FTA

FEDERAL TRANSIT ADMINISTRATION

FY2014 Triennial Review Workshop Workbook

United Stated Department of Transportation
Federal Transit Administration

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SUMMARY OF CHANGES

Overall

- For the seven review areas with potential for Enhanced Review Modules, placed triggers at the beginning of the section, ensured that there were questions in the pre-review section related to the triggers, and synced triggers with triggers on Scoping Sheet
- Re-ordered sections so that the seven review areas with potential for ERMs were at the beginning, facilitating more efficient distribution of scoping and baseline packages
- Updated sections (primarily Financial, Technical, Legal, Planning, Half-Fare, and Safety and Security) for MAP-21, 9030.1E, and Section 5324

Financial Management and Financial Capacity

- Included distinction between Financial Condition and Capability Assessments (FCCAs) (performed by FMO contractors) and Financial Capacity Assessments (FCAs) (performed by TPE contractors) as source of information
- In Question 10 on financial capacity asked about local share impacts of past three years in addition to asking about projected impacts
- Pursuant to MAP-21, updated question on calculation of operating assistance to acknowledge ability of operators in large UZAs operating fewer than 100 buses to receive operating assistance and to include JARC eligibility in the 5307 program.

Technical Capacity

- Added information to trigger questions on grantees that now are located in a large UZA pursuant to the 2010 Census
- Re-titled transit enhancements to associated transit improvements pursuant to MAP-21
- Revised questions on 5310, 5316, and 5317 program status reports
- Added explanatory information on SAFTEA-LU vs. MAP-21 grant programs
- Replaced question on certifying FFRs with question on responding to FTA's comments on FFRs
- Revised information on 'inactive' grant definition
- Added question about process for reconciling data in MPRs with that in FFRs.
- Added question about looking for funds in existing grants before applying for new grants
- Updated period of availability chart to include both SAFETEA-LU and MAP-21
- Added question in pre-review section on new subrecipients, management contractors, or lessees. Added explanatory information that private non-profits are eligible subrecipients for JARC projects funded through 5307
- Added question on 5310 project funding allocation and eligible subrecipients
- Added question on applicable force account approval by FTA prior to drawing down force account funds
- Added questions related to Section 5324/Emergency Relief Programs grants

Maintenance

- Included emphasis on security equipment to preventative maintenance questions

Americans with Disabilities Act

- Added applicability discussion on page 1
- Added information to question on complementary paratransit for geographic coverage of service
- Added question on other demand response service offered in addition to complementary paratransit
- Added question for definitions of complementary paratransit denials, excessively long trips, missed trips, on-time performance, etc.
- Added questions on annunciator systems
- Added explanatory information and deficiency code for accommodating wheel chairs based on equipment capabilities
- Added questions to appeals process for presumptive eligibility if processing takes longer than 21 days
- Added information on eligibility appeals
- Added to questions on phone system capacity
- Added to questions on no-show/late cancel policies

- Added information and question on rail station construction/modification and accessibility
- Added question about prompt and equitable resolution of complaints

Title VI

- Added information for grantees that no longer meet higher threshold due to new circular (for service/fare equity analysis)
- Added new deficiency codes and information for board approval of service/fare change equity analysis and monitoring results

Procurement and Buy America

- Requested change orders over $100,000 in pre-review section of this area
- Reinstated question on how procedures address full and open competition for micro-purchases, small purchases, sealed bids, etc.
- Reinstated explanation and deficiency codes for lack of lobbying certifications
- Included question in pre-review section on requested Buy America waivers
- Revised language on Buy America for state GSA-type contracts to note that the grantee should consider the full contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases
- Revised explanation on piggybacking
- Added questions related to Section 5324/Emergency Relief Program grants

Disadvantaged Business Enterprise

- Added question on overall goal including all projects in grants
- Added question on existence of zero overall goal
- Reinstate questions on adequate resources
- Reinstated questions on shortfall analysis
- Reinstated question on semi-annual reports and added question on semi-annual reports being reconciled to procurement records
- Added question for enhanced review trigger if grantee is certifier under the state's UCP
- Added question about using race-conscious goals in 9th circuit
- Eliminated questions on complaint processing

Legal

- Added question on designated recipients for 5307, 5310 and 5339 grants
- Updated thresholds for 'covered federal actions' for lobbying questions

Satisfactory Continuing Control

- Added question on flood insurance
- Revised explanation regarding states and disposition of equipment
- Added explanatory information on oversight requirements for leased equipment
- Added questions related to Section 5324/Emergency Relief Program grants

Planning/ Program of Projects

- Added information on 5310 under coordinated planning

Public Comment on Fare and Service Changes

- No new questions

Half Fare

- No new questions

Charter Bus

- No new questions

School Bus

- No new questions

Safety and Security

- Revised question on 1% of 5307 spending on security projects from being recipient-based to being UZA-based
- Eliminated safety questions and questions related to security and emergency preparedness

Drug Free Workplace and Drug and Alcohol Program

- Reinstated question on D&A specialty reviews being conducted or planned
- Added explanatory information on alcohol refusals
- Added question and deficiency on training for personnel who make reasonable suspicion determinations
- Added language under sources of information for new hires and transfers
- Added deficiency for safety-sensitive employees not being covered

Equal Employment Opportunity

- Re-combined section (in FY13 it was separated as if it had the potential for an ERM)
- Re-instated question on EEO specialty reviews being conducted or planned

- Added question on meeting goals and providing justification if goals not met

National Transit Database

- Review area eliminated based on input from program office

1. FINANCIAL MANAGEMENT AND FINANCIAL CAPACITY

BASIC REQUIREMENT

The grantee must demonstrate the ability to match and manage FTA grant funds, cover cost increases and operating deficits, cover maintenance and operational costs for FTA funded facilities and equipment, as well as conduct and respond to applicable audits.

FTA Emergency Relief Program

A grant awarded under 49 U.S.C. section 5324 (Emergency Relief Program) or under Section 5307 or Section 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.).

AREAS TO BE EXAMINED

1. ***Financial Capacity***
2. ***Eligible Expenditures***
3. ***Funds Management***
4. ***Audits/Oversight Reports***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. MAP-21 Section 20017
3. Single Audit Act Amendment of 1996
4. 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
5. 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-Profit Organizations"
6. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations"
7. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
8. FTA Master Agreement
9. FTA Circular 5010.1D, "Grant Management Requirements"
10. FTA Circular 7008.1A, "Financial Capacity Policy"
11. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
12. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
13. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
14. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
15. May 29, 2013 Federal Register Notice
16. 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

51 CFR 552, "Federal Agencies Responsible for Cost Negotiations and Audit of State and Local Government"

ECHO Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

ER Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

SCOPING REVIEW QUESTIONS

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 triennial 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, 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, corrective actions need to be repeatedly resubmitted until they are acceptable)
- the grantee has not conducted annual A-133 single audits as required or kept FTA appropriately informed of A-133 audit findings
- FTA implemented drawdown restrictions due to non-compliance with requirements
- the grantee has had numerous Electronic Clearinghouse Operations (ECHO) rejections or made numerous credits/refunds in the ECHO system
- the grantee does not have up-to-date written policies and procedures for its financial management practices
- the grantee's does not provide a recent financial management report comparing actual expenses against budgets with explanations of significant variances
- the grantee does not demonstrate that it has adequate accounting expertise
- Federal Financial Reports (FFR) have not been completed correctly or submitted in TEAM-Web (see the Technical review area for input into this trigger)
- the cost allocation plan (CAP) is outdated (due to a change in accounting systems or the percentage change made in the rate being charged); CAP or indirect cost rate is unapproved; or the CAP does not support the rate being charged on the FFRs
- there is not a sufficient multi-year financial plan
- there are indications of unfunded liabilities; federal match is not available; funds are being redirected from originally budgeted purposes; the sources of local funds are changing
- the grantee has experienced projects deficits, layoffs, service cuts, deferred or late maintenance or reduction in service

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including Financial Management Oversight Reviews, Financial Condition and Capability Assessments, Financial Capacity Assessments, and the most recent triennial review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of financial management or financial capacity? Are any such reviews scheduled during this federal fiscal year (FFY)?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies currently open?*

3. *Are any issues related to Financial Management or Financial Capacity indicated in the Grantee Oversight Assessment?*

EXPLANATION

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

FTA's Office of Transit Safety and Oversight conducts Financial Management Oversight (FMO) reviews and Financial Condition and Capability Assessments (FCCA). These reviews are discretionary, in-depth oversight reviews used by FTA when grantees are considered to have higher risk. 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 more tailored review of one area of financial management, such as fixed assets. FTA's Office of Planning and Environment conducts Financial Capacity Assessments (FCA), 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, FCCA, 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.

FTA regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the financial management or capacity areas of the GOA 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 as a result of:

- An FMO review, FCCA, or FCA conducted in the past three years, or planned
- The most recent triennial review
- Annual A-133 audit reports
- Annual financial statement audits
- Any GAO or OIG audits/investigations
- Any internal, state or local audits (obtain from grantee)
- GOA (available in OTrak)

DETERMINATION
Input into enhanced review 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 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 deficiencies by the GAO, the OIG, and/or any local or state audits.

4. *If applicable, were annual single audits completed for the past three years? If there were no findings, were copies of the SF-SAC forms submitted to the FTA regional office? If there were findings in audits related to FTA or DOT programs in any of the past three years, was a copy of the audit and the SF-SAC form submitted to the FTA regional office?*

EXPLANATION
Non-federal entities that expend $500,000 or more in federal awards in a year are required to have conducted an independent single audit in accordance with OMB Circular A-133. Very few of FTA's 5307 grantees expend less than $500,000 in federal awards annually. 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.

If the annual single audit report contains no FTA or other DOT program findings, grantees are only required to submit a copy of the SF-SAC to the FTA regional office. Single audit reports are to be issued within the earlier of 30 days after report issuance or nine months after the end of the audit period. If the single audit contained FTA or other DOT program findings, grantees are required to submit a copy of the entire audit report, management response, and the single audit reporting form (SF-SAC) to the FTA regional office.

The grantee must resolve single audit findings promptly. The grantee's audited financial statement may provide additional information about how well the grantee has rectified previous audit findings and/or indicate any new areas of concern.

REFERENCES
Single Audit Act Amendment of 1996
49 CFR 18.26
FTA C 5010.1D, Ch. VI, Section 8
Dear Colleague Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION
Review information provided by the FTA regional office and OTrak pertaining to annual A-133 audit reports. Information on audits can also be retrieved from the Federal Audit Clearinghouse.

DETERMINATION
Input into enhanced review determination

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

The grantee is deficient if it has not submitted its single audit reports, management letter comments, or SF-SACs to the FTA regional office. (***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, along with 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.

5. *How many ECHO adjustments (rejections, refunds, etc.) have been processed since the last triennial review? Has FTA placed any ECHO drawdown restrictions on the grantee?*

EXPLANATION
The FTA regional office receives notification if ECHO payment requests are rejected for insufficient funds or for other reasons.

ECHO transactions made by the grantee are populated to TEAM-Web. 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 TEAM-Web and information provided by the FTA regional office. Discuss rejections, refunds, or restrictions with the regional office.

DETERMINATION
Input into enhanced review determination

Determinations on ECHO transactions will be made in conjunction with Question 16 of this review area.

SUGGESTED CORRECTIVE ACTIONS
None

PROVIDED BY THE GRANTEE
The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

6. *What internal written policies and procedures guide the grantee's effective financial management of FTA funds?*

- *How do these procedures address the preparation of reports that compare actual expenses against budgets, so that variances can be identified and resolved?*
- *If applicable, what procedures are in place to provide grantee financial oversight of subrecipients?*
- *What grantee officials routinely review financial reports?*

7. *Describe qualifications for grantee staff with financial and/or accounting responsibilities.*

EXPLANATION

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

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

None

SOURCES OF INFORMATION

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

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTIONS

None

8. *Are grantee indirect costs charged to one or more FTA grants? If yes,*

- *When and to what agency did the grantee submit its cost allocation plan (CAP)? Has the CAP submission been acknowledged and/or approved?*
- *What is the process for preparing, updating, and reviewing the CAP and reporting the current rate in the FFR?*

EXPLANATION

Under federally funded grant programs, recipients may incur both direct and indirect costs. A CAP 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. Two types of CAPs can be used to allocate costs to a transit program: a central service CAP or an indirect cost rate proposal.

A central service CAP, sometimes referred to as a statewide or local-wide CAP, is used by a state or local government 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. Each local government that has been designated a "major local government" by the Office of Management and Budget (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.

A governmental unit or agency that does not have a cognizant federal agency identified by OMB must develop an indirect cost rate proposal annually 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 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.

REFERENCES

2 CFR Part 225 (OMB Circular A-87), Attachments C and E
2 CFR Part 230 (OMB Circular A-122)
51 CFR 552
FTA C 5010.1D, Ch. VI, Section 6 and Appendix F
FTA C 9050.1, Ch. VI, Section 11
FTA C 9045.1, Ch. VI, Section 11
FTA C 9040.1F, Ch. VI, Section 7
FTA C 9070.1F, Ch. VI, Section 12

SOURCES OF INFORMATION

Review FFRs to determine if the grantee is charging indirect costs to FTA grants. Review TEAM-Web and prior triennial review documents in OTrak for evidence that a CAP has been approved or at least submitted for approval. Review and obtain documentation of CAP submittal and approval. On-site, as part of ECHO draw reviews, determine if indirect charges are being applied to grants in accordance with the approved CAP.

DETERMINATION

Input into enhanced review 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

If submittal to the cognizant agency is required, direct the grantee to obtain cognizant agency approval of the CAP and provide the FTA regional office with procedures for updating and submitting the plan annually.

If submittal to the cognizant agency is not required, direct the grantee to update the indirect cost rate proposal and CAP annually and retain it for audit.

9. *Describe procedures for developing the grantee's short-term (next three years) financial plans. How are expenses, and local and federal sources of funds budgeted/projected and how are adjustments made to projections, when necessary?*

10. *In the short term financial plan (next three years) what issues or underlying assumptions could affect the financial condition of the grantee? What impacts to local funding have occurred since the last triennial review? What potential impacts to local funding does the grantee project in the next three years? Is new transit service or an expansion of existing service planned? How have these issues been reflected in financial plans?*

11. *Has the grantee had deficits, layoffs, service cuts, or deferred or late maintenance since the last triennial review?*

12. *Does the grantee project deficits, or layoffs, service cuts, or deferred maintenance in the next three federal fiscal years (FFY)?*

13. *Have the grantee's capital funds been used to cover deficits in the operating budget since the last triennial 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 have multi-year financial plans (three to five years) that project operating and capital revenues and expenses. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects. Revenue sources must be stable and reliable enough to meet future capital and operating costs. Any sign of major decreases in service levels or operations must be explained. If the grantee is involved in a New Starts project, the financial plan must have a 20-year horizon.

Financial capacity considers the nature of funds matched to support operating deficits and capital programs, along with forecasted changes in fare and non-fare revenues. If a grantee is forecasting new funding sources, 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, redirecting funds to meet critical operating and maintenance needs, and/or staff reductions. Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs.

A grantee's financial condition, future financial capacity, and ability to match FTA funds could be impacted greatly if one 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. Grantees 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, as appropriate.

REFERENCES

49 USC 5307 (d)(1)(a)
FTA Circular 7008.1A
FTA Master Agreement, Section 5
FTA Circular 5010.1D, Ch. VI, Section 4

SOURCES OF INFORMATION

Review TEAM-Web 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 revenue section of the grantee's current year's 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 program (TIP) for levels of transit funding.

DETERMINATION

Input into enhanced review determination

The grantee is deficient if it does not have a multi-year financial plan or the plan is insufficient. (***DEFICIENCY CODE 15***: No existing financial plan)

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

SUGGESTED CORRECTIVE ACTIONS

Direct the grantee to submit to the FTA regional office a multi-year financial plan.

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.

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

14. *What are the grantee's sources of non-FTA funding for operating and capital expenses? Are the funds eligible? Identify any changes that have occurred since the last triennial review. How does the grantee fully document volunteered services or in-kind revenue used as local match?*

EXPLANATION

All local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds. The following are permitted 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; Temporary Assistance for Needy Families (TANF) funds; and other non-DOT federal funds, such as Community Development Block Grant funds, if authorized by the originating program to be used for transportation.

No FTA program funds can be used as a source of local match for other FTA programs, even when used to contract for 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 5
FTA Circular 5010.1D, Ch. VI, Section 4
FTA C 9030.1E, Ch. III, Sections 7 and 8, Ch. V, Section 1.a. (2)
FTA C 9300.1B, Ch. II, Sections 7 and 9.b
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12
FTA C 9040.1F, Ch. III, Sections 1.a and 3
FTA C 9070.1F, Ch. III, Sections 1 and 9

SOURCES OF INFORMATION

Review annual audit reports, budgets, multi-year financial plans, National Transit Database (NTD) reports, and the TIP for information on local funding sources. Discuss with the grantee while on site. 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.

15. *For grantees receiving Section 5307, 5316, or 5317 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 one hundred 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. Section 5316 and 5317 operating assistance was available to all UZAs through FY2012.

MAP-21 also expanded eligible 5307 activities to include job access and reverse commute 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 Job Access and Reverse Commute Program. Job access and reverse commute projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible job access and reverse commute projects is not limited by the "100 bus" special rule for operating assistance established by MAP-21 under 5307(a)(2).

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, 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 C 9030.1D Appendix C and FTA C 9030.1E Appendix C provide applicable worksheets 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 9040.1F, Ch. III Sections 2.e and 3.b, Appendix G
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12

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.

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

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

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

EXPLANATION

Grantees request federal funds through the U.S Department of Treasury Electronic Clearinghouse Operation (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. For example, a grant project for preventive maintenance entitles a grantee to draw funds for 80 percent of the preventive maintenance expenses accrued at the time funds are drawn. FTA defines preventive maintenance expenses as all maintenance expenses (i.e., those items that meet the NTD definition of maintenance expenses). The purchase of replacement tires is an eligible expense, but fuel is not an eligible preventive maintenance expense. 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.

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 TEAM-Web. Frequent reconciling of internal grant balances with those in TEAM-Web helps the grantee identify and address any discrepancies quickly and prevent discrepancies from delaying grant close outs.

It is incumbent upon the grantee to have internal controls that monitor these data to determine expenditures by line item. When a grantee requests funds from FTA, the request is made for planning, capital, or operating funds. TEAM-Web does not track drawdowns by ALI so the grantee must maintain this information, 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

49 CFR 18.21
FTA Master Agreement, Section 9.b
FTA C 5010.1D, Ch. VI, Section 9

SOURCES OF INFORMATION

Review the grantee's marketing materials and website. If the grantee is providing a form of service that is ineligible for FTA funds, ask the grantee to demonstrate how the funding sources and expenses for that ineligible service are segregated and not included in ECHO drawdowns.

When on site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure that documentation supports the draws. Review documentation to determine if:

- the 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.

Check to ensure that indirect costs are charged at the current rate, if applicable.

Check the audited financial statements and A-133 audit reports to determine if there are ECHO process findings.

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 down for expenses not eligible under the grant. (***DEFICIENCY CODE 276***: Ineligible expenses charged to grant)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit procedures for disbursing FTA funds within three business days and to report to FTA until further notice on the number of days by which funds were disbursed.

Direct the grantee to work with the FTA regional office to reimburse the Federal Treasury if interest is owed.

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

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

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

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

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

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

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

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

REFERENCES

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

EXPLANATION AND SOURCES OF INFORMATION

The reviewer selects ECHO transactions from each active Hurricane Sandy grant. For those selections, the reviewer examines each underlying transaction, up to a maximum of five, to verify funds management procedures (i.e., adequate documentation, segregation of duties, and no excess cash on hand,).

Eligible uses of Emergency Relief funds include:

(1) Emergency operations;

(2) Emergency protective measures;

(3) Emergency repairs;

(4) Permanent repairs;

(5) Actual engineering and construction costs on approved projects; and

(6) Resiliency projects.

Ineligible uses of Emergency Relief funds include:

(1) Heavy maintenance;

(2) Project costs for which the recipient has received funding from another Federal agency;

(3) Project costs for which the recipient has received funding through payments from insurance policies;

(4) Projects that change the function of the original infrastructure;

(5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;

(6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster.

(7) 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.

(8) 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. Recipients 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.

REFERENCES

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

DETERMINATION

If the grantee does not maintain documentation adequate to support the ECHO draws, demonstrate sufficient internal controls, or disburse Federal funds within three business days of receipt, it is deficient.

Refer to additional information in Questions 16, 17, and 18 of the Financial Management and Capacity area of the Triennial Review 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.

21. *If the grantee has subrecipients, how does the grantee ensure its subrecipients:*

- *Have eligible funds available for local match?*
- *Fully document volunteered services or in-kind revenue used as local match?*
- *Conduct annual A-133 audits and promptly address/resolve/close findings?*
- *Have the financial management systems to carry out the programs and to receive and disburse federal funds?*
- *Only charge indirect costs to FTA grants based on an approved CAP?*

EXPLANATION

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. 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. Generally, grantees require applicants to list the sources of funding that will be applied to the project. For capital items, such as vehicle purchases or facility construction, a grantee may request a three to five year financial plan.

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. The grantee must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented.

The grantee must ensure that subrecipients expending $500,000 or more in federal awards in a federal fiscal year have annual independent audits conducted in accordance with OMB Circular A-133. 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 an annual financial audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the state 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.

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 an audit, some grantees require subrecipients to have their auditors certify year-end financial statements for their transit operations.

Grantees are responsible for monitoring subrecipients' CAPs. This monitoring may include, but is not limited to, ensuring that the plan was approved by a federal or state agency or the plan was retained for audit and ensuring that indirect costs are charged at the current rate.

REFERENCES

2 CFR Part 225 (OMB Circular A-87), Attachments C and E
2 CFR Part 230 (OMB Circular A-122)
51 CFR 552
Annual Certifications and Assurances
Single Audit Act Amendment of 1996
49 USC 5307 (d)(1)(a)
49 CFR 18.20
49 CFR 18.26
FTA Circular 7008.1A
FTA Master Agreement, Section 5
FTA Circular 5010.1D, Ch. VI

FTA C 9030.1E, Ch. II, Section 8.b
FTA C 9300.1B, Ch. II, Sections 7 and 9.b
FTA C 9050.1, Ch. III, Section 12 and Ch. VI, Sections 11 and 13
FTA C 9045.1, Ch. III, Section 12 and Ch VI, Sections 11 and 13
FTA C 9040.1F, Ch. III, Sections 1.a and 3, and Ch VI, Sections 7 and 9
FTA C 9070.1F, Ch. III, Sections 1 and 9 and Ch. VI, Sections 12 and 14
Dear Colleague Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION

Review project/state management plan(s), application package(s), standard subrecipient agreement(s), site visit checklists and any other written policies and procedures for information on how the grantee monitors its subrecipients to ensure they have the necessary local match, sufficient funds, and accounting systems to operate and maintain capital projects; as well as how they monitor subrecipient A-133 audit activities. Review the project/state management plan for a discussion of the grantee's process for obtaining and reviewing audits and monitoring the resolution of findings.

On site, discuss how the grantee considers local match in the evaluation process and ensures that subrecipients have the necessary local match and funds to operate and maintain capital projects. Discuss the process used to ensure the subrecipient conducts annual A-133 audits and promptly resolves any findings. Review documentation of follow-up to subrecipients' single audit activities. Review the single audit and follow-up correspondence for subrecipients visited. Discuss the grantee's process for monitoring subrecipients that charge indirect costs to FTA grants. If subrecipient cost allocation plans are on file with the grantee, review a copy.

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 amounts invoiced to source documents. If they charge indirect costs, review their approved cost allocation plan.

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 the capital project
- Ensure that only eligible funds are used as local match
- Ensure that the value of non-cash share is documented and supported, the non-cash share represents a cost that would otherwise be eligible under the program, or the non-cash share is included in the net project costs in the project budget
- Review audits and ensure that subrecipients resolve audit findings related to the FTA funded programs
- Ensure that subrecipients have the financial management systems to carry out the programs and to receive and disburse federal funds
- Monitor subrecipients' application of cost allocation plans.

(***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 local match used by subrecipients is eligible.

Direct the grantee to submit to the FTA regional office procedures for ensuring that volunteer or in-kind services used by subrecipients are eligible and fully documented.

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

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients can account for federal funds.

Direct the grantee to submit procedures to the FTA regional office for ensuring that subrecipients that claim indirect costs have and follow cost allocation plans.

2. TECHNICAL CAPACITY

BASIC REQUIREMENT

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

FTA Emergency Relief Program

A grant awarded under 49 U.S.C. section 5324 (Emergency Relief Program) or under Section 5307 or Section 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 FAQs (TIP/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. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request FTA Administrator determination that certain terms and conditions not apply 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 Reporting and Administration***
2. ***Force Account Activities***
3. ***Capital Leasing***
4. ***Technical Oversight of Capital Projects***
5. ***Oversight of Subrecipients, Transit Management and Service Contractors, and Lessees***

REFERENCES

1. 49 USC Chapter 53, Section 5307
2. MAP-21 Section 20017
3. 49 CFR Part 18 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
4. 49 CFR Part 639, "Capital Leases"
5. FTA Master Agreement
6. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
7. FTA Circular 5010.1D, "Grant Management Requirements"
8. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
9. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
10. Emergency Relief Docket (2013 and 2014)
11. March 29, 2013 Federal Register Notice
12. May 29, 2013 Federal Register Notice
13. 49 CFR Part 602, Interim Final Rule
14. 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

Construction Project Management Handbook (2009 Update)

Project and Construction Management Guidelines (2003 Update)

Project Management Oversight Lessons

Quality Management System Guidelines

The Federal Financial Report

FFR Instruction Guide for Grantees

Section 5316 and 5317 Frequently Asked Questions

ER Program Frequently Asked Questions (FAQs) http://www.fta.dot.gov/15138_15174.html

FTA Emergency Relief Fact Sheet

SCOPING REVIEW QUESTIONS

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- the grantee is a new grantee undergoing a triennial review for the first time, or a grantee that is in an area whose categorization has changed from small urbanized area to large urbanized area 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
- there is a pattern of poor quality corrective actions from past oversight reviews
- the number of open grants, inactive grants, or grants with scheduling problems appear excessive for the size and complexity of the grantee's program
- Milestone Progress Reports and/or Federal Financial Reports are not submitted are submitted late or incomplete; or do not correspond to each other
- Milestone Progress Reports do not contain reasonable explanations and/or recovery plans for budget and/or schedule variances
- the grantee has multiple subrecipients or transit contractors
- the manner in which the grantee's organization is structured and/or the levels of staffing appear inadequate
- there are a number of vacancies or shortages in key positions or major changes in key grant or project management staff
- there are indications of inadequate governance or impropriety by the Board of Directors, governing body, or senior management
- management has transferred some of its authority, directly or indirectly, to a third party

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Is this the first triennial review for the grantee?*

2. *Has the urbanized area of the grantee been re-categorized from small urbanized area to large urbanized area pursuant to the 2010 Census?*

3. *Is the grantee embarking on a type of FTA funded project that is new to them?*

4. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including the most recent triennial review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of technical capacity?*

5. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies currently open?*

6. *Are any issues related to technical capacity indicated in the Grantee Oversight Assessment?*

EXPLANATION

Special emphasis in the area of technical capacity may be needed if this is a grantee's first triennial review or an experienced grantee is undertaking a type of project (such as a New Start, Small Start, or design-build) that is new to them.

The 2010 Census UZA delineations resulted in twenty-seven UZAs going over the 200,000 population threshold and thirty-six new UZAs, all under 200,000 in population. The changes to urbanized areas resulting from the 2010 census may require changes to how transit agencies, designated recipients, metropolitan planning organizations, 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 urbanized areas.

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, procurement, financial capacity, maintenance, Title VI, etc.) for signs of systemic technical capacity issues.

Regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the technical capacity area of the GOA could indicate issues in this area.

REFERENCE
None

SOURCES OF INFORMATION
Review information from the FTA regional office and TEAM-Web on the impact of the 2010 Census on the UZA of the grantee.

Review information in OTrak, including previous review reports, GOAs, 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 the enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

7. *Do the data in the Milestone Progress Reports (MPRs) 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 management practices?*

8. *Are there indications in the grantee's 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 in the grant agreement, as updated in the MPRs.

REFERENCES
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
Conduct an FFR data query in TEAM-Web 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 TEAM-Web. 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, 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 the enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

9. *Are MPRs submitted for each open grant at the required intervals (quarterly or annually) and on time? Are Section 5307 associated transit improvement (previously transit enhancement) reports submitted annually? Are program status reports for each open Section 5310, 5316 and 5317 grant submitted by October 31? Do the reports contain all required information?*

10. *For FTA Emergency Relief grants, is the grantee submitting monthly Milestone Progress Reports (MPR) on FTA Emergency Relief Program grants?*

11. *For FTA Emergency Relief grants, is the grantee submitting Insurance Proceeds Reports (IPR) monthly?*

EXPLANATION

SAFTEA-LU and MAP 21 Grant Programs

Other federal transportation programs may provide support for Section 5307 projects, and Section 5307 projects may in turn enhance the effectiveness of these programs. The following is a list of programs that were repealed with MAP-21, but for which funding remains available:

- Clean Fuels Grant Program (Section 5308)
- Section 5309 Bus and Bus Facilities Program
- Job Access and Reverse Commute Program (JARC) (Section 5316)
- Paul S. Sarbanes Transit in Parks Program (Section 5320)
- New Freedom Program (Section 5317)
- Alternatives Analysis Program (Section 5339)

The following are programs that were revised or newly authorized under MAP-21:

- Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (Section 5309
- State of Good Repair Formula Program (Section 5337)
- Bus and Bus Facilities Formula Program (Section 5339)
- Public Transportation Emergency Relief Program (Section 5324)
- Enhanced Mobility of Seniors and Individuals with Disabilities Program (Section 5310)
- Rural Area Formula Program (Section 5311)
- Transit-Oriented Development Planning Pilot Program
- Transportation Alternatives Program (FHWA – 23 U.S.C. 213(b))
- Federal Lands Access Program (FHWA – 23 U.S.C. 204)
- Federal Highway Administration "Flexible" Programs

Additional information on these programs is described in FTA Circular 9030.1E.

MPRs

MPRs are the primary written communication between grantees and FTA. Grantees in large urbanized areas (populations of 200,000 or more) submit MPRs quarterly, no later than 30 days after the end of each federal fiscal quarter. The first quarter begins October 1. Reports are due even when there is no grant activity. Grantees in small urbanized areas (populations less than 200,000) submit MPRs annually, no later than 30 days after the end of the federal fiscal year (by October 30). However, FTA, at its discretion, can require quarterly reporting. MPRs for Section 5309 grants that include facility construction projects are due quarterly. Reports should be submitted electronically using TEAM-Web.

Grant reporting applicability and frequency for common programs implemented by triennial review grantees are summarized in the following table:

Grant Program	Who Reports	How Often	
		Small UZAs (<200k)	Large UZAs (>200k)
5307, 5309, 5310 5316, 5317, 5337, 5339	All direct recipients	Annually	Quarterly
5309/5339 Facilities Construction Grants	All direct recipients	Quarterly	
5307 Associated Transit Improvements	Recipients in UZAs >200k	Annually with 4th Quarter MPR	
5324	All direct recipients of funds	Monthly	

The Common Rule (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.

Associated Transit Improvement (formerly Transit Enhancement) Reports

Under MAP-21, the transit enhancement program is referred to as associated transit improvements. In UZAs with a population of at least 200,000, the designated recipient or designated recipients must certify that no less than one percent of the fiscal year's 5307 apportionment will be expended on associated transit improvements. Recipients must submit with the fourth quarter MPR a report listing projects carried out in the preceding fiscal year with those funds. 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 transit improvements. Rather, the grantees together must spend one percent of the UZA's apportionment on projects and project elements that qualify as improvements. The designated recipient or the MPO may submit this report on behalf of all recipients a UZA.

Associated transit improvement reports should include:

- Grantee name
- UZA name and number
- FTA project number(s)
- Project category or categories
- Brief description of improvements and progress towards project implementation
- Activity line item codes from the approved budget(s)
- Amount awarded by FTA for the project

Program Status Reports

Program status reports are the primary written communication between Section 5316 and 5317 grantees and FTA. States are the designated recipients in small urban and nonurbanized areas and report annually on these projects. Direct recipients in small urbanized areas also report annually. Annual reports are due no later October 31. Designated and direct recipients in large urbanized areas (populations of 200,000 or more), including states, submit program status reports quarterly, no later than 30 days after the end of each federal fiscal quarter. The 1st quarter begins October 1. Reports are due even when there is no grant activity. These reports should be attached to the grantee's fourth quarter milestone report in TEAM-Web.

Reports must include:

- Updated program of projects for each active grant that contains active projects reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories
- Revised milestones for activity line items (ALIs) that require milestones with grant submission (vehicle procurements and construction projects) and, for revised estimated completion dates, an explanation for the revision
- Budget revisions for changes in line item budgets
- Significant civil rights compliance issues
- Additional information requested by the regional office.

Emergency Relief Grants

Post-award reporting requirements for 5324 grants include a monthly submission of the Milestone Progress Reports in TEAM-Web consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

Grantees that receive FTA Emergency Relief funding are required to submit monthly Insurance Proceeds Reports (IPR) to FTA, no later than thirty (30) calendar days after the end of each calendar month, which 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, then it shall identify whether it allocated insurance proceeds towards an FTA funded project activity or a non-FTA funded project activity, and

If the grantee allocated insurance proceeds towards an FTA funded project activity, then it shall identify that project activity by Project Number and Activity Line Item, and the grantee shall identify the status of any grant action taken to adjust the Federal share, accordingly.

REFERENCES

49 CFR 18.40
FTA C 5010.1D, Ch. II, Section 3 and Ch. III, Section 3
FTA C 9030.1E, Ch. V, Section 9
March 29, 2013 Federal Register Notice
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Prior to the scoping review, examine the grantee's progress reports. Determine if the FTA regional office has imposed additional reporting requirements, such as quarterly reporting for grantees required to file annual reports. Review recently submitted reports in TEAM-Web to determine if they are submitted on time and include the required information. Ensure that grantees in UZAs with a population of at least 200,000 receiving enhancement funds submit transit enhancement reports with their 4th quarter MPRs for Section 5307. Review written grant administration and reporting procedures prior to the site visit. During the site visit, discuss the grantee's procedures for grant administration.

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

DETERMINATION

Input into the enhanced review determination

The grantee is deficient if its reports are consistently late. (***DEFICIENCY CODE 38***: Late MPRs/FFRs)

The grantee is deficient if it does not include sufficient detail about schedule delays or omits other required information. (***DEFICIENCY CODE 68***: Progress reports lack required information)

The grantee is deficient if it does not submit MPRs and IPRs for each open 5324 grant or does not submit the reports on time at the required intervals. (***DEFICIENCY CODE 568***: Late MPRs/IPRs for Section 5324 grants)

The grantee is deficient if MPRs for FTA Emergency Relief grants are incomplete or inaccurate. (***DEFICIENCY CODE 569***: Insufficient MPR reporting for Section 5324 grants)

The grantee is deficient if IPRs for FTA Emergency Relief grants are incomplete or inaccurate. (***DEFICIENCY CODE 570***: Insufficient IPR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the delinquent report(s) for the most recent reporting period and to submit to the FTA regional office procedures for submitting reports on time. Direct the grantee to email the FTA regional office when reports are submitted.

Direct the grantee to submit reports that include the missing information in the current or next submission and to submit to the FTA regional office procedures for ensuring all required information is in future reports, including the missing narrative information.

12. *Are FFRs submitted for each open grant at the required intervals (quarterly or annually) and on time? 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? If applicable, has the grantee responded to FTA comments on FFRs?*

13. *Are FFRs submitted for each open Section 5324 grant monthly? 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? If applicable, has the grantee responded to FTA comments on FFRs?*

EXPLANATION

FFRs accompany MPRs. The FFR reports on the use of project funds using the standard Office of Management Budget (OMB) form. Refer to the table from the prior questions for a summary of reporting frequency.

FFRs for FTA Emergency Relief grants are to be submitted monthly.

Federal cash on hand at the beginning of period (line A) is the amount of federal cash on hand at the beginning of the reporting period. **Federal cash receipts** (line B) are the cumulative amount of FTA funds received. **Federal cash disbursed (**line C**)** is the cumulative amount of FTA funds disbursed as of the reporting period end date. Lines B and C are reported on a cash basis - when the funds are actually received and disbursed. For grantees that draw funds on a reimbursement basis, report federal funds as disbursed only after they are received. **Federal cash on hand at the end of period** (line D) is the sum of line A plus line B minus line C and is populated by TEAM-Web. Federal cash on hand should never be a negative number. If there is cash on hand at the end of the quarter, 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** (line F) and **recipient share of expenditures** (line G) are reported on an accrual basis - when goods and services have been received.

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

REFERENCES

49 CFR 18.41
SF-425
The Federal Financial Report
FFR Instruction Guide for Grantees
FTA C 5010.1D, Ch. III, Section 3
March 29, 2013 Federal Register Notice
May 29, 2013 Federal Register Notice
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Review FFRs in TEAM-Web to determine if they are submitted on time at the required intervals. Determine if federal cash receipts, federal cash disbursements, federal cash on hand, indirect expense, and program income entries are reported. If cash on hand is reported, determine if an adequate explanation is provided in the remarks and certification tab. If the grantee charges indirect costs to grants, verify that the rates and amounts have been entered into the FFR.

DETERMINATION

Input into the enhanced review 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)

The grantee is deficient if it does not report cumulative federal cash receipts, cumulative cash disbursements, or cash on hand, or if there is an unexplained balance. The grantee is deficient if it enters indirect expense information incorrectly. The grantee is deficient if it has not responded to FTA comments regarding a report. **(*DEFICIENCY CODE 122:*** Incorrect FFR reporting)

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

The grantee is deficient if, for 5324 grants, it does not report cumulative federal cash receipts, cumulative cash disbursements or cash on hand, or if there is an unexplained balance. The grantee is deficient if it enters indirect expense information incorrectly. The grantee is deficient if it has not responded to FTA comments regarding a report. **(*DEFICIENCY CODE 572:*** Incorrect FFR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the delinquent report(s) for the most recent reporting period and to submit to the FTA regional office procedures for submitting reports on time. Until further notice, direct the grantee to email the FTA regional office when reports are submitted.

Direct the grantee to submit reports that include the missing information in the current or next quarter and to submit to the FTA regional office procedures for including all required information in future reports.

Direct the grantee to address any outstanding FTA comments regarding FFRs by submitting revised reports in TEAM-Web and procedures for addressing FTA comments to the FTA regional office.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

14. *Describe the resources for administering FTA grant programs. What technical training have employees received in the past three years?*

15. *Describe any removal/ resignation of board members, General Managers/ CEOs, or other executive leaders since the last triennial review.*

16. *Describe any change(s) in key grant or project management staff since the last triennial 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.

While there is no explicit requirement for 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. However, the manner in which a grantee's organizational charts identifies specific functions, reporting relationships, and staffing levels can provide insight into the grantee's overall technical capacity.

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 is to be technically competent in the management of grant funds, program delivery, and capital project initiatives.

REFERENCES

None

SOURCES OF INFORMATION

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

DETERMINATION

Input into the enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

17. *Describe how the grantee develops and validates data for FFRs. How are the data in FFRs reconciled with the data in corresponding MPRs? How are unliquidated obligations calculated?*

18. *If indirect costs are charged to a grant, is the indirect expense section of the FFR for that grant completed? Are the rates shown consistent with the approved cost allocation plan or indirect cost proposal?*

EXPLANATION

The grantee should have procedures to ensure that FFRs are accurate. At many grantees, financial personnel prepare FFRs while program managers prepare MPRs. 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. For an FFR to appear as part of the MPR stored in TEAM-Web as a portable text format (pdf) documents, FFRs must be submitted before MPRs.

Unliquidated obligations (lines l through k of the FFR) 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.

Indirect expense is the amount of indirect costs charged to a grant. 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, cumulative indirect expenses charged to the grant, and the federal share of the indirect expenses charged.

REFERENCES
49 CFR 18.41
SF-425
The Federal Financial Report
FFR Instruction Guide for Grantees
FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION
Review FFRs and MPRs in TEAM-Web. If unliquidated obligations are not reported, review progress reports to determine if they should be. On site, follow up with the grantee regarding how it defines unliquidated obligations. If the grantee charges indirect costs to grants, verify that the correct rates and amounts have been entered into the FFR.

DETERMINATION
Input into the enhanced review determination

The grantee is deficient if data in FFRs does not agree to data in MPRs. (***DEFICIENCY CODE 68***: Progress reports lack required information or ***DEFICIENCY CODE 122:*** Incorrect FFR reporting)

The grantee is deficient if it reports unliquidated obligations incorrectly (***DEFICIENCY CODE 122:*** Incorrect FFR reporting)

The grantee is deficient if it enters indirect expense information incorrectly. (***DEFICIENCY CODE 122:*** Incorrect FFR reporting)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit corrected MPRs or FFRs in TEAM-Web and procedures for reconciling FFRs and MPRs to the FTA regional office.

Direct the grantee to submit corrected FFRs in TEAM-Web and procedures for validating FFR data to the FTA regional office.

19. *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? What procedures are followed to ensure that projects are completed and grants closed on time? Identify and discuss the status of any delayed or inactive grants or grants that should be closed.*

EXPLANATION
Projects may not always 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.

FTA expects projects to be completed as scheduled in the grant agreement and as updated in the MPRs. 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. For large, complicated construction projects, completing the project and closing the grant within the period of availability may not be feasible.

Section 5316 and 5317 programs of projects should be implemented within two years of grant approval. FTA may terminate and close out grants not implemented within two years and deobligate the funds.

Funds deobligated within the period of availability are available for reobligation 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**
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
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 project closeout. The grantee should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects.

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 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:

- As part of the annual grant development process, identify available funds in existing grants before applying for new funds
- Spend oldest funds first for on-going expenses such as state/program administration (financial purpose code (FPC) 6), operating assistance (FPC 4), ADA complementary paratransit (FPC 8), and preventive maintenance (FPC 0)
- Accumulate state administrative expenses in a generic account and then draw from the oldest grant with available state administrative funds instead of charging the expenses directly to grants
- Tie third party contracts to projects that are then tied to grants
- Set project time limits (less than two years)
- Transfer small remaining balances to new line items
- Deobligate project balances and reapply for funds (if within period of availability and allowed by the FTA regional office)
- Regularly reconcile grant balances with those in TEAM-Web
- When funding a project out of multiple grants, develop a grant drawdown plan
- 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% 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 also should 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

49 CFR 18.20(4)
49 CFR 18.50
FTA C 5010.1D, Ch. III, Section 5
FTA C 9030.1E, Ch. III, Section 3
FTA C 9300.1B, Ch. III, Section 2, Ch. IV, Section 3, Ch. V, Section 2
FTA C 9040.1F, Ch. III, Section 1.c, and Ch. IV, Section 5.b
FTA C 9070.1F, Ch. III, Section 3, and Ch. IV, Section 6
FTA C 9050.1, Ch. IV, Section 7
FTA C 9045.1, Ch. IV, Section 7
FTA C 8100.1C, Ch. II, Section 5.e (1)
FTA C 9300.1B, Ch. III, Section 2, Ch. IV, Section 3, and Ch. V, Section 2

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

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 have not had disbursement activity within the past 12 months. Review progress reports in TEAM-Web to identify major delays in projects. Prior to the site visit, discuss the status of grants with FTA regional office staff. Some FTA regional offices notify grantees when grants have been inactive for more than six months (e.g., have not had any disbursements). Obtain a schedule for closing all open grants.

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

Input into the enhanced review determination

The grantee is deficient if it does not track projects, close out completed projects, reprogram unused balances to other projects, or initiate grant closeout timely*.* The grantee is deficient if there are open grants that should be closed. (***DEFICIENCY CODE 79***: Inactive grants/untimely closeouts)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office procedures for spending older funds first, tracking projects, identifying project balances, reprogramming the unused project funds to other projects, or closing out the projects.

Direct the grantee to work with the FTA regional office to deobligate the funds and close the grant if small amounts of funds remain in an inactive grant or if a project is indefinitely delayed.

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

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) 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.

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 USC Section 5327
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4

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. During the site visit, ask the grantee to describe its 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 those contracts along with progress reports from the contractors. When delays are due to poor performance by contractors, examine how the grantee managed the delay and tried to improve performance by the contractor.

DETERMINATION

Input into the enhanced review determination

The grantee is deficient if capital projects proceeded without proper quality control procedures. (***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.

21. *Is the grantee currently (or does it plan to be) a designated recipient of Section 5310 funds?*

If yes, does the grantee (or how will the grantee) ensure that 55 percent of the Section 5310 apportionment to their area is applied to "traditional" Section 5310 capital projects?

If yes, how does the grantee (or how will the grantee) ensure that these capital projects are carried out by the eligible (and traditional) subrecipients?

EXPLANATION

MAP-21 repealed the New Freedom program (49 U.S.C. 5317) and merged the New Freedom program into the Section 5310 program. As a result of this merger of programs, activities eligible under the New Freedom program are now eligible under Section 5310, and, consistent with Section 5317, funds are apportioned among large urbanized areas, small urbanized areas, and rural areas, instead of only to States, as the law previously provided under Section 5310.

In addition to the types of projects eligible under the traditional Section 5310 program and the former New Freedom program, a new eligible activity is public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on complementary paratransit. Further, in order to preserve some aspects of the previously authorized Section 5310 program, MAP-21 requires that not less than 55 percent of an area's apportionment be available for capital projects that are "traditional" Section 5310 projects - those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate. A recipient may use more of its Section 5310 funds for these capital projects, but may not use less.

The law further states that the eligible subrecipients for these projects, consistent with the previous authorization, are limited to private nonprofit agencies, OR a state or local governmental authority that is approved by the state to coordinate services for elderly persons and persons with disabilities, or that certifies that there are no nonprofit corporations or associations are readily available in an area to provide the service.

REFERENCE

49 U.S.C. 5310 (b)(2)(A) and (B)
Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance.

SOURCES OF INFORMATION

Review responses from the grantee regarding allocation of 55 percent of 5310 funds and eligible subrecipients. Review TEAM-Web and project information contained in the required program of projects to confirm projects have been identified accordingly to support this requirement.

DETERMINATION

The grantee is deficient if it is the designated recipient for 5310 funds and does not allocate 55 percent of the funds to traditional 5310 capital projects. (***DEFICIENCY CODE 553****:* Section 5310 project deficiencies)

The grantee is deficient if has awarded 5310 projects to ineligible subrecipients. (***DEFICIENCY CODE 554***: Ineligible Section 5310 subrecipients)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the FTA regional office to properly allocate Section 5310 funds and/or identify eligible subrecipients.

22. *Has the grantee taken on new subrecipients, transit management or service contractors, and/or lessees since the last review? If yes, how many? How does the grantee monitor subrecipients to ensure compliance with FTA requirements?*

EXPLANATION

Many FTA requirements flow through the grantee to subrecipients, 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 (subrecipients, contractors and lessees) have met all statutory and program requirements. The grantee must have sufficient documentation to support the certifications to FTA. Please note that MAP-21 made private non-profit organizations eligible as subrecipients for job access reverse commute projects funded with Section 5307 funds.

The grantee must have an ongoing system to ensure that subrecipients, 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. 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 triennial 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 takes an overall look at the systems in place for monitoring compliance with a range of federal requirements. Appropriate systems may include:

- applications/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 subrecipient, 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 subrecipients, 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 subrecipients, transit management or service contractors, and/or lessees to have formal oversight mechanisms.

REFERENCES

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

SOURCES OF INFORMATION

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

DETERMINATION

Input into the enhanced review 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. Similarly, it could be found deficient under Technical, 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 FTA requirements.

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

23. *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?*

24. *If the amount of force account 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?*

EXPLANATION

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. 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. 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. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock.

If the cost of force account work is $100,000 or more, reimbursement is subject to a grantee having a force account plan and justification on file. When the cost of force account work to be performed equals $10,000,000 or more, prior FTA approval is required.

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 have on file a force account plan and justification.

If force account amount is $10,000,000 or more FTA approval is required before incurring costs.

REFERENCES

FTA Master Agreement, Section 17.i
FTA C 5010.1D, Ch. IV, Section 4.d

SOURCES OF INFORMATION

Review grant budgets in TEAM-Web for indications of force account plans. The progress and status of force account activities should be separately discussed in milestone/project reports, 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. 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.

DETERMINATION

The grantee is deficient if it has not submitted for prior FTA approval plans for force account projects that cost $10,000,000 or more. The grantee is deficient if force account projects costing between $100,000 and $10,000,000 are not supported by a proper force account plan or 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) The grantee is deficient if it drew down funds (for force account work that required a force account plan approval) prior to FTA's approval of the plan. (***DEFICIENCY CODE 544:*** Inappropriate drawdown of force account funds)

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 Circular 5010.1D for use of its own workforce 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.

25. *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

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. 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. 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 grant or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock.

If the cost of force account work is $100,000 or more, reimbursement is subject to a grantee having a force account plan and justification on file. When the cost of force account work to be performed equals $10,000,000 or more, prior FTA approval is required. However, for Hurricane Sandy prior FTA approval was not required – instead grantees were required to have force accounts plans in place prior to incurring costs.

For additional information, see Questions 20 and 21 of the triennial review Technical Capacity area.

REFERENCES

49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation Emergency Relief Programs
May 29, 2013 Federal Register Notice
FTA Master Agreement, Section 17.i
FTA C 5010.1D, Ch. IV, Section 4.d

SOURCES OF INFORMATION

Review grant budgets in TEAM-Web for indications of force account plans. The progress and status of force account activities should be separately discussed in milestone/project reports, 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. For Hurricane Sandy – obtain and review force account plans above $100,000 for the grantee. 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.

DETERMINATION

The grantee is deficient if force account projects costing between $100,000 and $10,000,000 are not supported by a proper force account plan or 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 573***: Lacking force account plan/justification for FTA Emergency Relief activities)

The grantee is deficient if it drew down funds (for force account work that required a force account plan approval) prior to FTA's approval of the plan. For Hurricane Sandy the grantee is deficient only 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 submit to the FTA regional office a force account plan and justification as detailed in FTA Circular 5010.1D for use of its own workforce on capital improvement projects and procedures for developing force account plans when required.

26. *Since the last triennial 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 of FTA review of the cost-effectiveness determination.*

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

Grantees shall obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease, including for tires. Grantees should refer to the guidance in OMB Circular A-94 and obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.

REFERENCES

OMB Circular A-94
49 CFR 639
FTA C 5010.1D, Ch. IV, Section 3.j

SOURCES OF INFORMATION

Review projects in TEAM-Web to determine if the grantee uses FTA funds to finance the lease of capital items and submitted the cost-effectiveness evaluation for prior FTA review. 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 submit the cost-effectiveness evaluation for prior FTA review. (***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 conduct a cost-effectiveness comparison if one is not on file, but FTA will determine if corrective action is possible or if federal participation in the project must be withdrawn.

27. *For grants received after October 1, 2010, provide documentation that the grantee reported subawards 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 the Federal Funding Accountability and Transparency Act Subaward Reporting System (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 Data Universal Numbering System (DUNS) number 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 DUNS but is not required to register in SAM.

Grantees must report the information about each first tier subaward over $25,000 (funds passed through to other public agencies, private non-profit 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 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. The reporting requirement does not apply to awards made before October 1, 2010, so FTA awards made before FY2011 will not appear in 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 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

SOURCES OF INFORMATION

For FTA grants and grant amendments over $25,000 awarded on or after October 1, 2010, 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 from grants or grant amendments awarded by FTA after October 1, 2010. 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 sub-awards.

Direct the grantee to submit to the FTA regional office procedures for reporting sub-awards to FSRS by the end of the month following the sub-award.

28. *For Section 5324 Emergency Relief projects, 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 5324 grant projects since award? If so are the items included in the revisions eligible?*

29. *For 5324 Emergency Relief local priority resiliency projects, did the grantee receive FTA approval prior to incurring costs?*

30. *For 5324 Emergency Relief projects, has the grantee received funds from other sources (such as FEMA) to reimburse the total project(s) or a portion of the project(s) receiving 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. See question 2 of this area for additional eligibility information.

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 DOT policy on floodplain management, which requires that projects in the floodplain be built to be resilient to one foot above FEMA's 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.

Consistent with FTA Circular 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 USC 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

SOURCES OF INFORMATION

Review information provided in TEAM-Web, 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 may be 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, if applicable. FTA issued a Dear Colleague letter in February 2014 stating the policy and options for allocating lump-sum insurance proceeds. **(*DEFICIENCY CODE 577:*** Section 5324 funding deficiencies)

The grantee may be 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

For deficiencies in this area, consult with the FTA regional office to address correcting project scopes and/or adjusting the FTA share of funding.

3. MAINTENANCE

BASIC REQUIREMENT

Grantees and subrecipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Grantees and subrecipients must keep ADA accessibility features on all vehicles, equipment and facilities in good operating order.

AREAS TO BE EXAMINED

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

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws (SAFETEA-LU)
2. 49 CFR Part 18 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”
3. 49 CFR 37 “Transportation Services for Individuals With Disabilities (ADA)”
4. FTA Circular 5010.1D “Grant Management Requirements”
5. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions”
6. FTA Master Agreement

USEFUL WEBLINKS

FTA State of Good Repair and Asset Management Website

APPLICABILITY

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

SCOPING REVIEW QUESTIONS

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- there have been repeat deficiencies in triennial reviews
- previous triennial reviews or financial management oversight deficiencies related to maintenance are still open
- the grantee demonstrates a pattern of poor quality corrective actions from past oversight reviews
- 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 has inadequate 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

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including Financial Management Oversight (FMO) reviews and the most recent triennial review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of maintenance? Are any such reviews scheduled during this FFY?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any findings currently open?*

3. *Are any issues related to Maintenance indicated in the Grantee Oversight Assessment?*

EXPLANATION

Grantees with repeat deficiencies in the maintenance section of the previous triennial 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 prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the maintenance area of the GOA could indicate issues in this area.

SOURCES OF INFORMATION

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

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

4. *Are there indications that preventive maintenance is being deferred?*

5. *Are patterns of service interruptions due to inadequate maintenance?*

6. *Have there been safety incidents related to maintenance?*

7. *Have there been early retirements and/or mid-life overhauls to 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) very specific 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.

SOURCES OF INFORMATION
Review information provided by the FTA region office and OTrak such as, the GOA. 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

DETERMINATION
Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

PROVIDED BY THE GRANTEE
The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

8. *Describe the resources (organizational structure, staffing levels, experience, etc.) assigned to maintenance of FTA funded assets. What technical training have maintenance employees had? Does the grantee have certification requirements for maintenance employees?*

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.

DETERMINATION
Input into the enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

9. *When was the written maintenance program/plan for FTA funded rolling stock last updated? Does the program include goals and objectives? Are the plan and preventive maintenance checklists consistent with the current operating fleet? Are the plan and checklists consistent with manufacturers' minimum maintenance requirements for vehicles under warranty?*

10. *How does the grantee track the manufacturer's recommendations and updates on requirements?*

11. *How does the maintenance program address on-board security systems?*

EXPLANATION
Every recipient of Section 5307 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 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

49 CFR Part 18.32 (d) (4)
FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1E, Ch. VI, Section 1.a (5)

SOURCES OF INFORMATION

As part of scoping review activities, examine the grantee's vehicle maintenance plan(s) and/or program(s), the 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

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

For vehicles under warranty, 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.

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

13. *Where does the grantee maintain records of the maintenance history of facilities and equipment? How long are the records 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, and
- Power substations, etc.
- Security equipment

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 usage (hours of use). 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. However, 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
49 CFR Part 18.32 (d) (4)
FTA Master Agreement Section 21.c and d
FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1E, Ch. VI, Section 1.a (5)

SOURCES OF INFORMATION
Examine the grantee's facility and equipment (mission critical and safety/security items) maintenance plan and/or program. Examine the related maintenance checklists.

DETERMINATION
Input into enhanced review 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.

14. *What maintenance management reporting system is used to track vehicle, equipment, and facility preventative maintenance?*

15. *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

16. *Has the grantee deferred any vehicle, facility, or equipment maintenance since the last triennial 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 triennial review. Grantees should separately identify rail vehicle maintenance budgets 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

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

PART A: VEHICLE MAINTENANCE

17. *What is the grantee's schedule for vehicle preventive maintenance inspections? 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

49 CFR Part 18.32 (d)(4)
FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1E, Ch. VI, Section 1a. (5)

SOURCES OF INFORMATION

Review the 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 (Follow the procedures for the selection of maintenance records in Review Process). 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 bus/van and light or heavy rail 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.

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

EXPLANATION

The 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 maintenance plan and the 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 the person responsible for the grantee's 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 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 regional civil rights officer.

PART B: FACILITY AND EQUIPMENT MAINTENANCE

19. *What is the grantee's schedule for facility and equipment preventive maintenance inspections? 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

49 CFR Part 18.32 (d) (4)
FTA Master Agreement Section 19.c
FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1E, Ch. VI, Section 1a. (5)

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. Refer to the Maintenance section of the Records Selection Procedures for further guidance. 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.

20. *How does the grantee ensure that facility accessibility features are maintained in operative condition?*

EXPLANATION
The 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. Refer to the Maintenance section of the Records Selection Procedures for further guidance.

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 regional civil rights officer 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 regional civil rights officer.

PART C: WARRANTY PROGRAM

21. *What is the grantee's system for tracking warranty issues and recovering warranty claims? Are claims pursued satisfactorily? Identify any fleet components under warranty. What other FTA-funded equipment is 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 Circular 5010.1D Ch. II, Section 3.a and Ch. IV Section 3.k
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 how timely and aggressive the grantee has been in pursuing and collecting 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 diligently. (***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 D: OVERSIGHT

22. *What proportion of the grantee's FTA-funded vehicles or facilities are maintained by subrecipients, leased to service providers, or maintained under contract by other than the grantee's employees? What process does the grantee use to monitor compliance with FTA maintenance requirements including ADA requirements?*

EXPLANATION

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

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

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

REFERENCES

49 CFR Parts 18.37 and 18.40
FTA Circular 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1E, Ch. VI, Section 1a. (5)
FTA Master Agreement Section 19.c

SOURCES OF INFORMATION

Review sample subrecipient agreements, contracts, and leases for maintenance requirements. Review a sample of maintenance plans. Often the plan is found either in the request for proposals or in the contractor's proposal. Determine who is responsible for monitoring the maintenance activities of subrecipients, contractors, and lessees. 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. Determine how the grantee is actively monitoring the activities of subrecipients, contractors, and lessees. For maintenance being conducted by third-party contractors, assess the grantee's strength in procurement and contract management. Visit a subrecipient, contractor, and/or lessee to visually inspect vehicles and facilities and to sample maintenance records. Refer to the Maintenance section of the Records Selection Procedures for further guidance.

DETERMINATION

The grantee is deficient if it does not have or require a maintenance plan or does not oversee the contractor's maintenance activities through periodic reports and inspections of facilities and vehicles. (***DEFICIENCY CODE 191***: Inadequate oversight of contracted maintenance activities)

SUGGESTED CORRECTIVE ACTION

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

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

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. ***Vehicle Accessibility***
2. ***Facility Accessibility***
3. ***Service Provision***
4. ***Training***
5. ***Maintenance of Accessibility Features***
6. ***Fixed Route Service***
7. ***Route Deviation Service***
8. ***ADA Complementary Paratransit***
9. ***Rail Service***
10. ***Ferry Service***
11. ***Complaints/Lawsuits***

REFERENCES

1. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
2. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
3. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
4. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
5. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

USEFUL WEBLINKS

FTA ADA Website

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

OFFICE OF CIVIL RIGHTS ADA TEAM LEADER

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OVERSIGHT

When a public entity enters into a contractual or other arrangement with a private entity to operate fixed route; demand-responsive 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 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 5310 funds.

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. 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.

SCOPING REVIEW QUESTIONS

ENHANCED REVIEW TRIGGERS
Consider an enhanced review if:

- there are repeat ADA deficiencies in triennial reviews and/or ADA reviews
- previous triennial review ADA deficiencies are still open
- the Office of Civil Rights has identified compliance issues through complaint investigations or other sources
- the grantee does not appear to have adequate staff and/or resources in place to implement ADA requirements
- the grantee has constructed or altered a facility (or is actively planning to do so) and appears to have a poorly defined process and/or insufficient technical resources for preparing specifications for an ADA-compliant facility, or appears to rely solely on state/local building codes, inspections and/or certificates of occupancy
- the grantee does not meet the basic requirements for ADA complementary paratransit in terms of service area and hours/days of service; 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

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including ADA reviews and the most recent triennial review) identified significant deficiencies, material weaknesses, and/or repeat findings in the area of ADA? Are any such reviews scheduled during this federal fiscal year?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings? Are any findings currently open?*

3. *Are any issues related to ADA indicated in the Grantee Oversight Assessment?*

4. *What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?*

5. *Have any ADA complaints been filed with FTA?*

EXPLANATION
If the prior triennial 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 prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the ADA portion of the GOA could indicate additional issues in this area.

The FTA Office of Civil Rights conducts on-site assessments of grantees' compliance with ADA requirements for lift/ramp use and maintenance, stop announcements and route identification, ADA paratransit, and rail stations. The Office of Civil Rights also investigates complaints of noncompliance received from individuals who believe they have been subject to discrimination prohibited by the ADA. Both of these activities can result in findings requiring corrective actions on the part of the grantee, which are detailed in complaint resolution letters and compliance review findings transmitted to the grantee.

REFERENCE
49 CFR Parts 27, 37, 38 & 39

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

- The most recent triennial review
- ADA reviews conducted in the past three years
- GOA in OTrak
- Complaints submitted to the Office of Civil Rights

The prior triennial review report and worksheets, and supplemental information provided by the Office of Civil Rights will provide information on any findings in the ADA concerning ADA compliance. The FTA regional office's files on the grantee should contain information submitted by the grantee on the any 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) and the FTA Office of Civil Rights-ADA Team, will also provide additional information. This information will include information regarding compliance review final reports, open findings, complaint decisions, and corrective action letters issued by the FTA Office of Civil Rights, as well as details on any potential deficiencies the office has identified through media reports and other sources.

DETERMINATION
Input into the enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

PROVIDED BY THE GRANTEE
The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

6. *Describe the resources utilized in the implementation of the ADA program in terms of personnel, responsibility, and experience. Does the grantee provide technical training to employees?*

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 U.S. Department of Transportation's (DOT) 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
None

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

7. *Has the grantee or subrecipient constructed or altered any facilities since the last triennial review? If so, how did the grantee ensure that the facility meets the appropriate accessibility requirements under DOT ADA regulations?*

8. *For facilities constructed or altered by the grantee or a subrecipient that did not meet the requirements of 49 CFR 37.9 and Subpart C to 49 CFR Part 37, provide documentation sufficient to support the determination that the facility was made accessible to the maximum extent feasible or that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope.*

9. *When subrecipients construct or modify facilities, how does the grantee ensure that subrecipients comply with ADA requirements 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 and Subpart C to 49 CFR Part 37.

If the entity alters an existing facility used to provide public transportation, the altered portions of the facility 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. Section 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, the path of travel to the altered area, or the bathrooms, telephones, and drinking fountains, it is required to be made accessible, unless the costs are disproportionate to the alteration, in which case whatever is not disproportionate must be made accessible. The regulations define "disproportionate" as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The 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 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 ADA requirements.

Note that there are differences between the standards required under 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 ADA requirements.

REFERENCES

49 CFR 37.9
49 CFR Part 37, Subpart C
49 CFR Part 37, Appendix A
DOT's ADA Standards for Transportation Facilities
DOT Final Rule Adopting New Accessibility Standards – Effective November 29, 2006
49 CFR Part 39.61
49 CFR 18.37 and 18.40

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 DOT ADA requirements.

For grantees that have undertaken alterations to an area that serves a primary function and have not made a 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

Input into the enhanced review determination.

The grantee is deficient if the new facilities do not comply with the standards referenced in 49 CFR 37.9. The grantee is deficient if alterations do not comply with the standards referenced in 49 CFR 37.9, and/or the grantee 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 DOT ADA requirements. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA 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 and for reporting quarterly on progress until full compliance is attained.

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 and others 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.

10. *If the grantee provides fixed route transit service (bus or rail, except commuter rail or commuter bus), what days and hours are each of these services provided? Is complementary paratransit service provided? If yes, provide documentation to demonstrate that the service provided serves all origins and destinations within the minimum ADA complementary paratransit service area and during all days and hours as fixed route service.*

11. *What changes to the grantee's fixed route service (days or hours of service, service area, or fares) have been implemented in the past three years? How was the complementary paratransit service changed as a result?*

12. *Describe any demand response service provided beyond that required by the ADA.*

EXPLANATION

Each public entity operating a fixed route system must provide paratransit or other special service 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 of FTA funding, 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, such as limited attempts to comprehensively cover a service area, restricted purposes of travel, and 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. In some cases, the grantee may provide funding directly to an institution of higher education for purposes of providing university transportation service.

If the grantee is not required to provide complementary paratransit services, it still must ensure that services described as commuter or university service provided by subrecipients have the characteristics specified in the DOT ADA regulations.

ADA complementary paratransit must run during the same hours and days as the corresponding fixed route service. The ADA service area at a minimum includes all origins and destinations within ¾ 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 1½ 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 ¾ 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 1½ 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 bar 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 being provided.

REFERENCES

49 CFR 37.121-131
49 CFR Part 37.25
49 CFR Part 37 Appendix D to §37.3
Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C 9040.1F, Ch. X, Section 11.f

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 material to confirm 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 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."

If the grantee provides other demand response service, such as to elderly persons, review public information to ensure that the service is clearly distinguished from ADA complementary paratransit service.

DETERMINATION

Input into the enhanced review 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 ¾ mile corridors on each side of each fixed route, 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 responsive service. (***DEFICIENCY CODE 73***: ADA complementary paratransit service deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a plan for implementing ADA complementary paratransit service and to report quarterly on the progress in meeting the plan.

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.

13. *Provide the grantee's definition of trip denials, on-time performance, missed trips, and excessively long trips for ADA complementary paratransit service.*

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. How are operational data confirmed for accuracy?

Do the data indicate a potential "pattern or practice" of capacity constraints?

EXPLANATION

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 the trip, it must be tracked as two denials. 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.

The 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) from 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.

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

49 CFR 37.131(b)
49 CFR 37.131(f)
49 CFR Part 37 Appendix D to §37.131

SOURCES OF INFORMATION

Review the definitions for denials, on-time performance, missed trips, and excessively long trips Review the performance data. Discuss how complementary paratransit service is monitored.

DETERMINATION
Input into the enhanced review 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. (***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
Direct the grantee to submit to the FTA RCRO a plan for increasing capacity or taking other measures to reduce demand (e.g., eliminating service that exceeds ADA requirements or modify the fixed route service area or other characteristics). Direct the grantee to report monthly on capacity issues until such time as the data indicate that there is no pattern or practice of capacity constraints.

Direct the grantee to submit to the FTA RCRO procedures for tracking trip denials correctly.

Direct the grantee to submit to the FTA RCRO procedures for monitoring its ADA complementary paratransit service for patterns or practices of capacity constraints.

14. *What changes to the grantee's complementary paratransit service (i.e., change in no-show/late cancel 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 triennial review?*

15. *What changes to the grantee's ADA complementary paratransit eligibility processes have been made since the last triennial review?*

16. *Since the last triennial review, 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)?*

17. *Are there any lawsuits alleging discrimination on the basis of disability? If so, identify parties to suits and issues.*

EXPLANATION
Changes in policies, procedures, or service delivery may indicate potential issues or may have been implemented to address issues that were identified.

REFERENCES
None

SOURCES OF INFORMATION
Review the answers to determine if they indicate potential risks that might indicate an enhanced review module is needed.

DETERMINATION
Input into the enhanced review determination.

Advise the Office of Civil Rights of any pending lawsuits.

BASELINE QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

PART A: BUS AND RAIL VEHICLES

18. *Since the last triennial review, has the grantee or a subrecipient purchased or leased any new or used bus or rail vehicles for use in fixed route service? If yes, were all of the vehicles accessible? 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).*

19. *Since the last triennial 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? If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs? 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).*

20. *If the grantee or a subrecipient contracts for fixed route service, including commuter bus service, how does the grantee know that the buses used for the service are accessible?*

21. *Since the last triennial review, has the grantee or a subrecipient purchased or leased any new inaccessible vehicles for demand-responsive service, including route deviation service? If yes, provide the grantee's documented analysis of equivalent service and the date of the analysis. When was the certification of equivalent service filed? How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?*

22. *How does the grantee ensure that subrecipients comply with the 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 affiliated contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under Sections 5310, 5311, 5316 and 5317. Private for profit entities are eligible subrecipients under Sections 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, follow the rules for public entities. For Section 5310, 5316, and/or 5317 subrecipients that are private entities that operate service for the general public, consult the Office of Civil Rights ADA Team Leader in FTA's Headquarters Office for technical assistance.

Public Entities

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 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-responsive service for the general public must purchase or lease accessible vehicles unless it 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-responsive 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, restrictions or priorities based on trip purpose, availability of information and reservation capability, and constraints on capacity or service availability.

Before procuring any inaccessible vehicle for demand-responsive service, the entity must file an equivalent service certification with FTA. A state must obtain certifications from Section 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the DOT ADA regulations includes a copy of the certification of equivalent service. Grantees are required to file certifications of equivalent service by checking the appropriate category of the annual certifications and assurances. 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 same 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.

Subrecipient Oversight

Grantees must ensure that subrecipients comply with the 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-responsive service.

REFERENCES

49 CFR Part 37.23
49 CFR Part 37.31
49 CFR Part 37, Subpart D
49 CFR Part 37, Subpart E
49 CFR Part 37, Appendix C
49 CFR Part 38
49 CFR 18.37 and 18.40

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 triennial review. For each inaccessible vehicle acquired, review the supporting documentation for each acquisition (documentation of good faith efforts to obtain an accessible vehicle or documentation of equivalent service). Discuss how the grantee monitors equivalent service. For each inaccessible vehicle acquired, determine whether the conditions permitting the acquisition of an inaccessible vehicle were met. If subrecipients have acquired inaccessible vehicles, review supporting documentation, including procurement documents, waivers, documentation of good faith efforts to acquire accessible vehicles, and certifications of equivalent service.

DETERMINATION

The grantee is deficient if it acquired inaccessible vehicles and the conditions permitting the acquisition of an inaccessible vehicle were not met. The grantee is deficient if remanufactured vehicles were not made readily accessible to people with disabilities or 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 do not acquire and use accessible vehicles for fixed route service. The grantee is deficient if it acquired inaccessible vehicles for general public demand responsive service and did not file a certification of equivalent service. The grantee is deficient if it acquired inaccessible vehicles for general public demand responsive 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 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 Section 5307 or 5311 subrecipient acquiring an inaccessible vehicle for demand responsive service. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO that the applicable conditions had been met prior to the acquisition of the inaccessible vehicle(s). The documentation must include policies and procedures for documenting the grantee's analysis and any policies and procedures for ensuring that the applicable conditions are met before acquiring inaccessible vehicle(s) in the future.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that subrecipients acquire accessible vehicles and for ensuring that subrecipients 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 Section 5307 and 5311 subrecipients prior to their purchasing inaccessible vehicles for demand responsive service.

PART B: SERVICE PROVISIONS

23. *What are the grantee's and subrecipients' procedures and policies, including those prescribed in bus operator training manuals, for (1) making stop announcements on fixed route vehicles, and (2) providing a means of route identification at stops served by multiple vehicles and multiple routes? How does the grantee ensure that operators are following these policies? How does the grantee monitor performance of vehicle operators and, where appropriate, the annunciator system?*

24. *What are the grantee's and subrecipients' procedures and policies, including those in bus operator training manuals, governing the following DOT ADA requirements:*

a. 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?

b. Transport of all wheelchairs regardless of size or weight, as long as the lift and vehicle can physically accommodate them?

c. Lift/ramp deployment at any stop?

d. Service to persons using respirators, concentrators, or portable oxygen?

e. Time allowed for persons with disabilities to board/disembark a vehicle?

25. *How does the grantee provide public information and communications in accessible formats? In what formats is information regarding transportation services available?*

26. *How are DOT ADA service requirements, including those listed above, communicated to employees, contractors, subrecipients, and lessees?*

27. *How does the grantee monitor adherence to these requirements or otherwise enforce their implementation, including personnel disciplinary actions?*

EXPLANATION

The ADA regulations (49 CFR 37.161-167) detail specific requirements for bus and rail service. (For ferry service requirements see Question 44.) 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.

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 ADA supersedes any union agreement that prevents the entity from requiring operators to call stops.

When more than one route serves a stop, the entity shall provide a 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.

Entities must maintain in operative condition those features of vehicles and facilities, including annunciator systems, that are required to make them accessible to and usable by persons with disabilities. Accessibility features must be repaired promptly if they are damaged or out of order. When the annunciator system is out of order, the grantee must ensure that drivers announce stops and ensure an alternative mechanism for route identification at stops served by multiple vehicles and multiple routes.

Other DOT ADA service provision requirements include:

a. 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.

b. 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 could accommodate wheelchairs that did not meet the definition of "common wheelchair." Wheelchairs that exceeded the weight or dimensional requirements of a "common wheelchair" could 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."

   [Note that 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, a grantee that does so is not deficient. Because the minimum standards for vehicle lifts and ramps have not been 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.]

c. 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 (i.e., the stop is "closed" for the duration of such conditions). The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.

d. Entities may not deny service to individuals using respirators, concentrators, or portable oxygen.

e. 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, subrecipients, 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, subrecipients, and lessees meet the grantee's obligations under the ADA and monitor compliance.

REFERENCES

49 CFR 37.161-167
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures pertinent to the DOT ADA regulations. Examine if procedures include monitoring compliance with ADA requirements. Examine public information materials for details on the availability of alternative and accessible formats. Review grantee/project management plans for policies regarding service provision. Review documentation, including surveys, checklists, interview forms, and follow up correspondence. During the site visit, discuss compliance monitoring with the grantee.

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 ADA requirements. The grantee is deficient if it does not enforce its policies or monitor operations of staff. (***DEFICIENCY CODE 136***: ADA service provisions deficiencies)

The grantee is deficient if it does not ensure that contractors, subrecipients, and lessees meet the grantees obligations under the DOT ADA Regulations. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

The grantee is deficient if it restricts use of its vehicles to “common wheelchairs,” or to dimensions and/or weights that are less than the grantee’s fleet is able to accommodate. (***DEFICIENCY CODE 545***: Setting weight/size limitations on wheelchairs that understate fleet capacities)

SUGGESTED CORRECTIVE ACTION

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 to the RCRO procedures for monitoring its internal operations for compliance with required service provisions.

Direct the grantee to submit to the RCRO procedures for ensuring that contractors, subrecipients, and lessees comply with required service provisions.

PART C: TRAINING

28. *How does the grantee ensure that personnel, contractors, subrecipients, 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 ADA requires that each fixed route or demand responsive 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 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 at all times. The training must be appropriate to the duties of each employee and must address both technical requirements and human relations.

REFERENCES

49 CFR 37.173
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review training materials and handbooks, along with bulletins and other materials provided to personnel. Review complaint records for potential problem areas. Assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, subrecipients, 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 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 personnel properly assist individuals with disabilities. (***DEFICIENCY CODE 169***: ADA training not adequate)

The grantee is deficient if it does not ensure that its personnel operate vehicles and equipment safely and properly assist individuals with disabilities. The grantee is deficient if it does not ensure that contractors, subrecipients, or lessees have trained personnel to operate vehicles and equipment safely and/or provided sensitivity training on interacting with persons with disabilities. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a revised training program and a schedule for retraining personnel. Direct the grantee to report quarterly to FTA on retraining until all personnel have been trained as appropriate for their duties.

Direct the grantee to submit to the FTA RCRO procedures for monitoring the training programs of contractors, subrecipients, and lessees.

PART D: MAINTENANCE OF ACCESSIBLE FEATURES

29. *How does the entity ensure that accessible elements of transit buildings and facilities, such as elevators, ramps, and accessible routes, are maintained in operative condition? When an elevator is out of service, how does the entity accommodate individuals who rely on the elevator?*

30. *How does the grantee ensure that the annunciator system is maintained in working condition? Are vehicles with an inoperative annunciator system placed into service?*

31. *How does the entity 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? Are operators required to report failures immediately? Is alternative accessible service provided to persons with disabilities as required? Are lifts and ramps repaired within the timeframes required by the DOT ADA regulation prior to returning the vehicle to service? How does the grantee know? Are sufficient accessible spare vehicles available to enable the grantee, contractors, and subrecipients to meet the timeframes?*

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. 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. The adequacy of the procedures may be reflected in the frequency of in-service failures. 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. In any case where a vehicle with an inoperable lift is in service and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity is required to provide alternative accessible service to individuals with disabilities needing an accessible vehicle within 30 minutes. 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). If the grantee has Section 5309, 5316, or 5317 subrecipients that are not public entities, consult the Office of Civil Rights ADA Team Leader in FTA's Headquarters Office.

The grantee must monitor its compliance with the 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 subrecipients, contractors, and lessees meet the requirements.

REFERENCES

49 CFR 37.161-163
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review 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 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 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 does not provide alternative accessible service to individuals with disabilities within 30 minutes in any case when 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, subrecipients, and lessees comply with ADA maintenance requirements. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a maintenance program for accessibility features.

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.

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 procedures for effectively 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 subrecipients, contractors, and lessees comply with these requirements.

PART E: ROUTE DEVIATION SERVICE

33. *Does the grantee or a subrecipient provide route deviation service as its method for demand-responsive service? If yes:*

   a. *Does the service deviate for people with and without disabilities?*

   b. *Is the service publicly advertised as route deviation service?*

34. *How does the grantee ensure that route deviation service meets the requirements for general public demand responsive service?*

EXPLANATION

The DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand responsive, for which ADA complementary paratransit is not required. One key factor to consider in determining whether a transit system is fixed route or demand responsive 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 responsive 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-responsive service.

To be considered demand responsive, 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 responsive 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.

The grantee must ensure that route deviation service provided by subrecipients has the characteristics of demand responsive service.

REFERENCES
49 CFR 37.77
49 CFR 37 Appendix D to 37.3
Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C 9040.1F, Ch. X, Section 11.f
49 CFR 18.37 and 18.40

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 does not ensure that subrecipients deviate for the general public, advertise the availability of the route deviation service, or provide equivalent service to persons with disabilities. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO public information and other documentation to demonstrate that general public route deviation service has the characteristics of demand-responsive service.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service.

PART F: ADA COMPLEMENTARY PARATRANSIT

35. *How does the ADA complementary paratransit eligibility process of the grantee and subrecipients ensure the requirements of Sections 37.123 and 37.125, including those below, are met?*

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 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.

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 Section 37.123(e) of the 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 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. 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 eligible for paratransit service for trips to and from those areas. If the grantee elects not to implement conditional eligibility appropriately, it must grant applicants who can use fixed route in certain situations unconditional eligibility.

   The applicant must be given a written reason for the determination and information on the right to an appeal. The written determination 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 for denial must specifically convey the evidence in the matter to the eligibility criteria.

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 an appeal 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.

REFERENCES

49 CFR 37.121-125
49 CFR Part 37 Appendix D to 37.121-125
49 CFR 18.37 and 18.40

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 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 until such time that the application is denied. Discuss the appeals process and spot check files for recent appeals to ensure that the process meets the regulatory requirements. Collect and review sample eligibility (including denial and conditionally eligible and temporarily eligible) and appeal decision letters.

DETERMINATION

The grantee is deficient if it does not have an eligibility process for determining ADA complementary paratransit eligibility. The grantee is deficient if the application process relies solely on a note from a physician and applicants are granted eligibility based on a diagnosis alone. 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 reason for the determination that specifically relates the evidence to the eligibility criteria and the grantee's process. (***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 an 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)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit revised procedures to the FTA RCRO for its eligibility determinations and/or appeals process to meet the regulatory requirements.

36. *How does the ADA complementary paratransit service provided by the grantee and subrecipients meet the following regulatory requirements:*

a. Is the base mode of service door-to-door or curb-to-curb? If curb-to-curb, how does the grantee ensure door-to door-service is provided when necessary due to disability to provide origin-to-destination service?

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 are the grantee's procedures for providing paratransit service to out-of-town visitors and what documentation is required?

d. What hours and days are requests for reservations accepted? How are reservations accepted when the administrative office is closed?

e. How does the fare for complementary paratransit service compare to the regular fixed route fare?

EXPLANATION

The DOT ADA regulations include detailed requirements for provision of ADA complementary paratransit. These requirements include:

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. Service must be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility documentation, the entity may request proof of residency, and if the disability is not apparent, documentation of the individual's disability. The entity must accept a certification by the visitor that he or she is unable to use fixed route transit. 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.

d. 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).

e. 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.

REFERENCES
49 CFR 37.123-133
DOT Disability Law Guidance on Origin-to-Destination Service
49 CFR 18.37 and 18.40

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. Discuss the percentage of next day and optional advance-reservations. A high percentage of advance reservations coupled with a low percentage of very low next-day reservations may be one indicator of capacity constraints.

DETERMINATION
The grantee is deficient if the ADA complementary paratransit service does not meet the DOT ADA requirements. (***DEFICIENCY CODE 73****: ADA c*omplementary paratransit service deficiencies)

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*)*

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.

37. *What is the telephone hold time standard? How is telephone access measured (averages, percentiles, etc.)?*

38. *At peak times, can a caller reach the reservation office? Do callers ever receive busy signals? How does the grantee or subrecipient know whether callers reach the reservation office at peak times? How does the grantee know whether callers ever receive busy signals?*

39. *Are restrictions placed on the number of trips an eligible passenger may reserve? Are waiting lists used for non-subscription trips?*

40. *How does the grantee monitor its own ADA complementary paratransit service to ensure that there is no lack of access to phone reservations?*

EXPLANATION
The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by placing restrictions on the number of trips an individual will be provided, implementing wait lists for access to non-subscription service, and using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability, such as limited phone reservation capacity is also prohibited.

If on a regular basis, the phone lines are busy, the average hold times or long hold times are excessive, the call abandonment rates are high, or callers after a certain time (e.g., mid-morning) are told that they cannot reserve trips for the next day, the grantee is limiting the availability of service. Grantees also must ensure that an ADA eligible individual can reach a reservation agent to cancel a trip. Grantees should be able to provide data on the performance of its phone reservation system. Grantees may not limit the number of reservations made during a phone call. Policies limiting the number of reservations on a phone call suggest the existence of a capacity constraint due to unreasonably long telephone hold times.

Restrictions may not be placed on the number of trips taken by a rider. Waiting lists for non-subscription service are prohibited.

REFERENCE
49 CFR 37.131(b)
49 CFR 37.131(f)
49 CFR Part 37 Appendix D to §37.131

SOURCES OF INFORMATION
Discuss standards of service for reservations and whether the grantee is meeting them. Review performance data. If possible, phone the reservation line at various times of day prior to or during the site visit to determine if a caller can reach a reservation agent. Some grantees may have communication systems that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance. If no such data are collected or reviewed, discuss how compliance with these requirements is assured.

DETERMINATION
The grantee is deficient if it relies on waiting lists or trip caps, or demonstrates phone access limitations. The grantee is deficient if it has no provisions to accommodate peaks in demand. The grantee is deficient if it limits the number of reservations allowed during a call. The grantee is deficient if it does not provide eligible passengers with an opportunity to negotiate trip times within an hour before or after the desired travel time, when it cannot provide service at the time requested. The grantee is deficient if it does not monitor its ADA complementary paratransit service reservation and scheduling system for capacity constraints. (***DEFICIENCY CODE 109***: Limits or capacity constraints on ADA complementary paratransit service)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a plan for increasing capacity or taking other measures to reduce demand (e.g., eliminating service that exceeds ADA requirements or modify the fixed route service area or other characteristics). Direct the grantee to report monthly on capacity issues until such time as the data indicate that there is no pattern or practice of capacity constraints.

Direct the grantee to submit to the FTA RCRO procedures that eliminate any limits on the number of reservations that can be made during a call.

41. *Does the grantee or a subrecipient use a no-show policy or a no-show/late cancellation policy? If yes:*

- *How does the grantee or a subrecipient define a no-show and/or a late cancellation?*
- *Does the policy(ies) require that the vehicle arrive within the agreed-upon pickup window?*
- *What is the service suspension policy(ies) for no-shows?*
- *How does the grantee or subrecipient determine whether or not no-shows are under the rider's control?*
- *What are the thresholds for a cancellation before it is considered a no-show?*
- *Are penalties are assessed for no-shows? If so, what are they?*
- *What is the appeals process for proposed service suspensions?*
- *How did the grantee determine the length of the proposed suspensions period(s)? Are the lengths of the suspension periods reasonable?*

EXPLANATION
Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by 49 CFR 37.125(h). However, such a policy must 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.

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. In most cases, a provider should be able to absorb the capacity of a trip cancelled two hours or less before the scheduled pickup.

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 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.

REFERENCES
49 CFR 37.125(h)
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION
Refer to information gathered during the pre-review information phase. 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 suspends riders who do not demonstrate a true pattern or practice of no-shows (consult with TCR as needed to ascertain the reasonableness of proposed service suspensions). The grantee is deficient if it counts no-shows not under the rider's control or caused by operator error against the rider (consult with TCR as needed). The grantee is deficient if it counts cancellations that do not have the same effect on the system as a no-show. The grantee is deficient if it assesses financial penalties for no-shows (consult with TCR as needed). The grantee is deficient if it does not allow riders to contest no-shows or does not have an appeals process for suspensions. (***DEFICIENCY CODE 316***: Insufficient no-show policy)

SUGGESTED CORRECTIVE ACTION
Consult with TCR's ADA Team Leader in FTA's Headquarters Office and the RCRO to determine appropriate corrective action required for these deficiencies. Potential corrective actions are:

Direct the grantee to cease counting no-shows that are not under the rider's control against the rider.

Direct the grantee to 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.

Direct the grantee to count 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).

Direct the grantee to revise its no-show policy to only suspend riders who have established a pattern or practice of missing scheduled trips.

Direct the grantee to cease assessing a mandatory financial penalty for no-shows.

Direct the grantee to implement an appeals process for no-shows.

Direct the grantee to document how it determines whether or not the length of a suspension period is reasonable.

Direct the grantee to submit evidence of the implemented corrective actions to the RCRO.

42. *How does the grantee ensure that subrecipients comply with ADA complementary paratransit requirements?*

EXPLANATION
The grantee must monitor subrecipients to ensure that they provide ADA complementary paratransit service in compliance with the DOT ADA requirements. The oversight program should address eligibility determinations, service criteria, service capacity, and no-show policies.

REFERENCES
49 CFR 37 Subpart F
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION
Review subrecipient monitoring procedures and documentation of monitoring activities. Discuss the 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 complementary paratransit service policies and procedures during the subrecipient site visit.

DETERMINATION
The grantee is deficient if it does not ensure that the eligibility process of subrecipients meets the DOT ADA requirements. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

The grantee is deficient if it does not ensure that the ADA complementary paratransit service provided by subrecipients meets the DOT ADA requirements. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

The grantee is deficient if it does not monitor subrecipient ADA complementary paratransit service capacity constraints. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

The grantee is deficient if it does not monitor subrecipient no-show policies. (***DEFICIENCY CODE 306***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO procedures for ensuring that eligibility processes of subrecipients comply with the regulatory requirements for eligibility.

Direct the grantee to submit to the RCRO procedures for ensuring that the ADA complementary paratransit service provided by subrecipients meets the ADA requirements.

Direct the grantee to submit to the FTA RCRO procedures for monitoring subrecipients' ADA complementary paratransit service for patterns or practices of capacity constraints.

Direct the grantee to submit to the RCRO procedures for monitoring the no-show policies of subrecipients.

PART G: RAIL SERVICE

43. *If the grantee operates or oversees the operation of rail service:*

a. How does the system ensure at least one accessible car per train?

b. 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? What procedures are followed to ensure dwell times are sufficient to permit boarding and disembarking by persons with disabilities?

c. For stations altered or constructed after February 1, 2012, is accessible boarding provided to each accessible car in the train?

EXPLANATION

All rail operators in existence prior to September 6, 1991, were required to ensure that key stations (e.g., transfer points, major interchanges with other transportation modes, and stations serving major activity centers) were made accessible by July 26, 1993. Provisions were made for FTA to grant extensions until July 26, 2020 for individual light and rapid rail stations where extraordinarily expensive structural changes or complete replacement would be required, provided that two-thirds of key stations would be made accessible by July 26, 2010. For commuter rail, extensions could be made until July 26, 2010. The majority of these time extensions have since expired. Some key stations have not been completed, and others have been completed but outstanding issues remain. In such cases, the grantee is required to submit quarterly reports to FTA detailing its activities undertaken to complete the necessary work. Where FTA has granted an extension that has not yet expired, the grantee should be able to demonstrate how it will meet that extended deadline. Where FTA has not granted an extension or the extension has expired, and stations are not complete, the grantee should be able to provide documentation that it has made achieving compliance a priority.

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. 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 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 DOT ADA Standards.

Under the 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. 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.

Effective February 1, 2012, new and altered commuter and intercity rail stations that were not under construction or in final design as of that date 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 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.

REFERENCES
49 CFR 27.7(b)(6)
49 CFR 37.9
49 CFR 37.42
49 CFR 37.47-61
49 CFR 37.93
49 CFR 37 Appendix D to 37.93
49 CFR 37.167
49 CFR 38.71(b), 38.91(c) & 38.111(b)
ADA Standards for Transportation Facilities
DOT Final Rule Adopting new Accessibility Standards–Effective November 29, 2006
DOT Disability Law Guidance on Level Boarding
ADA Accessibility Guidelines (ADAAG)
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION
Determine if FTA has issued a time extension for key station accessibility and whether or not it has expired. If so, determine if the reports have been submitted to FTA as required. 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, documented 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 commuter and intercity rail station constructed or altered after February 1, 2012, 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 stations are not complete by deadline (original or time extension). (***DEFICIENCY CODE 229***: Expired Key Station Deadline)

The grantee or a subrecipient is deficient if the entity has constructed new stations that do not comply with 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 DOT ADA standards in effect at the time of alteration. (***DEFICIENCY CODE 555***: Failure to comply with ADA requirements for facilities)

The grantee is deficient if it, or a subrecipient, 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. (An accessible car is not usable if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark.) 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)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit delinquent reports to the FTA RCRO.

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 missed key station deadlines, noncompliant new construction or alterations, and operational deficiencies

PART H: FERRY SERVICE

44. *If the grantee operates or oversees the operation of ferry service:*

a. Indicate if any of the following apply:

1. *Limitations on the number of persons with disabilities who may board?*
2. *Medical documentation or advance notice, or other special requirements for individuals with disabilities?*

3. *Higher fares, surcharges, or other fees for persons with disabilities?*

b. 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?

c. If transportation service is provided to and from a ferry, is the transfer service accessible?

d. Does the entity 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?

e. How does the entity ensure that assistance is promptly provided to passengers with disabilities who are not able to board or disembark without assistance?

f. 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?

g. Has the grantee had to restrict 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?

h. How does the entity make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal? Does the CRO have the power to overrule the decisions of any other personnel, excluding 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.

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 DOT ADA regulations. Accessibility of landside facilities are addressed by Subpart D, and requirements for assistance and services to passengers with disabilities are contained in Subpart F.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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

49 CFR Part 39 Subparts B, C, D, F, & G
49 CFR 18.37 and 18.40
Use of "Segways" on Transportation Vehicles

SOURCES OF INFORMATION

During the desk review, obtain information regarding complaints and lawsuits from the RCRO. Before the site visit, review policies regarding serving passengers with disabilities. Review fares for surcharges. Review contracts with ferry shuttle services. Review an organization chart showing the designation of a CRO. Review policies relating to responsibilities of the CRO. During the site visit, discuss with the grantee what modifications to policies were made to comply with Part 39. For modifications not made, discuss the basis for determining 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 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 enduring 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 I: COMPLAINT/LAWSUIT PROCEDURES

45. *What are the procedures for tracking and resolving complaints? Who handles the complaints?*

46. *What are the grantee's standards for the prompt and equitable resolution of complaints?*

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

EXPLANATION

Grantees are required to have an internal complaint review system, and to retain copies of complaints for at least one year and a summary of all complaints for at least five years. Complaints or legal actions may indicate a problem with implementation of the ADA requirements. Requiring subrecipients to notify the grantee of any complaints should be part of the grantee's oversight program.

REFERENCES

49 CFR 27.13
FTA Master Agreement Section 96

SOURCES OF INFORMATION

Review and discuss the procedures with the grantee.

DETERMINATION

The grantee is deficient if there is no internal process in place for reviewing complaints. (***DEFICIENCY CODE 324***: Insufficient ADA complaint process)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and implement a process for reviewing and resolving complaints.

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 federally supported transit services and related benefits are distributed in an equitable manner.

Note: The 2014 Triennial Review covers a three-year period in which the FTA issued a revised circular for Title VI, which provided more information on how to comply and changed requirements for some grantees with populations over 200,000 persons. As of October 1, 2012, grantees must comply with the requirements of FTA C 4702.1B. The Triennial Review will look at compliance with the requirement of FTA C 4702.1A for the period prior to October 1, 2012, and compliance with the revised circular for activities after this date.

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 for 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***

REFERENCES

1. FTA C 4702.1A "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients"
2. FTA C 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
3. FTA C 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"
4. 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"
5. Federal Register: April 15, 1997 (Volume 62, Number 72, pp. 18377-18381) "Department of Transportation (DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations"
6. Executive Order 13166 August 11, 2000: "Improving Access to Services for Persons with Limited English Proficiency"
7. Federal Register: December 14, 2005 (Volume 70, Number 239, pp. 74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"
8. Civil Rights Restoration Act of 1987

USEFUL WEBLINKS

FTA Title VI page

DOT Limited English Proficiency (LEP) Guidance

Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs

Title VI Frequently Asked Questions

SCOPING REVIEW QUESTIONS

ENHANCED REVIEW TRIGGERS

Consider an enhanced review if:

- the Title VI program in TEAM-Web shows the grantee does not appear to understand Title VI requirements
- OTRAK shows repeat Title VI deficiencies in the past two triennial reviews or show Title VI deficiencies in both reviews
- there are comparable or repeat Title VI deficiencies in between triennial reviews and Title VI reviews
- previous deficiencies are still open
- the Office of Civil Rights has identified compliance issues through complaints or other sources
- the number of complaints in the Office of Civil Rights or at the grantee level is out of proportion to the size of the transit agency'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's LEP analysis is not adequate
- the grantee is building new facilities
- the grantee instituted or is planning changes in fares, fare medium, or service characteristics. (See Question 11 for applicability of information for fare or service changes.)
- the grantee is planning or constructing a new fixed guideway system or New Starts project (see Question 12 for applicability)

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including Title VI Reviews and the most recent triennial review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of Title VI? Are any such reviews scheduled during this federal fiscal year?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies? Are any deficiencies currently open?*

3. *If a Title VI compliance review is scheduled for the current federal fiscal year, what information prompted the review?*

4. *Are any issues related to Title VI indicated in the Grantee Oversight Assessment?*

5. *Have Title VI complaints been filed with FTA against the grantee?*

EXPLANATION

If the prior triennial 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 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 Office of Civil Rights.

FTA regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the Title VI area of the GOA 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 triennial review

- A Title VI compliance review conducted in the past three years
- Grantee Oversight Assessment in OTRAK
- Complaints submitted to the Office of Civil Rights

DETERMINATION
Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

6. *Has the grantee submitted a Title VI program to FTA in TEAM-Web? If yes, when does the concurrence expire? If no, is the grantee working with the FTA regional civil rights officer on its submission? If the program has expired, what is the explanation?*

EXPLANATION
Every three years all direct grantees must submit a Title VI program that documents their compliance. (Prior to October 1, 2012, 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 has also changed. The threshold under 4702.1A required all transit providers in a geographic area of 200,000 or more persons to conduct an analysis. Under the revised Circular 4702.1B certain requirements apply to all transit providers; however 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 meet the threshold that require 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.

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: • 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

The major changes in the 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.

Further, FTA has established a policy that all civil rights programs must be uploaded to TEAM-Web. This submission is to be 60 days prior to the due 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 TEAM-web.

REFERENCES
FTA C 4702.1B, Ch. III, Section 4; and Ch. IV, Ch. V, and Ch. VI

SOURCES OF INFORMATION
Review Title VI program submission information in TEAM-Web and information provided by the RCRO.

DETERMINATION
Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION
None

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

7. *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?*

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 is to be 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

8. *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 2014? Was a Title VI equity analysis completed, or when is it anticipated to be completed? If an analysis has not been or is not anticipated to be completed, what factors led to this conclusion?*

EXPLANATION
FTA C 4702.1B describes the requirements for complying with the regulations 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." 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.

Additional explanatory information on this requirement is included in Question 16.

REFERENCES
49 CFR 21.9(b)(3)

FTA C 4702.1B, Ch. III, Section 13

SOURCES OF INFORMATION
Review information received from the grantee in response to this question. If completed, review any equity analyses.

DETERMINATION
Input into enhanced review determination.

Compliance with the requirement to conduct the equity analysis associated with this requirement will be reviewed in Question 16.

SUGGESTED CORRECTIVE ACTION
See suggested corrective actions for Question 16.

9. *Are there any Title VI-related complaints currently filed with the grantee or external agencies? If yes, what is the status of the complaints?*

EXPLANATION
Any person who believes that the Title VI requirements have been violated may file a written complaint.

REFERENCE
FTA C 4702.1B, Ch. III, Section 6
49 CFR 21.9(b)

SOURCES OF INFORMATION

Obtain information regarding complaints from headquarters, the RCRO, and the grantee. At the site visit, ask the grantee to make available a listing of all Title VI-related complaints and lawsuits during the past three years and the disposition of such complaints. Review individual complaint files. Discussions with responsible officials and employees may be necessary.

DETERMINATION

Input into enhanced review determination

SUGGESTED CORRECTIVE ACTION

None

10. *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 individuals who are LEP? How did the results of the four-factor analysis influence the steps taken?*

EXPLANATION

The U.S. 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's Circular 4702.1B states that grantees shall document the steps undertaken to implement the 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 Circular 4702.1B provides information on how a transit system can analyze information to address the four factors.

FTA Circular 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 the LEP persons. A means to ensure meaningful access is to develop and carry out a Language Assistance Plan. FTA grantees must develop a Language Assistance Plan 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 program needs to be based on the results of the analysis of how the four factors apply to the grantee's programs and activities. 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

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 DOT LEP Guidance. Determine whether the agency developed an implementation plan on language assistance. Review examples of language assistance measures that have been implemented, including a listing of vital documents.

DETERMINATION

Input into enhanced review determination.

The grantee is deficient if it has not prepared a language assistance plan and 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 language assistance plan.

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.

11. *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, have there been any fare, fare media, or major service changes since the last triennial review? If the change occurred after April 1, 2013, did the grantee have board approved policies and procedures in place for conducting an analysis? Are there any fare, fare media, or service changes planned for the next two FFYs? If yes what was the date of the analysis, or when is it anticipated to be completed?*

If the grantee met the threshold under FTA C. 4702.1A, but does not meet the threshold of FTA C. 4702.1B, and had a fare or major service change prior to October 1, 2012, did the grantee conduct a service or fare equity analysis in accordance with 4702.1A?

EXPLANATION

Grantees that provide service to geographic areas with a population of 200,000 or more or are located in a UZA with this population shall evaluate significant system-wide service, fare, and fare medium 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, fare, and fare medium changes do not result in disparate impacts on the basis of race, color or national origin.

Additional explanatory information on this requirement is included in Question 18.

REFERENCES

49 CFR 21.5(b)(2); (b)(7); and Appendix C

U.S. DOT Order 5610.2

FTA C 4702.1A, Ch. V, Section 4

FTA C 4702.1B, Ch. IV, Section 7

Fare and Service Equity Guidance

SOURCES OF INFORMATION

Review the Title VI program to determine what documentation has been submitted on fare and equity analyses that have occurred. Review the grantee's prior triennial review report describing service and fares, and compare this with information received from the grantee in response to the scoping package. Inquire of the FTA regional office if there have been any fare or major service changes since the last review.

Review FTA's Title VI website for a listing of 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.

DETERMINATION

Input into enhanced review determination

Compliance with the requirement to conduct the equity analysis will be reviewed in Question 18.

SUGGESTED CORRECTIVE ACTION

See suggested corrective actions for Question 18.

12. *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” as defined by the transit provider. 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 Starts/Small Starts/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 or Small Starts service 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
Input into enhanced review 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 are not within six months of starting revenue service, direct the grantee to meet Title VI requirements. For projects completed after October 1, 2012 without complete analyses, consult the RCRO to discuss the corrective action.

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

13. *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.

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

SOURCES OF INFORMATION

Review the grantee's Title VI program for a description of how this notification requirement is implemented. Review a copy of the materials that the grantee uses to inform the public of its rights under Title VI and a description of how these materials are disseminated. During the site visit, review marketing materials and postings on vehicles and public facilities.

DETERMINATION

The grantee is deficient if it has not disseminated a Title VI notification. The grantee is also deficient if its only means of dissemination consists of publishing the notice on the agency's website. 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 DOT LEP Guidance, it is deficient. ***(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.

14. *How did the grantee ensure inclusive public participation of minority and LEP populations into its public participation procedures, such as soliciting comments on fare increases and service reductions and on its policies and procedures?*

EXPLANATION

The content and considerations of Title VI, the Executive Order on LEP, and the 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. Outreach to LEP populations could also include 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

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 submissions. 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 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.

15. *How does the grantee monitor to ensure that subrecipients comply with Title VI requirements?*

EXPLANATION

The grantee is responsible for ensuring that subrecipients that provide transit service comply with Title VI requirements. If the subrecipients are not in compliance with Title VI requirements, then the grantee is not in compliance. In order to ensure the primary and subrecipient are in compliance with 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.

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

49 CFR 18.37 and 18.40

49 CFR 21.9(b) (d)

FTA C 4702.1B, Ch. III, Section 12

Executive Order 13166

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.

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 such assistance such as providing subrecipients sample notices to the public informing beneficiaries of their rights under 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.

16. *Since October 1, 2012, grantees that made decisions concerning the location of transit facilities (including but not limited to, storage facilities, maintenance facilities, operations centers, etc.) had to conduct an equity analysis. If the grantee has not made a decision, proceed to the next question. If the grantee has made a location decision, 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 regulations 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."

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.

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 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 all the requirements have not been met. ***(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 and the analysis was not completed, consult the RCRO to discuss the corrective action.

17. *Identify the grantee's system-wide service standards for each fixed route mode of service. Do the standards include measures for: vehicle load, vehicle headway, on-time performance, and service availability? What is the grantee's policy for each mode operated for the distribution of transit amenities in the community and vehicle assignments? How does the grantee implement and monitor its policy on siting of transit amenities?*

EXPLANATION

All grantees that operate fixed route services must set system-wide service standards and policies necessary to guard against discriminatory service design or operational decisions. Policies must be set for each mode.

REFERENCES

49 CFR 21.9(b); Appendix C

FTA C 4702.1A, Ch. V, Sections 2 and 3

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. Grantees that are required to submit updated Title VI programs prior to the triennial review site visit are deficient if the Title VI program does not include the required service standards. For grantees that are not required to submit an updated Title VI program (conforming to FTA C. 4702.1B) prior to the triennial review site visit, consult with FTA's Office of Civil Rights on determinations. ***(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.

Below are questions that address program-specific requirements for grantees that during the past three years provided service to geographic areas with a population of 200,000 or more and received 49 USC 5307 funding or that operated 50 or more fixed route vehicles in peak service and were located in a UZA of 200,000 or more in population.

18. *If the grantee meets the threshold of 50 or more fixed route vehicles in peak service and is located in a UZA of 200,000 or more in population what steps have been taken to establish a major service change policy, disparate impact policy, and disproportionate burden policy? When were these policies approved by the Board or governing entity?*

For fare and major service changes since the last triennial review:

- *that occurred prior to October 1, 2012, did the grantee conduct applicable equity analysis following FTA C. 4702.1A?*
- *that occurred between October 1, 2012 and April 1, 2013, which circular was followed for equity analysis?*
- *That occurred on or after April 1, 2013, did the grantee conduct applicable equity analysis following FTA C. 4702.1B?*

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 significant system-wide service and fare 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 major service change* and to conduct a service equity analysis for all major service changes. Fare equity analyses are required for all fare or fare medium changes. FTA previously recommended specific procedures for conducting an analysis of service changes and fare changes. The updated FTA C 4702.1B requires written procedures for the conduct of service and fare equity analyses to be part of the Title VI program and 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. These policies and procedures require public participation during the development stages and are to be formally adopted once the governing board approves them.

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. 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 Triennial Review Section on Public Comment on Fare and Service Changes.) 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).*

REFERENCES

49 CFR 21.5(b)(2); (b)(7); and Appendix C

U.S. DOT Order 5610.2

FTA C 4702.1A, Ch. V, Section 4

FTA C 4702.1B, Ch. IV, Section 7

Fare and Service Equity Guidance

SOURCES OF INFORMATION

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 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 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. If a grantee did not conduct an analysis of a past service or fare change, consult with the 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 not 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 submit to the RCRO a document that describes a methodology to analyze the impacts of future fare and major service changes.

19. *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?*

- *When were demographic and service profile maps and charts, last updated?*
- *When was the last survey conducted to provide input into demographic ridership and travel patterns?*

20. *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 users and low-income users, in order to assist with fare equity analyses. The demographic information shall be displayed in tabular format.

FTA C4702.1B 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 shall 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.

21. *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? If it was determined that disparities existed what corrective actions did the grantee take?*

EXPLANATION

Prior to October 1, 2012 grantees that provided service to geographic areas with a population of 200,000 or more and received 49 USC 5307 funding were required to monitor the transit service provided throughout the grantee's service area. Periodic service monitoring activities were required to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision-making was equitable service. Grantees needed to implement one of four alternative monitoring procedures.

With FTA C 4702.1B, the requirements were updated to require 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 their 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.

REFERENCES

49 CFR 21.9 (b) and Appendix C
FTA C 4702.1A, Ch. V, Section 5
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, cannot document that it has monitored service within the past three years, or, if applicable, has not met the updated requirements of FTA C 4702.1B. ***(DEFICIENCY CODE 111:*** No procedure for monitoring level or quality of service)

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 also deficient if its monitoring identified disparities in the level and quality of service provided to minority and non-minority users but 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.

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 (specifically Section 18.36) and FTA Circular 4220.1F, "Third Party Contracting Guidance."

FTA Emergency Relief Program

A grant awarded under 49 U.S.C. section 5324 (Emergency Relief Program) or under Section 5307 or Section 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 C 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA C 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.

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 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. Regional transit authorities are not state agencies. If a triennial review is conducted of a state agency, refer to the State Management Review Guide.

Guidance on procurements of works of art and artist services is included in FTA C 4220.1F, Ch. IV, Section 2.g. In addition, FTA's "Best Practices Procurement Manual" (BPPM) includes extensive non-binding suggestions and advice on implementing FTA C 9400.1A and related provisions.

Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA C 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 C 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 BPPM as a guide for the procurement process, but should not rely on the BPPM for ensuring that FTA requirements will be 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 Master Agreement.

COMPLIANCE

If a grantee fails to comply with FTA procurement requirements, including in other procurement-related areas, such as Buy America, FTA may decide to not participate in the procurement.

REFERENCES

Procurement

1. 49 USC Chapter 53, Federal Transit Laws
2. Transportation Equity Act for the 21st Century, Public Law No. 105-178
3. 49 CFR Part 18.36, "Procurement"
4. FTA C 4220.1F, "Third-Party Contracting Guidance"
5. FTA C 5010.1D, "Grant Management Requirements"
6. FTA C 9030.1E, "Urbanized Area Formula Program: Program Guidance and Grant Application Instructions"
7. FTA Master Agreement
8. 49 USC Section 5325

Emergency Relief Program

9. MAP-21 Section 20017
10. Emergency Relief Docket (2013 and 2014)
11. March 29, 2013 Federal Register Notice
12. May 29, 2013 Federal Register Notice
13. 49 CFR Part 602, Interim Final Rule
14. ER Program Frequently Asked Questions (FAQs)

Buy America

15. 49 CFR Part 661, "Buy America Requirements"
16. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
17. FTA "Dear Colleague" Letter, March 18, 1997
18. FTA "Dear Colleague" Letter, March 30, 2001
19. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America Requirements; Amendments to Definitions
20. Federal Register Vol. 72, No. 182, pp. 53688-53698, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule
21. Federal Register Vol. 72, No. 188, pp. 55103-55104, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction

Federal Motor Vehicle Safety Standards

22. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"

Bus Testing

23. 49 CFR Part 665, "Bus Testing"

Suspension/Debarment

24. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"
25. 2 CFR Part 180, "Nonprocurement Suspension and Debarment"
26. FTA Master Agreement

Lobbying

27. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEBLINKS

FTA's Best Practice Procurement Manual

FTA Procurement Frequently Asked Questions

FTA Emergency Relief Fact Sheet

FTA Buy America Website

Bus Testing Website

National RTAP Procurement PRO

U.S. DOT and FTA Buy America Home Pages

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements, FTA T-90-7713-93-1, Rev. B

Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements, FTA DC-90-7713-94-1, Rev. B

System for Award Management

SCOPING REVIEW QUESTIONS

ENHANCED REVIEW TRIGGERS

Consider an enhanced level of review if:

- the grantee had significant and/or repeat findings in a prior review
- the grantee was slow to implement prior corrective actions
- there are ongoing concerns that previously implemented corrective actions are not being maintained
- the grantee does not demonstrate it has adequate procurement expertise
- 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

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews audits, or investigations of the grantee conducted since the last triennial review (including Procurement System Reviews (PSR), Buy America audits, Financial Management Oversight (FMO) reviews, and the most recent triennial review) identified significant deficiencies, material weaknesses and/or repeat findings in the area of procurement or Buy America? Are any such reviews scheduled during this FFY?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings? Are any findings currently open?*

3. *If a PSR has been requested for the upcoming year, what triggered the review request (e.g., new grantee, known procurement)?*

4. *Are any issues related to procurement indicated in the Grantee Oversight Assessment?*

EXPLANATION

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

Procurement System Reviews (PSRs), Financial Management Oversight (FMO) reviews, 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 a "full scope" review 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 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.

FTA regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the procurement area of the GOA 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 triennial review
- Any PSR, FMO, or Buy America audit conducted in the past three years
- Any GAO or OIG audits/investigations
- Any internal, state, or local audits (obtain from grantee).

DETERMINATION
Input into enhanced review

SUGGESTED CORRECTIVE ACTION
None

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

5. *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?*

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.

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 is to be 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

SUGGESTED CORRECTIVE ACTION
None

6. *<u>Since the last triennial review</u> 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)?*

7. *What is the grantee's most recently awarded, FTA-funded:*
   a. architectural and engineering (A&E) procurement?
   b. rolling stock procurement?
   c. piggyback procurement?

8. *How many FTA-funded sole source or single bid procurements has the grantee conducted since the last triennial review?*

9. *Identify any change orders over $100,000 on FTA-funded contracts since the last triennial 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

SUGGESTED CORRECTIVE ACTION
None

10. *List any of the following types of FTA-funded procurements <u>anticipated for the next three years</u>:*
   a. A&E
   b. rolling stock
   c. piggyback
   d. any that involve a method or type not previously managed by the grantee

11. *Is the grantee planning or constructing a New Start, 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 TEAM-Web, and responses from the grantee on planned projects and procurements.

DETERMINATION
Input into enhanced review

SUGGESTED CORRECTIVE ACTION
None

12. *Does the grantee have written protest procedures? Were any bid protests received since the last triennial review? If so, 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 procurements 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. When a grantee denies a bid protest, and especially if an appeal to FTA is likely to occur, 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.

A protester must exhaust all administrative remedies before pursuing a protest with FTA. The protester must deliver its appeal to the applicable FTA Regional Administrator or the FTA Associate Administrator within five working days of the date when the protester has received actual or constructive notice of the grantee's final decision. Information on this process should be provided to those bidding on grantee procurements.

REFERENCE
49 CFR 18.36(b)(12)
FTA C 4220.1F, Ch. VII, Section 1

SOURCES OF INFORMATION
Examine 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, or if the it has not disclosed information regarding protests to FTA. (***DEFICIENCY CODE 152****:* No written protest procedures)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office written protest procedures and implement a process to provide FTA all information related to protests.

13. *When were the grantee's procurement procedures last updated? 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)*

b. *Small Purchases (more than $3,000 but not more than $100,000)*

c. *Sealed Bids/Invitation for Bid (IFB)*

d. *Competitive Proposals/Request for Proposals (RFP)*

e. *Architectural and Engineering Services (A&E)*

f. *Revenue Contracts*

EXPLANATION
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 items exceeding the federal simplified acquisition threshold, currently fixed at $100,000, 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 firm 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.

Architectural and Engineering (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 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 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 greatest cost, even though the other necessary services would not typically be procured by that method.

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.

REFERENCE

49 CFR 18.36 (c)(1)
49 CFR 18.36 (d)(1)(2)(3)
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

Input into enhanced review

The 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)

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 revised 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

The Common Grant Rule for non-governmental recipients requires the grantee to have written procurement procedures, and by implication, the Common Grant Rule for governmental grantees requires written procurement procedures as a condition of self-certification.

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

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

Input to enhanced review

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. *Has the grantee requested any waivers from Buy America requirements since the last triennial review?*

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to a waiver, contain Buy America provisions. Waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software and purchases under the simplified acquisition threshold (currently $100,000).

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 FTA before it may award a contract to that bidder or offeror. It should be noted that the Buy America rules apply to utility contracts that are within the scope and budget of an FTA funded project. Buy America applies to the entire project.

SOURCES OF INFORMATION

Review information provided by FTA regional office and the grantee on Buy America waivers have been applied for.

DETERMINATIONS

Input to enhanced review

Deficiencies related to compliance with Buy America are determined in the baseline portion of the triennial review.

.# BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

Policies and Procedures

16. *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

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.

17. *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", and

c. proper justification for sole source and single bid procurements?

EXPLANATION

Grantees must conduct procurement transactions in a manner providing full and open competition. 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. 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 has not in the past 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.

In the case of a sole source award, the grantee should prepare a written cost analysis and justification.

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 might include a survey of potential sources that chose not to submit a bid or proposal.

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 C 4220.1F when federal funds are used to pay for these services.

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 C 42201.F 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 C 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.

REFERENCES

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 noncompetitive specifications or statements of work. (***DEFICIENCY CODE 346:*** Insufficient solicitation elements)

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)

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

When procurements exceeding $100,000 have violated federal requirements, advise the FTA regional counsel. The grantee must cease immediately any practice that is in violation of FTA guidelines.

In all cases, direct the grantee to cease any practice that violates FTA requirements and submit to the FTA regional office documentation demonstrating that deficiencies identified have been corrected.

Direct the grantee to submit to the FTA regional office documentation demonstrating that deficiencies identified in its prequalification process have been corrected.

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.

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.

18. *How does the grantee ensure that it avoids the use of geographical preferences?*

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 did not restrict competition (i.e., the use of geographic preference left 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.

REFERENCES

49 CFR 18.36 (c)
FTA C 4220.1F , Ch. II, Section 2

FTA C 4220.1F, Ch. VI, Sections 1 and 2,

SOURCES OF INFORMATION

Review the grantee's procurement procedures to determine how these elements are addressed.

Review selected procurement files in accordance with records sampling procedures for evidence that the grantee does not use geographical preferences except when allowed by U.S.C. Section 5325(i) for Licensing, Major Disaster & Emergency Relief services, and *some* A&E Services

DETERMINATION

The grantee is deficient if it has used geographic preferences in any procurement for other than one of the exceptions. 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

When procurements exceeding $100,000 have violated federal requirements advise the FTA regional counsel.

Direct the grantee to cease using geographic preferences in FTA-funded procurements and submit to the FTA regional office documentation demonstrating that deficiencies identified have been corrected. Additionally, direct the grantee to provide to the FTA regional office documentation of a revised procurement process that prohibits the improper use of geographic preferences.

19. *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 grantees 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

49 CFR 18.36 (b)
FTA C 4220.1F , Ch. II, Section 2
FTA C 4220.1F, Ch. IV, Section 1
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 procurements. The grantee is deficient If such procedures exist, but are not followed. (***DEFICIENCY CODE 112:*** No procedures used to avoid unnecessary or duplicative purchases)

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. Direct the grantee to provide the FTA regional office evidence that deficiencies in the implementation of such procedures have been corrected.

20. *How does the grantee ensure that it performs an independent cost estimate (ICE) before receiving bids or proposals?*

EXPLANATION

The independent cost estimate (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 the conduct of 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 where only one price proposal is received), 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

49 CFR 18.36 (f)
FTA C 4220.1F, Ch. II, Section 2
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.

21. *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?*

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. The Master Agreement identifies certain clauses that apply to third-party contracts. FTA Circular 4220.1F discusses federal requirements that affect a recipient's acquisitions. FTA's *Best Practices Procurement Manual*, Appendix A, also includes a discussion of federally required and other model contract clauses. 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, a grantee can develop 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 the state 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. Procurements above the micro-purchase thresholds 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 Master Agreement for each required clause. Exhibit 6.1, Part B lists certifications, reports, and forms that are required for 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.

REFERENCES

49 CFR 18.36 (i)(1-13)
49 CFR 18.36 (j-o)
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
FTA Master Agreement, Ch. IV, Section 2
FTA C 4220.1F, Appendix D
Best Practices Procurement Manual
FTA Third Party Contracting FAQs
National RTAP Procurement PRO
49 CFR Part 20

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 reference to FTA requirements or any FTA 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.

The grantee is deficient if it has not included the lobbying certification in its agreements and procurement solicitations. (***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. (***DEFICIENCY CODE 40:*** Lobbying certifications not signed by subgrantees, contractors, or subcontractors)

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.

22. *How does the grantee ensure compliance with Buy America provisions in all procurements of steel, iron, and manufactured products, except for products with a waiver or purchases under the simplified acquisition threshold (currently $100,000)?*

EXPLANATION

Buy America regulations require that all procurements of steel, iron, and manufactured products, except for those subject to a waiver, contain Buy America provisions. Waivers are listed in Appendix A to 49 CFR 661.7 and include microcomputer equipment and software and purchases under the simplified acquisition threshold (currently $100,000).

The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four minivans that totals $120,000, even though each minivan costs $30,000, must comply with the Buy America requirements. Grantees may not split procurements that exceed the threshold in order to avoid Buy America requirements. For construction projects and projects involving the installation of manufactured products, the small purchase limitation is based on the total value of the project, not the value of the steel, iron, and manufactured products purchased for the project.

Buy America provisions apply to:

- All purchases of steel, iron, and manufactured products exceeding the simplified acquisition threshold, regardless of whether they involve capital, operating, or planning funds
- Subcontractors, regardless of the size of the subcontract, if the prime contract is more than the simplified acquisition threshold
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

The grantee must include a clause citing the Buy America requirement and a Buy America certification in its invitations for bids (IFB) and requests for proposals (RFP). There are different certifications for procurements of rolling stock than for procurements of other steel, iron, or manufactured products. The specific text for steel, iron, or manufactured products can be found at 49 CFR 661.6. The specific text for rolling stock can be found at 49 CFR 661.12. Each is contained in the FTA *Best Practices Procurement Manual*. The requirements of 49 CFR 663 describe the audit reporting for a procurement of rolling stock.

The grantee, and those procuring on its behalf, must obtain a signed certification from each successful bidder providing steel, iron, or manufactured products when the total purchase price exceeds the simplified acquisition threshold. The contractor is required to certify that the materials provided either comply or do not comply with Buy America requirements. The grantee is required to retain these certifications in the contract file and make them available for inspection upon request. If a bidder or offeror certifies that it does not comply with the Buy America requirements, then the grantee must request, receive, and retain a waiver from FTA before it may award a contract to that bidder or offeror. It should be noted that the Buy America rules apply to utility contracts that are within the scope and budget of an FTA funded project. Buy America applies to the entire project.

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.

The Buy America waiver for minivans was rescinded on December 3, 2012.

REFERENCES

49 CFR 661.6
49 CFR 661.7
49 CFR 661.12
49 CFR 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
Best Practices Procurement Manual
FTA Third Party Contracting FAQs
FTA Buy America Website

SOURCES OF INFORMATION

Ask the FTA regional office staff if the grantee applied for any waivers from Buy America requirements. 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 simplified acquisition 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. (***DEFICIENCY CODE 156***: Contract files lacking Buy America certifications)

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 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 but not yet awarded, direct the grantee to submit to the FTA regional office documentation that it obtained signed Buy America certifications.

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.

23. *What is the grantee's process for following federal requirements when procuring architectural and engineering (A&E) services?*

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 greatest cost, even though the other necessary services would not typically be procured by that method.

REFERENCES

49 CFR 18.36(d)(3)
49 CFR 18.36(d)(1)(2)(3)
FTA C 4220.1F, Ch. VI, Section 1
FTA C 4220.1F, Ch. VI, Sections 3.f

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.

24. *Identify any time and materials contracts the grantee has entered into using FTA funds. How did the grantee determine that this type of contract was the only method suitable for the procurement? Did the grantee specify a ceiling price?*

EXPLANATION

Time and materials type contracts are those 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

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.

25. *As part of its evaluation of bids and proposals prior to award, does the grantee perform a cost or price analysis?*

EXPLANATION

Grantees must perform cost or price analyses in connection with every procurement. 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., catalog or market prices) may be performed for all other procurements.

REFERENCES

49 CFR 18.36 (f)(1)
FTA C 4220.1F, Ch. VI, Section 6

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.

26. *As part of its evaluation of bids and proposals prior to award, how does the grantee ensure award to responsive and responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract?*

EXPLANATION

SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA-assisted contract awards be made 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 U.S. Department of Transportation (DOT) regulations, "Non-procurement Suspension and Debarment."
- Affirmative Action and DBE. Is in compliance with the Common Grant Rule's Affirmative Action and 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 CFR 18.36(b)(8)
49 USC Section 5325
FTA C 4220.1F, Ch. VI, Section 8.b

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 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.

27. *As part of its evaluation of bids and proposals prior to award, does the grantee search the System for Award Management (SAM) to identify debarred or suspended bidders?*

28. *Subsequent to awarding a contract, has the grantee discovered that a contactor was listed in 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. FTA requires grantees to review SAM before entering into any third party contract expected to equal or exceed $25,000. A good practice is for the grantee to print the screen with the results of the search to include in the grant or procurement file. [Prior to the implementation of SAM, grantees were required to check the Excluded Parties Listing System (EPLS)]

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 FTA 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 no-cost time extension) with the excluded party.

REFERENCES
2 CFR Part 180
FTA Master Agreement, Section 3.b

SOURCES OF INFORMATION
Review the grantee's written procurement procedures and employment procedures to determine if the requirement to review the SAM has been included. During the site visit, review contract and subrecipient files to determine if the SAM is being searched 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 FTA.

DETERMINATION
The grantee is deficient if it has not reviewed SAM 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 FTA 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 to search SAM 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 FTA in writing of any excluded party's participation.

29. *Has the grantee used liquidated damage clauses in any of its procurements? If yes,*

- *How was the damage rate specified in the solicitation and contract?*
- *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 used to impose a penalty, limit or restrict competition, or 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.

REFERENCE
49 USC 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 damage 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 damage 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 damage 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.

30. *What are the grantee's procedures and systems for administering the contract? Are these procedures written?*

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. 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.

REFERENCES
49 CFR 18.36(b)(2)
FTA C 4220.1F, Ch. III, Section 3
FTA Third Party Contracting FAQs
49 CFR 26.37

SOURCES OF INFORMATION
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.

DETERMINATION
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. 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) 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.

31. *How does the grantee demonstrate that it manages contract amendments and change orders, ensuring they are:*

- *Approved by the appropriate, authorized official(s)?*
- *Determined to be fair and reasonable via use of independent cost estimate(s) and cost or price analyses?*
- *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.

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
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.

32. *How does the grantee demonstrate that it only uses advance payments after receiving written approval from FTA headquarters?*

33. *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
FTA C 4220.1F, Ch. IV, Sections 2.b.(5)(b) and (c)
49 CFR 26.29
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
The grantee must cease any 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.

Direct the grantee to submit to the FTA regional office procedures for obtained adequate security and or sufficient written documentation to substantiate the work for progress payments.

34. *What FTA funded contracts contain option clauses? What process did the grantee use to evaluate the options at the time of the initial bid? 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 USC 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, evaluated, and prices were evaluated prior to executing. In some cases, the grantee may have assigned options on a vehicle procurement 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 contact 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 violate the requirements have not been exercised.

Direct the grantee to develop procedures for complying with FTA requirements when exercising options in instances where the grantee has exercised options that were not evaluated and priced initially, or were assigned improperly to another grantee.

Consult the FTA regional counsel if the contract quantities were not based on the grantee's foreseeable needs.

35. *Where do the grantee's written procurement policies or procedures address records retention systems? 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

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.

36. *Identify any FTA funded equipment obtained since the past triennial review through a piggyback, state-led, or joint procurement method.*

EXPLANATION

Recipients of FTA financial assistance are required by both 49 U.S.C. § 5325(a) and the common grant rule (49 C.F.R. 18.36(c)) to use full and open competition when making 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. (4) State purchasing schedules are procurements conducted by States and available to grantees within that state.

A joint procurement is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor. 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.

States are accorded substantial deference under the Common Grant Rule at 49 C.F.R. 18.36(a) 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.

FTA grantees located outside of a State's borders are not permitted to purchase from that State's schedule. Joint procurements (and in limited circumstances piggybacking) are the only forms of FTA-funded contracts permitted among grantees from different states.

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). FTA should be consulted before entering into any agreements with such organizations.

For reasons of economy, FTA permits the assignment of unneeded contract rights, someimes 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 Common Grant Rule described above. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the Common Grant Rule'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). Although FTA has provided additional guidance in the BPPM, 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 changes 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.

Generally speaking, FTA encourages recipients to use joint procurements, particularly among smaller transit agencies. Recipients often can obtain better pricing by combining their requirements into larger joint purchases. However, they must limit their joint procurement to the amount of property and services required to meet each of their reasonably expected needs, and are prohibited from improperly expanding the procurement to include excess capacity simply for the purpose of assigning contract rights to others at a later date. Accordingly, FTA permits the assignment of unneeded contract rights to another transit agency—piggybacking—only when a recipient has unintentionally acquired more goods or options than it needs to support its transit system.

REFERENCES

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)
Piggybacking Worksheet from FTA Best Practices Procurement Manual
FTA Administrator's Policy Letter March 8, 2013

SOURCES OF INFORMATION

Refer to information obtained during the scoping phase for any piggyback, state-led, or joint procurements conducted since the last triennial 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 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 the grantee 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. (***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.

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.

Notify the FTA regional counsel when significant procurements (i.e., exceeding $100,000) have violated federal requirements.

Revenue Rolling Stock Procurements

37. *Since the last triennial review, has the grantee had 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? If yes, describe.*

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. MAP-21, effective July 16, 2012, extended this restriction to 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.

Grantees may seek a waiver from the five-year or seven-year requirement from FTA Headquarters. A copy of the written approval for this waiver must be in the applicable contract file.

REFERENCES

49 USC 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 during 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 five or seven years' requirements. The grantee is deficient if it has a revenue rolling stock and replacement parts contract with a period of performance exceeding five or seven years and has not obtained prior FTA written approval. (***DEFICIENCY CODE 240****:* Contract(s) exceed five year 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.

38. *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 Bus Testing Report prepared on the bus model before the final acceptance of the first 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, Chapter VI 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. 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.

39. *How does the grantee conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?*

40. *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 or order to be conducted 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.

These requirements apply to purchases of new and used revenue service rolling stock. However, FTA recognizes that it may be impractical for used vehicles to demonstrate compliance with some of the Buy America requirements, such as the pre-award and post-delivery audit, and having a resident inspector present during the vehicle's construction.

FTA issued a waiver from Buy America requirements for purchases under the simplified acquisition threshold (currently $100,000). Thus, a procurement of small buses and vans which totals less than $100,000 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.

<u>Compliance with purchaser's specifications:</u> 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 under the federal simplified acquisition threshold. The pre-award audit is required before a grantee enters into a formal contract with a supplier. 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.

<u>Compliance with Buy America:</u> If the procurement exceeds the simplified acquisition threshold (currently $100,000), at the pre-award stage, the grantee must complete:

- A compliance certification verifying that the rolling stock will contain a minimum of 60 percent domestic components, by cost, and that final assembly will take place in the United States; or

- An exemption certification indicating that the grantee has a letter from FTA granting a waiver from the Buy America requirement.

The grantee or an independent third party must conduct the Buy America audit. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate. 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 FMVSS: The grantee must receive a certification from the vehicle manufacturer at the pre-award stage that the vehicles being procured comply with the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration (49 CFR Part 571).

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 under the federal simplified acquisition threshold.

Grantees are required to have an inspector during final assembly process if they meet the following criteria:

- Grantees purchasing any number of rail vehicles
- Grantees in an urbanized areas with populations of more than 200,000 that are purchasing more than 10 buses
- Grantees in areas with populations of 200,000 or less that are 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 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 under the federal simplified acquisition threshold.

REFERENCES

49 CFR Part 571
49 CFR Part 661
49 CFR Part 663
FTA C 9030.1E, Chapter VI Section 11.e
Dear Colleague letter of March 30, 2001
Dear Colleague Letter, March 18, 1997
FTA Buy America Website
Conducting Pre-Award and Post-Delivery Audits for Bus Procurements
Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements
Buying Used Buses

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 submit to the FTA regional office procedures for pre-award and post-delivery review and inspection.

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 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.

If the grantee did not sign the pre-award and/or post-delivery certifications, 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.

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.

41. *How does the grantee ensure that transit vehicle manufacturer(s) have complied with DBE requirements?*

EXPLANATION

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. The grantee is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23). Currently, dealers and manufacturers of unmodified, mass produced vehicles such as vans and sedans are not classified as TVMs for the DBE regulation. Contracting opportunities for modification of mass produced vehicles after purchase should be included in a grantee's overall agency three-year goal calculation.

A list of TVMs that have submitted required DBE information to FTA is available at the FTA website: www.fta.dot.gov/dbe. Evidence that this website has been checked to validate the TVM certification, prior to award, 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.

Note that FTA is working with USDOT to formalize the definition of TVM. In particular, grantees using FTA funds for the purchase of ferries should include the contracting opportunities associated with these procurements in their overall three-year agency goal-setting methodology.

REFERENCES

49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION

Review vehicle procurement files in accordance with records sampling procedures for signed TVM certifications and evidence that TVM had an approved DBE plan, either a signed approval letter or evidence that FTA's DBE website was checked. Note whether the grantee obtained the certification in Exhibit 6.2 Required Certifications, Reports, and Forms in the review package as evidence that DBE certifications were submitted as part of the manufacturer's bid or proposal.

DETERMINATION

The grantee is deficient if it does not include 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 regional civil rights officer (RCRO) a signed TVM certification from the manufacturer and procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs before contract award.

Direct the grantee to submit to the RCRO an updated TVM certification to be used in future revenue rolling stock procurements.

42. *Did procurements funded with FTA Emergency Relief grants comply with 4220.1F?*

43. *Provide a list (noting scope and dollar amount of change orders) to FTA Emergency Relief grant projects.*

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) 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

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
Emergency Relief Docket (2013 and 2014)

SOURCES OF INFORMATION

Review procurement files of Emergency Relief funded projects. Refer to Question 31 and complete Exhibits 6.1, 6.2, and 6.3 of the triennial review Procurement area. The grantee is deficient if reviewed procurements do not comply with FTA Circular 4220.1F.

DETERMINATION

The grantee is deficient if Section 5324 funded procurements are not in compliance with applicable requirements of FTA C. 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. (***DEFICIENCY CODE 584****:* Insufficient documentation for Section 5324 change orders)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit change order procedures to the FTA regional office.

Procurement Oversight

44. *Does the grantee contract for services funded with federal monies and/or has the grantee passed through FTA funds to a subrecipient? If yes:*

- *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. In such circumstances, the procurement process of the contractor/subrecipient should meet federal requirements contained in the Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. Furthermore, a grantee needs to have a mechanism to ensure contractor/subrecipient compliance. Requiring written procurement procedures, overseeing selected procurement processes, and auditing the contractor/subrecipient annually are measures that a grantee could use.

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.

REFERENCE

49 CFR 18.37
49 CFR 18.40
FTA Master Agreement , Sections 2.d and 2.e

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

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
A. 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.f
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§10.a
Federal changes		§2.c(3)(d)
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)		
Buy America	When tangible property or construction will be acquired	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§96
Awards Exceeding $100,000 by Statute		
Lobbying		§3.d
Clean Air		§17.m
Clean Water		§17.m
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
A. 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: • 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.p(1)
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§26.e
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.l
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g
Assignability Clause	Piggyback procurements	§17.a
State Requirements		
Special Notification Requirements for States		§42

Exhibit 6.2
B. 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	§17.0(4)
TVM Certifications	Procurements of buses and modified mass produced vans	§13.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > $100,000	§16.a
Pre-Award Audit	Rolling stock procurements	§17.o(3)
Pre-Award Buy America Certification	Rolling stock procurements>$100,000	§17.o(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§17.o(3)
Post-Delivery Audit	Rolling stock procurements	§17.o(3)
Post-Delivery Buy America Certification	Rolling stock procurements >$100,000	§17.o(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.o(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.o(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§17.o(3)
Excluded Parties Listing System search	Procurements > $25,000	§3.b
Lobbying Certification	Procurements > $100,000	§3.d(1)
Standard Form LLL and Quarterly Updates (when required)	Procurements > $100,000 where contractor engages in lobbying activities	§3.d(1)

Exhibit 6.3
C. OTHER REQUIRED ITEMS

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

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	>$100,000	>$100,000 (for steel, iron, manufacture d products)
Provisions for resolution of disputes, breaches, or other litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
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)	

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				
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
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

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
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

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 DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

1. ***DBE Program***
2. ***DBE Goals and Reports***
3. ***Procurement***
4. ***Certification***
5. ***DBE Reporting***

REFERENCES

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)

SCOPING REVIEW QUESTIONS

Enhanced Review Triggers
The following are potential triggers:

- the prior triennial 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
- issues have been identified in FTA's Grantee Oversight Assessment (GOA)
- there are complaints 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 did not achieve its overall goal for FY13 and did not complete a shortfall analysis
- the grantee is one of the top 50 grantees, did not achieve its overall goal for FY13 and the shortfall analysis was not submitted, was submitted late, or was incomplete

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including DBE reviews, UCP reviews and the most recent triennial review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of DBE? Are any such reviews scheduled during this FFY?*

2. *If conducted, has a recent (since the last triennial review) PSR identified any issues related to DBE in the "Other Matters" section?*

3. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any findings currently open?*

4. *Are any issues related to DBE indicated in the Grantee Oversight Assessment?*

5. *Have DBE complaints been filed with FTA against the grantee? If yes, have all such complaints been resolved?*

6. *Has grantee or FTA received any bid protests related to DBE issues?*

EXPLANATION
In addition to triennial reviews, FTA periodically conducts DBE and UCP reviews of selected grantees. If one of these reviews was conducted, review the report, identify any open deficiencies, and discuss issues with the 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.

FTA regional office staff prepare an annual Grantee Oversight Assessment (GOA) for each grantee that focuses on several areas of importance for FTA. Items identified in the DBE area of the GOA could indicate issues in this area.

Any person who believes that the DBE regulations have been violated may file a written complaint. Bid protests relating to DBE, while not complaints, could also trigger an enhanced review.

REFERENCES
None

SOURCES OF INFORMATION
Review information provided by the FTA regional office and OTrak pertaining to previous deficiencies as a result of:

- The most recent triennial review
- A DBE review, UCP review, or PSR conducted in the past three years
- GOA in OTrak
- Protests or complaints received by FTA related to DBE issues

DETERMINATION
Input into enhanced review

SUGGESTED CORRECTIVE ACTION
None

7. *Has the grantee submitted a DBE program to FTA? If no, does it appear that the grantee met the threshold for submitting a program to FTA? If yes, was it submitted on time? Was the program uploaded to FTA's Transportation Electronic Award Management (TEAM-Web) system? Has FTA approved the program?*

8. *Were the overall DBE goals submitted to FTA by August 1 preceding the designated submission year? Do the projects/work areas discussed in the goal correspond to programmed projects in current grants? Does the grantee have a zero percent DBE goal?*

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 included in 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 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 TEAM-Web.

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 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.

For grantees that meet the threshold, 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 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.

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. Recipients 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 26.21
49 CFR 26.45

SOURCES OF INFORMATION
Review information provided by the FTA regional office, the grantee's DBE program, and current and previous goal submissions in TEAM-Web. Review grant-funded project information in TEAM-Web.

DETERMINATION
Input into enhanced review

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 during the scoping review a program had not been uploaded to TEAM-Web, the grantee is deficient ***(DEFICIENCY CODE 590:*** DBE program not uploaded to TEAM-Web)

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 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 submit its DBE program to the FTA RCRO and upload it to TEAM-Web.

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, the race-conscious and race-neutral split, and/or create a method for establishing contract goals if subcontracting opportunities are available.

9. *Has the grantee submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually?*

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 TEAM-Web. 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).

On March 22, 2011, FTA's Deputy Administrator issued a letter informing grantees that paper DBE reports would no longer be accepted and must be entered in TEAM-Web's DBE reporting module.

REFERENCE
49 CFR 26.11
DBE Semi-Annual Reporting Form

SOURCES OF INFORMATION
Examine the DBE files and TEAM-Web for correspondence regarding semi-annual report submittals. Verify that semi-annual reports are submitted in TEAM-Web, beginning with the report due June 1, 2011. Discuss any issues the RCRO has identified with the timeliness or adequacy of DBE reporting.

DETERMINATION
Input into enhanced review

The grantee is deficient if it has not submitted the reports semi-annually, has not submitted them timely, or is not using the electronic module in TEAM-Web (***DEFICIENCY CODE 327***: DBE uniform reports not submitted semi-annually)

Determinations regarding the adequacy of semi-annual reports are made based on information in Question 21.

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 TEAM-Web, along with an implemented procedure to ensure future reports are submitted on time.

10. *If the grantee is a certifying entity in its state's UCP, have there been issues identified with DBE certifications?*

EXPLANATION
Not all grantees certify DBEs as part of their state's UCP. For those that do, certification procedures in the DBE regulation help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. The regulation gives specific guidance on determining eligibility based on group membership or individual disadvantage, business size, ownership, and control. The correct instructions, form, and document checklist to be used for DBE certification are located at USDOT's website. Certifying grantees are to use these documents unmodified, unless such modifications were approved by USDOT.

REFERENCES
49 CFR 26.61-26.91

SOURCES OF INFORMATION
Review the website of the grantee and the UCP to verify which entities certify DBEs in the state's UCP.

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

- The most recent triennial review

- A DBE or UCP review conducted in the past three years
- GOA in OTrak
- Protests or complaints received by FTA related to DBE certification issues

DETERMINATION
Input into enhanced review.

SUGGESTED CORRECTIVE ACTION
None

PROVIDED BY THE GRANTEE
The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

11. *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?*

EXPLANATION
In its Notice of Proposed Rulemaking of May 2010, USDOT called attention to the last section of 49 CFR 26.25, which requires that the recipient have adequate staff to administer the DBE program. It also noted that, "In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of Federal law that the DBE program be adequately staffed to ensure compliance with Part 26."

REFERENCES
49 CFR 26.25

SOURCES OF INFORMATION
Review the DBE program, organizational information, and training programs/information provided by the grantee. Consult the RCRO for any indications of past problems with staffing.

DETERMINATION
A staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. Consult with the RCRO prior to making this deficiency. (***DEFICIENCY CODE 303***: Inadequate staff to administer DBE program)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO evidence of corrective actions taken to designate DBE responsibilities properly.

12. *Did the grantee's DBE reports for FY2013 indicate that the grantee's awards to DBEs were less than the overall goal applicable to that year? If yes, did the grantee conduct the required shortfall analysis? If the grantee is one of the top 50 transit grantees, did it provide this analysis to its RCRO?*

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

State highway agencies and 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.

REFERENCE
49 CFR 26.47
FTA DBE Website

SOURCES OF INFORMATION
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
Input into enhanced review

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 to FTA and did not. (***DEFICIENCY CODE 308***: DBE goal achievement analysis not completed or not submitted)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO the required analysis and a description of the actions taken to implement the process for completing and submitting future annual reports, as applicable.

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

13. *Is the grantee's DBE liaison officer (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 TEAM-Web. 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.

14. *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 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 submit an update of its DBE program to the FTA RCRO for approval.

15. *In setting its most recent overall goal, did the grantee conduct a consultative process, as detailed in 49 CFR 26.45(g)1? Prior to submission of the goal to FTA, did the grantee publish a notice of the goal? Was the notice published in general circulation media, available minority focused media, and trade association publications?*

16. *If the grantee plans to meet DBE goals using race-conscious methods in the 9th circuit or where race-conscious methods are otherwise prohibited, was a disparity study conducted?*

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 that 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, informing the public that the proposed goal and its rationale are 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 must include addresses (including the FTA RCRO's address) to which comments may be sent. The notice must be published in general circulation media, minority-focused media, and trade association publications. Publication of DBE goals on the entity's website or any website is not sufficient to meet the publication requirement.

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 must be considered during goal setting.

REFERENCES

49 CFR 26.45

SOURCES OF INFORMATION

Review information provided by the FTA regional office and the grantee's DBE program and goal submission in TEAM-Web. 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 provide opportunity to comment on its overall goal. (***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. (***DEFICIENCY CODE 549***: Insufficient support for 9th Circuit race conscious goals)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop a timeline for facilitating public participation, including a schedule for consultative meetings and a timeline for issuing a public notice for future cycles.

Direct the grantee to examine disparity studies within its area prior to setting race-conscious goals, if in the 9th circuit. If applicable, suggest that a new disparity study be considered.

17. *Identify any 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?*

EXPLANATION

Not every FTA funded contract is required to have a DBE goal. However, 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, DBEs named must be certified to do the scopes of work that they are contracted to perform.

REFERENCES
49 CFR 26.53 and Appendix A

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. 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 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 176***: Inadequate implementation of DBE contract compliance)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a method for determining "good faith efforts" and/or evidence that it has included documentation in applicable procurement files.

18. *What prompt payment and return of retainage clauses are included in FTA-funded procurements? How does the grantee monitor and enforce these clauses?*

EXPLANATION
Grantees 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. Note in Exhibit 6.1 A. Required Third Party Contract Clauses (in the review package) whether the clause is included. 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.

19. *How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the grantee use for DBE requirements? 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?*

EXPLANATION
Recent investigations by the U.S. DOT Office of the Inspector General (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. 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 project with a DBE goal to a contractor, the grantee is required to collect from the awardee the names, dollar amounts, and types of work for each DBE. 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 Part 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 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
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)

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 (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.

20. *How does the grantee monitor projects to ensure that DBEs are actually performing the work committed to at the time of contract award? How often does the grantee review contracting records for compliance with DBE requirements? How does the grantee monitor worksites for compliance with DBE requirements? 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. 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.

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.

21. *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 TEAM-Web. 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.*

REFERENCE

49 CFR 26.11
DBE Semi-Annual Reporting Form

SOURCES OF INFORMATION

Review scoping information from Question 9. Verify that semi-annual reports are submitted in TEAM-Web, beginning with the report due June 1, 2011. During the site visit, obtain information on how grantee and subrecipient contracting activities are included in the grantee's reports. Examine documentation and procedures demonstrating how DBE reporting data 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 TEAM-Web, along with an implemented procedure to ensure future reports are submitted on time.

Direct the grantee to submit to the FTA RCRO procedures for including all applicable FTA funded contracting activity, including the activity of subrecipients, in future reports and inform the 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.

8. LEGAL

BASIC REQUIREMENT

The grantee must be eligible and authorized under state and local law to request, receive, and dispense FTA funds and to execute and administer FTA funded projects. The authority to take actions and responsibility on behalf of the grantee must be properly delegated and executed. Grantees must comply with Restrictions on Lobbying requirements.

AREAS TO BE EXAMINED

1. ***Designation of Recipient / Supplemental Agreements***
2. ***Source and Delegation of Authority***
3. ***Annual List of Certifications and Assurances***
4. ***Changes in Law and Litigation Affecting Recipient Status***
5. ***Restrictions on Lobbying***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws (SAFETEA-LU)
2. FTA Master Agreement
3. Annual List of Certifications and Assurances
4. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
5. FTA Circular 9300.1B "Capital Investment Program Guidance and Application Instructions"
6. FTA C 9050.1 "The Job Access and Reverse Commute Program Guidance and Application Instruction"
7. FTA C 9045.1 "New Freedom Program Guidance and Application Instructions"
8. FTA C 9070.1F "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
9. FTA Team-Web
10. 49 CFR Part 20, "New Restrictions on Lobbying"
11. Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

BASELINE REVIEW QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Is the grantee a designated recipient for 5307 grants? 5310 grants? 5339 grants?*

Is the appropriate documentation of designation on file with 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 UZA to the state, regional authorities, or to other public agencies.

- <u>In urbanized areas 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.</u>

- <u>In urbanized areas with less than 200,000 population, the Governor or the Governor's designee(s) is (are) the designated recipient(s) for Section 5307, 5310, and 5339 funds.</u>

Documents designating recipients must include:

- <u>For areas with 200,000 or more population,</u> 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 MPO concurring in the designation; and an opinion of counsel.

- <u>For areas with less than 200,000 population,</u> 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 supplemental agreement with a designated recipient. For Section 5310 assistance, the designated recipient must apply for the funds. For Section 5339 assistance, the designated recipient must apply for the funds apportioned to urbanized areas. 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 urbanized areas (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 Urbanized Area Formula Program 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 a "split letter," which establishes the allocation of Section 5307 funds in a large UZA. A state must inform FTA of such arrangements in an annual apportionment letter for funds attributable to small UZAs.

Under MAP–21 the 5310 program no longer provides a single apportionment to the State; however, it now provides apportionments specifically for large urbanized, small urbanized and rural areas; and will require new designations in large UZAs.

REFERENCES

Former 49 USC 5307 (a)(2)
Current 49 USC 5302 (4)
FTA Circular 9030.1E, Ch. II, Section 6, 7, and 8; Ch. VI, Section 1.a (1)
FTA Circular 9300.1B Ch. II, Section 9.a
FTA C 9050.1 Ch. III, Section 1
FTA C 9045.1 Ch. III, Section 1
Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

SOURCES OF INFORMATION

Review the Designation of Signature Authority for the Transportation Electronic Award & Management

Process forms for the grantee and the designated recipient. Review TEAM-Web to determine the identity of the official that executed recent grants and, if applicable, executed the supplemental agreement for the recent Section 5307 grants awarded to a direct recipient.

For new grantees or new 5310 or 5339 designated recipients, obtain documentation indicating the source of authority of officials acting on behalf of the grantee and designated recipient. The source of authority may be state or local laws, an authorizing resolution, or by-laws.

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)

The grantee is deficient if it cannot demonstrate that the person executing the grant has the authority to act on its behalf or that the person executing the supplemental agreement is authorized to act on behalf of the designated recipient. (***DEFICIENCY CODE 65***: Officials do not have requisite authority)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office the delegation of authority for the appropriate individual(s) to execute grants in TEAM-Web.

Direct the grantee to submit to the FTA regional office the delegation of authority by the designated recipient to the official who executes the supplemental agreement in TEAM-Web.

2. *Are grants executed by an authorized official?*

3. *Are supplemental agreements executed by an authorized official?*

EXPLANATION

Officials executing grants on behalf of the grantee and the designated recipient must have appropriate authority as required by state or local law or the grantee's governing body. The authority must be delegated properly by an authorized official of the agency to the individual who executes the grant in TEAM-Web. The authorizing information is approved when the TEAM signature designation is submitted.

If the grantee is not a designated recipient of Section 5307 funds, an authorized official of the designated recipient must execute the supplemental agreement in TEAM-Web before the grantee can execute the grant.

REFERENCES

Former 49 USC 5307 (a)(2)
Current 49 USC 5302 (4)
FTA Circular 9030.1E, Ch. VI, Section 1.a (1)
FTA Circular 9300.1B Ch. II, Section 9.a
FTA C 9050.1 Ch. III, Section 1
FTA C 9045.1 Ch. III, Section 1
FTA C 9070.1F Ch. III, Section 1

SOURCES OF INFORMATION

Review the Designation of Signature Authority for the Transportation Electronic Award & Management Process forms for the grantee and the designated recipient. Review TEAM-Web to determine the identity of the official that executed recent grants and, if applicable, executed the supplemental agreement for the recent Section 5307 grants awarded to a direct recipient.

For new grantees, obtain documentation indicating the source of authority of officials acting on behalf of the grantee and designated recipient. The source of authority may be state or local laws, an authorizing resolution, or by-laws.

DETERMINATION

The grantee is deficient if it cannot demonstrate that the person executing the grant has the authority to act on its behalf or that the person executing the supplemental agreement is authorized to act on behalf of the designated recipient. (***DEFICIENCY CODE 65***: Officials do not have requisite authority)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office the delegation of authority for the appropriate individual(s) to execute grants in TEAM-Web.

Direct the grantee to submit to the FTA regional office the delegation of authority by the designated recipient to the official who executes the supplemental agreement in TEAM-Web.

4. *Was the Annual List of Certifications and Assurances submitted on time?*

5. *Was the Annual List of Certifications and Assurances PINed or signed by an authorized official and attorney?*

EXPLANATION

The certifications and assurances required of FTA grantees are compiled in a single record published annually in the Federal Register, either before or in conjunction with the publication of FTA's annual apportionment notice. Once each year, a grant applicant or a grantee with open grants must file the certifications and assurances.

FTA expects the grantee to record its certifications and assurances in TEAM-Web and provide the appropriate electronic signatures. Should it become necessary for the grant applicant to provide paper certifications and assurances, the Federal Register notice includes a signature page that may be signed by the grant applicant's authorized official and attorney and uploaded to Team-Web.

The grantee must make the requisite certifications and assurances by:

- selecting, from a list provided, those certifications and assurances that will apply to all grants for the fiscal year (FTA recommends that grantees select all certifications and assurances, even those that may not currently apply.),
- PINning in TEAM-Web or submitting the signature page signed by the authorized representative and by the legal counsel, and
- submitting properly signed certifications and assurances on time.

Certifications and assurances are due with the first grant application in the fiscal year or within 90 days from the date of the publication of the notice in the Federal Register, whichever comes first.

The certifications and assurances require two signatures or electronic PINs: one from an authorized official and another from an attorney. If the attorney does not PIN in TEAM-Web, he or she must sign a hard copy of the affirmation. The grantee must maintain the hard copy in the file and should upload it to TEAM-Web.

REFERENCES

49 USC 5307 (d)(1)
FTA Circular 9030.1E, Ch. VI, Section 1
FTA C 9045.1 Ch. IV, Section 10
FTA C 9050.1 Ch. IV, Section 10
FTA C 9070.1F Ch. IV, Section 7
Annual List of Certifications and Assurances

SOURCES OF INFORMATION

Review TEAM-Web to ensure that the grantee has submitted the Annual List of Certifications and Assurances on time. Review the Designation of Signature Authority for the Transportation Electronic Award & Management Process forms. Note the person who has PINned on behalf of the agency and review state or local laws, authorizing resolutions and delegations of authority to ensure that the person has the authority to PIN on the grantee's behalf.

Typically, the person who PINs or signs the certifications and assurances is also the person who executes the grant. Note whether the attorney has PINned directly in TEAM-Web. If not, obtain on site hard copies of the signed attorney's affirmations for certifications and assurances submitted since the last review if they are not attached in TEAM-Web.

DETERMINATION

The grantee is deficient if someone other than an authorized individual PINned the certifications and assurances. (***DEFICIENCY CODE 65***: Officials do not have requisite authority)

The grantee is deficient if it did not submit the annual certifications and assurances or submitted them late. (***DEFICIENCY CODE 131***: No/late Certifications and Assurances submission)

The grantee is deficient if the attorney has not affirmed the legal authority of the grantee either by PINing in TEAM-Web or signing a hard copy of the certifications and assurances. (***DEFICIENCY CODE 148***: Lacking/improper Attorney Affirmation)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office either the delegation of authority to PIN the annual certifications and assurances, procedures to submit the annual certifications and assurances on time, or procedures to ensure that the attorney affirms the grantee's legal status. These should also be uploaded by the grantee into Team-Web.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

6. *Since the last triennial review, describe any changes in local or state laws and/or litigation that have affected or will affect the grantee's FTA program. 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 will require a new Opinion of Counsel.

REFERENCES

FTA Master Agreement, Section 2.g. and 56.a
FTA Circular 9030.1E, Ch. VI, Section 1.a (1)(a)
FTA Circular 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 an 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 triennial 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.

7. *Provide detailed information on any lobbying activities funded with non-federal funds, and documentation that proper OMB Standard Form LLL disclosures have been made and filed with FTA and are updated quarterly.*

8. *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, 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. All certifying entities must ensure that any quarterly disclosure forms are forwarded to the grantee that must forward them to FTA.

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 forms on file, during the site visit, discuss the process for receiving and forwarding the disclosure statements.

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)

The grantee is deficient if it did not forward an OMB Standard Form LLL or quarterly report update submitted by a subrecipient, contractor, or subcontractor to FTA. (***DEFICIENCY CODE 128***: Lacking process for receiving and filing lobbying certifications and disclosure statements)

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 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 49 U.S.C. section 5324 (Emergency Relief Program) or under Section 5307 or Section 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.).

AREAS TO BE EXAMINED

1. *Real Property*

a. Use
b. Excess property
c. Disposition
d. Oversight

2. *Equipment*

a. State procedures
b. Equipment records
c. Biennial physical inventory and reconciliation
d. Property control system
e. Oversight
f. Leases
g. Use
h. Disposition
i. Insurance proceeds
j. Fixed route bus spare ratio
k. Contingency fleet
l. Rail fleet management plan

APPLICABILITY

Under 49 CFR 18.32(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. If the grantee is a state agency, refer to the Asset Management section of the State Management Review Guide. If the grantee is also a subrecipient of a state, the subrecipient follows FTA procedures only for equipment purchased with funds received directly from FTA.

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. MAP-21 Section 20017
3. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
4. FY 2014 Master Agreement
5. FTA Circular 5010.1D, "Grant Management Requirements"
6. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
7. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions
8. FTA Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions
9. FTA Circular 9045.1, New Freedom Program Guidance and Application Instructions
10. FTA Circular 9050.1, The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions
11. FTA Circular 9300.1B, Capital Program Guidance and Application Instructions
12. May 29, 2013 Federal Register Notice
13. 49 CFR Part 602, Interim Final Rule
14. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

ER Program Frequently Asked Questions (FAQs)

FTA Emergency Relief Fact Sheet

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

PART A: REAL PROPERTY

1. *Does the grantee use any FTA funded real property for non-transit purposes (i.e., incidental use)? If yes, provide documentation that FTA approval was obtained. How does the grantee document that it maintains continuing control over the property, that the property is also being used for transit purpose (if applicable), and that the grantee is recovering the costs of the use and applying the revenues for 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 real property (FTA funded land and/or buildings) 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

49 CFR 18.25 (g) and 18.31
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. I, Section 5.hh and Ch. IV, Section 2.i
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

Examine grantee files or TEAM-Web 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 to the FTA regional office procedures for maintaining continuing control over real property used for incidental purposes.

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 documentation to the FTA regional office that it has applied lease income to transit purposes.

2. *Since the last triennial review, did the grantee remove real property from the service originally intended at the time of grant approval or put property to additional or substitute uses?*

3. *Does the grantee or a subrecipient have any excess FTA funded real property? Has the plan been updated, if necessary?*

4. *Since the last triennial review, did the grantee or a subrecipient dispose of any FTA funded real property? If yes, provide documentation of FTA prior concurrence in the method of disposition of real property. 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, grantees are required to prepare or update an excess property inventory and utilization plan. The grantee's plan should identify and explain the reason for excess property. FTA C 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.

The Common Rule (49 CFR Part 18), 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

49 CFR 18.31
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. IV, Section 2.j

SOURCES OF INFORMATION

Examine grant files for notification of change of use of real property and excess property utilization plans. Check previous review files for any unresolved issues. 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 FTA 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 update the existing plan.

Direct the grantee to submit to the FTA regional office 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.

5. *How does the grantee monitor use of FTA funded real property by subrecipients, contractors, and lessees?*

EXPLANATION

The grantee must ensure that subrecipients, contractors, and lessees use FTA funded real property (land and/or buildings) for project purposes. Examples of 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

FTA C 5010.1D, Ch. IV, Section 2.i
FTA C 9070.1F, Ch. VI, Section 8
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7

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 control 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 controlling the use of FTA funded real property by subrecipients, contractors, or lessees.

6. *Does the grantee have any buildings located in an area that has been identified as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968.*

If yes, has the grantee 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.

7. *Have any FTA Emergency Relief funds been used to repair or replace a facility which was not properly insured and that was located in 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 the National Flood Insurance Act 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 the Federal Emergency Management Administration’s (FEMA) 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
May 29, 2013 Federal Register Notice
49 U.S.C. Section 5324 / MAP-21 Section 20017
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

Review information provided by the grantee to determine if any construction projects or acquisitions over $10,000 since the last triennial review are covered by the National Flood Protection Act. If so, review insurance coverage information provided by the grantee.

DETERMINATION
The grantee is deficient if it 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.

PART B: EQUIPMENT

8. *If the grantee is a state, how does it maintain control of FTA funded equipment and rolling stock? If the state disposed of any FTA-funded equipment before the end of useful life, what did the state do with the proceeds?*

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 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 49 CFR Part 19. Common grant rule procedures and requirements for However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA funded equipment.

Also under the common grant rule, states do not owe FTA proceeds for disposal of equipment, even equipment disposed of before the end of useful service life. However, FTA may decide not to replace Section 5307 or 5309 funded equipment removed from service before the end of useful service life unless the state applies the proceeds to a grant for replacement equipment (like-kind exchange).

REFERENCES
49 CFR 18.32 (b)
FTA C 5010.1D, Ch. II, Section 3.a
FTA C 9040.1F, Ch. VI, Section 3.c
FTA C 9070.1F, Ch. VI, Section 4.c
FTA C 9050.1, Ch. VI, Section 4.b
FTA C 9045.1, Ch. VI, Section 4.b
FTA C 5010.1D, Ch. IV, Section 3
FTA C 9300.1B, Ch. III, Section 7.b

SOURCES OF INFORMATION
Obtain and review equipment management procedures, if written, and sample records. Review the state's equipment inventory, if it has one, and document the data elements tracked. Obtain and review disposition procedures, if written. On site, confirm the procedures. 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. Examine sales records and financial reports. 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 insufficient to maintain 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.

9. *Demonstrate that the grantee's equipment records provide the required information.*

10. *Has the grantee updated its records to account for any Hurricane Sandy 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

FTA strongly recommends, but does not require, that grantees update their property records to include useful life for all items put into service prior to November 1, 2008. Equipment purchased after October 2008 must have useful life in the records. 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 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.k

SOURCES OF INFORMATION
Review a sample page(s) from 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 TEAM-Web Milestone Progress Reports to verify inclusion of newly acquired assets in property records.

DETERMINATION
The grantee is deficient if records are missing required information or if the records are not current. (***DEFICIENCY CODE 58***: Inadequate equipment records)

The grantee is deficient if records are missing required information or if the records are not current based on damage from Hurricane Sandy. (***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.

11. *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 that the results of the inventory were reconciled and equipment records updated will be examined.*

12. *What system does the grantee have in place to prevent loss, damage or theft of FTA funded property, equipment, and rolling stock? How does the grantee investigate and document any loss, damage, or theft of FTA funded property, equipment and rolling stock?*

EXPLANATION
The Common Rule and FTA C 5010.1D require grantees to conduct a physical inventory of 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.

The grantee must 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
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. 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 conducted a biennial physical inventory of all FTA funded equipment, including equipment operated by contractors, lessees, and subrecipients, within two years of the site visit. (***DEFICIENCY CODE 89***: No evidence of physical inventory)

The grantee is deficient if a physical inventory has been conducted but results have not been reconciled to records. (***DEFICIENCY CODE 107***: Inventory results not reconciled to equipment records)

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 evidence that it has conducted a physical inventory and that the inventory results have been reconciled to equipment records and procedures for conducting a biennial physical inventory.

Direct the grantee to submit to the FTA regional office evidence that the physical inventory has been reconciled to records and procedures for reconciling the biennial physical inventory to records.

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.

13. *How does the grantee maintain control of FTA funded equipment and rolling stock operated by subrecipients, contractors, or lessees?*

14. *Does the grantee lease FTA funded equipment and/or rolling stock to private operators? If yes, was prior concurrence from FTA obtained for leases entered into on or after November 1, 2008? During the review, such leases will be reviewed to determine if they contain FTA required provisions.*

EXPLANATION

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 general public transportation. If the grantee is not a state, for any equipment provided or leased to contractors, lessees, or subrecipients, the grantee must:

- include the equipment in its records
- conduct (or cause to be conducted) a biennial physical inventory
- reconcile (or ensure reconciliation of) the results of the physical inventory to the equipment records
- ensure that a system is in place to prevent loss, damage, or theft
- ensure that equipment is use for transit purposes
- 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.

REFERENCES
49 CFR 18.32
FTA C 5010.1D, Ch. II, Section 3, and Ch. IV, Sections 3.e(1) and 3.j(1)

SOURCES OF INFORMATION
Review documentation of control over contractor, lessee, and subrecipient operated equipment. 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.

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. (***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 FTA approval for leases of FTA funded equipment and submit procedures to the FTA regional office.

15. *Did the grantee notify FTA when it 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.*

16. *Did the grantee or a subrecipient dispose of any FTA funded equipment or supplies since the last triennial review? If yes, when did FTA provide prior concurrence in the method of disposition for equipment removed from service before the end of service life? When was FTA reimbursed for its share of proceeds, if required? For retained proceeds, how did the grantee apply the proceeds to reduce the gross project cost?*

17. *If applicable, did the grantee apply insurance proceeds to the cost of replacing any damaged or destroyed project equipment or rolling stock? If yes, 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 D, 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 equipment's useful life is expended, FTA is entitled to its share of the remaining federal interest. 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 the grantee's 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 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.

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 DOD and 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 chasis.

REFERENCES

49 USC 5334
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. IV, Section 3.l and Appendix D
FTA C 9030.1E, Ch. V, Section 11.a and b
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 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 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 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.

18. *Did the grantee dispose of any FTA funded equipment or supplies because of damage from Hurricane Sandy? When was FTA reimbursed for its share of proceeds, if required? For retained proceeds, how did the grantee apply the proceeds to reduce the gross project cost?*

19. *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? If yes, 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 and receives more than $5,000 for the asset, the Recipient will promptly notify FTA and reimburse FTA for its proportionate share in accordance with FTA Circular 5010.1D

As authorized by 49 U.S.C. §5324(d)(1) and FTA Circular 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 recipient 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 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.k
49 U.S.C. Section 5324 / MAP-21 Section 20017
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. 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)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office updated records with the required information.

20. *For fixed route buses operated in urban service (NTD motorbus category), does the spare ratio exceed FTA's 20 percent guideline for bus fleets of 50 or more* *revenue vehicles? For fleets 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

49 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.i
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 TEAM-Web 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 print out 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 the excessive 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 Milestone/Progress Reports.

21. *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

49 CFR 18.32
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.

22. *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?*

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

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 updated 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 incomplete or out of date. (***DEFICIENCY CODE 196:*** Lacking rail fleet management plan/plan out of date) The determination is only if the plan has the required elements and is up-to-date. No determination is to be 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 (PLANNING)

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

BASIC REQUIREMENT (HUMAN SERVICES TRANSPORTATION)

Grantees must participate in a coordinated public transit-human services transportation planning process that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.

BASIC REQUIREMENT (PROGRAM OF PROJECTS (POP))

Each recipient of a Section 5307 grant shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a POP.

AREAS TO BE EXAMINED

1. ***Metropolitan Planning Process***
2. ***Coordinated Planning Process for Human Services Transportation***
3. ***POP Public Participation Requirements***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 23 USC Section 134, Federal Aid Highways, “Metropolitan Planning”
3. 23 CFR Part 450, “Planning Assistance and Standards”
4. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions”
5. FTA Circular 9050.1, “The Job Access and Reverse Commute (JARC) Program”
6. FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions”
7. FTA Circular 9070.1F, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions”
8. Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

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

NTI Courses

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

BASELINE REVIEW QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *If the grantee is located in a designated Transportation Management Area (TMA) (population 200,000 or more), when was the last Planning Certification Review (PCR) completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FTA/FHWA)? Did the grantee participate in the review? 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

FTA and FHWA conduct PCRs of MPOs in TMAs at least every four years. The PCR process includes input from participants in the planning process, including the grantee. The triennial review verifies the status of corrective actions from the PCR that pertain to the grantee.

In non-TMA areas (population of less than 200,000), 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. Discuss issues with the planners on the FTA regional staff. Review PCR files for the final report and documentation of follow-up actions. The PCR report may also be available on the MPO 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.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

PART A. METROPOLITAN PLANNING PROCESS

3. *How does the grantee participate in the MPO planning process? Is the grantee a voting member of the MPO policy board?*

4. *How does the grantee participate with the MPO in developing the listing of projects for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year?*

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 is a two-year window for making this change, where necessary.

The MPO, in cooperation with the state(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall include: capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53, including transportation enhancements, Federal Lands Highway Program projects, safety projects included in the State's Strategic Highway Safety Plan, trails projects, pedestrian walkways, and bicycle facilities. Any financial or travel demand forecasts related to transit services that appear in the TIP and the metropolitan transportation plan need to be developed cooperatively by the MPO and the transit operator.

Annually no later than 90 calendar days following the end of the program year, the state, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

REFERENCE
23 USC Section 134
49 USC 5303
49 USC 5304
23 CFR 450.314, 322, and 324

SOURCES OF INFORMATION
Check the planning files and the grantee's website for Information regarding policy board composition. Obtain this information from the grantee if it is not otherwise available.

DETERMINATION
Since the requirement to include transit policy officials on the MPO policy board has a two-year time frame for completion, no deficiencies will be made at this time.

SUGGESTED CORRECTIVE ACTION
None

5. *Identify any complaints or lawsuits directed at the grantee with respect to transit operator involvement in the metropolitan planning process. What was the nature of each complaint/lawsuit? How were these complaints/lawsuits resolved? Are any pending?*

EXPLANATION
The existence of complaints and lawsuits can indicate shortcomings in the metropolitan transportation planning process.

REFERENCE
None

SOURCES OF INFORMATION
Obtain this information from FTA staff that works with the grantee or from the FTA regional counsel. Obtain additional information from the grantee at the site visit. Notify the FTA regional office of any complaints or lawsuits identified during the site visit.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part B. Coordinated Planning Process for Human Services Transportation

6. *If the grantee is a designated recipient of Section 5310, 5316 and/or Section 5317 funds, provide evidence that the grantee:*

a. *Documents procedures for administering these programs in a Program Management Plan*

b. *Included or derived projects from a coordinated public transit-human services transportation plan developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and non-profit transportation and human services providers and other members of the public*

c. *Notified eligible local entities of funding availability and project selection criteria*

d. *Conducted a competitive selection process (5316 and 5317 only)*

e. *Allocated funds to subrecipients on a fair and equitable basis*

f. *Awarded funds only to eligible applicants*

g. *Published a list of selected projects (5316 and 5317 only)*

EXPLANATION

Pursuant to MAP-21, 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. This program provides funds to: 1) serve the special needs of transit-dependent populations beyond traditional public transportation service, where public transportation is insufficient, inappropriate, or unavailable; 2) projects that exceed the requirements of the ADA; 3) projects that improve access to fixed route service and decrease reliance on complementary paratransit; and 4) projects that are alternatives to public transportation.

Under MAP-21, the Section 5316 JARC program was repealed and a new eligibility was created for job access and reverse commute projects under Sections 5307 and 5311.

Pursuant to SAFETEA-LU, Section 5316 (JARC) funds were available for transportation projects that support the development and maintenance of transportation services designed to transport low income individuals to and from jobs and activities related to their employment and to support reverse commute projects. FTA C 9050.1 Chapter III Section 11 lists potential eligible projects.

Pursuant to SAFETEA-LU, Section 5317 (New Freedom) funds were available for transportation projects that support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation service, including transportation to and from jobs and employment support services. FTA C 9045.1 Chapter III Section 11 lists potential eligible projects.

a. The grantee must document its procedures for administering the program(s), including eligibility requirements, in a Program Management Plan.

b. Projects funded with Section 5310, 5316, or 5317 funds are to be included in or derived from a locally developed, coordinated public transit-human service transportation plan (coordinated plan). A coordinated plan should maximize the programs' collective coverage by minimizing duplication of services. Further, a coordinated plan should be developed through a process that includes representatives of seniors, individuals with disabilities, representatives of public, private, and non-profit transportation and human services providers, and participation by the public. In particular, it is important for the designated recipient of these funds to provide evidence of outreach to local entities for participation in the planning process.

   Under MAP-21, the Section 5316 JARC program was repealed and a new eligibility was created for job access and reverse commute projects under Sections 5307 and 5311. In addition, the Section 5317 program was repealed and a new eligibility was created for these project types under Section 5310. Beginning with funding apportioned for fiscal year 2013, the requirement that eligible projects be derived from a locally developed, coordinated public transit–human services transportation plan only applies to the Section 5310 program.

   Although the coordinated planning process is no longer required for job access and reverse commute projects, FTA encourages public transit systems in all areas to continue to participate in the coordinated public transit–human service transportation planning process in order to identify and develop job access and reverse commute projects for funding under Section 5307. This process gives affected populations direct participation in the formulation and approval of projects that are intended to serve them, and provides an opportunity for a variety of public, private and private nonprofit transportation providers, non-DOT transportation programs, and other community interests to likewise share their knowledge and participate in formulating projects and identify opportunities for coordination.

   In addition, recipients should be aware that several other FTA requirements can be met through the use of the coordinated planning process. For example, Section 5307(b)(5) requires that recipients ensure that the proposed program of projects assisted under Section 5307 provides for the coordination of public transportation with transportation services assisted from other U.S. government sources. Additionally, the metropolitan planning requirements under Section 5303(g)(3)(B)(ii) require that recipients conduct planning in coordination with non-DOT funded nonemergency transportation services.

c. The grantee shall publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential subrecipients. Potential mechanisms include websites and newspaper notices.

d. For the Sections 5316 and 5317 programs, the grantee shall conduct a competitive selection process that is separate from, but coordinated with, the planning process. The competition allocates funding to subrecipients to implement projects. Grantees may not allocate/suballocate funds without conducting a competitive selection process covering the large urbanized areas. The process should be transparent. The process may be conducted annually or at intervals not to exceed three years. Even if the process is conducted annually, the grantee may select projects that will be implemented over multiple years.

e. The grantee must demonstrate that the competition for Section 5316 and 5317 funds was open and transparent. Section 5310, 5316 and 5317 funds must be distributed fairly and equitably. For the Section 5316 and 5317 programs, fair and equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process. The result may not be an “equal” allocation of resources among projects or communities.

f. Eligible subrecipients of Section 5310 assistance include: private nonprofit agencies, public bodies approved by the state to coordinate services for elderly persons and persons with disabilities, or public bodies which certify to the Governor that no nonprofit corporations or associations are readily available in an area to provide the service. Eligible subrecipients of Section 5316 and 5317 funds include: private non-profit organizations, state or local governmental authorities, and operators of public transportation services, including private operators of public transportation services.

g. For the Section 5316 and 5317 programs, the grantee shall publish a list of selected projects following the competitive selection process in formats and forums appropriate to potential subrecipients. Many grantees publish the list of selected projects on their websites.

REFERENCES

Federal Transit Laws, Title 49, United States Code, Chapter 53

Federal Register notice published March 29, 2007 (72 FR 14851)

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

FTA Circular 9070.1, Chapters V and VII

FTA Circular 9045.1 Chapter II, Section 4 a-i

FTA Circular 9050.1 Chapter II, Section 4 a-i

SOURCES OF INFORMATION

Examine the Program Management Plan (and coordinated plan if available) on file with the FTA regional office and list of funded projects in TEAM-Web. For the Section 5316 and 5317 programs, obtain and review the public notification of availability of funding and published list of selected projects. During the site visit, discuss the Section 5316 and 5317 competitive selection process.

DETERMINATION

For the Section 5310, 5316 and 5317 programs, the grantee is deficient if it does not have a Program Management Plan(s), awards funds to ineligible applicants, or does not allocate funds to subrecipients on a fair and equitable basis. For the Section 5316 and 5317 programs, the grantee is deficient if it does not notify eligible entities of funding availability and project selection criteria, conduct a competitive selection process, or publish a list of selected projects. (***DEFICIENCY CODE 195***: 5310/JARC/New Freedom program elements missing)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office an updated Program Management Plan incorporating any missing elements from the Section 5310, 5316 and 5317 process.

Direct the grantee to provide the FTA regional office a plan with milestones for correcting any deficient part of the process.

7. *If the grantee is not the designated recipient, direct recipient, or subrecipient of Section 5310, 5316, or 5317 funds, how is the grantee participating in the coordinated public transit-human service transportation planning process?*

EXPLANATION

Public transit systems in UZAs in which a recipient is applying for funds under Section 5310 are required to continue to participate in the coordinated public transit–human service transportation planning process FTA’s Section 5316 and 5317 circulars note that recipients of Section 5307 and Section 5311 assistance are the “public transit” in the public transit-human services transportation plan and their participation is assumed and expected. Further, Section 5307(c)(5) requires that, “Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services … with transportation services assisted from other United States Government sources.”

REFERENCES

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and FTA Fiscal Year 2013 Apportionments, Allocations, Program Information and Interim Guidance

FTA C 9045.1, Ch. V, Section 4.d

FTA C 9050.1, Ch. V, Section 4.d

SOURCES OF INFORMATION
During the site visit, request information that demonstrates that the grantee is participating in the coordinated planning process. Participation can include attendance at meetings and provision of information to the designated recipient of Section 5310, 5316 or 5317 funds or the MPO.

DETERMINATION
The grantee is deficient if it has not participated in, or does not have plans to participate in, the coordinated public transit-human services transportation planning process. (***DEFICIENCY CODE 210***: 5310/JARC/New Freedom coordinated transportation plan participation lacking)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that it has contacted the designated recipient of Section 5310, 5316 and 5317 funds to notify it of its intent to participate in the development of future coordination plans.

PART C. PUBLIC PARTICIPATION REQUIREMENTS

8. *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 plan clearly state that the MPO's public participation process satisfies the grantee's public participation requirements for the POP?*

c. *Does the public notice for the TIP state that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy POP requirements?*

If no:

d. *How does the grantee develop proposed POPs in consultation with interested parties, including private transportation providers?*

e. *How does the grantee ensure that proposed POPs provide for coordination of mass transportation services assisted by other federal sources?*

f. *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?*

g. *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 recipient?*

h. *How is an opportunity for a public hearing provided?*

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 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 TIPs. (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 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 MPO's public participation plan should state that the MPO's public participation process satisfies the grantee's public participation process for the POP.

c. The public notice for the TIP must have an explicit statement that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy the POP requirements.

If the grantee relies on its own process to satisfy POP public participation requirements, it must:

d. Develop a proposed POP in consultation with interested parties, including private transportation providers. The grantee may rely on the MPO to assist in this process. A transportation advisory committee of the MPO may be informed or used as a reviewer of the POP. Private providers should be involved throughout this process.

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. Make available to the public information concerning the amount of funds available under the Section 5307 program and the POP that the recipient proposes to undertake with such funds.

g. Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on it and on the performance of the grantee. The public notice is published in the general circulation newspaper in the service area of the grantee and should indicate where citizens can examine the proposed program and budget in detail and submit comments on the proposed program and 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.)

h. 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.

i. Consider comments and views received, including those of private transportation providers, in preparing the final POP.

j. 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.

REFERENCES

23 CFR 450.314, 316, 322 and 324
FTA Circular 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 involvement process for the TIP, review the MPO's public participation plan to ensure that it states the public involvement process for the TIP is used to satisfy the grantee's public participation process for the POP. Review the TIP public notices to ensure that they state that public notice of public involvement 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 involvement requirements for the POP, and:

- The MPO's public participation plan does not state that the MPO's public participation process is used to satisfy the grantee's public participation process for the POP. (***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 involvement 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 in an appropriate local publication, has failed to provide sufficient detail in the announcement, has failed to offer an opportunity for a public hearing, or has failed to communicate to a significant population of non-English speaking individuals. (***DEFICIENCY CODE 93***: POP public notice deficiencies)
- The proposed POP does not contain a statement that the proposed program also will be the final program unless amended and a final notice is not published. (***DEFICIEINCY CODE 93***: POP public notice deficiencies)
- The grantee does not have a consultative process (e.g., does not attempt to solicit opinions of others, does not mail a notice of its plans for developing the POP to private providers, does not have an ongoing public participation process, etc.) or there is no evidence that a good faith effort toward service coordination was made as the POP was being developed. (***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 submit to the FTA regional office a revised public participation plan for the TIP and/or to include the required language in the TIP notice. Since the publication of the notice is an annual event, the timetable of the corrective action will depend upon 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, 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 timetable 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.

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
1. 49 USC Chapter 53, Federal Transit Laws
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. FTA C 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

BASELINE REVIEW QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

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 are these procedures documented?

2. *Since the last triennial review, has the grantee raised a fare or reduced service? Was the reduction considered major? 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 USC Chapter 53, Section 5307 (d)(1)(I)
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 triennial 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.

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 amended procedures that incorporate 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? How are these procedures documented? How does the grantee ensure that the 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 CFR Chapter 53, Section 5307 (d)(1)(I)
49 CFR Part 18.37
FTA C 9030.1E Ch. IV, Section 8.k

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 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 elderly persons, 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

1. 49 USC Chapter 53, Federal Transit Laws (MAP-21)
2. 49 CFR Part 18 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”
3. 49 CFR Part 609 “Transportation for Elderly and Handicapped Persons”
4. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions”

USEFUL WEBLINKS

Medicare Eligibility

BASELINE QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Does the grantee allow elderly persons, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours?*

2. *Do external materials describing fares show half fares and eligibility requirements?*

EXPLANATION

See Questions 3 – 5.

REFERENCES

See Questions 3 – 5.

SOURCES OF INFORMATION

Review information provided by the FTA regional office and OTrak for insight into the status of past deficiencies. The reviewer should answer these questions prior to the site visit based on the grantee's published and online fare information, half-fare application documentation, and other marketing materials. This information should be consistent with the responses provided by the grantee to Questions 3, 4 and 5 below. Onsite, the reviewer should confirm fare information on board vehicles and at facilities, review subrecipient oversight procedures, and discuss any discrepancies.

DETERMINATION

See Questions 3 – 5.

SUGGESTED CORRECTIVE ACTION

See Questions 3 – 5.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

3. *What is the full fare? What is the half fare? During what hours are half fares available (all hours or off peak hours only)? Are there any 5307-funded fixed route services not included in the half fare program?*

EXPLANATION

Fares charged elderly persons, persons with disabilities, and Medicare cardholders during off peak hours for Section 5307-funded fixed route service must not be more than half the peak hours fare. 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, including 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, that service elderly persons and persons with disabilities exclusively
- Services that operate only during peak hours, such as express and commuter routes
- Services that operate only in the off peak hours (e.g., lunchtime circulators and weekend routes 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

"Elderly" by FTA regulations is to "at a minimum, include all persons 65 years of age or over." 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 required 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 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1E, Ch. VI, Section 1.a (6)

SOURCES OF INFORMATION
Review the grantee's general public information that presents its fare structure. Common examples are the system map, pocket timetables, signs within the system (e.g., decals on fareboxes, 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 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. The times should be consistent with the hours reported to NTD. 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 should be included. (***DEFICIENCY CODE 32***: Half fares not extended to all required services)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office 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.

4. *For the half fare, what proof of eligibility is required at time of boarding for elderly persons? For persons with disabilities? For Medicare cardholders? 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? Does the grantee require any additional information from a Medicare cardholder? If yes, what?*

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 ADA eligibility card. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

A grantee may require 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.

In order to ensure that the person presenting a Medicare card is the authorized individual, the grantee may request proof of identity (another card 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 validity of the Medicare card.

REFERENCES
49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 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 identification card are not accessible by transit, open during convenient hours, and publicized. The grantee is deficient if it does not accept a Medicare card as the basis for payment of half fare or 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 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.

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.

5. *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, including Medicare eligibility, 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 fare for elderly persons, persons with disabilities, and Medicare cardholders is $0.50 during off peak hours.

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 elderly.

REFERENCES

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 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 farebox 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 complete 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.

6. *How does the grantee ensure that subrecipients, contractors, and lessees operating fixed route service supported with Section 5307 funds allow elderly persons, 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

REFERENCES

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
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. ***Charter Service***
2. ***Reporting***
3. ***Use of Locally Owned Vehicles***
4. ***Training***
5. ***Oversight***
6. ***Advisory Opinions***
7. ***Cease and Desist Orders***
8. ***Complaints***

REFERENCES

1. 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

BASELINE REVIEW QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Did the grantee on behalf of itself or a subrecipient, contractor, or lessee request an advisory opinion from the Office of Chief Counsel? If yes, what was the outcome? 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 Parts 604.18, 604.20

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 following 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.

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 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, what was the outcome? 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 its 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 Parts 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 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. There are no requirements for the grantee in the complaint process for a subrecipient.

REFERENCES

49 CFR Part 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)

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.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

4. *What charter service is provided by the grantee and subrecipients and under what exception is it provided?*

5. *How does the grantee obtain information to report all charter services provided under the exceptions for itself, subrecipients, contractors, and lessees?*

EXPLANATION

The charter service regulations apply to all grantees and subrecipients that receive Section 5307, 5309, 5310, 5311, 5316, or 5317 funds. 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**.

a. Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements.

b. Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements.

Exemptions

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

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 using TEAM-Web 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 Parts 604.2 (b) – (g) and 604.3 (c)

Appendix C (c) (18), (24), (26) and (36)
49 CFR Parts 604.6 – 604.11; Appendix A
Appendix C (a) (1), (3) and (6)
Petitions to the Administrator
49 CFR Part 604.12
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 reports submitted to FTA in TEAM-Web 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

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 TEAM-Web 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
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.

6. *Does the grantee, a subrecipient, 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?*

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 Satisfactory Continuing Control and Maintenance 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.

7. *How does the grantee ensure that subrecipients, contractors, and lessees 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. 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.

<u>Instructions for filling out the FTA Charter Exceptions Quarterly Reporting Form</u>

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.

<u>Section 1 – For All Exceptions</u>

- 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:
    - government officials - **GO**
    - qualified human service organizations - **QH**
    - leasing - **LE**
    - 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.

<u>Section 2 – For GO, QH, and WN Exceptions Only</u>

- 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".

<u>Section 3 – For LE Exception Only</u>

- 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															
13															
14															
15															
16															
17															
18															
19															
20															

14. SCHOOL BUS

BASIC REQUIREMENT

Grantees are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the 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

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

BASELINE QUESTIONS

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

1. *Does the grantee or a subrecipient operate exclusive school bus service? If yes, does the service qualify for one of the statutory exemptions? Has the grantee received approval from the FTA Administrator? 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 Administrations (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 or a subrecipient 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 or a subrecipient 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 or a subrecipient 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.

2. *Does the grantee or a subrecipient provide school "tripper service"? If yes, 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.

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 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 or a subrecipient 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. *Do any contractors or lessees provide exclusive school bus service? If yes, how does the grantee ensure that it is provided 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 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.

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, and site visit checklists. Ask the grantee to identify any subrecipients, contractors, and lessees operating exclusive school bus service. Ask the grantee to identify subrecipients that operate school tripper service. During subrecipient, contractor, and lessee site visits, look for indications that exclusive school bus or tripper service is operated. Ask the subrecipient, contractor, or lessee if it operates exclusive school bus service or 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 regulations

15. SAFETY AND 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

1. 49 USC Chapter 53, Federal Transit Act, Section 5302(a)(1) and 5307(d)(1), Security Expenditures

2. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

BASELINE REVIEW QUESTIONS

1. *Does the grantee utilize one percent of its Section 5307 expenditures for transit security? If yes, how were the funds utilized over the last three years? If no, how do existing security measures meet agency needs? If the grantee is the designated recipient in a UZA where there is more than one 5307 grantee, what process will be used to certify that at least 1% of 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)
- Security and emergency management planning
- Training and drills (SAFETEA-LU expanded the definition of security related capital projects to include planning, training, and drills, such that these expenditures are now eligible expenses for grantees in UZAs over 200,000 population to apply towards the one percent for security requirement.)
- Any other project intended to increase the security and emergency management 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.
- 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 DHS 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 C 9030.1E (issued January 16, 2014), designated recipients and recipients must certify that either: (1) recipients in the urbanized area will collectively expend at least 1 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 MPO in coordination with eligible recipients in the UZA.

REFERENCES

49 USC 5302(a)(1) and 5307(d)(1)(J)
FTA C 9030.1E, Ch. VI, Section 1 a. (13)

SOURCES OF INFORMATION

Review grants in TEAM-Web 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. Look online for news articles or other publications describing accidents or safety 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. (***DEFICIENCY CODE 153***: One percent security requirement not met)

The grantee is deficient if it cannot provide adequate documentation of its Section 5307 security expenditures. (***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 2011	FY 2012	FY 2013
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			
CCTV and surveillance technology			
Communications systems			
Security planning			
Drills & tabletop exercises			
Employee security training			
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

All grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program. Grantees receiving Section 5307, 5309 or 5311 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. ***Drug and Alcohol Testing of Safety-Sensitive Employees Rate of Random Testing***
4. ***Post-Accident Testing***
5. ***Reasonable Suspicion Training***
6. ***New Hire Data***
7. ***Records Control***
8. ***MIS Reporting***
9. ***Monitoring Program***

REFERENCES

1. 49 CFR Part 32 "Governmentwide Requirements for a Drug-free Workplace (Grants)"

2. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988

3. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"

4. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"

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 Department of Health and Human Services Certified Laboratories

APPLICABILITY

The Drug Free Workplace Act (DFWA) applies to grantees but not subrecipients or contractors.

FTA drug and alcohol testing requirements apply to grantees, subrecipients, and contractors with safety sensitive employees that receive FTA funds under Sections 5307, 5309, or 5311, except where funds are used exclusively for facilities or planning and the grantee does not fund operations.

BASELINE REVIEW QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Has FTA conducted a drug and alcohol program compliance audit in the past two federal fiscal years? If yes, when was the site visit? Is an audit scheduled for the current federal fiscal year?*

EXPLANATION

As part of its project oversight functions, 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

Contact the FTA regional 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

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

2. *How does the grantee comply with its obligations to have a written policy as prescribed in the Drug-Free Workplace Act that is distributed it to all transit-related employees?*

EXPLANATION

The grantee is required to have and distribute to transit related employees a written policy that states that:

- 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 the FTA Drug and Alcohol Testing Program, which applies only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

REFERENCES

49 CFR 32.200; 215; and 220

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 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 transit-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. ***(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 policy that includes all required elements along with documentation that the amended policy has been distributed to all grant-related employees.

3. *What is the grantee's ongoing drug-free awareness program? 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; 215; and 220

SOURCES OF INFORMATION
Review the written policy, employee handbooks, brochures, posters, and other 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 a consistent 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.

4. *Since the last triennial review, has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? Did the grantee provide FTA timely notice of the conviction? 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.

5. *Do the drug and alcohol testing policies of the grantee, its subrecipients, contractors, subcontractors, and/or lessees 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 2. Some grantees may have separate DFWA policies.

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 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 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 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 or a confirmed alcohol test with an alcohol concentration of 0.04 or greater. If the system has a second chance policy, a description of the

evaluation and treatment processes must be included.

(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) Employer's 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 Part 40.87: opiates (morphine, codeine, and heroin/6-acetylmorphine), amphetamines (amphetamine, methamphetamine, MDMA, MDEA, and MDA). Cut-off concentrations for drugs, if listed, must agree exactly with Part 40.87.

Some grantees may have modeled their testing programs after Federal Motor Carrier Safety Administration (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.

Federal Railroad Administration (FRA) regulations cover commuter rail operations.

U.S. Coast Guard (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 655.15
49 CFR 40.87, 40.191, 40.197, 40.261
49 CFR Part 382

SOURCES OF INFORMATION

Review the grantee's drug and alcohol policy and up to three policies of any subrecipients, contractors, subcontractors, or lessees with safety-sensitive employees. Ensure that the policies include 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 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)

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 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.

Direct the grantee to implement the testing program immediately if any requirement is lacking.

6. ***How does the grantee ensure that safety-sensitive employees as defined by FTA are included in a drug and alcohol testing program?***

EXPLANATION

Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. 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. 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 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 to an operations contractor **are** subject to FTA's drug and alcohol testing regulations.
- Carry a firearm for security purposes

Grantees that operate a commuter railroad regulated by FRA must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. Unless supervised by the local police department, employees carrying a firearm for security purposes are covered under FTA regulations, as they are not listed as covered employees by FRA 49 USC Sec 21101.

Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the 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 mariners document or under a certificate of inspection), since the USCG does not have a similar requirement.

Grantees that have employees, subrecipients, contractors, subcontractors, or lessees that are subject to drug and alcohol testing as part of a 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. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

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, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. 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.

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 Management Information System (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 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 a drug and alcohol testing program for all covered employees.

Direct the grantee to cover immediately 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 exclude immediately 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.

7. *How are the minimum random testing rates of 25 percent for drugs and 10 percent for alcohol achieved?*

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.

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 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.

8. *Under what circumstances does the grantee conduct post-accident testing?*

EXPLANATION

FTA requires that a 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:

(1) One or more individuals is immediately transported for medical treatment away from the accident

(2) Any rubber-tired vehicle incurs disabling damage requiring a tow truck

(3) A rail transit vehicle 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 an employee's performance can be completely discounted as a contributing factor to the accident. A decision not to test 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 Part 655 must be done under the grantee's own authority. Non-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. 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 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 Part 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 employee'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 for only accidents that meet the definition of an accident under Part 655 are done under FTA's authority.

9. *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.

10. *How does the grantee check on the drug and alcohol testing records of new hires and transfers that will work in safety-sensitive positions? 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 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 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 DOT agency drug and alcohol testing regulations
- The employee's successful completion of 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 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 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 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 DOT agency drug and alcohol testing rules during the past two years. Discuss how the grantee obtains 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 negative tests results are received, obtain and review data for the past year on the date applicants are placed in safety-sensitive positions as compared to the date negative test results were received.

DETERMINATION

The grantee is deficient if it does not obtain an applicant's consent, the required information, or the information for the past two years. (***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.

11. *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 is has moved program records to a secure location with controlled access.

12. *During the review period, when did the grantee submit annual calendar year MIS reports for itself, subrecipients, contractors, subcontractors, and lessees summarizing drug and alcohol test results as requested by FTA?*

EXPLANATION

The grantee must prepare, maintain, and submit to FTA annual MIS reports for itself and collect, maintain, and submit annual MIS reports for Section 5307, 5309, and 5311 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 must retain copies of the reports for five years.

The standard MIS report forms, which are on the web, must be used "as-is;" they may not be combined or modified by a grantee and must be filled out completely. Contractors, subrecipients, or lessees that provide FTA-covered service to more than one grantee or other recipient must break out their information so as not to double-report data. The MIS reports must be submitted to the FTA Office of Safety and Security or its designated agent by March 15 following the calendar year for which the reports were prepared. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet at http://damis.dot.gov.

REFERENCES

49 CFR 655.72
MIS report forms

SOURCES OF INFORMATION

Review copies of MIS reports submitted since the last review. Discuss the grantee's process for obtaining MIS reports from subrecipients, contractors, subcontractors, and lessees with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15. Review the MIS reports for the grantee and a sample of reports for subrecipients, contractors, subcontractors, and lessees.

DETERMINATION

The grantee is deficient if the MIS reports for the grantee, subrecipient, contractor, subcontractor, or lessee were not submitted. (***DEFICIENCY CODE 298***: MIS reports not properly submitted)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to prepare or collect and submit all delinquent MIS forms, 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.

13. *How does the grantee monitor subrecipients, contractors, subcontractors, and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

14. *If the grantee contracts private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?*

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 passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, reporting to FTA on the testing programs, and 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

- Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing is conducted properly
- 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-DOT forms used)

Many grantees ensure compliant drug and alcohol programs by including subrecipients, contractors, subcontractors, or lessees in their programs.

If a grantee contracts a private carrier, the carrier's CDL holders, which are already covered by FMCSA drug and alcohol testing requirements (49 CFR Part 382), may be subject to FTA drug and alcohol requirements. CDL holders who spend more than half of their time in transit service must be covered by an FTA drug and alcohol testing program. Once determined, the employee will be subject to pre-employment and random testing under FTA authority.

For private carriers, the assignment of regulatory authority for reasonable suspicion and post-accident testing depends on the function an employee is performing at the time of the incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test result. If subject to Part 655, the grantee must collect, retain, and submit MIS reports annually for the private carrier. Private carrier employees that perform FTA safety-sensitive functions and are not part of an FMCSA drug and alcohol program (those without CDLs), must be covered by an FTA drug and alcohol program.

REFERENCES

49 CFR 18.37 and 18.40
49 CFR 655.81
Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit
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 and the oversight files 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)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a drug and alcohol oversight program for its subrecipients, contractors, subcontractors, and lessees.

15. *How does the grantee monitor vendors (e.g., consortia, third party administrators, collection sites, medical review officers, etc.) that support its program and the programs of subrecipients, contractors, subcontractors, and lessees to ensure compliance with 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, the grantee should have 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 that vendors are following the correct procedures or that 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 that testing laboratories are HHS certified.

FTA does not prescribe how a grantee must monitor vendors. The grantee simply must show evidence that 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 that program records are accurate and current and that 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 that subrecipients, contractors, subcontractors, or lessees review the forms or review the forms itself.

REFERENCES

49 CFR 18.40
49 CFR 40.15
HHS certified laboratories

SOURCES OF INFORMATION

Review copies of contracts and monitoring reports.

DETERMINATION

The grantee is deficient if it does not have contracts with vendors and/or it cannot show that it is monitoring vendor operations. (***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 executed contract(s) with vendor(s) and/or monitoring procedures.

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: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. ***EEO Program***
2. ***Oversight of Subrecipients and Contractors***

REFERENCE

1. FTA C 4704.1

USEFUL WEBLINKS

FTA EEO web page
EEO Compliance Reviews

BASELINE REVIEW QUESTIONS

COMPLETED BY THE REVIEWER

The reviewer will examine OTrak, TEAM-Web, the grantee's web site, and information provided by FTA to determine the answers to the following questions.

1. *Have any oversight reviews, audits, or investigations of the grantee conducted since the last triennial review (including EEO Reviews and the most recent triennial review) identified significant deficiencies, material weaknesses, and/or repeat findings in the area of EEO? Are any such reviews scheduled during this FFY?*

2. *Did the grantee experience difficulty resolving or closing any oversight review, investigation, or audit findings? Are any findings currently open?*

3. *If an EEO compliance review is scheduled for the current fiscal year, what information prompted the review?*

4. *Have any EEO complaints been filed with FTA against the grantee?*

5. *Is FTA aware of any EEO-related lawsuits filed against the grantee?*

EXPLANATION

If the prior triennial 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

The 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 Office Civil Rights and OTrak pertaining to previous findings as a result of:

- The most recent triennial 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

6. *Does the grantee meet the threshold for submission of a formal EEO program?*

a. *If yes, was the grantee's program submitted on time? Has the program received concurrence from FTA? When does the program expire?*

b. *If no, no further questions are asked in this review area.*

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 TEAM-Web.

REFERENCES

FTA C 4704.1, Ch II, Section 2 and 5, Page III-2(b)

SOURCES OF INFORMATION

Review the Civil Rights section of TEAM-Web and the EEO program posted in TEAM-Web. 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 p*rogram not submitted or expired)

The grantee is deficient if it has not uploaded its program to TEAM-Web. (***DEFICIENCY CODE 300***: EEO program not uploaded to TEAM-Web)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to upload the required EEO program or program update to TEAM-Web and notify the FTA RCRO that the program has been uploaded.

PROVIDED BY THE GRANTEE

The reviewer will examine responses from the grantee in addition to information gained from other sources to evaluate the following questions.

7. *Who is responsible for ensuring that EEO obligations are fulfilled? Is the current EEO officer correctly identified in the most recent EEO program submission? To whom does this individual report for EEO matters? 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 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 11) 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 TEAM-Web for the name and reporting relationship of the EEO officer. Consult the 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 a clear reporting relationship to the CEO. 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.

8. *At the time of the most recent EEO submission, what were the grantee's areas of underutilization?*

9. *Were short-term and long-range goals established to address the underutilization?*

10. *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 provide justification where prior goals were not met.

11. *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.

12. *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.

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.

13. *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 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.

14. *Do any subrecipients or transit management/operations contractors meet the threshold for submission of an EEO program? If yes:*

- *Do the subrecipients or contractors have on file with the grantee an approved EEO plan?*
- *Does the grantee obtain program updates every three years? If no, provide an explanation.*

EXPLANATION

Subrecipients and 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.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, seek additional guidance from the RCRO on the submittal of its program.

REFERENCES

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 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 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 contractors that meet threshold requirements. Confer with the RCRO to determine if a plan should be submitted to FTA.