used to make the determination.

Post-accident testing for "accidents" that do not meet the definition of an accident under 49 CFR Part 655 must be done under the grantee's own authority. Non-US DOT custody and control forms and alcohol testing forms must be used.

REFERENCE

49 CFR 655.44

SOURCES OF INFORMATION

Request a copy of a post-accident testing decision form, if used. Note that a post-accident testing decision form is not required. Review MIS reports to determine if and how often post-accident testing is performed. During the site visit, discuss the circumstances under which post-accident testing is performed.

DETERMINATION

The grantee is deficient if it does not conduct post-accident testing under FTA's authority for accidents that meet the 49 CFR Part 655 definition of an accident, unless, for non-fatal accidents, the operator's behavior was discounted as contributing to the accident. The grantee is deficient if it conducts post-accident testing under FTA's authority for an accident that does not meet the 655 definition of an accident, or if it conducted testing under FTA's authority for a non-fatal accident in which it has discounted the operator's actions. (**DEFICIENCY CODE 118:** Improper post-accident determination)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a process for making proper post-accident determinations, including procedures to document the decision-making process when appropriate.

Direct the grantee to submit to the FTA regional office a process for ensuring that post accident testing under FTA authority is only conducted for accidents that meet the definition of an accident under 49 CFR Part 655.

14. *How does the grantee ensure that supervisors who are designated to determine whether reasonable suspicion exists to require a safety-sensitive employee to undergo alcohol and/or drug testing are provided the required training?*

EXPLANATION

A grantee's determination whether to conduct reasonable suspicion testing for drug or alcohol shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. Supervisors or other company officials who are trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations. Training shall consist of at least 60 minutes on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes on the physical, behavioral, speech, and performance indicators of alcohol misuse.

REFERENCES

49 CFR 655.14 and 655.43

SOURCES OF INFORMATION

Obtain a list of supervisors and other officials who are assigned the responsibility for making reasonable suspicion testing decisions. Review the grantee's training records to ensure that the supervisors and officials have received the required training.

DETERMINATION

The grantee is deficient if supervisors or other officials who make reasonable suspicion determinations have not received the required training. (**DEFICIENCY CODE 552:** Reasonable suspicion training not provided/insufficient)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation that all supervisors and other officials who make reasonable suspicion determinations have received the required training and procedures for ensuring training is provided before individuals are allowed to make reasonable suspicion testing decisions.

15. *How does the grantee check on the drug and alcohol testing records of new hires and transfers that will work in safety-sensitive positions?*

16. *At what point in the hiring process are applicants placed in safety-sensitive positions?*

EXPLANATION

Grantees, subrecipients, contractors, subcontractors, and lessees, after obtaining an employee's written consent, must request information on the US DOT drug and alcohol testing history of any employee who is seeking to begin performance of safety-sensitive duties for the grantee for the first time (i.e., a new hire an employee who transfers into a safety-sensitive position). Grantees must request the following information from US DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration

- Verified positive drug tests
- Refusals to be tested (including verified adulterated or substituted drug test results)
- Other violations of US DOT agency drug and alcohol testing regulations
- The employee's successful completion of US DOT return-to-duty requirements (including follow-up tests), if applicable

If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must obtain this information from the employee.

The grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. After 30 days, the grantee must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.

If the employee refuses to provide written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a US DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.

Grantees must also ask the employee whether he or she has tested positive or refused to test on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by US DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

REFERENCES

49 CFR 40.25

Office of the Secretary Prior Employer Records Release Form

SOURCES OF INFORMATION

Review a copy of the applicant consent form and the letter requesting drug and alcohol testing information from prior US DOT employers. Ensure that the forms request the required information for the past two, not three years, as per 49 CFR Part 382. Discuss how the grantee obtains information on pre-employment drug or alcohol tests administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by US DOT agency drug and alcohol testing rules during the past two years.

Discuss how the grantee attempts to obtain documents of successful completion of the return-to-duty process for an applicant who admits that he or she had a positive test or a refusal to test. Do not request to see copies of employee drug test results, consent forms, and/or any other potentially confidential material. If a grantee hires applicants before the information is received from prior employers or the employee, obtain and review data for the past year on the date applicants are placed in safety-sensitive positions as compared to the date the information was received.

DETERMINATION

The grantee is deficient if it does not obtain an applicant's consent or the required information. The grantee is deficient if it does not attempt to obtain the information for the past two years before the applicant is placed in a safety-sensitive position. (**DEFICIENCY CODE 301**: Deficiencies in process of checking previous drug and alcohol testing records)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a process for ensuring that the previous drug and alcohol testing records of first-time safety sensitive employees are reviewed. A link to the Office of the Secretary records release form is provided under references.

17. How does the grantee ensure that drug and alcohol testing program records are maintained in a secure location with controlled access?

EXPLANATION

Grantees, subrecipients, contractors, subcontractors, and lessees must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. As an example, program records should be maintained in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records.

REFERENCE

49 CFR 655.71

SOURCES OF INFORMATION

During the site visit, ask to be shown where the records are stored.

DETERMINATION

The grantee is deficient if it does not maintain drug and alcohol testing program records in a secure location with controlled access. (**DEFICIENCY CODE 244:** Drug and Alcohol program records not secure)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation that it has moved program records to a secure location with controlled access.

18. *How does the grantee monitor contractors, subcontractors (including private carriers), and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

19. *How does the grantee monitor subrecipients with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

EXPLANATION

Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Grantees are responsible for overseeing the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs are in compliance with 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

FTA does not dictate how grantees must oversee the programs. However, elements of an effective oversight program will ensure:

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-US DOT forms used)
- MIS reports are submitted

Some grantees ensure compliant drug and alcohol programs by including subrecipients, contractors, subcontractors, or lessees in their programs.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
49 CFR 655.81
Drug and Alcohol Program Compliance Audit Questionnaires

SOURCES OF INFORMATION

Request a list of all subrecipients, contractors, subcontractors, and lessees in order to determine if the requirement for drug and alcohol testing applies. Review subrecipient agreements, contracts, leases, and monitoring documents (reports, questionnaires, site visit checklists) for a description and the details of the grantee's drug and alcohol oversight program. Discuss the oversight program with the grantee. Review MIS reports, oversight files, and drug and alcohol policies for the subrecipients, contractors, and lessees to be visited during the site visit.

DETERMINATION

The grantee is deficient if it does not oversee the drug and alcohol programs or if its oversight program is inadequate to ensure minimal compliance. (**DEFICIENCY CODE 157:** Drug and Alcohol contractors, subrecipients, and/or lessees not properly monitored for D&A program)

The grantee is deficient if the policies of subrecipients, contractors, subcontractors, or lessees that were reviewed do not include all of the required provisions required by the regulations or have not been updated to reflect updates and/or amendments to the regulations. (**DEFICIENCY CODE 157:** Drug and Alcohol contractors, subrecipients, and/or lessees not properly monitored for D&A program)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a drug and alcohol oversight plan.

Direct the grantee to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee and procedures to ensure oversight of subrecipients, contractors, subcontractors, and/or lessees.

20. *How does the grantee ensure service agents/vendors (e.g., consortia, third party administrators, collection sites, medical review officers, etc.) that support its program and the programs of contractors, subcontractors, and lessees are compliant with 49 CFR Part 40 program requirements?*

21. *How does the grantee ensure service agents/vendors (e.g., consortia, third party administrators, collection sites, medical review officers, etc.) that support the programs of subrecipients are compliant with 49 CFR Part 40 program requirements?*

EXPLANATION

The grantee is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors for its program and the programs of subrecipients, contractors, subcontractors, and lessees. Consequently, it is best practice that the grantee has a contract with its own vendors and should ensure that subrecipients, contractors, subcontractors, and lessees have contracts with their vendors that reference 49 CFR Part 40, as amended. The grantee should not assume vendors are following the correct procedures or they are knowledgeable about FTA regulations. The grantee should monitor the quality of the testing service vendors for its program and the programs of subrecipients, contractors, subcontractors, and lessees, including collection sites, medical review officers, and substance abuse professionals. Grantees need only ensure testing laboratories are HHS certified.

FTA does not prescribe how a grantee must monitor vendors. The grantee simply must show evidence monitoring is being performed at some level. Examples of monitoring activities include: maintaining on file copies of vendor qualifications; conducting periodic mock collections; investigating reports from employees, subrecipients, contractors, subcontractors, and lessees of flawed procedures; requiring detailed explanations for cancelled tests; or documenting error correction training. This oversight can be done by the third-party administrator.

It is the responsibility of the grantee to ensure program records are accurate and current and they comply fully with FTA regulations. The grantee should review its copies of custody and control forms and alcohol testing forms to

ensure they are completed accurately and legibly, and should follow up with collection sites when forms are not completed correctly or indicate improper procedures (drug tests conducted before alcohol tests, seals dated and initialed after being placed on the bottles (no carbon bleeds) have been followed. The grantee should either ensure subrecipients, contractors, subcontractors, or lessees review the forms or review the forms itself.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 40.15
49 CFR 655.81
HHS certified laboratories

SOURCES OF INFORMATION

Review copies of service agent/vendor qualifications and grantee monitoring reports.

DETERMINATION

The grantee is deficient if it does not ensure service agents/vendors are compliant with 49 CFR Part 40. The grantee is deficient if it does not ensure service agents/vendors of subrecipients, contractors, subcontractors, or lessees are compliant with 49 CFR Part 40. (**DEFICIENCY CODE 173:** Drug and/or alcohol program vendors not properly monitored)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office evidence of monitoring procedure, along with evidence of implementation.

17. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance under the Federal transit laws. (Note: Equal Employment Opportunity Commission's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. *Equal Employment Opportunity Program*
2. *Oversight of Subrecipients and Contractors*

REFERENCE

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

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"

USEFUL WEBLINKS

FTA Equal Employment Opportunity (EEO) web page

EEO Compliance Reviews

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last Comprehensive Review (including Equal Employment Opportunity (EEO) Reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of EEO?*
2. *Are any such reviews scheduled during this Federal fiscal year (FFY)?*
3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings?*
4. *Are any oversight review, investigation, or audit findings currently open?*
5. *If an EEO compliance review is scheduled for the current fiscal year, what information prompted the review?*
6. *Have any EEO complaints been filed with the Federal Transit Administration (FTA) against the grantee?*
7. *Is FTA aware of any EEO-related lawsuits filed against the grantee?*

EXPLANATION

If the prior Comprehensive Review had deficiencies, issues may still exist if the grantee did not implement the corrective actions properly. The FTA Office of Civil Rights conducts on-site assessments of grantees' compliance with EEO requirements. Complaints may also indicate potential issues with the grantee's EEO program.

REFERENCES

None

SOURCES OF INFORMATION

FTA Office of Civil Rights will inform the review team of any outstanding findings and other potential deficiencies identified through website reviews, media reports, and other sources that require follow up. Information on complaints may also be obtained from the regional civil rights officer (RCRO). Review information provided by the FTA Office Civil Rights and OTrak pertaining to previous findings as a result of:

- The most recent Comprehensive Review. Documentation from the prior review needs to be examined to identify the corrective actions taken so that observations can be made during the site visit of how the changes were implemented.
- An EEO review conducted in the past three years

DETERMINATION

Input to review

SUGGESTED CORRECTIVE ACTION

None

8. *Does the grantee meet the threshold for submission of a formal EEO program?*
 - a. *If yes, was the grantee's program submitted on time?*
 - b. *Has the program received concurrence from FTA?*
 - c. *When does the program expire?*
 - d. *If no, skip to Question 19.*

EXPLANATION

A formal EEO program is required of any grantee that both employs 50 or more transit-related employees (including temporary, full-time, or part-time employees) **and** 1) requests or receives in excess of \$1 million in capital and/or operating assistance or 2) requests or receives in excess of \$250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years. Formal communication mechanisms should be established to publicize and disseminate appropriate elements of the program, such as the EEO policy statement. The policy statement should be posted, for example, on bulletin boards, near time clocks, or in the employee's cafeteria.

All civil rights programs must be uploaded to the FTA Electronic Award and Management System (EAMS).

REFERENCES

FTA C. 4704.1, Ch. II, Section 2 and 5, Page III-2(b)

SOURCES OF INFORMATION

Review the Civil Rights section of the EAMS and the EEO program posted in the EAMS. If the grantee states that it does not meet the threshold requiring a formal program, verify this by reviewing FTA grants and operating budgets to understand funds being received by the grantee and the organization chart and size of the fleet to estimate employment. Confirm the information during the site visit.

DETERMINATION

The grantee is deficient if it meets the threshold and has not submitted a program. The grantee is deficient if the current EEO program has expired and it has not submitted a program update or requested and received an extension for submitting a program update. (**DEFICIENCY CODE 44:** EEO program not submitted or expired)

The grantee is deficient if it has not uploaded its program to the EAMS. (**DEFICIENCY CODE 300:** EEO program not uploaded to the EAMS)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to upload the required EEO program or program update to the EAMS and notify the FTA RCRO that the program has been uploaded.

9. *Who is responsible for ensuring that EEO obligations are fulfilled?*
10. *Is the current EEO officer correctly identified in the most recent EEO program submission?*
11. *To whom does this individual report for EEO matters?*
12. *Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they resolved?*

EXPLANATION

The importance of an EEO program is indicated by the individual named to manage the program and the authority he or she possesses. The EEO officer should be identified in the grantee's policy statement. The EEO officer should be an executive and must report directly to the Chief Executive Officer (CEO) or have dotted line access, meaning they can bypass managers and go directly to the CEO. The EEO officer should be identified by name in all internal and external communications regarding the grantee's EEO program.

Care should be taken to avoid conflicts of interest when assigning responsibility for administering the EEO program as a collateral duty assignment. Collateral duty means the person has other responsibilities rather than being a full time EEO officer. The EEO officer should serve as a check and balance on employment practices. Since one of the EEO officer's minimum responsibilities includes reporting periodically to the CEO on the progress of each unit in relation to the agency's EEO goals, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office. For example, many of the employment practices (see explanation section of Question **Error! Reference source not found.**) may be, in large part, the responsibility of the human resource department.

Additionally, the EEO officer is responsible for processing employment discrimination complaints.

REFERENCE

FTA C. 4704.1, Ch. III, Page III-3(c)

SOURCES OF INFORMATION

Review the EEO policy statement and program submission in the EAMS for the name and reporting relationship of the EEO officer. Consult the FTA RCRO for any indications of past problems with staffing. Confirm current staff assignments in discussions at the site visit. Review the organization chart for the reporting relationship of the EEO officer. Review the job description for the EEO officer to confirm responsibilities and reporting relationships. Confirm on site that the EEO officer processes employment discrimination complaints.

DETERMINATION

The grantee is deficient if the EEO officer does not have direct or dotted line access to the CEO. If the grantee does not have direct or dotted line access to the CEO, contact the FTA RCRO for additional direction. The grantee is deficient if the EEO officer is not processing EEO complaints. (**DEFICIENCY CODE 6**: Inadequate designation of EEO Officer)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of corrective actions taken to designate EEO responsibilities properly. The grantee may need to change reporting relationships or assignment of responsibilities to properly delineate the reporting relationship.

13. *At the time of the most recent EEO submission, what were the grantee's areas of underutilization?*
14. *Were short-term and long-range goals established to address the underutilization?*
15. *In the current EEO program, is there a discussion on meeting the prior program submission goals and a justification given for goals not met?*

EXPLANATION

The purpose of the utilization analysis is to identify those job categories where underutilization and/or concentration of women or minorities exist in relation to their availability in the relevant labor market. It is also to establish the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any underutilization or concentration. Specific percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis.

Generally, long-range goals (to be obtained in four to five years) are usually stated as percentages. Qualitatively, short-term goals should be set and pursued in order to ensure accomplishment of long-range goals. Quantitatively, short-term goals represent the net increase in minority and/or women's employment in a particular job category within the next 12 months. Short-term goals should be stated as both actual numbers and percentages and should be based on anticipated job openings, job group availability, and the long-range goals. If the goals that were set in the previous submission were not met, there is an obligation to explain what efforts were taken to meet the goal and fully explain and justify why the goal was not met.

REFERENCES

FTA C. 4704.1, Ch. III, Pages III-5(d) and III-7(e)

SOURCES OF INFORMATION

Review the EEO program, particularly the utilization analysis chart. At the site visit, obtain a copy of the most recent workforce utilization analysis and other employment materials to show progress toward meeting EEO short-term and long-range goals. Discuss hiring practices and examine the number of persons hired in the areas of underutilization. Examine how the new hires affected the underutilization. Discuss efforts to ensure nondiscrimination in employment practices (including outreach).

DETERMINATION

The grantee is deficient if it has not done a utilization analysis. The grantee is deficient if there is no justification for prior EEO goals that were not met. (**DEFICIENCY CODE 204**: EEO utilization analysis/goal deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA RCRO a more thorough utilization analysis.

Direct the grantee to submit to the RCRO justification where prior goals were not met.

16. Has the grantee conducted a detailed narrative and statistical assessment of employment practices to identify those that operate as employment barriers?

EXPLANATION

In conjunction with the utilization analysis and EEO goal establishment, grantees must conduct a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. For example, the narrative assessment of the employment practices may include the agency's current practices in recruitment, selection, promotion, termination, transfers, layoffs, disciplinary actions, compensation and benefits, training.

The analyses must contain statistical data to document the impact of employment practices. At a minimum, the analyses must contain the following:

- The number of individuals by race and sex applying for employment and the number who were actually hired
- The number of individuals by race and sex who applied for a promotion or transfer within the past year and the number who were promoted or transferred
- The number and types of disciplinary actions and terminations by race and sex.

All problem areas must be identified and a proposed program of remedial, affirmative actions enumerated in the grantee's EEO plan.

REFERENCE

FTA C. 4704.1, Ch. III, Page III-9 (f)

SOURCES OF INFORMATION

Review the EEO program and the most recent narrative and statistical employment practices analyses.

DETERMINATION

The grantee is deficient if there is no narrative description of its employment practices. The grantee is deficient if there is no statistical analysis of its employment practices. (**DEFICIENCY CODE 520**: Employment practices analyses deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA RCRO a detailed narrative and/or statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Direct the grantee to submit to the FTA RCRO a plan to routinely conduct this assessment in conjunction with evaluating short-term and long-range goals.

17. Does the grantee have a monitoring and reporting system?

EXPLANATION

An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should:

- Assess EEO accomplishments
- Report accomplishments and lack of accomplishments to management
- Enable the evaluation of the program during the year
- Enable the taking of necessary action regarding goals and timetables
- Provide a factual database for future projections

The monitoring and reporting system should be used to prescribe and revise short-term goals. The system should

allow for revision of long-range goals to reflect availability of traditionally underutilized persons. The reporting system should provide documentation to support actions that affect women and minority job applicants or employees. Management should be kept informed of program effectiveness.

Because the monitoring and reporting system should be used to prescribe and revise short-term goals (which typically have a 12-month range), it is expected that these activities occur at least annually.

REFERENCES

FTA C. 4704.1, Ch. III, Page III-10(g)

SOURCES OF INFORMATION

Review the grantee's EEO program on file for information on the EEO goals and areas of underutilization. At the site visit, obtain a copy of the information that is shared with management to document the program's progress, such as: the most recent workforce utilization analysis, the statistical employment practices analyses, a copy of the document that shows how EEO complaints are tracked, and documents to show the EEO officer is meeting with management and how often these meetings occur.

DETERMINATION

The grantee is deficient if there is no documentation of what is being monitored and reported to management. (**DEFICIENCY CODE 225**: EEO monitoring/reporting system deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA RCRO a detailed monitoring and reporting system.

18. *Are there any EEO-related complaints filed with the grantee or external agencies? If yes, what is the status of the complaints?*

EXPLANATION

The number and nature of EEO complaints may indicate that the grantee is not administering programs to comply with EEO. If complainants are not using the internal EEO process but are filing directly with outside agencies, employees may not have confidence in the EEO program.

REFERENCE

FTA C. 4704.1, Ch. VI

SOURCES OF INFORMATION

Information from the FTA RCRO will show if EEO complaints have been filed with FTA. Discuss the nature of the complaints. On site, review the grantee's complaint process and its tracking mechanisms. Determine the nature of the complaints and the grantee's responses to them. Examine the number of complaints that were filed internally versus filed directly with outside agencies.

DETERMINATION

The grantee is deficient if there are EEO complaints filed against it concerning FTA programs and it has not acted to investigate and resolve the complaints. (**DEFICIENCY CODE 76**: EEO complaints not addressed properly)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to advise the FTA RCRO of the resolution of the complaints filed against it.

19. *List any subrecipients that meet the threshold for submission of an EEO program.*

20. *How does the grantee's staff responsible for EEO remain current on the status of agency subrecipients?*

21. *Who at the agency receives, reviews, and approves subrecipient EEO programs?*

22. *Does the grantee obtain subrecipient EEO program updates every three years? If no, provide an explanation.*

23. *List any transit management/operations contractors that meet the threshold for submission of an EEO program.*
24. *How does the grantee's staff responsible for EEO remain current on the status of agency transit management/operations contractors?*
25. *Who at the agency receives, reviews, and approves transit management/operations contractors' EEO programs?*
26. *Does the grantee obtain transit management/operations contractor EEO program updates every three years? If no, provide an explanation.*

EXPLANATION

Subrecipients and transit management/operations contractors that receive capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and employ 50 or more transit-related employees must submit to the grantee an EEO plan. Program updates are due every three years. The grantee is required to review and approve the plan. This approval needs to be done by someone with knowledge of EEO requirements.

For transit management/operations contractors that have a regional operation, supporting more than one FTA grantee, contact the FTA RCRO for determinations on threshold and employees covered for their EEO plans.

Note: In some circumstances, the FTA RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to the FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, seek additional guidance from the FTA RCRO on the submittal of its program.

REFERENCES

2 CFR 200.331
49 CFR 18.37 and 18.40
FTA C. 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION

Determine whether any subrecipient or transit management/operations contractor receives capital or operating assistance in excess of \$1 million or planning assistance in excess of \$250,000 and has 50 or more transit-related employees. Assets, such as vehicles that have been purchased by the grantee for use by a subrecipient, should be counted towards the subrecipient's threshold. Ask if the subrecipients or transit management/operations contractors have approved EEO plans on file with FTA or if they are on file with the grantee. Ensure that the person reviewing the EEO program(s) has the expertise to evaluate and approve the program.

DETERMINATION

The grantee is deficient if it (or FTA, if requested) does not have on file a properly approved EEO plan for subrecipients and transit management/operations contractors that meet threshold requirements. (**DEFICIENCY CODE 144:** Failure to obtain EEO plans from subrecipients/contractors)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO documentation that it has reviewed and approved EEO plans from subrecipients and transit management/operations contractors that meet threshold requirements. Confer with the FTA RCRO to determine if a plan should be submitted to FTA.

27. *How does the grantee comprehensively review applicable subrecipient EEO programs?*
28. *How does the grantee comprehensively review applicable transit management/operations contractors' EEO programs?*

EXPLANATION

For subrecipients or transit management/operations contractors that meet the threshold described above, the grantee must review the adequacy of their plans. That review should be documented through correspondence with the

subrecipient or transit management contractor sufficient to demonstrate that the grantee determined compliance of their plan(s) with FTA C. 4704.1.

REFERENCE

FTA C. 4704.1, Ch. III, Page III-3(c)
FTA C. 4704.1, Ch. III, Pages III-5(d) and III-7(e)
FTA C. 4704.1, Ch. III, Page III-9 (f)
FTA C. 4704.1, Ch. VI

SOURCES OF INFORMATION

Review the following:

- How the grantee reviews the plans of applicable subrecipients or transit management contractors? For example, does it use checklists, does it request additional information on EEO submissions, does it acknowledge receipt and review of subrecipient plans?
- Correspondence between the grantee and the subrecipient or transit management contractor on EEO plan submissions and approvals.
- How often the EEO Officer of the subrecipient or transit management contractor provide updates to the grantee on the status of its EEO goals and timetables?
- The grantee's mechanisms for receiving information on subrecipient or transit management contractor EEO complaints.
- Additional grantee processes for monitoring subrecipients or transit management contractors for compliance.

DETERMINATION

The grantee is deficient if it does not have documentation supporting its review of EEO plans from subrecipients or transit management contractors that meet threshold requirements. (**DEFICIENCY CODE 31**: Failure to adequately review EEO plans)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO procedures that document the process for adequately reviewing EEO plans from subrecipients and transit management contractors that meet threshold requirements.