2012 Contractor's Guide

STATE MANAGEMENT REVIEW PROGRAM

Federal Transit Administration
U.S. Department of Transportation
Washington, DC

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0. REVIEW PREPARATION

The Review Preparation section of the State Management Review (SMR) is to be used to gather information prior to the site visit portion of the review. Prior to the desk review at the regional office, reviewers should examine all remotely available sources (TEAM-Web, OTrak, NTD, FTA website, state/subrecipient website, etc) and begin completion of this section. The completed tables will appear either in the background section of the review package or in another review area, such as Program Management or Grant Administration. At the regional office desk review, the completed portions of this section are reviewed with FTA staff (to include FTA Headquarters Civil Rights staff as appropriate) and additional data completed based on discussions held and documents reviewed at the regional office.

Any information remaining to be completed after the regional office desk review is to be forwarded to the state for completion as part of the review package.

At the conclusion of the desk review, an exit briefing is held with regional office staff to determine, based on information reviewed to date, areas of additional preparation, emphasis, and follow up for the site visit portion of the review.

PROGRAM PROFILE

The state completes Exhibit 0.1, Program Profile. The state's profile provides the information the reviewer uses to develop the state's description and to guide the review.

The reviewer will also obtain organizational charts that document:

- Staffing of public transit positions
- Oversight positions
- Other positions in state that support the state programs
- Financial management positions
- Procurement positions
- Civil rights positions

The answers to the questions and the documents provide the basis for a detailed discussion of resources.

PRIOR REVIEWS

The State Management Review (SMR) is a comprehensive review. FTA also conducts program- and project-specific reviews. Prior to conducting the desk review, the reviewer will search OTrak to determine if a program-specific review has occurred or is scheduled. The reviewer should ascertain from the regional office the status of any special purpose reviews. The reviewer will obtain reports from the regional office, headquarters, or OTrak and review findings and corrective actions from completed program-specific reviews for input into the review process.

If a program-specific review was completed in the year preceding the SMR site visit, (i.e., the final report was issued within 365 days preceding the SMR site visit start), the reviewer will not ask duplicative questions. Instead, the SMR will be used to obtain the status of any open deficiencies and verify implementation of remedies and/or resolution of deficiencies that were addressed or closed out. If a program-specific review has occurred prior to 365 days of the SMR site visit, all questions in the related SMR area will be asked, and the SMR will follow up on the implementation of corrective actions. The reports from program-specific reviews should be carefully reviewed, as they provide meaningful input to the SMR.

Prior to the desk review, the reviewer will complete Exhibit 0.2, which is included in the review package, to the extent possible by reviewing available information in TEAM-Web, OTrak, and FTA's Website. The exhibit should be completed for any reviews completed (final report issued) for which site visits were conducted within the past three years and for any scheduled reviews. Draft or final reports (dependent on review stage) for many of the program-specific reviews are uploaded to OTrak and final reports for selected civil rights reviews are located on FTA's Civil Rights section of the FTA website under each program type (i.e. EEO, DBE).

When FTA has scheduled other oversight activities with a state, the reviewers should coordinate the SMR site visit schedule through the regional office.

REPORTS AND SUBMISSIONS

Before and during the desk review, the reviewer will determine whether the state is submitting all required reports and submittals and whether they are submitted on time. Exhibit 0.3, Reports and Submittals, documents the analysis. The reviewer will also analyze a sample of progress reports and Federal Financial Reports (FFR's) for grants to ensure that the state is reporting the required information at the required intervals. As shown in Exhibit 0.4, Progress Reports, the review package will document whether each required topic is addressed. This exhibit will appear in Grant Administration in the review package. The state will respond to reviewer comments.

COMPLAINTS/PROTESTS/OTHER

Complaints, protests, litigation and/or legislation alone do not indicate that the state is deficient in any area. However, the nature, pattern and trends of these occurrences can be an indication of areas that warrant follow up or additional review in an SMR. Much of the information in this area will be completed during the desk review at the regional office, including discussions with the regional counsel and civil rights officer, and during the review process with the state. In Exhibit 0.5, Complaints/Lawsuits/Other, the reviewer will indicate the nature of complaints, protests, litigation and/or legislative occurrences.

STATE MANAGEMENT PLANS

The reviewer is responsible for reviewing, analyzing and examining all grantee state management plans to ensure that they address the required topics and address current procedures. As shown in Exhibit 0.6, State Management Plans, which will appear in Program Management, the reviewer will document the review of the state management plan in the review package and verify through the review that procedures are being followed.

PROGRAM EXPENDITURES

Before the desk review, the reviewer completes a series of tables that document state administration, intercity bus and RTAP expenditures. The tables are included in the review package.

Exhibit 0.7, State Administration Expenditures, documents whether the state is using the allowed percentage of apportioned funds on state administration expenditures. The purpose of the exhibit is to help FTA determine whether the state is spending adequate resources to administer the programs. The exhibit appears in Program Management in the review package.

Exhibit 0.8, Intercity Bus Expenditures, documents whether the state is expending the required 15 percent of the Section 5311 apportionment on intercity bus projects. The exhibit appears in Intercity Bus in the review package.

GRANT ANALYSIS

Before the desk review, the reviewer will forward the completed Exhibit 0.9, Grant Analysis, to the regional office grants management staff to facilitate an interview with them on grants status during the desk review. This data forms the basis for the reviewer's analysis of grants. This will allow the reviewer to ascertain:

- The number of open grants by program
- Whether the state is spending from the oldest grant with available funds first
- Which grants are inactive based on no draw downs in 18 months or that have been open for five years or more
- Comparison of grant balances in TEAM-Web to those reported in FFRs to see if the state is completing FFRs correctly
- Consistency of data in FFR to narratives in progress reports
- RTAP balances

During the desk review, the reviewer discusses potential issues with the regional office and follows up on issues with the state during the site visit.

The exhibit appears in Grant Administration in the review package.

Exhibit 0.1
Program Profile
Completed by the state

Section 5305	
How many Section 5305 subrecipients does the state have?	
Section 5311	
How many Section 5311 subrecipients does the state have?	
Please provide the number of: ▪ Public entities (excluding Indian tribes) ▪ Private non-profit entities ▪ Indian tribes	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5310	
How many Section 5310 subrecipients does the state have?	
On average, how many vehicles does the state fund each year?	
How many vehicles are in operation that have remaining Federal interest?	
Section 5316	
How many Section 5316 subrecipients does the state have?	
How many do not receive 5307, 5310, or 5311 funds?	
Do the small urban grantees apply for their Section 5316 funds directly with FTA?	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5317	
How many Section 5317 subrecipients does the state have?	
How many do not receive 5307, 5310, or 5311 funds?	
Do the small urban grantees apply for their Section 5317 funds directly with FTA?	
What types of service do they provide (fixed route, route deviation, demand response)?	
Section 5309	
Does the state have Section 5309 subrecipients? If yes, how many?	

Exhibit 0.1
Program Profile

Are any of these subrecipients direct FTA grantees for Section 5307 assistance? If yes, how many?	
Facilities	
List the subrecipients and location of any facilities constructed with FTA funds passed through the state. Note the source of FTA funding (5307, 5309, 5310, 5311, etc.).	
Please provide a brief description of any noteworthy projects completed within the past three years.	
Please provide a brief description of noteworthy projects that are on-going.	
Please provide a brief description of noteworthy projects that are planned for the next 3 to 5 years.	
Please provide a brief description of ARRA-funded projects completed, underway or planned.	

Exhibit 0.2
Program Specific Reviews
Completed by the reviewer with input from regional office

Type of Review	Site Visit Dates	Draft Report Date	Final Report Date	Open Deficiencies	Closed Deficiencies
Financial Management Oversight (FMO) Full Scope Review					
FMO Follow-up Review					
FMO Cost Allocation Plan Review					
FMO Agreed Upon Procedures or Special Assignment Review					
Real Estate Review					
Procurement System Review (PSR)					
PSR Follow-Up Review					
Disadvantaged Business Enterprise Review					
Title VI Review					
UCP Review					
Drug and Alcohol Program Audit					
Equal Employment Opportunity Review					
ARRA Review					

Exhibit 0.3
Reports and Submittals
Completed by the reviewer with input from regional office

Report/Submission	Due Date	Submitted Date	Comments
Progress Reports*			
FFRs*			
Intercity Bus Certifications			
EEO Program Update			
DBE Program			
DBE Small Business Element			
DBE ARRA Quarterly Reports			
DBE Goals			
DBE Semi-Annual Reports			
Title VI Program			
Lobby – Standard Form LLL			
Charter reports			
NTD reports			

Exhibit 0.4
Progress Reports
Completed by the reviewer with input from regional office and the state

Questions	Reviewer Comments	Regional Office Comments	State Response
Do progress reports contain the required information?			
Section 5305			
Section 5310, 5311, 5316 and 5317: a. Updated programs of projects that contain active projects reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories			
b. Revised milestones for activity line items (ALIs) that require milestones with grant submission (vehicle procurements, construction projects, and program reserve) and, for revised estimated completion dates, an explanation for the revision			
c. Budget revisions for changes in line item budgets			
d. Significant civil rights compliance issues			
e. Additional information requested by the regional office			
Section 5309: a. Current status of each open ALI within the active/executed grant			

Exhibit 0.4
Progress Reports
Completed by the reviewer with input from regional office and the state

Questions	Reviewer Comments	Regional Office Comments	State Response
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			

Exhibit 0.4
Progress Reports
Completed by the reviewer with input from regional office and the state

Questions	Reviewer Comments	Regional Office Comments	State Response
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 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 and 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 - Involve a highly publicized matter, irrespective of amount			

Exhibit 0.4
Progress Reports
Completed by the reviewer with input from regional office and the state

Questions	Reviewer Comments	Regional Office Comments	State Response
l. List of real property acquisition actions, including just compensation, property(s) under litigation, administrative settlements, and condemnation for each parcel during the reporting period			
Are Federal Financial Reports (FFRs) submitted for each open grant at the required intervals (quarterly or annually) and on time?			
Is the form completed correctly for the following items: a. Are Federal cash receipts and cash disbursements reported? If a positive balance of Federal cash is on hand at the end of the reporting period, is the amount reported and an explanation include in the remarks section?			
b. How are unliquidated obligations calculated? Are they reported correctly?			
c. If indirect costs are charged to the grant, is this section of the FFR for that grant completed? Are the rates shown consistent with the approved cost allocation plan or indirect cost proposal?			

Exhibit 0.4
Progress Reports
Completed by the reviewer with input from regional office and the state

Questions	Reviewer Comments	Regional Office Comments	State Response
d. Does the state certify that the information is true, complete, and accurate to the best of its knowledge under the remarks and certification tab? Who certifies on behalf of the state?			
e. Did the state respond to any comments made by FTA regarding a report?			

Exhibit 0.5
Complaints/Lawsuits/Other
Completed by the regional office and state

Review Area	Identified by FTA	Identified by State	State's System for Processing	State's System for Becoming Aware of/Monitoring Subrecipient Issues in this area
Legal – Any litigation or legislation that would impact the provision of mass transit service				
Selection and Eligibility – Complaints regarding distribution of funds				
Intercity Bus – Complaints				
Subrecipient Single Audit Findings				
GAO/OIG Audits				
Asset Management– Real property incidental use approvals				
Asset Management– Prior concurrence for real property dispositions				
Procurement – Bid protests/complaints/litigation				
Buy America – Waivers				
Disadvantaged Business Enterprise – Complaints or bid protests				
Charter Bus – Complaints/litigation				
School Bus - Complaints/litigation				
Title VI - Complaints/litigation				
Equal Employment Opportunity - Complaints/litigation				
ADA – Complaints				

Exhibit 0.6
State Management Plans
Completed by the state with input from the reviewer

Questions	State Response				Reviewer Comments
[If combined plan, please use Section 5311 checklist]	**Enter page number**				
	5311	**5310**	**5316**	**5317**	
Program goals and objectives					
Roles and responsibilities					
Coordination					
Eligible subrecipients					
Eligible services and service areas					
Eligible assistance categories					
Local share and local funding requirements					
Project selection criteria and method of distributing funds					
Intercity bus transportation					
Annual POP development and approval process					
Funds transfers					
State administration, planning and technical assistance					
RTAP					
Private sector participation					

Exhibit 0.6
State Management Plans
Completed by the state with input from the reviewer

Questions	State Response				Reviewer Comments
[If combined plan, please use Section 5311 checklist]	**Enter page number**				
	5311	**5310**	**5316**	**5317**	
Civil rights					
Maintenance					
Charter rule					
Section 504 and ADA compliance					
Program measures					
NTD reporting					
State program management (e.g., procurement, financial management, property management, vehicle use and disposition, accounting systems, audit and close out, subrecipient oversight and reporting, productivity/cost-effectiveness/service standards)					
ARRA Provisions					
Other provisions (e.g., Section 5333(b), environmental protection, Buy America, pre-award and post-delivery audits, lobbying restrictions, prohibition of exclusive school transportation, drug and alcohol testing)					
Date of Regional Office SMP approval, if available					

Exhibit 0.7
State Administration Expenditures

Completed by the reviewer

Section 5311				
Year	**Year X**	**Year Y**	**Year Z**	**ARRA**
Apportionment				
Grant number				
State Administration				
% of Apportionment				
Section 5310				
Year		**Year X**	**Year Y**	**Year Z**
Apportionment				
Total				
Grant number				
State administration				
% of Apportionment				
Section 5316				
Year		**Year X**	**Year Y**	**Year Z**
Large urbanized area apportionment				
Governor's small urbanized area apportionment				
Governor's nonurbanized area apportionment				
Total apportionment				
Grant number				
State Administration				
% of Apportionment				

Exhibit 0.7
State Administration Expenditures

Section 5317			
Year	**Year X**	**Year Y**	**Year Z**
Large urbanized area apportionment			
Governor's small urbanized area apportionment			
Governor's nonurbanized area apportionment			
Total apportionment			
Grant number			
State Administration			
% of Apportionment			

Exhibit 0.8
Intercity Bus Expenditures
Completed by the reviewer

Year	**Year X**	**Year Y**	**Year Z**	**ARRA**
Apportionment				
Grant				
Intercity Bus				
% of Apportionment				

Exhibit 0.9
Grant Analysis
Completed by the reviewer

STATUS OF OPEN GRANTS AS OF: (date)									
Grant	**Date Executed**	**FPC**	**Year Funds Ap'd**	**TEAM Balance**	**Date of Last Draw**	**FFR Unl'd Ob's As of (date)**	**FFR Unob'd Balance As of (date)**	**Projected Close Date**	**Comment**

1. PROGRAM MANAGEMENT

BASIC REQUIREMENT

The state must dedicate sufficient resources to managing the FTA funded programs in accordance with the grant application, Master Agreement, and all applicable laws and regulations using sound management practices.

AREAS TO BE EXAMINED

1. ***Resources and Procedures***
2. ***Selection and Eligibility***
3. ***Intercity Bus***

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 Master Agreement
4. FY2012 Certifications and Assurances
5. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
6. FTA Circular 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
7. FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions"
8. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
9. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
10. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
11. FTA Circular 5010.1D, "Grant Management Requirements"

USEFUL WEBLINKS

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

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

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

Section 5311 Program Overview

Section 5310 Program Overview

Section 5316 Program Overview

Section 5317 Program Overview

Intercity Bus Overview

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

National RTAP

National Transit Resource Center

Project Action

National Center on Senior Transportation

United We Ride

Small Urban and Rural Transit Center

Local and Tribal Transportation Assistance Program

QUESTIONS FOR THE REVIEW

Part A: Resources and Procedures

1. *Which agency (or agencies) has the governor designated for administering the FTA programs?*

What unit within the agency is responsible for administering the programs?

Who is the person with day-to-day management responsibility for each program?

What is the organizational structure and staffing of the unit?

What are the major functions of the unit?

What other agencies or units support the FTA programs?

What training is provided to staff to ensure capacity?

EXPLANATION

The governor designates the state agency (or agencies) with the principal authority and responsibility for administering the FTA programs. The designation remains in effect until changed by the governor by official notice of re-designation transmitted to the FTA Regional Administrator.

The designated agency must have the requisite technical capacity to receive and administer Federal funds. It must have the staffing resources necessary to carry out its responsibilities in accordance with FTA requirements and to ensure subrecipient compliance with Federal requirements. Other administrative offices usually support the FTA programs. These offices may include finance, procurement, civil rights, engineering, and legal.

REFERENCE

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

SOURCES OF INFORMATION

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

DETERMINATION

Review of the state's organizational structure and staffing levels does not by itself lead to a finding. The state's organization, functions, and staffing levels, when considered with findings in other aspects of program management (technical assistance, monitoring, and routine administrative activities) and other review areas, support a determination of whether the state is applying the resources necessary to manage the FTA programs in accordance with FTA requirements. (See question 7.)

SUGGESTED CORRECTIVE ACTION

None

2. *Has the state submitted to FTA a state management plan for the Section 5310, 5311, 5316, and 5317 programs?*

What are the dates of the last revisions? Have the plans been updated since the last State Management Review?

Have the plans been updated to incorporate changes in program management or new requirements?

Have the plans been updated for new programs or capital projects?

Did the state seek public comment for significant revisions to the state management plans?

Do the plans address the required areas?

EXPLANATION

Each state is required to have and submit a state management plan for the Section 5310, 5311, 5316 and 5317 programs to the FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. State management plans document the state's policies and procedures for the state managed portions of the programs.

FTA gives each state the maximum discretion permitted by law in designing and managing the programs to meet the passengers' needs under those programs. The state develops program standards, criteria, procedures and policies for the programs. The document should be useful to the state, subrecipients and FTA. The plans should facilitate FTA oversight.

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

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

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

REFERENCE

FTA C 9040.1F, Ch. VII
FTA C 9070.1F, Ch. VII
FTA C 9050.1, Ch. VII
FTA C 9045.1, Ch. VII

SOURCES OF INFORMATION

During the desk review, obtain copies of the state management plan(s). Discuss the plan(s) with the regional office to determine whether the plans are current, the regional office's approach for reviewing and approving plans, and any concerns or issues the regional office has identified with the plan(s). If necessary, obtain a current copy of the plan(s) with the documents requested for the review. A State Management Plan checklist is submitted to the state prior to the site visit. Before the site visit, review the plan(s), review the state's responses to this checklist, and note in each section of the review package the pertinent policies and procedures documented in the plan. During the site visit, discuss and confirm the policies and procedures documented in the plan(s). Compare the information provided in the plan(s) with that obtained through discussion with state staff. Ask the state if the plan(s) are up-to-date and reflect current practice in each area.

DETERMINATION

Determination of deficiency is based on the state's direct response to this question, comparison of the policies and procedures documented in the state management plan with the responses of state staff to specific questions in each review area, and discussions with regional office staff. The determination should only be made after completing the review of each area.

The state is deficient if a state management plan does not address each required area. The state is deficient if there are discrepancies between a state management plan and actual policies and procedures. (***DEFICIENCY CODE**:* SMP out of date/incomplete)

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

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated plan that includes missing areas or policies.

Direct the state to submit to the FTA regional office an updated plan that reflects current practice in all areas. Direct the state to seek public comment on the revised plan if significant revisions are required.

Direct the state to submit to the FTA regional office evidence of having solicited public comment for any

significant revisions and procedures for obtaining public comment for future significant revisions.

3. *Do the coordinated plans for Section 5310, 5316 or 5317 programs contain the required elements?*

What is the cycle and duration of the coordinated plans?

Was the development of the coordinated plan prepared in coordination and consistent with the applicable statewide transportation planning process?

EXPLANATION
Public transit-human services transportation plans must contain:

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

Before selecting a Section 5310, 5316 or 5317 project, the state must ensure that the coordinated plan containing the project meets the requirements.

The coordinated plan serves as the foundation for the program of projects and should be integrated into the metropolitan and statewide transportation planning processes and document local policy support and Federal fund eligibility. The coordinated plan may either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans or be developed as part of the metropolitan and statewide transportation planning processes. If the plan is not prepared within the broader process, the lead agency for the coordinated plan should ensure coordination and consistency between the coordinated planning process and metropolitan or statewide planning processes.

States and communities may update the coordinated plan to align with the competitive selection process based on needs identified at local levels. There should be opportunities to update coordinated plans to align with the competitive selection process. The cycle should be conducive to and coordinated with the metropolitan and statewide planning processes. The update cycles for coordinated plans in metropolitan areas should follow the update cycles for metropolitan transportation plans (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas).

REFERENCE
FTA C 9070.1F Ch. V
FTA C 9050.1 Ch. V
FTA C 9045.1 Ch. V

SOURCES OF INFORMATION
Review the state management plans for a discussion of public transit-human services transportation plans. Review any technical assistance documents provided by the state providing guidance on development of the plans. Discuss on site. Review the state's documentation of review of a plan and a sample of coordinated plans to ensure that the plans include required elements. Review a sample of UPWPs to ensure that human services coordinated planning activities are included.

DETERMINATION
The state is deficient if the coordinated plans do not contain the required elements. (***DEFICIENCY CODE:*** Coordinated plans missing required elements)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures for ensuring that all coordinated plans contain the required elements.

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

Do the agreements address Federal requirements? If not, how does the state pass through FTA requirements?

EXPLANATION
The state must enter into a written agreement with each subrecipient. The written agreement must include applicable Federal requirements and require the subrecipient to undertake responsibilities for the project usually performed by the state. The Federally required clauses that the state is required to incorporate in agreements (see *Procurement* section) reference some, but not all, of the basic Federal

requirements. Many states pass through FTA requirements to subrecipients by incorporating the FTA Master Agreement by reference. The state must ensure that the subrecipients have the technical capacity to implement the project. Technical capacity involves the capability of the grant applicant to properly carry out the project and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. Expectations are for the grantee to:

1. Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program
2. Provide administrative and management support of project implementation
3. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress
4. Ensure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards
5. Maintain the project work schedule agreed to by FTA and the grantee and monitor grant activities to assure that schedules are met and other performance goals are achieved
6. Keep expenditures within the latest approved project budget
7. Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements
8. Request Federal funds for eligible activities only in amounts and at times as needed to make payments and retain receipts to substantiate withdrawals
9. Account for project property
10. Demonstrate and retain satisfactory continuing control over the use of project property
11. Demonstrate procedures for asset management and adequate maintenance of equipment and facilities
12. Ensure that an annual independent organizationwide audit is conducted in accordance with Office of Management and Budget (OMB) Circular, A–133, “Audits of States, Local Governments, and Non-Profit Organizations”
13. Prepare force account and cost allocation plans and submit and obtain approval if applicable before incurring costs
14. Prepare and submit FTA required reports
15. Update and retain FTA required reports and records for availability during audits or oversight reviews
16. Ensure that effective control and accountability are maintained for all grants and subgrants, cash, real and personal property, and other assets. Grantees and subgrantees must ensure that resources are properly used and safeguarded, and used solely for authorized purposes.

REFERENCE

49 CFR 18.37
FTA Master Agreement, Subsection 2e
FTA C 5010.1D, Ch. IV, Section 3.j(1)
FTA C 9040.1F, Ch. VI, Section 2
FTA C 9070.1F, Ch. VI, Section 2
FTA C 9050.1, Ch. VI, Section 2
FTA C 9045.1, Ch. VI, Section 2
FTA C 8100.1C, Ch. II, Section 7.b(2)

SOURCES OF INFORMATION

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

DETERMINATION

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

The state is deficient if the written agreements do not address FTA requirements. (***DEFICIENCY CODE****:* Written agreements do not address requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office executed written agreements with each subrecipient. Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for entering into written agreements with each subrecipient prior to the expenditure of Federal funds on a local project.

Direct the state to submit to the FTA regional office an amended subrecipient agreement that includes missing FTA requirements. Direct the state to use the amended agreement beginning with the next project application cycle.

5. *How and how often does the state provide technical assistance to subrecipients in meeting Federal requirements?*

EXPLANATION

The state must inform subrecipients of applicable Federal requirements, provide technical assistance in meeting those requirements, and oversee compliance with the requirements. The state management plan(s) can serve as a program guide for local project subrecipients. The state's subrecipient agreements should identify applicable Federal requirements. In addition to the agreements, states sometimes provide more detailed guidance for specific activities, such as the procurement of vehicles, in separate documentation. Some states require applicants/ subrecipients to participate in program orientation sessions.

Technical assistance may be provided through orientations, informal conversations, formal correspondence, on-site performance reviews, conferences, etc. Many states sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided. FTA provides Rural Transportation Assistance Program (RTAP) funds to assist states in these efforts.

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

REFERENCE

49 CFR 18.37
FTA C 9040.1F, Ch. II, Section 3.b
FTA C 9070.1F, Ch. III, Section 7
FTA C 9050.1, Ch. III, Section 10
FTA C 9045.1, Ch. III, Section 10

SOURCES OF INFORMATION

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

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

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

6. *How and how often does the state monitor subrecipients to ensure compliance with Federal requirements?*

EXPLANATION

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

The state must have an on-going system to ensure that subrecipients adhere to Federal requirements. While FTA does not prescribe specific monitoring activities, it expects the state to look behind certifications and assurances and for the oversight program to be comprehensive. FTA relies on each state 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 state management review. In each review area, the state is asked to provide information on the specific mechanisms in place for monitoring compliance with the Federal requirements in that area. The examination under the *Program Management* section takes an overall look at the systems in place for monitoring compliance with a range of Federal requirements.

Appropriate systems may include:

- Applications
- Monthly, quarterly or annual reports
- Meetings
- Site visits
- Vehicle/facility inspections

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

REFERENCE

49 CFR 18.37 and 18.40
FTA Master Agreement, Subsection 2e
FTA C 5010.1D, Ch. II, Section 3
FTA C 9040.1F, Ch. II, Section 3.a and Ch. VIII, Section 5
FTA C 9070.1F, Ch. II, Section 4

FTA C 9050.1, Ch. II, Section 4
FTA C 9045.1, Ch. II, Section 4
FTA C 8100.1C, Ch. II, Section 7.b and 7.e (5)

SOURCES OF INFORMATION

Review the state management plan(s) for a discussion of monitoring activities of subrecipients, including periodic reporting, management or financial reviews, project monitoring and on-site reviews.

Discuss the state's methods of monitoring compliance with regional office staff. Regional staff may have insights regarding the effectiveness of the state's monitoring systems and may be able to provide specific examples of problems reflecting inadequate monitoring.

Review the applications and the agreements for additional information regarding the state's monitoring mechanisms, particularly reporting requirements.

On site, discuss information obtained from the state management plans, application packages, agreements, and other documents regarding monitoring activities and have state staff confirm and explain the use of specific monitoring mechanisms. Discuss the documentation and follow-up of findings. Review a sample of written reports, if applicable. Obtain copies of routine reporting forms and guidelines for reporting. Discuss how the state analyzes the information obtained through periodic reporting and types of follow-up action that could result. Review the file for the subrecipient(s) to be visited during the site visit.

DETERMINATION

The state could be found deficient in its monitoring of a specific area but not deficient in *Program Management*. Similarly, it could be found deficient in *Program Management*, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements.

The state is deficient if it does not have appropriate systems for monitoring compliance with FTA requirements, does not document oversight efforts, or is not applying the resources required to carry out an effective monitoring program. (***DEFICIENCY CODE:*** Inadequate oversight of subrecipient)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for effectively monitoring compliance with Federal requirements.

7. *Does the state devote adequate resources (staffing and budget) to administering the FTA funded programs?*

EXPLANATION

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

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

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

REFERENCE

49 CFR 18.40
FTA Master Agreement, Subsection 2e
FTA C 5010.1D, Ch. II, Section 3
FTA C 9040.1F, Ch. II, Section 3.a
FTA C 9070.1F, Ch. II, Section 4
FTA C 9050.1, Ch. II, Section 4
FTA C 9045.1, Ch. II, Section 4
FTA C 9300.1B, Ch. II, Section 9(c)
FTA C 8100.1C, Ch. II Section 7.b

SOURCES OF INFORMATION

Responses to other questions in the *Program Management* section, *Grants Administration*, and other review areas provide the basis for making a determination. Discussions with regional office and state staff support the determination. Before the desk review, complete the State Administration Expenditures worksheet in the *Review Preparation* section that documents the amount of grants funds devoted to state administration. At the desk review, discuss the adequacy of resources the state is applying to the programs. On site, discuss with staff.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office a plan for deploying the resources necessary to properly administer the FTA programs.

Part B: Selection and Eligibility

8. *What are the state's procedures for:*

- *determining the availability of subrecipients' local match and operating funds?*
- *ensuring that only eligible sources are used as local match?*
- *ensuring that subrecipients fully document volunteered services or in-kind contributions used as local match?*

EXPLANATION
Annually, the state certifies to FTA (as part of the annual certifications and assurance process) that it and its subrecipients have the financial capacity to carry out its proposed program of projects. Most states provide financial assistance to support public transit services. State assistance may provide some or the entire non-Federal match. The sources of state funding may differ for capital and operating assistance programs. Operating assistance may be funded through general revenues. Capital assistance may be funded through bond revenues. FTA does not require a dedicated funding source.

All of the local share must come from non-U.S. Department of Transportation (DOT) sources, except for Federal Lands Highway Program funds. SAFETEA-LU permits the use of the following as local share: cash (or in-kind contribution); non-farebox revenues from transit operations (e.g., advertising and concession revenues); amounts received under a service contract with a state, local or private social service agency or organization; undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash or new capital; in-kind contributions; revenue bond proceeds (capital only); transportation development (toll) credits; program income generated from an earlier grant; 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 which would otherwise be eligible under the program, and is included in the net project costs in the project budget.

The state 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 state must obtain and maintain sufficient documentation from each subrecipient to support its certification to FTA. The state must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented.

States generally require applicants to list the sources of funding that will be applied to the project. Some states have included the availability of local funding for the project as a threshold or evaluation criterion in the project selection process. Many states require the development of transit development plans. For capital items, such as vehicle purchases or facility construction, a state may request a three to five year financial plan.

REFERENCE
Annual Certifications and Assurances
FTA Master Agreement, Section 5
FTA C 9040.1F, Ch. III, Sections 1.a and 3
FTA C 9070.1F, Ch. III, Sections 1 and 9
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12
FTA C 5010.1D, Ch. VI, Section 4
FTA C 9300.1B, Ch. II, Sections 7 and 9.b

SOURCES OF INFORMATION
Review the state management plans for discussions on sources of state funds and eligible local match. On site, ask state staff for an explanation of the state funding programs. Discuss the types of projects funded (e.g., capital, operating, or planning) and how the state programs supplement the FTA programs. Obtain an explanation of the sources of state funds for each program.

Review the state management plan(s), application package(s) and standard subrecipient agreement(s) for information on how the state ensures that the local subrecipient has the necessary local match and sufficient funds to operate and maintain vehicles purchased under the project. Review site visit checklists or other monitoring materials. On site, discuss how the state considers local match in the evaluation process and ensures that subrecipients have the necessary local match and funds to operate and maintain capital projects.

DETERMINATION
The state is deficient if it cannot document that the funds it uses for local match are eligible. The state is deficient if the value of non-cash share is not documented, the non-cash share represents a cost which 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**:* State match deficiencies)

The state 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. The state is deficient if it does not ensure that only eligible funds are used as local match. The state is deficient if it does not ensure that subrecipients document and support the value of non-cash share, the non-cash share represents a cost which would otherwise be eligible under the program, or the non-cash share is included in the net project costs in the project budget. (***DEFICIENCY CODE**:* Insufficient oversight of subrecipient local match)

SUGGESTED CORRECTIVE ACTION
Direct the state 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.

Direct the state 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 which would otherwise be eligible under the program, and the non-cash share is included in the net project costs in the project budget.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes 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 state to submit to the FTA regional office an updated state management plan(s) that includes procedures for ensuring that only eligible funds are used as local match.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for ensuring that subrecipients document and support the value of non-cash share, the non-cash share represents a cost which would otherwise be eligible under the program, and the non-cash share is included in the net project costs in the project budget.

Direct the state to submit to the FTA regional office evidence that it follows its financial management oversight procedures.

Section 5311 - Nonurbanized Area Formula Program

9. *How does the state define eligible subrecipients under Section 5311?*

10. *How does the state define technical capacity for Section 5311 subrecipients? How does the state ensure that Section 5311 subrecipients have the technical capacity to carry out proposed projects?*

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

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

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

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

The state certifies that its Section 5311 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

REFERENCE

FTA C 9040.1F, Ch. III, Section 2
FY2012 Certifications and Assurances

SOURCES OF INFORMATION

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

DETERMINATION

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

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (***DEFICIENCY CODE**:* Lacking criteria for oversight of technical capacity)

SUGGESTED CORRECTIVE ACTION

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

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to include technical capacity criteria for Section 5311 subrecipients and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan if applicable. Direct the state to submit to the FTA regional office the revised plan and other pertinent documents and evidence that public comment, if applicable, was solicited for the revised state management plan.

11. *What is the process used to distribute funds under Section 5311? How are Indian tribal governments, where present, treated? Does the project selection process provide for a fair and equitable distribution of funds?*

EXPLANATION

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

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

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

Most states select projects for capital assistance based on specific project evaluation criteria, which frequently include maintenance of effort, need, coordination, and other factors determined by the

state. Generally, states assign weights to each evaluation criterion and provide an overall score for each project, allowing projects to be ranked.

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

REFERENCE
FTA C 9040.1F, Ch. IV

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

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

SUGGESTED CORRECTIVE ACTION
Direct the state to incorporate into its state management plan a revised process for distributing funding to provide fair consideration of projects to all eligible Section 5311 applicants. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan, evidence that public comment was solicited, if applicable, and evidence that it was implemented in the next application cycle.

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

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

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

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

REFERENCE
FTA C 9040.1F, Ch. III, Section 2.c

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

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

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

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

EXPLANATION
Transit service providers receiving assistance under Section 5311 may coordinate and assist in providing meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. FTA expects the nutrition program to pay operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment related to meal delivery.

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

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

REFERENCE
FTA C 9040.1F, Ch. III, Section 2.c

SOURCES OF INFORMATION
Review the state management plan for discussion of incidental service. On site, discuss with staff the state's policy on meal delivery and other incidental service. Identify subrecipients providing incidental service. During subrecipient site visits, ask if the subrecipients provide meal delivery or other incidental service.

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

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

14. *Do any Section 5311 subrecipients provide service in urbanized areas? How does the state ensure that costs are properly allocated between urban and rural service?*

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

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

REFERENCE
FTA C 9040.1F, Ch. III, Section 2.d

SOURCES OF INFORMATION
On site, ask the state to identify any Section 5311 subrecipients that provide service in both urbanized and nonurbanized areas. Discuss the state's mechanism for ensuring that costs are allocated appropriately between the urban and nonurban service. Review cost allocation methodologies.

DETERMINATION
The state is deficient if it provides Section 5311 assistance to subrecipients operating in both urbanized and nonurbanized areas but does not ensure that costs are properly allocated between the urban and nonurban service. (***DEFICIENCY CODE**:* Insufficient monitoring of rural/urban cost allocation)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures for ensuring that Section 5311

subrecipients operating in both urbanized and nonurbanized areas properly allocate costs between urban and nonurban service.

Section 5310 - Elderly Individuals and Individuals with Disabilities Program

15. *How does the state define eligible subrecipients under Section 5310? Do any governmental authorities receive Section 5310 funds? Have the governmental authorities been approved by the state to coordinate services for elderly individuals and individuals with disabilities or have they certified that no nonprofits are readily available?*

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

17. *How does the state define technical capacity for Section 5310 subrecipients? How does the state ensure that Section 5310 subrecipients have the technical capacity to carry out the proposed projects?*

18. *What are the state's procedures for monitoring Section 5310 subrecipients to ensure that services being delivered continue to be eligible?*

EXPLANATION

Section 5310 provides funding for public transportation capital projects planned, designed and carried out to meet the special transportation needs of elderly individuals and individuals with disabilities. Section 5310 funds can be used for projects in urban and rural areas. FTA C 9070.1F Ch. III Section 8 lists examples of eligible projects. At the discretion of the state, a subrecipient's acquisition of transportation services under contract, lease, or other arrangement may be funded under Section 5310 (capital cost of contracting). SAFETEA-LU authorized a pilot program that allowed seven states (Alaska, Louisiana, North Carolina, Minnesota, Oregon, South Carolina and Wisconsin) to use up to one-third of their apportionment for fiscal years 2006-2009 for operating expenses.

FTA established three categories of eligible subrecipients for Section 5310:

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

The state develops its own process and criteria for approving public bodies to coordinate service. States may further limit subrecipient eligibility for the program in order to comply with state laws or to further program goals. However, the state may not extend eligibility beyond those entities allowed by FTA. The state management plan must document program eligibility requirements.

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

The state certifies that its Section 5310 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

FTA encourages maximum use of 5310 funded vehicles. Vehicles are to be used for the project stated in the grant application and subrecipient agreement. Beyond those needs, vehicles should be used to meet other transportation needs of elderly individuals and individuals with disabilities; to meet other Federal program or project needs; and finally, to meet other local transportation needs. Subrecipients may coordinate and assist in delivering meals if the delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. The number and size of vehicles applied for must be determined by the number of passengers to be transported, not meal delivery

capacity. Section 5310 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

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

REFERENCE

FTA C 9070.1F, Ch. II, Section 4; Ch. III, Sections 4, 6, 8; Ch. VI Section 5
FY2012 Certifications and Assurances

SOURCES OF INFORMATION

Review the state management plan, subrecipient grant application, and subrecipient agreement for eligibility and technical capacity requirements. Review the most recent program of projects to determine whether any public entities receive Section 5310 funds. Review oversight procedures. Confirm eligibility requirements and technical capacity requirements on site. Discuss the process and criteria, if applicable, for approving governmental authorities to coordinate services. Review subrecipients' certifications to the governor or state correspondence approving a public body to coordinate services.

DETERMINATION

The state is deficient if its eligibility criteria are more permissive than FTA's eligibility requirements. The state is deficient if it does not have the appropriate documentation for governmental authorities receiving Section 5310 assistance. (***DEFICIENCY CODE****:* Ineligible subrecipients)

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

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (***DEFICIENCY CODE***: Lacking criteria for oversight of technical capacity)

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

SUGGESTED CORRECTIVE ACTION

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

Direct the state to submit to the FTA regional office a revised state management plan that includes procedures for approving governmental authorities to coordinate services for elderly individuals and individuals with disabilities and for obtaining and maintaining on file certifications from governmental authorities to the governor that no nonprofits are readily available to provide the service. Direct the state to submit to the FTA regional office the appropriate documentation (applicant's certification to the governor or state's correspondence approving a governmental authority to coordinate service) for governmental authorities receiving Section 5310 assistance.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to incorporate a fair and open competitive process that provides for fair consideration of Section 5310 projects throughout the state and by all eligible applicants. Direct the state to obtain public comment on the revised state management plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the new process, evidence that public comment, if applicable, was solicited for the revised state management plan, and evidence that the new process was implemented in the next application cycle.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and

evidence that public comment, if applicable was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office a revised state management plan that includes procedures for ensuring that services provided are eligible for Section 5310 funding.

Section 5316 - The Job Access and Reverse Commute (JARC) Program

19. *How does the state define eligible subrecipients under Section 5316? Did the state publicly advertise the availability of funds and selection criteria? Are projects selected using a competitive process? Is the distribution of funds fair and equitable? Did the state publish a list of selected projects?*

20. *How does the state define technical capacity for Section 5316 subrecipients? How does the state ensure that Section 5316 subrecipients have the technical capacity to carry out the proposed projects?*

21. *What are the state's procedures for monitoring Section 5316 subrecipients to ensure the services delivered continue to be eligible?*

EXPLANATION

Section 5316 funds are 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 Ch. III Section 11 lists potential eligible projects.

FTA established three categories of eligible subrecipients for Section 5316:

- Private nonprofit organizations
- State or local governmental authorities
- Operators of public transportation services, including private operators of public transportation services

States may further limit recipient eligibility in order to comply with state laws or to further program goals. However, the state may not extend eligibility beyond entities allowed by FTA. The state management plan must document program eligibility requirements.

The state should publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential applicants. The state 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. States may not allocate/suballocate funds without conducting a statewide competitive selection process covering areas other than large urbanized areas (over 200,000 in population). 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 state may select projects that will be implemented over multiple years. The state management plan must document the competitive selection process.

The state must demonstrate that the competition was open and transparent and funds were distributed fairly and equitably. 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. The state should also publish a list of selected projects following the competitive selection process.

The state certifies that its Section 5316 subrecipients have the technical capacity to carry out proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

The state is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services. Generally, the state's subrecipient application package requests a description of the proposed project, including service area, targeted riders, and days and hours of operation. The state must enter into an agreement with subrecipients prior to expending funds on a local project that specifies the project to be funded under the grant. The state must report performance

information for the program. The state may also observe a subrecipient's service during site visits.

REFERENCE

FTA C 9050.1, Ch. III, Sections 5, 11 and Ch. IV, Section 3
FY2012 Certifications and Assurances

SOURCES OF INFORMATION

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

Review the subrecipient application to identify the information obtained on the populations to be served. On site, examine materials associated with the most recent competitive selection process. Discuss application requirements, reporting requirements, site visits, and other mechanisms used to ensure that subrecipients implement eligible projects.

DETERMINATION

The state is deficient if its eligibility requirements are not consistent with FTA's requirements. (***DEFICIENCY CODE****:* Ineligible subrecipients)

The state is deficient if it did not publicly advertise the availability of funds and selection criteria in formats and forums appropriate to potential applicants. The state is deficient if it does not select projects using a fair and open competitive process that provides for fair consideration of Section 5316 projects throughout the state and by all eligible applicants. The state is deficient if it did not publish a list of selected projects following the competitive selection process. (***DEFICIENCY CODE****:* Selection process issues)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (***DEFICIENCY CODE****:* Lacking criteria for oversight of technical capacity)

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

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5316 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the state to obtain public comment on the revised state management plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment, if applicable, was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publicly advertising the availability of funds and selection criteria in formats and forums appropriate to potential Section 5316 applicants. Direct the state to submit to the FTA regional office copies of public advertisements for the next application cycle.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to incorporate a fair and open competitive process that provides for fair consideration of Section 5316 projects by all eligible applicants. Direct the state to obtain public comment on the revised state management plan, if applicable. Direct the state to submit to the FTA regional office a revised state management plan that documents the new process, evidence that public comment, if applicable, was solicited, and evidence that it was implemented in the next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publishing a list of selected Section 5316 projects following the competitive selection process and to submit the published list after the next application cycle.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and evidence that public comment, if applicable, was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for ensuring that services provided are eligible for Section 5316 funding.

Section 5317 - New Freedom Program

22. *How does the state define eligible subrecipients under Section 5317? Did the state publicly advertise the availability of funds and selection*

criteria? Are projects selected using a competitive process? Is the distribution of funds fair and equitable? Did the state publish a list of selected projects?

23. *How does the state define technical capacity for Section 5317 subrecipients? How does the state ensure that Section 5317 subrecipients have the technical capacity to carry out the proposed projects?*

24. *What are the state's procedures for monitoring Section 5317 subrecipients to ensure that services delivered continue to be eligible?*

EXPLANATION

Section 5317 funds are 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. "New" service is any service or activity that was not in operation on August 10, 2005, and did not have identified sources of funds as of August 10, 2005, as evidenced by inclusion in the TIP or STIP. Recipients or subrecipients may not terminate ADA paratransit enhancements or other services funded as of August 10, 2005, in an effort to reintroduce the services as "new" and then receive Section 5317 funds for those services. FTA C 9045.1 Ch. III Section 11 lists potential eligible projects.

FTA established three categories of eligible subrecipients for Section 5317:

- Private nonprofit organizations
- State or local governmental authorities
- Operators of public transportation services, including private operators of public transportation services

States may further limit recipient eligibility in order to comply with state laws or to further program goals. However, the state may not extend eligibility to beyond those entities allowed by FTA. The state management plan must document eligibility requirements.

The state should publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential applicants. The state 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. States may not allocate/suballocate funds without conducting a statewide competitive selection process covering areas other than large urbanized areas over 200,000 in population. 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 state may select projects that will be implemented over multiple years. The state management plan must document the competitive selection process.

The state must demonstrate that the competition was open and transparent and funds were distributed fairly and equitably. 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. The state should also publish a list of selected projects following the competitive selection process.

The state certifies that its Section 5317 subrecipients have the technical capacity to carry out the proposed projects. Technical capacity involves the capability of the grant applicant to properly carry out the projects and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. FTA expects the state to define technical capacity for its subrecipients. The state may evaluate technical capacity using criteria such as staffing levels, staff training and experience, level of documentation of procedures, ability to submit required reports correctly and on time, ability to maintain project equipment, and ability to comply with FTA and state requirements. The state may ensure that subrecipients have the required technical capacity through the grant application and oversight and it may build technical capacity through training programs.

The state is responsible for monitoring subrecipients to ensure that the funds are being used to support eligible transportation services. Generally, the state's subrecipient application package requests a description of the proposed project, including service area, targeted riders, and days and hours of operation. The state must enter into an agreement with subrecipients prior to expending funds on a local project that specifies the project to be funded under the grant. The state must report performance information for the program. The state may also observe a subrecipient's service during site visits.

REFERENCE

FTA C 9045.1, Ch. III, Sections 5, 11 and Ch. IV, Section 3
FY2012 Certifications and Assurances

SOURCES OF INFORMATION

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

Review the subrecipient application to identify the information obtained on the eligibility of proposed projects. On site, examine materials associated with the most recent competitive selection process. Discuss application requirements, reporting requirements, site visits, and other mechanisms used to ensure that subrecipients implement eligible projects.

DETERMINATION

The state is deficient if its eligibility requirements are not consistent with FTA's requirements. (***DEFICIENCY CODE****:* Ineligible subrecipients)

The state is deficient if it did not publicly advertise the availability of funds and selection criteria in formats and forums appropriate to potential applicants. The state is deficient if it does not select projects using a fair and open competitive process that provides for fair consideration of Section 5317 projects throughout the state and by all eligible applicants. The state is deficient if it did not publish a list of selected projects following the competitive selection process (***DEFICIENCY CODE****:* Selection process issues)

The state is deficient if it has not established technical capacity criteria or does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (***DEFICIENCY CODE****:* Lacking criteria for oversight of technical capacity)

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

SUGGESTED CORRECTIVE ACTION

Direct the state to revise its Section 5317 eligibility requirements in its state management plan and other pertinent documents, such as the grant application, to be consistent with, or more restrictive than, FTA's requirements. Direct the state to obtain public comment on the revised state management plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that reflect the revised eligibility requirements, evidence that public comment, if applicable, was solicited for the revised state management plan, and evidence that the revised eligibility requirements were used in its next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan with procedures for publicly advertising the availability of funds and selection criteria in formats and forums appropriate to potential Section 5317 applicants. Direct the state to submit to the FTA regional office copies of public advertisements for the next application cycle.

Direct the state to revise its state management plan and other pertinent documents, such as the grant application, to incorporate a fair and open competitive process that provides for fair consideration of Section 5317 projects by all eligible applicants. Direct the state to obtain public comment on the revised state management plan, if applicable. Direct the state to submit to the FTA regional office a revised state management plan that documents the new process, evidence that public comment, if applicable, was solicited, and evidence that it was implemented in the next application cycle.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for publishing a list of selected Section 5317 projects following the competitive selection process and to submit the published list after the next application cycle.

Direct the state to revise the state management plan and other pertinent documents, such as the grant application, to incorporate technical capacity criteria and procedures for ensuring applicants and subrecipients have the technical capacity to carry out projects. Direct the state to solicit public comment on the revised plan, if applicable. Direct the state to submit to the FTA regional office the revised state management plan and other pertinent documents that incorporate the technical capacity requirements and evidence that public comment, if applicable, was solicited for the revised state management plan.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that services provided are eligible for Section 5317 funding.

Section 5309 - Capital Program

25. *Does the service supported with FTA Section 5309 assistance meet the definition of "public transportation?" Are ineligible activities incidental to the delivery of public transportation?*

EXPLANATION

FTA defines public transportation as transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include sightseeing, school bus, charter or intercity bus transportation or intercity passenger and intercity rail transportation provided by AMTRAK.

Intercity bus services are eligible under Section 5311(f) and intercity bus stations and terminals are eligible under Section 5309 as part of a joint development project. States need to ensure that service supported with Section 5309 funded equipment and facilities meets the definition of public transportation. A grantee may use FTA funded equipment and facilities to support incidental activities that do not detract from the provision of public transportation.

REFERENCE

49 USC 5302(a)(10)
FTA C 9300.1B, Ch. I, Section 5 and Ch. III, Section 4
FTA C 9040.1F Ch. VIII

SOURCES OF INFORMATION

Review the state management plans for discussions of eligible projects. Discuss on site.

DETERMINATION

The state is deficient if it does not ensure that service supported with Section 5309 assistance is eligible under the program. (***DEFICIENCY CODE**:* Ineligible services)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office implemented procedures to ensure that service supported with Section 5309 assistance is eligible under the program.

Direct the state to provided evidence to the FTA regional office that it has lifted restrictions on access to public transportation service.

26. *How does the state ensure that Section 5309 subrecipients have the technical capacity to carry out the proposed project?*

EXPLANATION

A state with Section 5309 subrecipients must ensure that the subrecipients have the technical capacity to implement the project. Technical capacity involves the capability of the grant applicant to properly carry out the project and manage FTA grants in accordance with the grant agreement and with all applicable laws and regulations using sound management practices. Expectations are for the grantee to:

17. Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program
18. Provide administrative and management support of project implementation
19. Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress
20. Ensure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards
21. Maintain the project work schedule agreed to by FTA and the grantee and monitor grant activities to assure that schedules are met and other performance goals are achieved
22. Keep expenditures within the latest approved project budget
23. Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements
24. Request Federal funds for eligible activities only in amounts and at times as needed to make payments and retain receipts to substantiate withdrawals
25. Account for project property
26. Demonstrate and retain satisfactory continuing control over the use of project property
27. Demonstrate procedures for asset management and adequate maintenance of equipment and facilities
28. Ensure that an annual independent organizationwide audit is conducted in accordance with Office of Management and Budget (OMB) Circular, A–133, “Audits of States, Local Governments, and Non-Profit Organizations”
29. Prepare force account and cost allocation plans and submit and obtain approval if applicable before incurring costs
30. Prepare and submit FTA required reports
31. Update and retain FTA required reports and records for availability during audits or oversight reviews
32. Ensure that effective control and accountability are maintained for all grants and subgrants, cash, real and personal property, and other assets. Grantees and subgrantees must ensure that resources are properly used and safeguarded, and used solely for authorized purposes.

REFERENCE

Master Agreement Section 2.e
FTA C 5010.1D, Ch. II, Section 3
FTA C 9300.1B, Ch. II, Section 9

SOURCES OF INFORMATION
Review the subrecipient application and agreement for technical capacity requirements. Review oversight procedures. Discuss on site with the state.

DETERMINATION
The state is deficient it does not ensure that applicants/subrecipients have the technical capacity to carry out the project. (***DEFICIENCY CODE:*** Lacking criteria for oversight of technical capacity)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures for ensuring that Section 5309 subrecipients have technical capacity.

Part C: Intercity Bus

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

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

REFERENCE
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION
Review the state management plan for discussion of the state's intercity bus program. Review the Section 5311 programs of projects in TEAM-Web for the last three years to determine the amount and percentage of funds the state has programmed for its intercity bus program. Complete Exhibit 0.8 (Intercity Bus Expenditures) of the *Review Preparation* section. To determine the percentage, compare the amount programmed for intercity bus projects to the annual apportionment, not the total amount of the grant.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

28. *If the state has programmed less than 15 percent on intercity bus projects, has the governor certified that intercity bus service needs are adequately met in relation to other rural transportation needs?*

If yes, did the state consult with intercity bus providers before the governor certified? Does the consultative process meet minimum requirements? Is there a direct correlation between the results of the consultative process and a determination that the state's intercity needs are adequately met?

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

A state may have obligated and assigned funds to intercity bus projects in prior years or reserved funds for intercity bus projects not yet selected. Note that amounts reserved (Category C funds) cannot exceed 10 percent of the apportionment (see *Grant Administration*). A state may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either case, if the funds committed or reserved for intercity bus projects are later determined to not be needed for intercity bus service, the state may submit a retroactive certification within the period of availability of funds. This action will permit the use of the prior year funds for other nonurbanized transit projects.

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

- Identify intercity bus providers in the state

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

The state management plan must document the consultative process. FTA C 9040.1F, Ch. VIII provides additional guidance on the elements of the consultative process.

REFERENCE
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION
Review the governor's certification on file with the regional office. Review the Section 5311 state management plan for documentation of the state's consultative process. On site, review documentation of the consultative process and other documentation supporting the certification. Review any statewide assessment of intercity bus needs. Ensure that certifications occurred within the period of availability of funds. Discuss with the state and review documentation related to the consultative process.

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

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

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

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

29. *What activities is the state pursuing to support intercity bus service in rural areas? Are these activities eligible?*

EXPLANATION
Assistance under Section 5311(f) must support intercity bus service in rural areas. FTA C 9040.1F defines intercity bus service as regularly scheduled bus service for the general public that:

- Operates with limited stops over fixed routes connecting two or more "urban areas" not in close proximity; **and**
- Has the capacity for transporting baggage carried by passengers; **and**
- Makes meaningful connections with scheduled intercity bus service to more distant points, if such service is available.

"Urban area" is defined broadly as an area that includes a municipality or other built-up place that is appropriate for a local public transportation system to serve individuals in the locality.

Commuter service and service which provides extensive circulation within a region are eligible for Section 5311 assistance but cannot be counted toward the required percentage for intercity bus service. Intercity bus does not include air, water, and rail service.

The statute identifies eligible intercity bus activities, including:

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

Other capital and operating projects supporting rural intercity bus service are also permitted, such as operating assistance for the direct operation of intercity service and capital assistance to purchase vehicles or vehicle related equipment such as wheelchair lifts for use in intercity service. Use of Section 5311(f) funds for capital projects in urbanized areas is limited to those aspects of the project that can be identified as directly benefiting and supporting service to and from nonurbanized areas.

Service that acts as a feeder to intercity bus service and makes meaningful connections with scheduled

intercity bus service to more distant points is eligible. Service that only incidentally stops at an intercity bus facility without regard to scheduled connections is not considered feeder service. The feeder service is not required to have the same characteristics as the intercity bus service to which it connects. For example, it can be demand responsive. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service.

REFERENCE

FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

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

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

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

2. GRANT ADMINISTRATION

BASIC REQUIREMENT

The state must track and report on the progress of projects, report to the National Transit Database, expend grant funds on time, and close out projects and grants when project activity is completed.

AREAS TO BE EXAMINED

1. ***Program of Projects Development***
2. ***Reporting***
3. ***National Transit Database***
4. ***Category C Funds***
5. ***ARRA Grant Budget Revisions***
6. ***Grant Administration***

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. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
4. Office of Management and Budget Open Government Directive - Federal Spending Transparency
5. FTA Master Agreement
6. FTA C 5010.1D, "Grant Management Requirements"
7. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
8. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
9. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
10. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
11. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"
12. 49 CFR Part 630, "Uniform System of Accounts and Records Reporting System"
13. *National Transit Database Reporting Manual (www.ntdprogram.gov)*
14. FTA C 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
15. FTA ARRA Webpage

USEFUL WEBLINKS

SF-425

FFR Instruction Guide for Grantees

Federal Funding Accountability and Transparency Act Subaward Reporting System

www.USASpending.gov/news

Recovery.gov

FTA ARRA Budget Revision Policy

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for development of the annual program of projects? Does the state look to available funds in existing grants before applying for new funds? Does the state take into account the status of current projects before awarding a subrecipient a grant for a new project?*

EXPLANATION

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

The program of projects identifies the subrecipients and projects for which the state is applying for financial assistance. FTA expects projects to be completed within a reasonable, specified time. Section 5310, 5311, 5316 and 5317 programs of projects should be implemented within two to three years of grant approval. Section 5311 projects should not extend for more than two years. The state may seek exceptions from the regional office for proposed projects that may exceed two years. FTA may terminate and close out grants not implemented within two years and deobligate the funds.

FTA funds are available to the state during the period of availability of the funds. Therefore, states need not apply for all its funds the year the funds are apportioned. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds	
5305	Year of apportionment plus 3
5309 fixed guideway modernization	Year of apportionment plus 3
5309 discretionary	Year of apportionment or allocation plus 2
5310	Year of apportionment plus 2
5311	Year of apportionment plus 2
5316	Year of apportionment plus 2
5317	Year of apportionment plus 2

REFERENCE

FTA C 9040.1F, Ch. IV, Section 5
FTA C 9070.1F, Ch. III, Section 3
FTA C 9050.1, Ch. IV, Section 6
FTA C 9045.1, Ch. IV, Section 6
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

SOURCES OF INFORMATION

Before the desk review, complete the Grant Analysis worksheet in the *Review Preparation* section. Before the site visit, review the state management plans and other policies and procedures for development of annual programs of projects. On site, discuss the procedures with the state.

DETERMINATION

The answers to these questions and to questions 9 and 10 provide the basis for making a determination. The state is deficient if it is not closing out completed projects and reprogramming unused balances, as applicable, to other projects timely. (***DEFICIENCY CODE**:* Not using oldest funds first)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for tracking and reprogramming available funds in existing grants to projects timely.

2. *What are the state's procedures for ensuring that progress reports (MPRs) are completed as required?*

What are the state's procedures for obtaining and validating project information for state and subrecipient managed projects for inclusion in progress reports?

Are all applicable progress reports (MPRs) submitted for each open grant at required intervals and on time?

EXPLANATION

The state is responsible for administration of grants in compliance with the grant agreement and other incorporated documents, including statutes, regulations, the Master Agreement and FTA circulars. There should be clear lines of authority and responsibility for grant administration and for preparing required progress reports, which are the primary written communication between states and

FTA. The state should have procedures for obtaining and validating project information.

A progress report for each open Section 5305, 5310 and 5311 grant is due by October 31. For Section 5316 and 5317 grants, progress reports are due annually by October 31 for small urbanized and nonurbanized grant funds and quarterly for large urbanized areas (populations of 200,000 or more). Quarterly reports are due no later than 30 days after the end of each Federal fiscal quarter. Progress reports for ARRA grants are due quarterly. Reports are due even when there is no grant activity. FTA, at its discretion, can require quarterly reporting for grants that would otherwise be due annually. Reports should be submitted electronically using TEAM-Web.

Section 5305 progress reports should discuss the information detailed in the Common Rule (49 CFR Part 18) and 5010.1D.

Section 5310, 5311, 5316 and 5317 progress reports must include:

a) Updated programs of projects that contains active projects reflecting revised project descriptions, changes in projects from one category to another and adjustments within budget categories

b) Revised milestones for activity line items (ALIs) that require milestones with grant submission (vehicle procurements, construction projects and program reserve) and, for revised estimated completion dates, an explanation for the revision

c) Budget revisions for changes in line item budgets

d) Significant civil rights compliance issues

e) Additional information requested by the regional office

Section 5309 progress reports for projects in non-urbanized and small urbanized areas (populations less than 200,000) are submitted 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. For Section 5309 grants that include facility construction projects, the reports are due quarterly. Progress reports for Section 5309 grants for projects in large urbanized areas are submitted quarterly, no later than 30 days after the end of each Federal fiscal quarter. Reports are due even when there is no grant activity. Reports should be submitted electronically using TEAM-Web. The Common Rule 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.

REFERENCE

49 CFR 18.40
FTA C 9040.1F, Ch. VI, Section 12
FTA C 9070.1F, Ch. VI, Section 17
FTC C 9050.1, Ch. VI, Section 16
FTA C 9045.1, Ch. VI, Section 16
FTA C 8100.1C, Ch. II, Section 7.d(6)
FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION

Before the desk review, review progress reports in TEAM-Web. During the desk review, ask regional office staff if reports have been submitted on time and include all of the required information. Ask if the regional office has required additional information to be reported. Review any correspondence from FTA to the state regarding reports. Discuss the reports with the state during the site visit.

DETERMINATION

The state is deficient if it has not submitted progress reports for each active grant, submits reports late or does not report required information. (***DEFICIENCY CODE****:* Late/incomplete progress reports)

The state is deficient if it has not submitted progress reports for each active ARRA grant, submits ARRA reports late or does not report required information. (***DEFICIENCY CODE****:* ARRA reports late/incomplete progress reports)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has submitted the delinquent progress report(s) for the most recent reporting period. For Section 5310, 5311, 5316 and 5317 grants, direct the state to submit to the FTA regional office an updated state management plan with procedures for submitting progress reports on time. For Section 5305, 5309, and ARRA grants, direct the state to submit to the FTA regional office procedures for submitting progress reports on time.

Direct the state to submit revised progress reports that include missing information. For Section 5310, 5311, 5316 and 5317 grants, submit to the FTA regional office an updated state management plan with procedures for including all required information, including the missing information, in future progress reports. For Section 5305, 5309, and ARRA grants, submit to the FTA regional office procedures for including all required information, including the missing information, in future progress reports.

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

Is the form completed correctly for the following items:

a. *Are Federal cash receipts and cash disbursements reported? If a positive balance of Federal cash is on hand at the end of the reporting period, is the amount reported and an explanation included in the remarks section?*

b. *How are unliquidated obligations calculated? Are they reported correctly?*

c. *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 cost allocation plan or indirect cost proposal?*

d. *Does the state certify that the information is true, complete and accurate to the best of its knowledge under the remarks and certification tab? Who certifies on behalf of the grantee?*

e. *Did the state respond to any comments made by FTA regarding a report?*

EXPLANATION

The FFR reports on the use of project funds using the standard Office of Management Budget (OMB) form. FFRs are submitted on the same schedule as progress reports for each open Section 5305, 5309, 5310, 5311, 5316, 5317 and ARRA grant. Reports should be submitted electronically using TEAM-Web.

a. **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 disbursements** (line C) are the cumulative amount of FTA funds disbursed. **Federal cash on hand at the end of period** (line D) is the amount of Federal cash receipts not disbursed at the end of the reporting period. The cash on hand amount should reflect immediate cash needs. 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. FTA may assess interest charges for excess cash held for more than three business days. Beginning with the third quarter reports due July 2010, grantees must report Federal cash information.

b. **Unliquidated obligations** (lines l through k) 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.

c. **Indirect expense** provides information on indirect expenses charged to a grant. The information includes 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, total cumulative indirect expenses charged to the grant, and the Federal share of cumulative indirect expenses charged to the grant.

d. The state must certify in the remarks and certification tab of the FFR in TEAM-Web that the information submitted to FTA is true, complete, and accurate to the best of its knowledge.

e. The state must respond to any FTA comments regarding an FFR.

REFERENCE

49 CFR 18.41
SF-425, Federal Financial Report
FFR Instruction Guide for Grantees

SOURCES OF INFORMATION

Before the desk review, review FFRs in TEAM-Web to see if they are submitted on time at the required intervals. Check to see if Federal cash receipts, Federal cash disbursements, Federal cash on hand, unliquidated obligations, indirect expense, and program income entries are reported. If cash on hand is reported, check to see if an adequate explanation is provided in the remarks and certification tab. If unliquidated obligations are not reported, review progress reports to determine if they should be. See if the grantee responded to FTA remarks. During the desk review, discuss the reports with the regional office. On site, follow up with the grantee regarding how it defines unliquidated obligations. If the grantee charges indirect costs to grants, verify that the rates and amounts have been entered into the FFR.

DETERMINATION

The state is deficient if it is not submitting FFRs for each open grant or is not submitting the reports on time at the intervals required. (***DEFICIENCY CODE***: Late FFRs)

The state is deficient if it is not submitting FFRs for each open ARRA grant or is not submitting the reports on time at the intervals required. (***DEFICIENCY CODE***: ARRA FFRs late)

The state is deficient if it is not reporting cash information or if there is an unexplained balance. The state is deficient if it is not reporting unliquidated obligations correctly. The state is deficient if it does not report indirect expense information. The state is deficient if it does not certify that the information submitted to FTA is true, complete, and accurate to the best of its knowledge. The state is deficient if it does not respond to FTA comments. (***DEFICIENCY CODE****:* Incorrect FFR reporting)

The state is deficient if is not reporting ARRA FFRs with correct and complete information. (***DEFICIENCY CODE****:* ARRA FFRs incorrect)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has submitted the delinquent report(s) for the most recent reporting period. For Section 5310, 5311, 5316 and 5317 grants, direct the state to submit to the FTA regional office an updated state management plan that includes procedures for submitting reports on time. For Section 5305, 5309, and ARRA grants, direct the state to submit to the FTA regional office procedures for submitting reports on time.

Direct the state to submit revised reports that include missing information. For Section 5310, 5311, 5316 and 5317 grants, submit to the FTA regional office an updated state management plan that includes procedures for including all required information, including the missing information, in future reports. For Section 5305, 5309, and ARRA grants, submit to the FTA regional office procedures for including all required information, including the missing information, in future reports.

4. *What are the procedures for coordinating the development of and reconciling the data in progress reports (MPRs) and FFRs?*

EXPLANATION

In many states, program managers prepare progress reports while financial personnel, either inside or outside the transit unit, prepare FFRs. FTA has found frequent instances of data in the progress reports not being reflected in FFRs and vice versa. For example, a progress report may indicate that the state has awarded a construction contract but the FFR does not report unliquidated obligations.

REFERENCE

49 CFR 18.40
49 CFR 18.41
FTA C 9040.1F, Ch. VI, Section 12
FTA C 9070.1F, Ch. VI, Section 17
FTC C 9050.1, Ch. VI, Section 16
FTA C 9045.1, Ch. VI, Section 16
FTA C 8100.1C, Ch. II, Section 7.d(6)
FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION

Before the desk review, examine progress reports and FFRs in TEAM-Web to see if the data reported agree. During the desk review, discuss with the regional office. Discuss on site.

DETERMINATION

The state is deficient if the data in progress reports is not reflected in FFRs and vice versa. (***DEFICIENCY CODE***: Data in progress reports and FFRs do not agree)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit revised reports that include corrected information. For Section 5310, 5311, 5316 and 5317 grants, direct the state to submit to the FTA regional office an updated state management plan that includes procedures for reconciling progress reports and FFRs before submitting them to FTA. For Section 5305, 5309, and ARRA grants, direct the state to submit to the FTA regional office procedures for reconciling progress reports and FFRs before submitting them to FTA.

5. *For grants received after October 1, 2010, did the state report sub-awards by the end of the month following the month it made the sub-award in accordance with the Federal Funding Accountability and Transparency Act of 2006 (FFATA)?*

EXPLANATION

All direct recipients of FTA grants, grant amendments and cooperative agreements over $25,000 awarded 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 sub-award information to the Federal Funding Accountability and Transparency Act Sub-award Reporting System (FSRS) at www.FSRS.gov by the end of the month, after the month in which they make any sub-award 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 Central Contractor Registration (CCR). For a direct recipient to report on a subrecipient, the subrecipient must also have DUNS but are not required to register in CCR.

Grantees must report the information about each first tier sub-award 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 sub-award 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 sub-award into FSRS. Once the grantee submits an initial report, it can revise it later to add additional sub-awards as they are made, or to change data previously submitted to reflect adjustments in sub-awards.

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 sub-awards after the information is downloaded to FSRS. The new 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 sub-award 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.

REFERENCE

P.L. 109-282 Federal Funding 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. Review programs of projects in TEAM-Web. Search www.fsrs.gov for the date that the grantee filed its report for a sample of subrecipients. On site, discuss with the state.

DETERMINATION

The state is deficient if it has not reported sub-awards over $25,000 from grants or grant amendments awarded by FTA after October 1, 2010. The state is deficient if it has not reported sub-awards on time. (**DEFICIENCY CODE**: FFATA reporting deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to notify the FTA regional office when it has reported sub-awards to FSRS.

For Section 5310, 5311, 5316 and 5317 grants, submit to the FTA regional office an updated state management plan that includes procedures for reporting future sub-awards.

For Section 5305, 5309, and ARRA grants, direct the state to submit to the FTA regional office procedures for reporting sub-awards to FSRS by the end of the month following the sub-award.

6. *Did the state submit its NTD reports for each of the past three years?*

EXPLANATION

All grantees that receive Section 5311 grant funds are required to file annual reports using the NTD Internet Reporting System. This requirement also applies to recipients of Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Surface Transportation Program (STP) funds that are "flexed" into the 5311 program.

The report due date is tied to the grantee's fiscal year. NTD reports are typically due as follows:

Fiscal Year End Date (Between)	NTD Report Due Date
January 1 and June 30	October 31
July 1 and September 30	January 31
October 1 and December 30	April 30

Note that the reporting deadline for the rural module was extended to November 30, 2011, for the 2011 report year.

REFERENCE

49 USC 5335 (a)
49 CFR Part 630
NTD Reporting Manual

SOURCES OF INFORMATION

Obtain a copy of the NTD close-out letter for the three most recent years. Information on reporting compliance may also be obtained from the NTD Program office at FTA Headquarters.

DETERMINATION

The state is deficient if it has not filed reports. (***DEFICIENCY CODE:*** Annual NTD report not submitted)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit a report for the current fiscal year by the required due date and to notify the FTA regional office when the submission is made. Direct the grantee to update its state management plan with a procedure to ensure that future reports are submitted on time.

7. *Have all Category C funds been allocated to specific projects within 12 months? Have funds not allocated within 12 months been allocated within the period of availability (the year of apportionment plus two)? Have funds not obligated within the period of availability been deobligated?*

EXPLANATION

Category C represents a "program reserve" unique to the Section 5310 and 5311 programs. It is designed to allow the state to obligate its entire apportionment in one grant, even if the funds are not completely programmed. The state should not use Category C funds for project contingencies which should be programmed in Category A or B. Category C funds may, however, supplement previously identified projects where original cost estimates were inadequate. Once funds have been programmed in Category A or B, they should not be reprogrammed as Category C.

The state may not include more than 10 percent of the total amount it obligates in the Section 5310 or 5311 grant in Category C.

FTA expects the state to allocate all funds in Category C to either new approvable projects or to budget adjustments in existing Category A and B projects within 12 months of grant approval. If the state does not expect to program the funds within that time period, obligation should be deferred until the following year. If Category C funds are not allocated within the period of availability (the year of apportionment plus two years), FTA will deobligate and redistribute the funds to all states.

REFERENCE

FTA C 9040.1F, Ch. IV, Section 5.a
FTA C 9070.1F, Ch. IV, Section 4

SOURCES OF INFORMATION

Examine Section 5310 and 5311 grants in TEAM-Web. Ensure that amounts in Category C do not exceed 10 percent of the grant. Discuss with regional office staff the state's allocation of Category C funds to projects within the period of availability and any funds deobligated. On site, review any balances in Category C with staff and discuss when the funds will be assigned to projects and moved to Category A or B.

DETERMINATION

The state is deficient if it has not allocated Category C funds within the period of availability. (***DEFICIENCY CODE**:* Lapsed Category C funds)

SUGGESTED CORRECTIVE ACTION

The regional office will de-obligate Category C funds that have not been allocated to projects within the period of availability.

For Category C funds approaching the end of the period of availability, direct the state to identify existing or new projects and allocate the funds to these projects.

Direct a state that has incorrectly put funds from approved projects into Category C to revise the grant budget and program of projects to remove the funds from Category C.

Direct the state to submit to the FTA regional office a revised state management plan that includes procedures for allocating Category C funds to projects within the period of availability.

8. *If an ARRA grant budget has been revised, did the revision comply with FTA's ARRA budget revision procedure?*

EXPLANATION

FTA allows budget revisions to ARRA grants if the budget revision is consistent with FTA criteria described in FTA Circular 5010.1D and if the following two conditions are met:

- The purpose of the proposed budget revision is to realign the ARRA grant funds within existing scopes in the grant so that they can be fully expended by September 30, 2013
- The grantee can document that funds are redirected from grant activities that cannot be fully expended by September 30, 2013

If a grantee wants to submit an ARRA budget revision requiring prior FTA approval for consideration, it should first contact its regional office before entering the request in TEAM-Web and before incurring any costs for the proposed new use of the funds. The regional office representative will walk through the request with the grantee and explain the documentation requirements to help determine if the request should be submitted in TEAM-Web and to FTA Headquarters for approval.

REFERENCE
FTA ARRA Budget Revision Policy

SOURCES OF INFORMATION
Before the desk review, look in TEAM-Web to see if the state has open ARRA 5311 grants. If so, discuss the issue with the regional office during the desk review. If necessary, follow up with the state during the site visit.

DETERMINATION
The grantee is deficient if it did not follow the rules for revising an ARRA grant. (***DEFICIENCY CODE***: Ineligible ARRA grant budget revision)

CORRECTIVE ACTION
Direct the state to work with the regional office to ensure that budget revisions are done in accordance with FTA requirements.

9. *What procedures are followed to ensure that projects are completed and grants closed on time? What is the status of all open grants? Are any grants ready for closeout?*

10. *Does the state close out projects with subrecipients within 90 days of completion of project activity? Does the state initiate grant close out with FTA within 90 days of completion of all activity in the program of projects?*

EXPLANATION
FTA expects projects to be completed within a reasonable, specified time. Section 5310, 5311, 5316, and 5317 programs of projects should be implemented within two to three years of grant approval. For Section 5311 grants, the state should generally not program projects that will extend for more than two years. The state may seek exceptions from the regional office for proposed projects that may exceed two years. FTA may terminate and close out grants not implemented within two years and deobligate the funds.

For Section 5305 and 5309 projects, a good "rule of thumb" is to complete the project within the period of availability of funds. For large, complicated construction or technology projects, completing the project and closing the grant within the period of availability of funds may not be feasible. Funds deobligated within the period of availability are available for re-obligation to a new grant.

Sometimes projects may not require the amount of funds originally requested and obligated by the state and therefore funds may remain after the project is completed. The state may reprogram remaining funds to other projects; however, it should not excessively prolong the life of the grant.

The state must close out projects within 90 days of completion of project activities. Frequently, states allow small balances in completed projects to delay project closeout. The state should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects. Some states actively track remaining funds and reprogram them for other projects. Some states have established minimum thresholds for reprogramming funds and will close out a grant with balances below the threshold rather than reprogram the funds. States should close out grants within 90 days of completion of program activity.

Examples of good grant management practices include:

- 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, not directly to grants
- Set project time limits (less than 2 years)
- Use available funding in open grants before including projects in a new grant
- Move delayed projects to newer grants and active projects to older grants
- Transfer small remaining balances to new line items
- Deobligate project balances and reapply for funds (if within period of availability and allowed by the regional office)
- Regularly reconcile grant balances with those in TEAM-Web to the FPC level
- 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 is placing a priority on closing out grants for which activity has ceased. Grants that have been inactive for a substantial length of time also should be

closed unless the state 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 state 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 state'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.

REFERENCE

49 CFR 18.50
FTA C 5010.1D, Ch. III, Sections 4 and 5
FTA C 9040.1F, Ch. III, Section 1(c), Ch. IV, Section 5 and Ch. VI, Section 8
FTA C 9070.1F, Ch. III, Section 3, Ch. IV Section 6 and Ch. VI, Section 13
FTA C 9050.1, Ch. III, Section 7 and Ch. VI, Section 12
FTA C 9045.1, Ch. III, Section 7 and Ch. VI, Section 12

SOURCES OF INFORMATION

Before the desk review, complete the Grant Analysis worksheet in the *Review Preparation* section. For on-going expenses such as state administration and RTAP funds, determine whether the state draws from the oldest funds first. Identify grants that are old, have small balances remaining, or have not had recent disbursement activity. Review progress reports and other correspondence to identify major delays in projects. During the desk review, discuss the status of grants with regional office staff.

Before the site visit, review the state management plans and other policies and procedures for grant administration and closeout procedures. Review subrecipient agreements for time limits on grant projects. Obtain from the state 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 closeout dates. Have the state 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. Refer to the discussion associated with Question 1 of this section.

DETERMINATION

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

SUGGESTED CORRECTIVE ACTION

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

Direct the state 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.

Direct the state to submit to the FTA regional office documentation to reprogram funds to projects which can be completed in a reasonable time and a timetable for grant completion and closeout if the funds are within the scope of the project.

3. PROJECT MANAGEMENT

BASIC REQUIREMENT

The state 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.

AREAS TO BE EXAMINED

1. ***Technical Oversight of Capital Projects***

2. ***Force Account Activities***

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. 49 CFR 633, "Project Management Oversight"

4. Federal Register: January 8, 2001 (Volume 66, No. 5, pp. 1455-1459) "FTA National Architecture Policy on Transit Projects"

5. FTA Master Agreement

6. FTA C 5010.1D, "Grant Management Requirements"

7. FTA C 5800.1, "Safety and Security Management Guidance for Major Capital Projects"

8. ARRA Questions and Answers

9. OMB Accelerated Spending Memo

10. ARRA Post-Award/Closeout/Oversight

USEFUL WEBLINKS

Construction Project Management Handbook

Quality Assurance and Quality Control Guidelines

Handbook for Purchasing a Small Transit Vehicle

QUESTIONS FOR THE REVIEW

1. *Provide a brief description of state-managed and subrecipient-managed capital projects initiated or completed since the last review.*

2. *Provide a brief description of capital projects underway.*

3. *Provide a brief description of capital projects planned for the next three to five years.*

4. *Identify which, if any, of the above projects utilized FTA ARRA funds.*

5. *For planned projects, has the state implemented a similar project in the past three years? If no, how does the state plan to maintain or increase its technical capacity to ensure project implementation?*

6. *What are the state's procedures for providing technical oversight of directly managed projects? What are the state's procedures for overseeing projects managed by subrecipients?*

7. *Are projects on schedule and on budget? If not, why not? What are the recovery plans for the schedules and budgets?*

EXPLANATION

The state must ensure continuous management of grant projects.

States contracting directly for facility construction or rehabilitation must provide technical oversight of the project. Regular meetings between the project manager and contractor(s) should be held to review project status. States may use internal staff, such as an engineering or construction group, to oversee construction projects. States that do not have the technical expertise or internal resources to manage large projects may hire an architectural/engineering (A&E) consultant to serve as project manager. Even when not required, some states have project management plans.

The state is responsible for monitoring subrecipients' facility construction and rehabilitation projects. Monitoring mechanisms may include:

- Contracting a consultant to provide project management oversight
- Reviewing the request for proposals and construction contracts
- Reviewing architectural plans and drawings
- Conducting periodic site inspections
- Requiring special progress reports
- Conducting regular project management meetings
- Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the state

States buying revenue rolling stock directly must provide for technical oversight of the procurement. When subrecipients buy buses directly, the state must monitor the procurement.

States must provide technical oversight of technology projects implemented by itself or subrecipients. A state's information technology (IT) department may oversee technology projects, sometimes with consultant support.

For procurements for the state-managed programs, the state should document its procedures for administering construction projects, bus procurements and other capital projects in the state management plans.

REFERENCE

49 CFR 18.40
49 CFR Part 633
FTA C 5010.1D, Ch. II, Section 3
FTA C 5800.1

SOURCES OF INFORMATION

Before the desk review, review progress reports for discussions ongoing projects and any project delays. During the desk review, discuss project delays and project management concerns with the regional office.

Before the site visit, review the state management plan(s) and the subrecipient agreement(s) for a discussion of procedures for administering and monitoring construction projects, bus procurements, and other capital projects. Review project management plans and quality control procedures, if written.

During the site visit, discuss the state's quality control procedures for construction projects, revenue rolling stock procurements, and technology projects. If the state contracts for such services, review the scope of services of these contracts along with progress reports from the contractors. Discuss the resources the state dedicates or plans to dedicate to project management.

When delays are due to poor performance by contractors, examine how the state managed the delay and tried to improve performance by the contractor. 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.

Understand the state's process and division of responsibilities for bus procurements. Specifically, ascertain where responsibility lies for:

- Developing bid specifications
- Establishing solicitation/contract terms and conditions
- Soliciting and receiving bids or proposals
- Evaluating responses, determining responsiveness and selecting a contractor
- Conducting pre-award audits for compliance with Buy America, Federal Motor Vehicle Safety Standards (FMVSS), and purchaser's requirements
- Executing a contract
- Receiving, inspecting and accepting revenue rolling stock
- Conducting post-delivery audits for compliance with Buy America, FMVSS, and purchaser's requirements
- Paying the vendor

DETERMINATION

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

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

SUGGESTED CORRECTIVE ACTION

For projects funded with Section 5310, 5311, 5316 or 5317 assistance, direct the state to submit to the FTA regional office a revised state management plan that includes project management procedures for existing or future projects to address deficiencies identified.

For projects funded with Section 5309 assistance, direct the state to submit to the FTA regional office project management procedures for existing or future projects to address deficiencies identified.

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

8. *What is the state doing to ensure that all ARRA funds are expended by September 30, 2015? Are any projects at risk of not being completed on time? If so, please list and discuss the reasons for project delays.*

EXPLANATION

On September 15, 2011, the Office of Management and Budget (OMB) issued a memorandum on accelerating the spending of ARRA funds. This memorandum noted that ARRA funds should be expended expeditiously and that unexpended funds could be subject to reclamation by Federal agencies.

ARRA funds are available through September 30, 2015, to be disbursed (drawn down) for grant expenses, after which time any remaining balance in the grant will be canceled.

REFERENCE

OMB Accelerated Spending Memo
ARRA Questions and Answers
ARRA Post-Award/Closeout/Oversight

SOURCES OF INFORMATION

Refer to progress and financial reports for the status and schedule of ARRA projects. During the desk review, discuss with the regional office. Discuss on site.

DETERMINATION

The state is deficient if current information demonstrates that any ARRA funds will not be disbursed by September 30, 2015. (***DEFICIENCY CODE****:* ARRA project delays)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit a plan to the FTA regional office demonstrating that ARRA-funded projects will be completed and funds disbursed by September 30, 2015.

Direct the state to work with the FTA regional office to determine if any ARRA funds will no longer be available for disbursement.

9. *Is the state's or a subrecipient's work force used in the execution of capital grant projects? If yes:*

a. If the force account work equals $10,000,000 or more, was a force account plan and justification submitted to FTA?

b. Is a plan on file for force account work of $100,000 or more but less than $10,000,000?

EXPLANATION

Work performed by the grantee's work force on capital projects, other than grant administration, that is included in an approved grant is "force account" work. Force account work may consist of design, construction, refurbishment, inspection and construction management activities. 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. When the cost of force account work to be performed equals $10,000,000 or more, prior FTA approval is required. When the cost of force account work to be performed is $100,000 or more but less than $10,000,000, a force account plan is required to be in the grantee's file. Use the full cost of the project, not just labor costs, when determining whether the project meets the threshold for a force account plan. Justification of a force account plan may be on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement.

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.

REFERENCE

FTA Master Agreement, Section 15.h
FTA C 5010.1D, Ch. IV, Section 4.d

SOURCES OF INFORMATION

Review individual grant files at the regional office for force account plans for work that equals $10,000,000 or more. Review force account plans for work below this threshold but equal to or exceeding $100,000 from the state.

DETERMINATION

The state is deficient if it has not submitted for prior FTA approval plans for force account projects that cost $10,000,000 or more. The state is deficient if force account projects costing between $100,000 and $10,000,000 are not supported by a proper force account plan and justification. The state is deficient if subrecipients do not have proper force account plans. (***DEFICIENCY CODE***: Lacking force account plan/justification)

SUGGESTED CORRECTIVE ACTION

Direct the state 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.

Direct the state to obtain and submit to the FTA regional office subrecipients' force account plans.

4. FINANCIAL MANAGEMENT

BASIC REQUIREMENT

The state must demonstrate the ability to match and manage FTA grants and expend FTA funds only on eligible activities.

AREAS TO BE EXAMINED

1. ***Financial Capacity***
2. ***Financial Management***
3. ***Funds Management***
4. ***Audits/Reviews***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. Single Audit Act Amendment of 1996
3. 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
4. 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-Profit Organizations"
5. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"
6. 31 CFR Part 205, "Rules and Procedures for Efficient Federal-State Funds Transfers"
7. 51 CFR 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"
8. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
9. FTA Master Agreement
10. FTA Circular 5010.1D, "Grant Management Requirements"
11. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
12. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
13. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
14. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
15. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"

USEFUL WEB LINKS

Guidance for Transit Financial Plans

Flexible Funds: FHWA and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

ECHO Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

Dear Colleague Letter, C-05-04, June 17, 2004

QUESTIONS FOR THE REVIEW

Part A: Financial Capacity

1. *Does the state have a financial plan for its transit program that covers the next three to five years? For the past three years, what were the amounts and sources of state funds to support transit programs? What are the anticipated amounts and sources for the next three years? If the state does not provide matching funds for transit programs, what is the source of that funding?*

2. *Are there any transit programs or projects that are being delayed due to the lack of local fund availability? If so, what is the plan for mitigating these forecasted funding deficits?*

3. *Is there any pending legislation or "sunset" provision in existing legislation that could affect the sources of state or local funding or financial capacity? If yes, please identify.*

4. *In the next few years, does the state anticipate any significant changes in the levels of local funding for transit, the sources of local funding for transit or the current transit service levels? If yes, please describe.*

EXPLANATION

Annually, the state certifies to FTA (as part of the annual certifications and assurance process) that it (and its subrecipients) has the financial capacity to carry out its proposed program of projects. Most states provide financial assistance to support public transit services. State assistance may provide some or the entire non-Federal match. The sources of state funding may differ for capital and operating assistance programs. Operating assistance may be funded through general revenues. Capital assistance may be funded through bond revenues. FTA does not require a dedicated funding source.

States should develop financial plans on the basis of current and projected capability to maintain and operate current assets and service, and to operate and maintain new assets and service.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves and the present status of depreciation accounts. Multi-year financial plans should indicate adequate revenues to maintain and operate the existing systems and to complete programs 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.

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 state is forecasting new funding sources, strategies for ensuring their availability must be identified.

A state's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one or more of its sources of non-FTA funding is impacted by pending legislation or "sunset" provisions in current legislation.

REFERENCE

FTA Master Agreement, Sections 2 and 5
FTA Circular 5010.1D, Ch. VI, Section 4

SOURCES OF INFORMATION

Review annual audit reports, budgets, local or state legislation, multi-year financial plans, National Transit Database (NTD) reports, A-133 audits and grants analysis. Review the information provided by the state for its description concerning projected grant activity. Review the current year's budget, including capital and operating expenses, and multi-year financial projections for financial condition and capacity. Ask the state about pending legislation or "sunset" provisions in current legislation.

DETERMINATION

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

The state is deficient if it does not have a multi-year financial plan. (***DEFICIENCY CODE*:** No existing financial plan)

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

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

Part B. Financial Management

5. *Are indirect costs of the state agency being charged to FTA grants? If yes,*

- *Does the state have an approved cost allocation plan?*
- *Who is the cognizant Federal agency?*
- *Was the annual cost allocation plan and/or indirect cost rate proposal retained for audit or submitted to the cognizant agency in accordance with the cognizant agency's requirements? What is the status of that submission?*
- *Are indirect costs charged in accordance with the plan?*
- *Are state central services costs included in the indirect cost rate? If yes, is there an approved central services plan and are the rates in the plan consistent with the rates charged to the operating agency and included in the operating agency's indirect cost proposal?*

EXPLANATION
Under Federally funded grant programs, recipients may incur both direct and indirect costs. An approved cost allocation plan is required to support the distribution of indirect costs to the grant program. Cost allocations often are found in state departments of transportation and municipal systems where overhead/ administrative charges are allocated to the transit program.

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 cost allocation plan. Central services plans reflect the cost of certain central services provided by the state, such as motorpools, computer centers, purchasing, accounting, etc., to operating agencies. Each state submits the plan to the Department of Health and Human Services (DHHS) each year for which it claims central services costs under federal awards. Since state-wide central services plans are reviewed and approved by DHHS, the primary responsibility of the SMR reviewer regarding these plans is to ensure that the amounts included in the indirect cost rate proposal accurately reflect the amounts that are included in the central services plan. There is no need for the reviewer to review in detail the central services plan.

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. 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 FTA or the cognizant agency, local-wide cost allocation plans do not have to be submitted for review and approval. However, they must be updated annually and maintained for audit.

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.

FTA requires that a grantee follows the requirements of its cognizant agency. In certain circumstances, FTA reserves the right to review the plan despite the fact that FTA is not the cognizant agency. If FTA is the cognizant agency, then FTA's approval of the initial plan is required and updates are to be submitted to FTA when:

The grantee has made a change in its accounting system, thereby affecting the previously approved

cost allocation plan/indirect cost rate and its basis of application.

- The grantee's proposed cost allocation plan/ 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 cost allocation plan/indirect cost rate proposal methodology.

REFERENCE

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

SOURCES OF INFORMATION

During the desk review, ask the regional office if the state has an approved cost allocation plan or an indirect cost rate proposal. Review grant files and correspondence. Review the A-133 annual audit regarding the proper implementation of a cost allocation plan. Review Federal Financial Reports (FFRs) in TEAM-Web to see if the state reports indirect cost charges to grants. On site, discuss with grantee staff. During the review of ECHO draws, ensure that indirect expenses are charged using the correct rate against the correct base.

DETERMINATION

The state is deficient if it cannot document that it has complied with the indirect cost allocation plan submission and retention requirements of its cognizant agency. The state is deficient if it has not updated the cost allocation plan or indirect cost rate proposal annually. The state is deficient if it has not retained the plan for audit. (Follow-up to single audit deficiencies relating to cost allocation plans is addressed in Review Preparation.) The state is deficient if it is not following the submitted and/or approved rate when drawing funds from FTA. (***DEFICIENCY CODE*:** Cost allocation plan deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide documentation that it has complied with the cost allocation plan submission and retention requirements of its cognizant agency or has submitted a plan to comply with the requirements of its cognizant agency.

Direct the state to update the cost allocation plan annually and retain it for audit.

Direct the state to correctly apply the submitted or approved rate when drawing funds from the FTA.

6. *Are subrecipients charging indirect costs to FTA grants? If yes:*

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

EXPLANATION

States are responsible for oversight of subrecipients' indirect cost allocation plans. This may include, but is not limited to, ensuring that the plan was submitted to a cognizant Federal agency. Where a local government only receives funds as a subrecipient, the primary recipient is responsible for negotiating and/or monitoring the subrecipient's plan. Monitoring can include ensuring that the plan is retained for audit and ensuring that indirect costs are charged at the current rate and against the correct base.

REFERENCE

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

SOURCES OF INFORMATION

Discuss this during the desk review. Review grant files and correspondence. Discuss the state's process for monitoring subrecipients that charge indirect costs to FTA grants. If the plans are on file with the state, review a copy. During the site visit to a subrecipient, determine whether the subrecipient has a cost allocation plan, the plan was approved by a Federal or other agency, and the plan is updated annually and documentation maintained for audit. Discuss the state's process for monitoring subrecipients that charge indirect costs to FTA grants. During the review of ECHO draws, ensure that indirect expenses are charged using the correct rate against the correct base.

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

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office evidence that it follows its financial management oversight procedures.

Direct the state to submit to the FTA regional office a revised state management plan that includes procedures for ensuring that subrecipients that claim indirect costs have and comply with the requirements of their cost allocation plans.

Part C. Funds Management

7. *What are the state's procedures for ensuring that TEAM-Web and state grant balances agree? Are there any discrepancies between TEAM-Web and state grant balances?*

8. *What are the state's procedures for ensuring subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds? Is this documented in the state management plan?*

9. *What are the state's procedures for processing and reviewing subrecipients' reimbursement requests?*

EXPLANATION
The Common Rule requires that the state and its subrecipients have fiscal control and accounting procedures sufficient to:

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

States and subrecipients must be able to trace reimbursements to source documents.

Some states have not effectively tracked grant activity, particularly for older grants. In some cases, a state's grant balances may not reconcile with those in TEAM-Web. Discrepancies in grant balances have delayed grant close outs.

Both the state's program and accounting staff should have TEAM-Web access. Direct access to TEAM-Web may help the state improve the tracking of grant balances. Frequent reconciling of internal grant balances with those in TEAM-Web helps the state identify and address any discrepancies quickly and prevent discrepancies from delaying grant close outs.

The state is responsible for ensuring that subrecipients have adequate financial management systems for expending and accounting for FTA funds properly. The state is not required to monitor the financial management systems of subrecipients that do not receive Federal cash (e.g., subrecipients for which the state procures vehicles). state management plans should include any procedures for management or financial reviews and project monitoring or on-site reviews.

Some states require applicants, especially first-time applicants, to describe their accounting systems or may perform a pre-award review of accounting systems. Other states require subrecipients to maintain separate accounting records for projects. States review financial audits and are required to obtain and review A-133 audits. In addition to an audit, some states require subrecipients to have their auditors certify year-end financial statements or perform a program audit of their transit operations.

The state is required to ensure that subrecipients can trace funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Some states review single audits. Some states require subrecipients to submit supporting documentation periodically. Some states require new and high-risk grantees to submit supporting documentation with every reimbursement request.

REFERENCE
49 CFR 18.20
FTA C 5010.1D, Ch. VI
FTA C 9040.1F, Ch. VII
FTA C 9070.1F, Ch. VII
FTA C 9050.1, Ch. VII
FTA C 9045.1, Ch. VII

SOURCES OF INFORMATION
Before the desk review, complete the Grant Analysis worksheet (Exhibit 0.9) in the *Review Preparation* section and review grant balances. During the desk review, discuss the state's financial management systems and grant accounting with regional office staff. The regional office may know when a grantee's grant balances differ through review of FFRs and

processing of ECHO rejections. Review single audits for findings related to grant accounting. On site, discuss with staff.

Review the state management plan, the state's applications, and monitoring tools, such as a site visit checklist, for discussion of fiscal capability. On site, discuss with staff. During site visits to subrecipients, review the back-up documentation for at least one invoice to the state to ensure that the subrecipient can trace the amounts invoiced to source documents. Review the single audits of the subrecipients to be visited.

DETERMINATION

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

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

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office a plan for reconciling the differences between the balances in TEAM-Web and its accounting system and to identify and correct the procedures that allow differences to develop.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that subrecipients can account for Federal funds.

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that subrecipients can trace funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

Direct the state to submit to the FTA regional office evidence that it follows it financial management oversight procedures.

10. *What is the process for receiving and disbursing FTA funds? Do records support ECHO requests and the disbursement of funds? Are draw requests signed by an authorized official other than the individual who requests the payment? Are funds disbursed within three business days of receipt?*

EXPLANATION

Grantees request Federal funds through the U.S Department of Transportation Electronic Clearinghouse Operation (ECHO-Web). 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 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). 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.

REFERENCE

49 CFR 18.21
FTA Master Agreement, Section 9.b
FTA C 5010.1D, Ch. VI, Section 9
31 CFR Part 205

SOURCES OF INFORMATION

Review a sample of ECHO draws to ensure that documentation supports the draws. Ensure that an authorized official approved the draw and is not the same person who drew the funds. Ensure that the approving official printed on the ECHO payment request form approves the draw or has delegated that authority in writing to the person who approves the draw. Ensure that the purpose of the draw is eligible under the grant. Ensure that funds are 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 or electronic payment initiated 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 annual financial audit to see if there are ECHO process findings.

During subrecipient site visits, review the source documents for a reimbursement request to the state.

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

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

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

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures for documenting ECHO draws. In certain cases, FTA may require the state to submit ECHO requests for prior approval.

Direct the state to work with the FTA regional office to reimburse FTA for funds that were drawn and not eligible.

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

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

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

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

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

Part D. Audits/Reviews

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

EXPLANATION
The state must ensure that subrecipients that expend $500,000 or more in Federal awards in a fiscal year have annual independent audits conducted in accordance with OMB C A-133. Items purchased by the state for a subrecipient count towards a subrecipient's single audit threshold. FTA does not require a single audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the state. The state must ensure that subrecipients resolve audit findings related to the FTA programs within six months of receipt of the audit report.

REFERENCE
Single Audit Act Amendment of 1996
49 CFR 18.26
FTA C 5010.1D, Ch. VI, Section 8
FTA C 9040.1F, Ch. VI, Section 9
FTA C 9070.1F, Ch. VI, Section 14
FTA C 9050.1, Ch. VI, Section 13
FTA C 9045.1,Ch. VI, Section 13
Dear Colleague Letter, C-05-04, June 17, 2004

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

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

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office an updated state management plan with procedures for obtaining and reviewing subrecipients' single audits and monitoring the resolution of audit findings.

12. *Since the last review, have any internal reviews or audits been conducted that included the transit program? If yes, were there any findings related to FTA program requirements? Were these findings resolved?*

EXPLANATION
Some states conduct internal audits and/or reviews. These audits or reviews may address FTA program requirements.

REFERENCE
None

SOURCES OF INFORMATION
Before the site visit, obtain a list of internal audit reports to determine if any of the reports address FTA program requirements. Review reports that address FTA program requirements. During the site visit, discuss specific findings of reports with the internal auditor or staff.

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

SUGGESTED CORRECTIVE ACTION
Direct the state to submit evidence to the FTA regional office of the resolution of open internal review or audit findings. These findings may relate to other sections of the state management review.

5. PROCUREMENT and DBE

BASIC REQUIREMENT

States use their own procurement procedures that reflect applicable state laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law.

Federal funds may not be obligated unless steel, iron and manufactured products used in FTA funded projects are produced in the United States. Grantees must conduct pre-award and post-delivery audits of purchases of revenue rolling stock in order to verify that Buy America provisions, Federal Motor Vehicle Safety Standards and purchaser's requirements are met.

The state must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. States also must create a level playing field on which disadvantaged business enterprises (DBEs) can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

1. ***Policies and procedures***
2. ***Buy America***
3. ***Suspension/Debarment***
4. ***Oversight***
5. ***DBE Program***

COMPLIANCE

If a state fails to comply with FTA procurement requirements, and its own procurement regulations, including in other procurement-related areas such as DBE, Buy America, and lobbying, FTA may decide to not participate in the procurement.

PROCUREMENT REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. Transportation Equity Act for the 21st Century, Public Law No. 105-178
3. 29 CFR Parts 4 and 5, "Labor Standards"
4. 41 CFR Parts 50-201 and 50-206, "Public Contracts and Property Management"
5. 49 CFR Section 18.36, "Procurement"
6. FTA Master Agreement
7. FTA C 4220.1F, "Third-Party Contracting Guidance"
8. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
9. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
10. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
11. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
12. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"
13. FTA C 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"

BUY AMERICA REFERENCES

1. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"
2. 49 CFR Part 661, "Buy America Requirements"
3. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
4. FTA "Dear Colleague" Letter, March 18, 1997
5. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America

Requirements; Amendments to Definitions

6. Federal Register Vol. 72, No. 182, pp. 53688-53698, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule

7. Federal Register Vol. 72, No. 188, pp. 55103-55104, Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction

SUSPENSION/DEBARMENT REFERENCES

1. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"

2. 2 CFR Part 1200, "Nonprocurement Suspension and Debarment"

DBE REFERENCES

1. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

3. Deputy Administrator Letter on TEAM-Web reporting

4. Instructions for uploading programs to TEAM-Web

USEFUL WEB LINKS

FTA's Best Practice Procurement Manual

FTA Procurement Frequently Asked Questions

Bus Testing Website

National RTAP ProcurementPRO

FTA Buy America Home Page

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

U.S. DOT Buy America Webpage

Buying Used Buses

Excluded Parties Listing System

FTA DBE Website

DOT Office of Small and Disadvantaged Business Utilization (OSDBU)

DOT DBE Regulation Questions and Answers

Tips for Goal Setting

List of Transit Vehicle Manufacturers

Sample DBE Program

Note on the Best Practices Procurement Manual – The *Best Practices Procurement Manual* (BPPM) 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 solely 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.

If a grantee fails to comply with procurement requirements, FTA may decide to not participate in the procurement.

OFFICE OF CIVIL RIGHTS DBE TECHNICAL LEAD
DBE Technical Lead
1200 New Jersey Ave., SE
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Washington, DC 20590

QUESTIONS FOR THE REVIEW

Policies and Procedures

1. *What policies and procedures guide FTA funded procurements conducted by the state? How do these procedures ensure full and open competition? How does the state ensure that those procedures are followed?*

What are the state's key procurement requirements for micro-purchases, small purchases, sealed bids (IFBs) and competitive proposals (RFPs)?

Over the past three years, how many single bids or sole source procurements were there?

EXPLANATION

When procuring property and services under a grant, a state may use the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance.

States must conduct procurement transactions in a manner providing full and open competition. States 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.

At a minimum, the state must comply with the federally mandated requirements on contract term limitations for revenue vehicle purchases, competition, prohibitions against geographic preferences, procurement of architectural engineering services, and awards to responsible contractors. The state must also ensure that each purchase order and contract financed with FTA assistance includes all provisions required by Federal statutes and their implementing regulations.

REFERENCE

49 U.S.C. Sections 5325(a) and (h)
FTA C 4220.1F, Ch. II, Sections 2.a(1)(a) and 2(a)(4) and Ch. VI, Section 1
FTA C 9040.1F, Ch. VI, Section 5
FTA C 9070.1F, Ch. VI, Section 9
FTA C 9050.1, Ch. VI, Section 8
FTA C 9045.1, Ch. VI, Section 8
FTA C 9300.1B, Ch. VI Section 17
FTA C 8100.1C, Ch. II, Section 3.b

SOURCES OF INFORMATION

Before the site visit, review the state's written procurement policies, and the list of single and sole source awards. During the site visit, review procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted in accordance with state and FTA procurement requirements. Pay particular attention to the frequency of sole-source, single bid, and "brand name" procurements to determine how and if the state is providing for full and open competition.

DETERMINATION

The state is deficient if it is not following its written procurement procedures, particularly in areas that impact full and open competition. (***DEFICIENCY CODE****:* Procurement procedures not followed)

The state is deficient if it has a pattern or practice of not providing for full and open competition. (***DEFICIENCY CODE****:* Lacking full and open competition for one or more methods of procurement)

SUGGESTED CORRECTIVE ACTION

The state must cease immediately any practice that is in violation of FTA guidelines. Direct the state to provide the FTA regional office with a plan to ensure that existing procurement procedures are followed. Direct the state to provide the FTA regional office revised procurement procedures that ensure full and open competition in all procurement transactions. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

2. *What is the process and horizon for the state's FTA funded procurement planning? What procurements does the state anticipate conducting in the upcoming year? What procurements does the state anticipate its subrecipients to be conducting in the upcoming year? Are any of these procurements of a type and size not*

recently executed by the state or its subrecipients?

EXPLANATION
This question provides information on what proactive steps the state uses to mitigate risks associated with future procurements.

REFERENCE
None

SOURCES OF INFORMATION
Before the site visit, examine any information in the state management plan regarding this area. During the desk review, ask this question of the regional staff, in particular for pending grant application information. Examine procurement information provided in response to this question and upcoming projects noted by the state. During the site visit, discuss this with the grantee.

DETERMINATION
None

3. *What processes does the state have in place to prohibit the inclusion of geographic preferences in its FTA-funded procurements?*

EXPLANATION
States 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 Federal 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.

REFERENCE
49 CFR 18.36(c)(1)(2)
FTA C 4220.1F, Ch. VI, Section 2.a. (4)(g)

SOURCES OF INFORMATION
Before the site visit, review procurement policies and procedures to see if there is information for geographic preferences. These might include verbiage such as local preference or the inclusion of price preferences or bid advantage for local or in-state firms. During the site visit, review procurement files including solicitation and evaluation documents to determine if procurements contain geographic preferences.

DETERMINATION
The state is deficient if it has used geographic preferences in any procurement for other than one of the exceptions. The state is deficient if the use of geographic preferences in A&E procurements restricted competition. (***DEFICIENCY CODE***: Improper use of geographic preferences)

SUGGESTED CORRECTIVE ACTION
Direct the state to provide to the FTA regional office documentation of a revised procurement process which prohibits the improper use of geographic preferences. The state must cease any practice that violates FTA guidelines. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

4. *Does the state have a statute prescribing a formal procedure for the procurement of A&E services? If yes, do the procedures provide for full and open competition? If no, did the state use competitive proposal procedures based on the Brooks Act when procuring A&E services with FTA funds?*

EXPLANATION
When using FTA assistance to contract for A&E services, SAFETEA-LU requires states to use competitive proposal procedures based on the Brooks Act or an equivalent qualifications based requirement adopted before August 10, 2005. Services subject to this requirement are program management,

construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services which lead to construction. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the state may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the state determines is fair and reasonable.

For design/build contracts, FTA requires the recipient to use the procurement method appropriate for the portion having the greater cost. For example, if construction accounts for the majority of the cost, then the recipient should follow its procedures for the procurement of construction contracts. If design accounts for the majority of the cost, the contract would be procured using the procedures for A&E services.

REFERENCES

49 U.S.C. Section 5325(b)(1)
49 CFR 18.36(t)
FTA C 4220.1F, Ch. IV, Section 2.g and Ch. VI, Sections 3.f and 3.h

SOURCES OF INFORMATION

Review state statutes, the state management plan and other documentation of procurement procedures for a discussion of procedures for contracting for A&E services. Review the list of procurements provided in advance of the review for procurements that would likely require these types of procedures. On site, discuss with the state, and evaluate procurement files to determine what procedures were used.

DETERMINATION

The state is deficient if the procedures for procuring A&E services do not provide for full and open competition. (***DEFICIENCY CODE**:* Lacking full and open competition for one or more methods of procurement)

The state is deficient if it has not adopted a statute prescribing a formal procedure for the procurement of A&E services before August 10, 2005, and does not follow the Brooks Act when using FTA assistance to contract for A&E services. (***DEFICIENCY CODE**:* Lacking compliant A&E procurement practices)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for procuring A&E services that provide for full and open competition.

Direct the state to submit to the FTA regional office procedures for following the Brooks Act when using FTA assistance to contract for A&E services. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

5. *Have applicable clauses been 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

States 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's BPPM, Appendix A, also includes a discussion of Federally required and other model contract clauses. However, reviewers must not refer to the contents of the BPPM as FTA requirements. The BPPM is a guidance document only. Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website.

States 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. States 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.

At the end of this section, a checklist of required clauses is provided. The checklist provides a citation from the Master Agreement for each required clause. Also provided is a checklist for certifications, reports, and forms that are required for DBE, Buy America, debarment, and suspension, and lobbying. A list of other required items to assist in determining whether the state's policies and procedures are actually being followed is also included.

At the end of this section, a listing showing the applicability of FTA clauses to different types of

procurements is provided. 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.

REFERENCE

49 CFR 18.36(i)(1-13) and (j-o)
29 CFR Parts 4 and 5
41 CFR Parts 50-201 and 50-206
Master Agreement
FTA C 4220.1F, Ch. IV, Section 2 and Appendix D
Best Practices Procurement Manual
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

Before the site visit, review written procurement procedures. During the site visit, examine procurement files for inclusion of required clauses.

DETERMINATION

The state 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**:* No FTA clauses)

The reviewer should not find the state deficient if it missed some clauses that should have been included. However, refer the state to the matrix at the end of this section and any other resource that may assist it in determining the applicability of clauses in the future. Clauses addressing lobbying, debarment and suspension, DBE, and Buy America provisions are addressed elsewhere within this section.

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office revised procurement procedures that address inclusion of all FTA required third party contract clauses. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

6. *What is the state's process for ensuring compliance with Buy America requirements? Does it ensure that the state includes a Buy America provision in all procurements of steel, iron, and manufactured products, except for products with a waiver or purchases under $100,000? Does this procedure encompass procurements such as rolling stock and construction? Has the state obtained Buy America certifications from successful vendors?*

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 $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 vans that totals $120,000, even though each van 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 threshold is based on the total value of the project, not the value of the steel, iron, and manufactured products purchased for the project.

On June 11, 2010, FTA issued a general waiver for final assembly in the United States for all minivans and minivan chassis, regardless of manufacturer. Purchases of minivans over $100,000 must still comply with Buy America domestic content requirements. The general waiver for final assembly in the United States of 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation was repealed by SAFETEA-LU.

Buy America provisions apply to:

- All purchases of steel, iron, and manufactured products exceeding the $100,000 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 $100,000 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 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 $100,000

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.

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 contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

REFERENCE

49 CFR 661.6, 661.7, 661.12 and 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
Notice of Buy America Waiver for Minivans and Minivan Chassis
Best Practices Procurement Manual
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION

During the desk review, ask if the state applied for any waivers from Buy America requirements. Review the state'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 $100,000 threshold. Review invitations for bids to determine if Buy America provisions were included. Examine bid responses and executed contracts to determine if properly executed Buy America certifications were obtained.

DETERMINATION

The state is deficient if it did not include Buy America provisions in solicitations or obtain signed Buy America certifications from vendors. (***DEFICIENCY CODE**:* Buy America provision not in solicitation and/or contract) (***DEFICIENCY CODE**:* Contract files lacking Buy America certifications)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office revised procurement procedures that require the state 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 state 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 state to submit to the FTA regional office documentation that it obtained signed Buy America certifications.

Direct the state 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.

7. *Do the state's procedures for making awards only to responsible contractors include ensuring that contractors are not suspended or debarred? Did the state search the Excluded Parties Listing System (EPLS) to ensure that excluded parties do not participate in covered transactions?*

EXPLANATION

Each grantee is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, third party contractors is suspended, debarred, ineligible, or voluntarily excluded from participation in Federally assisted transactions or procurements. FTA requires grantees to review the EPLS 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.

REFERENCE

2 CFR Part 180
FTA Master Agreement, Section 3.b
Excluded Parties Listing System

SOURCES OF INFORMATION

Review the state's written procurement procedures and employment procedures to see if the requirement to review the EPLS has been included. During the site visit, review contract files to determine if the EPLS is being searched before entering into any third party contracts.

DETERMINATION

The state is deficient if it has not reviewed the EPLS prior to applicable awards or actions. (***DEFICIENCY***

CODE: No verification that excluded parties are not participating)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures to search EPLS before entering into applicable transactions. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

8. *Are excluded parties participating in covered transactions? If yes, did the state promptly inform FTA in writing of this information?*

EXPLANATION
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.

REFERENCE
2 CFR Part 180

SOURCES OF INFORMATION
Ask the state 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 state 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:*** Excluded parties participating in covered transactions)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office documentation of an implemented process to promptly notify FTA in writing of any excluded party's participation.

9. *What policies and procedures does the state have in place regarding change orders to FTA funded projects? How are these policies monitored for subrecipients administering FTA funded projects?*

EXPLANATION
FTA does not participate in the recipient's decisions involving change orders, constructive changes, or modifications, but reserves the right to review the recipient's supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs. To be eligible for FTA assistance under the recipient's grant, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant, and reasonable for the completion of the changed work.

Section 5310, 5311, 5316 and 5317 progress reports must include budget revisions for changes in line item budgets which may be impacted by change orders.

REFERENCE
49 USC 5325(e)(1)
FTA C 4220.1F, Ch. VII, Section 2
FTA C 9040.1F, Ch. VI, Section 12
FTA C 9070.1F, Ch. VI, Section 17
FTA C. 9045.1, Ch. VI, Section 16
FTA C. 9050.1, Ch. VI, Section 16

SOURCES OF INFORMATION
Discuss this question with the regional office in advance of the desk review. Before the site visit, review the list of contract changes and select files for review. Review contract administration and subrecipient oversight procedures. Discuss with the grantee (and subrecipients) amount of change orders on current or recent projects. During the site visit, examine change orders to FTA-funded project files to determine how the change order was evaluated prior to execution and whether any change was outside the scope of the grant.

DETERMINATION
The state is deficient if it is funding ineligible change orders with FTA funds. It is also deficient if its processes do not allow it to adequately report on change orders to FTA when applicable. (***DEFICIENCY CODE:*** Change order procedures deficiencies)

SUGGESTED CORRECTIVE ACTION
Direct the state to provide the FTA regional office revised procurement procedures that address appropriate funding, tracking, evaluation, and reporting of change orders. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

10. *Has the state conducted any piggyback procurements? If yes, identify. Is the appropriate documentation on file?*

EXPLANATION

A recipient may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for small procurements.

A grantee may find that it has inadvertently acquired contract rights in excess of its needs. The grantee may assign those contract rights to other grantees if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as "piggybacking." Although FTA does not encourage the practice, a state may find it useful to acquire contract rights through assignment by another grantee.

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 state need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the state to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the state 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.

Vehicles added to the base or option amounts originally specified are called "tag-ons," which 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.

Any changes in the vehicle must be within the original scope (i.e., no major changes in configuration or design). FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar changes to be permissible changes.

REFERENCE

FTA C 4220.1F, Ch. VI, Section 1
Piggybacking Worksheet from FTA BPPM Appendix B.16

SOURCES OF INFORMATION

Review the file of a piggyback procurement. 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, five year contract term, etc.). Ask the state if any changes to the vehicle were required and determine if these were within the original scope. Use the Piggybacking Worksheet from FTA's *Best Practices Procurement Manual* to indicate results of the review.

DETERMINATION

The state is deficient if it procured vehicles in excess of the state's current and reasonably expected public transportation needs solely for the purpose of assigning options. (***DEFICIENCY CODE:*** Procurement quantities in excess of need)

The state is deficient if it cannot document that the original award contains an assignability clause, that vehicles are still available for assignment, or that FTA requirements were met. The state is deficient if the state conducted a "tag-on" purchase. The state is deficient if changes were beyond the original contract scope. (***DEFICIENCY CODE:*** Improper piggyback purchase)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office with piggybacking procedures that comply with FTA requirements if an improper piggyback purchase has been made.

Advise the regional counsel when significant procurements (i.e., exceeding $100,000) have violated Federal requirements.

Direct the state to provide revised procedures that address the requirements for a piggyback 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. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

Rolling Stock Procurements

11. *Does the state have any contracts for revenue rolling stock and replacement parts that include ordering periods exceeding five years in total length including base and options? If yes, identify.*

EXPLANATION

States must not enter into contracts for revenue rolling stock and replacement parts with a period of performance exceeding five years inclusive of options, extensions, or renewals. The five-year rule does not mean the state must obtain delivery, acceptance, or even fabrication in five years. However, the maximum quantity specified in such multi-year contracts must represent the state's reasonably foreseeable need. Typically, states use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

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

REFERENCE

49 USC 5325(e)(1)
FTA C 4220.1F, Ch. IV, Section 2.e. (10)

SOURCES OF INFORMATION

Before the site visit, review procurement procedures. During the site visit, examine procurement files for rolling stock and replacement part contracts during the site visit to ensure that these meet the five-year contract term restriction.

DETERMINATION

The state is deficient if a revenue rolling stock contract represents more than five years' requirements. The state is deficient if it has a revenue rolling stock and replacement parts contract with a period of performance exceeding five years and has not obtained prior FTA written approval. (***DEFICIENCY CODE**:* Contract(s) exceed five year limitation)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office revised procurement procedures that include the five-year restriction on the period of performance for rolling stock and replacement part contracts supported with FTA funds. Direct the state to provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract that exceeds the five-year restriction. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

12. *Did the state conduct pre-award and post-delivery audits for its purchases of revenue rolling stock? What process was used to verify domestic content, final assembly activities, and location of final assembly at the pre-award and post-delivery stages? Does the state have on file signed pre-award and post-delivery Buy America, purchaser's requirement, and Federal Motor Vehicle Safety Standards (FMVSS) certifications?*

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 FMVSS. The grantee is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The requirement applies to purchases of new and used revenue service rolling stock. (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.) On June 11, 2010, FTA issued a general waiver for the final assembly of minivans and minivan chassis. All other pre-award and post-delivery requirements continue to apply to minivans (domestic content, purchaser's requirements and FMVSS.)

The pre-award audit is required before a grantee enters into a formal contract with a supplier. The post-delivery audit 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 audits require the grantee to complete two certifications at the pre-award stage and three certifications at the post-delivery stage.

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.

Buy America

If the procurement exceeds $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 products, 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 must complete similar certifications at the post-delivery stage, based on the actual vehicles delivered.

Proper documentation for the 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.

FTA issued a waiver from Buy America requirements for purchases under 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.

Purchaser's Requirements

The recipient 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 grantee must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. 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 $100,000.

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 $100,000.

REFERENCE

49 CFR 661.11, Appendices B and C
49 CFR 663.21 and 663.31
Dear Colleague letter of March 30, 2001
Federal Register Vol. 71, No. 54, pp. 14112-14118
49 CFR Part 571
Notice of Buy America Waiver for Minivans and Minivan Chassis
Conducting Pre-Award and Post-Delivery Audits for Bus Procurements
Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements
Buying Used Vehicles

SOURCES OF INFORMATION

Review the state'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. As part of the review of procurement files, examine the pre-award and post-delivery audit certifications and supporting documentation for a recent procurement of revenue rolling stock.

DETERMINATION

The state is deficient if it did not conduct all of the required audits for revenue rolling stock procurements. (***DEFICIENCY CODE**:* Pre-award and/ or post-delivery audits not performed)

The state 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**:* Pre-award and/or post-delivery certifications lacking)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for conducting pre-award and/or post-delivery audits for future revenue rolling stock procurements.

Direct the state to submit documentation to the FTA regional office that the procurement complied with Buy America, FMVSS, and purchaser's requirements.

Direct the state 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.

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

13. *If the state purchased revenue rolling stock with multiple delivery dates using either options or multi-year procurements, did it perform and certify a pre-award audit for each group of vehicles before placing the order?*

EXPLANATION

Grantees may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

If a grantee is exercising another grantee's options for purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract if there is no change in vehicle configuration. However, the grantee must review the audit and prepare its own signed certifications.

REFERENCE

49 CFR 663.21 and 663.31
FTA Dear Colleague Letter, March 18, 1997

SOURCES OF INFORMATION

Examine contract files, invoices, and other procurement documentation available at the site visit to identify delivery dates and obtain information on options.

DETERMINATION

The state is deficient if it ordered a group of vehicles before the pre-award audit was conducted. (***DEFICIENCY CODE**:* Pre-award and/or post-delivery audits not performed)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the FTA regional office with an explanation and evidence that it has completed the required audits. The evidence must include audit documentation and work papers.

Direct the state 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.

Direct the state to submit to the FTA regional office pre-award audit information and certifications before awarding the contract or exercising an option for the next revenue rolling stock procurement.

14. *For procurements of transit vehicles (e.g., buses, railcars) conducted since the last review, did the state obtain DBE certifications from the transit vehicle manufacturer (TVM) with the bids/proposals submitted?*

EXPLANATION

All states must require that each 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 state 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). Typically, dealers and manufacturers of unmodified, mass produced vehicles such as vans and sedans are not currently classified as TVMs for the DBE regulation. Contracting opportunities for modification of mass produced vehicles after purchase should be included in a state'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. 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 states a copy of their FTA approval letters along with the TVM certifications.

Please note that FTA is working with USDOT to formalize the definition of TVM. In particular, states 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.

REFERENCE
49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION
At the site visit, review state transit vehicle procurement files for signed TVM certifications.

DETERMINATION
The state 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 state is deficient if it cannot provide evidence that it checked FTA's DBE website to ensure that the manufacturer is listed as an eligible TVM. (***DEFICIENCY CODE***: No TVM certification)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit evidence to the FTA RCRO that it has included a provision in applicable bid specifications requiring current TVM certifications and/or obtained TVM certifications from successful bidders. Direct the state to submit evidence to the FTA RCRO that it has implemented a process to verify TVM certifications through review of FTA's website.

Procurement Oversight

15. *What oversight procedures and processes does the state implement to mitigate the risk associated with subrecipients conducting procurements with FTA funds?*

EXPLANATION
In addition to complying with state and local law, subrecipients, transit management contractors and, depending on the structure of the contract, other contractors to which a state has contracted out a portion of its FTA funded operations must comply with relevant FTA third party contracting requirements when procuring goods and services with FTA assistance. Subrecipients that are public entities and contractors must comply with FTA requirements that apply to states. Subrecipients that are private nonprofit or for profit entities must comply with all the FTA requirements of FTA C 4220.1F. FTA considers all metropolitan planning organizations (MPOs), even those incorporated as a nonprofit organizations under state law, to be "local governments." Consequently, MPOs must comply with the FTA requirements that apply to states.

The state is responsible for ensuring that these organizations are aware of and comply with the requirements. Note that FTA requirements do not apply to procurements funded solely with local funds, including operating procurements.

Procurement requirements that apply to the state, public entity subrecipients and contractors are:

- Compliance with its own procurement regulations.
- Conduct all procurements in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services, if the state has not adopted a statute governing the procurement of such services before August 10, 2005
- Award to only responsible contractors possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract
- Ensure that every purchase order and contract executed using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations
- Do not enter into any contract for rolling stock with a period of performance for ordering exceeding five years inclusive of options without prior FTA approval
- Comply with Buy America requirements, including pre-award and post-delivery requirements
- Comply with debarment and suspension requirements
- Comply with lobbying requirements
- Comply with piggybacking requirements

In addition to the requirements that apply to states, FTA C 4220.1F requirements that apply to private

nonprofit or for-profit entities include, but are not limited to, the following:

- Maintain a written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
- Have written procurement policies and procedures
- Have written protest procedures to handle and resolve disputes relating to the award of contracts
- Have procedures for settlement of contract issues/disputes (procurements >$100,000)
- Analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest
- Review procurement requests to avoid duplicative or unnecessary purchases
- Incorporate a clear and accurate description of the material, product, or services being procured; identify all requirements that offerors must fulfill; and identify evaluation factors in solicitations
- Develop an independent cost estimate before receiving bids or proposals
- Conduct a contract cost or price analysis for every procurement
- Evaluate options at the time of bid award, exercise the options at the agreed upon terms, and determine that the option price is better than current market prices before exercising the options
- Maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders
- Maintain a written record of procurement history

FTA C 4220.1F contains a complete list of third party contracting requirements.

Some states provide written guidelines or standard terms and conditions to subrecipients and contractors for direct procurements. Some states review subrecipients' and contractors' direct procurements, particularly for vehicles, equipment and construction. Such reviews, which generally focus on bid evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals. The state is not required to review each subrecipient's or contractors' procurement to ensure compliance with Federal requirements. The state may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

REFERENCES

2 CFR Part 180
49 CFR Part 20
49 CFR 18.36
FTA Master Agreement for FY2011, Sections 2.d-e
FTA C 4220.1F
FTA C 9040.1F, Ch. VI, Section 5
FTA C 9070.1F, Ch. VI, Section 9
FTA C 9050.1, Ch. VI, Section 8
FTA C 9045.1, Ch. VI, Section 8
FTA C 8100.1C, Ch. II, Section 3.b

SOURCES OF INFORMATION

Review the state management plan for a discussion of policies and procedures applicable to procurements with Federal funds by subrecipients. Review the applications and standard agreements for procurement requirements. Review procurement solicitations and contracts for transit management services for procurement requirements. Review other pertinent documents that describe state procurement policies and procedures or provide guidance to subrecipients and contractors regarding applicable Federal and state procurement requirements.

On site, discuss the mechanisms used to inform subrecipients and transit management contractors of procurement requirements and to monitor compliance by subrecipients and transit management contractors. Identify technical assistance provided. If the state provides standard terms and conditions, review them for inclusion of Federally required clauses and clauses that restrict full and open competition. If the state reviews procurements and procurement procedures during site visits, review any documentation of reviews of subrecipient written procurement procedures. Review a sample of subrecipients' procurement documents if the state has any on file. If not, review a sample of procurements during site visits.

DETERMINATION

The state is deficient if it does not monitor subrecipients and contractors making direct procurements with FTA assistance for compliance with the requirements. (***DEFICIENCY CODE:*** Insufficient oversight of procurement)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office procedures for informing subrecipients and contractors making direct procurements with FTA assistance of Federal procurement requirements and

for monitoring them for compliance with the requirements. Direct the state to provide documentation of corrective action implementation and training on new procedure(s).

Disadvantaged Business Enterprise

16. *Does the state meet the threshold for a DBE program?*

a. If no, skip to Question 25.

b. If yes, has the state's DBE program been approved by FTA? If no, provide an explanation.

c. If yes, has the program been uploaded to TEAM-Web?

EXPLANATION

Written DBE programs are required of 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. The DBE program plan is not an annual submission and states 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.

A grantee that is required to have a written program that 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.

FTA has established a policy that all civil rights programs must be submitted to FTA's Transportation Electronic Award Management (TEAM-Web) system. Instructions on uploading these programs were provided to grantees in FY2011 and are on FTA's Civil Rights website.

REFERENCE

49 CFR 26.21

Instructions for uploading programs to TEAM-Web

SOURCES OF INFORMATION

During the desk review, examine files for the state's DBE program and correspondence regarding the status of program approval. Many of these program plans may be dated in 1999, when the regulation first became effective. For states that indicate that they do not meet the threshold, verify this by examining grant amounts, milestone progress reports, and procurement lists. Purchases from FTA funded operating budgets, preventative maintenance budgets, and capital programs may exceed $250,000 in FTA funds when aggregated. Include the contracting opportunities of a state's subrecipients when determining whether a state meets the threshold.

If the local government submits a single plan to FHWA, confirm with the RCRO that a separate FTA program plan is not required. By February 28, 2012, states must add an element to their program addressing the fostering of small business. Because of this new requirement, it is anticipated that new program plans will be submitted by states prior to that date.

DETERMINATION

A state is deficient if a program has not been submitted and it has $250,000 of FTA funds in contracting opportunities or has not responded to FTA's request for additional information. (*DEFICIENCY CODE:* No approved DBE program)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit its DBE program to the FTA RCRO and/or upload it to TEAM-Web.

17. *Who is the state's DBE liaison officer (DBELO) – name and position in organization? Is this the same organizational position as that detailed in the state's most recent DBE program? To whom does this person report for DBE matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved? Does the state have adequate staff to administer the program?*

EXPLANATION

For states that meet the threshold requiring that they have a DBE program, the state'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.

States 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 states 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 state's DBE program that should be communicated to the RCRO for approval.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. This 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. Therefore, 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 state 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.

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. They 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." The discussion of adequate resources in the DBE area also relates to resource questions asked in the area of *Program Management*.

REFERENCE

49 CFR 26.25

SOURCES OF INFORMATION

During the desk review, examine the DBE program submissions to the RCRO for the name and reporting relationship of the DBELO. Obtain and review a copy of the state's organization chart to determine where organizationally the DBELO is located and the resources assigned. The current DBELO is also typically listed in the agency's contact information in TEAM-Web. Consult the RCRO for any indications of past problems with staffing. During the site visit, confirm current staff assignments. An organization chart can indicate reporting relationships. A job description for the DBELO can confirm responsibilities and reporting relationships. The state's DBE program plan should indicate the staffing that should be in place to administer the program.

DETERMINATION

The state is deficient if the DBELO cannot demonstrate direct and independent access to the CEO. (***DEFICIENCY CODE***: Inadequate designation of DBE Officer)

The state is deficient if the DBELO is not organizationally located as described in its current DBE program. (***DEFICIENCY CODE***: DBE program not updated)

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. Information in this section also serves as in input into resource and oversight questions in the Program Management area. (***DEFICIENCY CODE***: Inadequate staff to administer DBE program)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO evidence of corrective actions taken to designate DBE responsibilities properly.

18. *Has the state included an element in its DBE program for fostering small business participation? Has the state implemented effective strategies to foster small business participation?*

EXPLANATION

By February 28, 2012, states must submit an element to their DBE program for fostering small business participation. This new element, required by a February 2011 change to the DBE regulation, must include provisions to structure contracting requirements to facilitate competition by small business. States must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

As part of this program element states may include, but are not limited to, the following strategies:

- Establishing a race-gender neutral small business set-aside for prime contracts under a stated amount (e.g.,$1 million)
- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts
- To meet the race-neutral portion of overall agency goal, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform

REFERENCE
49 CFR 26.39

SOURCES OF INFORMATION
During the desk review, examine DBE files for correspondence regarding DBE program submissions for this new requirement. Review program submissions in TEAM-Web. Review information provided by the state to demonstrate implementation of small business participation strategies.

DETERMINATION
The state is deficient if the review is conducted after February 28, 2012, and a program element addressing the fostering of small businesses has not been submitted. The state is deficient if it is not implementing small business strategies as described in its program. (***DEFICIENCY CODE***: Small business element not submitted and/or implemented)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO a DBE program element that addresses the fostering of small business. Direct the state to submit to the FTA RCRO evidence of implementing its small business participation strategies.

19. *What is the process that the state has in place to ensure that both its own direct FTA funded contracting activities and those of its subrecipients are incorporated into overall agency goal-setting?*

a. Did the state's goal submission detail the data sources used?

b. Did the goal submission include a race-conscious and race-neutral breakout?

c. Did the state conduct a consultative process in setting these goals? Did the state publish its goals at least 45 days in advance of submission to FTA in general circulation media, available minority focused media, and trade association publications prior to submission to FTA?

EXPLANATION
Overall three-year agency goals are required of FTA grantees receiving planning, capital, and/or operating assistance that project contracting opportunities (excluding transit vehicle purchases) exceeding $250,000 with those funds in any of the three Federal fiscal years. Beginning with FY 2011, states will submit their overall goals every three fiscal years in lieu of each fiscal year if a state projects that it will meet the threshold in any of the three years in its cycle. FTA provides a document on its website indicating which fiscal year each state is required to make this submission. Waivers may be sought by states from RCROs as appropriate for goal submissions.

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. FTA will review the submittals and advise the state if the overall three-year goal has not been calculated correctly or if the method used for calculating the goal is inadequate. If so, FTA may, after consulting with the state, adjust the overall three-year goal or require the state to make the adjustment.

Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, conducted by both the state and its subrecipients. Overall three-year goals should be calculated as a percentage of all FTA funds (exclusive

of funds to be used for the purchase of transit vehicles) that the state (and its subrecipients) will expend in FTA-assisted contracts during the period covered. With prior FTA approval or at FTA's direction, states may also be permitted or required to express an overall goal as a percentage of funds for a particular grant and/or project. An example of this may occur with a major project such as a New Start project.

a. Overall three-year DBE goals must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FTA-assisted contracts ("relative availability of DBEs"). The goal must reflect the state's determination of the level of DBE participation the state would expect absent the effects of discrimination. States cannot rely on either the 10 percent aspirational goal at the national level, or the previous goal, or past DBE participation rates without reference to the relative availability of DBEs in the market. The overall agency goal submission should detail the sources of data the state uses to determine the number of DBEs and the number of all businesses ready, willing, and able to participate on the FTA-funded contracting activities. The state must also include a description of its "market" area (e.g. where did it look for DBEs and why). It is not sufficient to simply look in the state if the state obtains prime contractors from other states. If the majority of contracts is to primes within the state, then a one-state market area would be sufficient.

b. In addition to the overall agency goal, the grantee must project which part of that goal will be accomplished through race-neutral means and which will be accomplished through race-conscious means.

   Note: For grantees in the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, the Ninth Circuit Court has issued a decision that affects DBE programs [*Western States Paving Co. v. State of Washington Dept. of Transportation,* 407 F. 3d 983 (9th Cir. 2005)]. For grantees in these states a disparity analysis must be completed before race conscious goals can be established. Consult with the RCRO to determine the appropriate approach for grantees in these states.

c. In establishing an overall three-year goal, states 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 state'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 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. Publication at 'dbegoodfaith.com" is also not sufficient.

Because of the 45-day requirement for receiving comments, a state must publish its goal no later than June 15 for the applicable year.

REFERENCE

49 CFR 26.45
FTA schedule for three-year goal submittal

SOURCES OF INFORMATION

During the desk review, examine DBE files for correspondence regarding overall three-year DBE goal submittals and public participation (e.g., evidence of consultation with interested parties and copies of DBE public notices with proof of publication). Review FTA's DBE website to verify which Federal fiscal year the state is to submit its three-year goal. Review program status reports and programs of projects in TEAM-Web to determine types of contracting activity the state should be including in agency goal submissions. Evaluate and verify contracting opportunities if the state has indicated that it will not be submitting an overall three-year goal because it does not meet the threshold for goal submission.

DETERMINATION

The state 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***: DBE goal not submitted to FTA)

The state is deficient if overall DBE goals did not account for comprehensive contracting activity of it

and it subrecipients. The state is deficient if DBE submissions did not include data sources or a race-neutral/race-conscious projection, when applicable. (***DEFICIENCY CODE***: DBE goal submission deficiencies)

The state is deficient if the goal setting process did not include a public participation process. (***DEFICIENCY CODE***: DBE goal public participation process deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the state 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.

Direct the state to implement a procedure to provide comprehensive information in its goal submissions to include identification of data sources and/or race-neutral/race-conscious projections.

Direct the state to submit to the FTA RCRO a revised public participation process and documentation of the implementation of the process.

20. *Do the state's Uniform Reports of DBE Awards or Commitments and Payments include the contracting opportunities of the state and its subrecipients?*

EXPLANATION

Each grantee that meets the threshold requiring it to have a DBE program must submit a Uniform Report of DBE Awards or Commitments and Payments on all activities, including ARRA, semi-annually in TEAM-Web. The report addresses the contracting opportunities of the state and its subrecipients. It includes information on awarded and completed contracts; **those that included DBE participation, as well as those that did not**. 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).

As stated in the FTA Dear Colleague Letter dated January 3, 2011, grantees that have received ARRA funds from FTA are also required to report on ARRA-specific contracting activities. ARRA-specific DBE reports are due the 10th day after the end of each calendar quarter, the same date that Section 1512 reports are due. The requirement to report continues until all ARRA funded contracts are completed. As with the semi-annual DBE reports, no reporting is required for revenue rolling stock procurements. The first ARRA-specific DBE quarterly report is due January 10, 2011.

On March 22, 2011, FTA's Deputy Administrator issued a letter informing states 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
Deputy Administrator Letter on TEAM-Web reporting

SOURCES OF INFORMATION

During the desk review, examine the DBE files and TEAM-Web for correspondence regarding semi-annual report submittals. Beginning with the report due June 1, 2011, verify that semi-annual reports are submitted in TEAM-Web. During the site visit, obtain any outstanding materials. During the site visit, obtain information on how subrecipient contracting activities are included in the state's reports.

DETERMINATION

The state is deficient if it has not submitted the reports semi-annually, has not submitted them timely, or is not using the current form. (***DEFICIENCY CODE***: Uniform DBE reports not submitted semi-annually)

The state is deficient if its reports do not include all applicable FTA funded contracting activity of itself and any subrecipients. (***DEFICIENCY CODE***: Uniform DBE reports do not include required information)

The state is deficient if it has not submitted the ARRA-specific DBE reports quarterly or the reports are not complete. (***DEFICIENCY CODE***: ARRA-specific DBE reports not submitted correctly)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO 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 state to submit ARRA-specific DBE reports quarterly along with an implemented procedure to ensure future reports are submitted on time.

Direct the state to submit to the FTA RCRO procedures for including all applicable FTA funded contracting activity, including the activity of subrecipients, in future reports.

21. *Did the state's DBE reports for FY2011 indicate that its awards to DBEs were less than the overall goal applicable to that year? If yes, did the state conduct the required shortfall*

analysis? Did it provide this shortfall analysis to its RCRO, if applicable?

EXPLANATION
Beginning with reports for FY 2011, if the awards and commitments shown on a state'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 state 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 approval. In FY2012, FTA will notify grantees if they are in this group. All other grantees must conduct the analysis and retain it in their records for three years; making it available to FTA upon request for review.

REFERENCE
49 CFR 26.47

SOURCES OF INFORMATION
At the desk review, ask the RCRO if the agency is in the group that is required to submit this analysis. Review TEAM-Web to determine if an analysis should have been submitted. Review analysis submissions. On site, review the analysis if it has not been submitted.

DETERMINATION
For reviews conducted after December 30, 2011, the state is deficient if its achievements were less than its overall goal, and the analysis was not conducted. The state is deficient if it is required to submit the analysis to FTA and did not. (***DEFICIENCY CODE***: DBE goal achievement analysis not completed or not submitted)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO the required analysis and/or a process for completing and submitting it annually, as applicable.

22. *Since the last review, if the state has contract goals, did it award a contract to a firm that did not meet the specified DBE contract goal? How did the state determine if "good faith efforts" were sufficient? Did the state approve of the good faith efforts?*

EXPLANATION
Not every FTA funded contract is required to have a DBE goal. However, if a contract does have a DBE goal, prior to awarding a contract to a firm that did not meet a specific DBE contract goal; the state must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goal and the state must approve those efforts.

Examples of efforts the state may consider include: whether the contractor attended any pre-bid meetings held by the state 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.

REFERENCE
49 CFR 26.53 and Appendix A

SOURCES OF INFORMATION
At the site visit, ask the state 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 award documents. Determine how the state verifies that DBEs are certified for the type of work that 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 state's documented good faith efforts review.

DETERMINATION
The state is deficient if it cannot describe the methods, or applicable procurement files do not include documentation of the consideration of "good faith efforts." The state is deficient if it does not verify that DBEs are certified to perform the type of work that they are being named for prior to award. (***DEFICIENCY CODE***: Inadequate implementation of DBE contract compliance)

SUGGESTED CORRECTIVE ACTION
Direct the state 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.

23. *What process does the state use to monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? Does this monitoring include monitoring for adherence to prompt payment and return of retainage requirements? What enforcement mechanisms does the state use for DBE requirements? Does the state require contractors to obtain prior written state consent prior to terminating or substituting 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. States must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. States 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 law). These mechanisms must be set forth in the state's DBE program. A state must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

For procurements with DBE goals, prior to award the state 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 state 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.

States must monitor adherence to their contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the state. States 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.

In February 2011, the regulation added the requirement that states 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 state. Details on what constitutes good cause is contained in 49 CFR Part 26.53(f). Written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the state) in writing of its intent to request substitution or termination and allows the DBE five days to respond. States must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

The state should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

REFERENCE

49 CFR 26.37
49 CFR 26.29
49 CFR 26.53
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state's DBE program to identify the methods that the state states it will use to monitor contractors and subrecipients. At the site visit, have the state provide examples of actual monitoring activities/reports from the past three years. Have the state provide documentation related to removals of DBEs on projects with DBE contract goals.

DETERMINATION

The state is deficient if it cannot demonstrate how it is monitoring its contractors and subrecipients. (***DEFICIENCY CODE***: Grantee does not monitor DBE compliance).

The state is deficient if it cannot demonstrate the due process and approval process for prime contractor terminations or substitutions of DBEs on projects with DBE contract goals. (***DEFICIENCY CODE***: Grantee not complying with DBE termination process)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO documentation that it has begun monitoring contractors and subrecipients.

Direct the state to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures. Direct the state to submit to the FTA RCRO implemented procedures for ensuring good cause and due process for termination or substitution of DBEs.

24. *What process does the state use to monitor projects to ensure that DBEs are actually performing work committed to at the time of contract award? Does the state review contracting records for compliance with DBE requirements? Does the*

state monitor worksites for compliance with DBE requirements? Does the state complete a written certification that it has done the above activities?

EXPLANATION

States 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 law). These mechanisms must be set forth in the state's DBE program. A state 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 state 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).

Recent 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 state's responsibility for monitoring DBE participation does not end with the certification process.

The reviewer should ask how the state implements efforts such as conducting site visits to observe that DBEs are actually performing the work on contracts, reviewing subcontract agreements, checking payroll records to ensure that the employees working on the job are actually employees of the DBE, and looking at the title to equipment used on the project to ensure that the equipment is owned or leased by the DBE.

REFERENCE

49 CFR 26.37

SOURCES OF INFORMATION

Review the state's DBE program to identify the methods that the state states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, ask the state 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 state is deficient if it cannot demonstrate how it is monitoring that DBEs are actually performing the stated work. The state 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***: Grantee does not monitor DBE compliance)

SUGGESTED CORRECTIVE ACTION

Direct the state 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 state to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures. Direct the state to submit to the FTA RCRO the implemented process for making written certifications of monitoring.

25. *Is the state the lead agency for the Unified Certification Program (UCP)? If not, is it signatory to its state's UCP?*

26. *Does the state certify DBEs itself? If yes, does the state:*

- *use the correct application form, instructions and document checklist;*
- *conduct site visits prior to certification;*
- *obtain annual affidavits from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation;*
- *comply with the requirements of interstate certification; and*
- *include the NAICS codes of DBEs in the UCP directory?*

EXPLANATION

The regulation requires that all DOT states participate in a UCP within their state. Even if a state does not certify DBEs, it is required to be signatory to its state's UCP agreement. Any state that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in their program.

The certification procedures help to reduce fraud and ensure that only eligible DBEs are certified and participate in the DBE program. The regulations give 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 states are to use these documents unmodified, unless such modifications were approved by USDOT.

The regulations also require that the certifying agency either conduct site visits, or, if the DBE is located out of state, obtain evidence that a certification site visit was conducted prior to the initial certification. A DBE's initial certification must be from its home state's UCP. Further, the regulations require that annual affidavits be obtained from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulations.

In February 2011, USDOT implemented a new section of the DBE regulation (49 CFR Part 26.85 – Interstate Certification) providing information on how UCPs were to handle certification requests for out of state firms that were currently certified by their home state UCP. The UCPs were instructed to either accept the determination of the applicant's home state UCP and list the firm in its directory, or perform a series of processes (with required timeframes) that include making a determination of good cause that the home state's certification was erroneous or should not apply to their state.

By August 26, 2011, the UCP DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

REFERENCE

49 CFR 26.61-26.91
USDOT DBE Certification Form

SOURCES OF INFORMATION

Have the state provide information regarding its participation in a UCP. Obtain a copy of the signed UCP agreement.

If a state certifies DBEs, obtain a copy of its DBE application and instructions to verify that the correct form is being used by comparing it with the USDOT form noted in the above explanation. Review two or three DBE certification files to confirm that the certification procedures are in place. Certification files should show evidence of a site visit prior to certification and annual affidavits of continued DBE eligibility. Examine a sample of annual affidavits for DBE firms that have performed work during the past three years and record the dates that these were submitted. Review the state's process for interstate certifications. Review the UCP directory to determine if NAICS codes for DBEs are being listed.

DETERMINATION

The state is deficient if it is not participating (through at least being signatory to the state's agreement) in the UCP. (***DEFICIENCY CODE***: Not participating in a UCP)

The state is deficient if it certifies DBEs and is not using the correct forms or has not followed the procedures. (***DEFICIENCY CODE***: DBE certifications not adequate)

The state is deficient if it has not implemented the requirements in 49 CFR Part 26.85 on interstate certifications. (***DEFICIENCY CODE***: Interstate certification deficiencies)

The state is deficient if it certifies DBEs but does not include their NAICS codes on the UCP directory. (***DEFICIENCY CODE***: DBE directory does not include NAICS codes)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters a description of how it will participate in the UCP, along with copies of signed UCP agreements. Direct the state to submit to the FTA RCRO evidence that it has implemented standards and procedures to determine initial and continued DBE eligibility in accordance with 49 CFR Part 26.61-26.91 and that it has updated the DBE program to reflect the new procedures.

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters implemented procedures for correct interstate certification procedures.

Direct the state to submit to the FTA RCRO and FTA's DBE Technical Lead in headquarters implemented procedures to ensure that DBE directory information contains all applicable NAICS codes.

In addition to the RCRO, corrective actions to deficiencies related to these certification questions should be submitted to: FTA DBE Technical Lead, 1200 New Jersey Ave., SE, East Bldg., 5th Floor, Washington, DC 20590.

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		§15.t
Federal changes		§2.c(1)
Civil Rights (EEO, Title VI & ADA)		§12
Incorporation of FTA Terms	Per FTA C 4220.1F	§15.a
Energy Conservation		§26
Awards Exceeding $10,000		
Termination provisions	49 CFR Part 18 Not required of states	§11
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	§14.a
Provisions for resolution of disputes, breaches, or other litigation		§56
Awards Exceeding $100,000 (by Statute)		
Lobbying		§3.d
Clean Air		§25.b
Clean Water		§25.c
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§14.b
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§14.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	§24.a
Copeland Anti-Kickback Act	Section 1: All Section 2: Contracts >$2,000	§24.a

A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Contract Work Hours & Safety Standards Act	Contracts >$100,000	§24.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	§15.o(1)
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§23.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	§24.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§24.d
Charter Service Operations		§28
School Bus Operations		§29
Drug and Alcohol Testing	Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects	§32.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§17
Rights in Data and Copyrights		§18
Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§12.d
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§12.d
Recycled Products	Contracts for items designated by EPA, when procuring $10,000 or more per year	§15.k
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§12.g
Assignability Clause	Piggyback procurements	§15.n
State Requirements		
Special Notification Requirements for States		§38

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	§15.n(4)
TVM Certifications	Procurements of buses and modified mass produced vans	§12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > $100,000	§14.a
Pre-Award Audit	Rolling stock procurements	§15.n(3)
Pre-Award Buy America Certification	Rolling stock procurements>$100,000	§15.n(3)
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§15.n(3)
Post-Delivery Audit	Rolling stock procurements	§15.n(3)
Post-Delivery Buy America Certification	Rolling stock procurements >$100,000	§15.n(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§15.n(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	§15.n(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§15.n(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)
Cost effectiveness determination	Facilities or equipment leases	5010.1D, Ch. IV, Section 3.j

APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Revenue Rolling Stock**	**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, manufactured 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)	
Copeland Anti-Kickback Act				Section 1: All Section 2: >$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>$100,000	>$100,000	>$100,000 (including ferry vessels)	

APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Revenue Rolling Stock**	**Construction**	**Materials & Supplies**
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 non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases if threshold for DBE program met	All non TVM purchases 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
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

6. ASSET MANAGEMENT

BASIC REQUIREMENT

The state must maintain control over real property, facilities, and equipment and ensure that they are used in transit service. States must keep Federally funded equipment and facilities in good operating order.

AREAS TO BE EXAMINED

1. ***Real Property***

2. ***Equipment***

3. ***Maintenance***

REFERENCE

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 Master Agreement

4. FTA C 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

5. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"

6. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"

7. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"

8. FTA C 5010.1D, "Grant Management Requirements"

9. FTA C 9300.1B, "Capital Investment Program Guidance and Application Instructions"

QUESTIONS FOR THE REVIEW

Part A: Real Property

1. *What are the state's procedures for monitoring its use of FTA funded real property?*

2. *What are the state's procedures for monitoring the use of FTA funded real property by subrecipients?*

3. *Does the state or a subrecipient make incidental use of any FTA funded real property? If yes, was FTA approval obtained? Is continuing control of the property maintained? Is revenue used for transit planning, capital, or operating expenses?*

EXPLANATION

The state must ensure that its FTA funded real property is used for project purposes.

The state must ensure that subrecipients use FTA funded real property for project purposes. Examples of monitoring procedures include: annual certifications of use, site visit inspections, or deed restrictions. Title to real property acquired under a grant will vest with the grantee or the subrecipient. The FTA interest in real property continues until it is sold.

Incidental use is defined as the authorized use of real property (and equipment) acquired with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. 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 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 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, under certain circumstances non-profit uses are permitted.

REFERENCES

FTA C 9040.1F, Ch. VI, Section 4 and Ch. VIII
FTA C 9070.1F, Ch. VI, Section 8
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7
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

SOURCES OF INFORMATION

During the desk review, examine grantee files or TEAM-Web for correspondence regarding incidental use. Review programs of projects for any notation of real property use. Review the state management plan and subrecipient agreements for discussion of procedures used to control the use of real property. 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 state. If incidental use of project property is observed, ask the grantee to provide documentation that FTA approved the incidental use that includes the appraisal and appraisal review. Review budgets or financial reports to ensure that proceeds are used to support the transit program.

DETERMINATION

The state is deficient if it does not adequately control its own or the use of FTA funded real property by subrecipients. (***DEFICIENCY CODE**:* Inadequate control of real property)

The state is deficient if FTA did not approve of the incidental use, the incidental use interferes with transit purposes, the state does not maintain control over the leased property, or the state does not ensure that

revenues are used for transit purposes. (***DEFICIENCY CODE***: Violation of incidental use requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for controlling the use of its FTA funded real property or that used by subrecipients.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for obtaining prior FTA approval for future incidental uses and to obtain FTA approval for any unapproved incidental uses.

Direct the state to submit documentation to the FTA regional office that incidental uses that interfere with transit purposes have ceased.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for maintaining continuing control over real property used for incidental purposes.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for ensuring that lease income is applied to transit purposes.

4. *Since the last review, did the state or a subrecipient dispose of any FTA funded real property? If yes:*

- *What was disposed?*
- *Did FTA provide prior concurrence in the method of disposition of real property?*
- *Was FTA reimbursed for its share of disposition proceeds, if required?*
- *What did the state or subrecipient do with its share of the proceeds?*

5. *Since the last review did the state or a subrecipient change the use of or remove FTA funded real property from service? If yes:*

- *Did FTA provide prior concurrence when use of real property changed or was removed from the service originally intended at grant approval or when property was put to additional or substitute uses?*
- *What was the utilization plan for the real property that changed use?*

EXPLANATION

Grantees are required to notify FTA when property is removed from the service originally intended at grant approval and 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, the 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
Master Agreement, Section 19
FTA C 5010.1D, Ch. IV, Section 2.j

SOURCES OF INFORMATION

During the desk review, 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 state 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 state to provide excess property utilization plans and documentation of disposition of FTA funded property. Discuss during the site visit.

DETERMINATION

The state 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:*** Real property use issues)

The state 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 state is deficient if the plan is out of date. (***DEFICIENCY CODE***: Lacking excess real property utilization inventory/plan out of date)

The state is deficient if it did not obtain prior FTA approval for the method of disposition of FTA funded property or did not reimburse FTA for its share of disposition proceeds. (***DEFICIENCY CODE***: Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state 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 an updated state management plan that includes procedures for notifying FTA when FTA funded real property has been removed from service or put to additional or substitute uses.

Direct the state to submit to the FTA regional office a written excess real property utilization plan or to implement the existing plan.

Direct the state to work with the FTA regional office to determine proceeds owed FTA from the disposition of FTA funded real property.

Part B: Equipment

6. *What procedures does the state follow to manage and maintain control over FTA funded equipment and ensure its continued use?*

EXPLANATION

The state can rely on its own laws and procedures for managing and disposing equipment acquired with FTA assistance. The state may use the same procedures for public bodies and private nonprofit organizations. The state may adopt FTA's procedures for equipment management.

Examples of procedures used by states to maintain control over FTA funded equipment operated by subrecipients include:

- **Equipment inventories**. Many states use inventories to track how many vehicles and other equipment a subrecipient has, including those not purchased with FTA or state assistance. Many states require subrecipients to provide an equipment inventory with each application. Some states reconcile the subrecipients' inventories to the state's inventory.
- **Annual vehicle use certifications**. Many states require subrecipients to submit annual vehicle use certifications. The certifications are particularly important for tracking vehicles acquired by subrecipients who generally do not apply for assistance on an annual basis. The state can use the certifications to update the state's inventory.
- **Periodic reporting of vehicle use**. Many states require periodic reports of vehicle use (miles, hours, passengers, trip purpose) to ensure that vehicles are used in accordance with program requirements and are not underused.
- **Retention of or liens on titles**. The state or the subrecipient may hold title to the vehicles acquired with FTA assistance. When subrecipients hold title to FTA funded vehicles, FTA recommends that states place a lien on the title. Either the state or subrecipient must hold title to any vehicle leased to public bodies or nonprofit organizations.
- **Disposition requirements**. States use disposition procedures to ensure vehicles are used until the end of their useful lives, to ensure vehicles that are no longer needed by a subrecipient can be transferred to another subrecipient, and to ensure that proceeds are used for transit purposes.
- **Lease restrictions**. States use lease restrictions to control vehicles that are used and maintained by entities other than subrecipients.
- **Productivity standards**. States use productivity standards to ensure that vehicles serve a minimum number of riders. States may transfer vehicles that are underused.
- **Site visits**. States use site visits to visually inspect vehicles to ensure their continued use in transit service.
- **Insurance**. Most states have insurance requirements. Insurance coverage for equipment purchased with Section 5310, 5311, 5316, and 5317 funds must be adequate to protect the Federal interest in the vehicle within the useful life determined by the state.

REFERENCES

49 CFR 18.32(a)
FTA C 9040.1F, Ch. VI, Section 3, 4

FTA C 9070.1F, Ch. VI, Section 4, 5, 7, 8
FTA C 9050.1, Ch. VI, Section 4, 5, 6, 7
FTA C 9045.1, Ch. VI, Section 4, 5, 6, 7
FTA C 5010.1D, Ch. II, Section 3.a

SOURCES OF INFORMATION

Review the state management plans for procedures on how the state tracks, controls, and monitors equipment controlled by subrecipients. Review application package(s), subrecipient agreements, and other documents such as vehicle buyer's guides for reporting and other requirements and copies of the forms. Review the oversight tools, such as site visit questionnaires and periodic reports. Review the state's equipment inventory, if it has one, and document the data elements tracked. On site, confirm the procedures with the state.

DETERMINATION

The state is deficient if it does not have or implement procedures for maintaining control of FTA funded equipment or the procedures are inadequate to maintain satisfactory continuing control of FTA funded equipment. (***DEFICIENCY CODE**:* Inadequate control of equipment)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that incorporates revised procedures for maintaining control over FTA funded equipment.

7. *What are the state's useful life standards for rolling stock? Do they follow FTA's standards or has the state developed its own? For rolling stock purchased with Section 5309 assistance, do the state's standards meet or exceed FTA's standards?*

EXPLANATION

In keeping with the intent of the Common Rule that states be given greater flexibility in managing and disposing of equipment, FTA delegates to the states the responsibility for establishing and implementing useful life standards for vehicles purchased with Section 5310, 5311, 5316, or 5317 assistance. States must follow useful life standards for vehicles purchased with Section 5309 assistance that meet or exceed FTA requirements.

Most states have adopted FTA's useful life standards for all vehicles, regardless of funding source. Many states have adopted stricter (longer) useful life standards for vehicles. The following table presents FTA useful life standards for vehicles and ferries.

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

FTA requires grantees to use vehicles purchased with Section 5309 funds for at least their minimum normal useful lives. Only time spent in normal service can be counted towards meeting the standards. Time spent stockpiled or otherwise unavailable for regular transit duty does not count towards meeting the standards. The state should have a mechanism to adjust the service life of any FTA funded vehicle that is removed from service for an extended period of time.

Per the Common 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 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 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

Review the state management plan, the subrecipient agreements, and other documentation for minimum useful life standards for vehicles. On site, confirm the requirements with the state. If the state removed vehicles before the end of useful life, during the maintenance review, determine if the reason was for lack of maintenance.

DETERMINATION

The state is deficient if it has not established its own minimum useful life standards for 5310, 5311, 5316, and 5317 vehicles. (***DEFICIENCY CODE**:* Useful life standards not established)

The state is deficient if it has not adopted useful life standards for Section 5309 funded vehicles that meet are exceed FTA requirements. (***DEFICIENCY CODE**:* Useful life standards not followed)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes state useful life standards.

Direct the state to submit to the FTA regional office adopted useful life standards that meet or exceed FTA requirements for Section 5309 funded vehicles.

8. *Does the state or a subrecipient lease FTA funded assets to other public entities, nonprofit organizations, or private for-profit operators? Did the state agree in writing to the lease of any Section 5310 vehicles? What are the state's procedures for monitoring subrecipients' leases?*

9. *Does the state lease FTA assets to private operators, including intercity bus operators? If yes, was prior concurrence from FTA obtained for leases entered into on or after November 1, 2008? Do the leases include the required provisions?*

EXPLANATION

Assets acquired with FTA funds may be leased to other entities such as local public bodies or agencies, private nonprofit organizations, or private for-profit operators. Under a lease acquired with FTA assistance, the lessee operates the assets on behalf of the state or subrecipient and provides transportation as described in the grant application.

FTA requires states to exercise control over FTA-funded assets leased by subrecipients to ensure that they are used for project purposes. Many states require subrecipients who are leasing FTA-funded assets to submit a copy of the lease to the state for review. Other states provide a standard lease that subrecipients are required to use.

FTA has established specific requirements for leases of Section 5310 vehicles. The state must agree in writing to the lease between the Section 5310 subrecipient and the lessee. The vehicle may be used for incidental purposes only after grant needs have been met. The state and subrecipients are responsible for ensuring that adequate control is exercised over use of the leased equipment. Either the state or the subrecipient must retain title to the vehicle.

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. Prior FTA approval is not required when equipment is leased to a transit management contractor that operates the service on behalf of the grantee. When FTA funded property is leased to a private operator, including management contractors, 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

FTA C 9040.1F, Ch. VI, Section 4
FTA C 9070.1F, Ch. VI, Section 6
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7
FTA C 5010.1D, Ch. IV, Sections 3.e(1) and 3.j(1)

SOURCES OF INFORMATION
During the desk review, determine if the state obtained prior FTA approval for leases of FTA funded equipment to private operators. Review the state management plan and subrecipient agreements for the state's policy regarding the lease of FTA funded assets and its procedures for monitoring subrecipients' leases. Review sample leases. Review a Section 5310 lease to ensure that it was approved in writing by the state and it contains the required terms and conditions. Review a state lease to ensure it includes the required provisions. Identify subrecipients that are currently leasing assets to other public or private operators. On site, discuss with the state its current policies and procedures.

DETERMINATION
The state is deficient if it does not oversee the leasing of FTA funded equipment. The state is deficient if it does not approve in writing subrecipients' leases of Section 5310 funded vehicles. The state is deficient if it does not obtain prior FTA approval before leasing FTA funded equipment to private operators. The state is deficient if leases to private operators of FTA funded assets do not include the required terms and conditions. (***DEFICIENCY CODE****:* Lease issues)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office procedures for overseeing leases of FTA funded equipment.

Direct the state to submit to the FTA regional office procedures for approving in writing leases of FTA funded vehicles by Section 5310 subrecipients.

Direct the state to obtain approval for leases of FTA-funded assets to private operators from the regional office and to submit to the FTA regional office procedures for obtaining prior FTA approval before leasing FTA-funded assets to private operators.

Direct the state to submit to the FTA regional office revised leases that include the required terms and conditions.

Part C: Maintenance

10. *What are the state's requirements for subrecipients, including intercity bus operators, for the maintenance of FTA funded vehicles? Are the requirements adequate to protect the Federal interest and maintain property in good operating order?*

EXPLANATION
The state must develop maintenance requirements for FTA funded vehicles that are adequate to protect the Federal interest and to ensure that the equipment is maintained in good operating order.

Generally, subrecipient agreements require equipment to be maintained in good operating order. Many states require subrecipients to follow manufacturers' suggested maintenance activities and schedules. Some states require applicants to document their maintenance procedures in the application and may evaluate the ability to maintain vehicles as part of the project selection process. Some states have developed maintenance procedures that they require subrecipients to follow or require the development of maintenance plans.

REFERENCE
49 CFR 18.32(a)
Master Agreement Section 19.c
FTA C 9040.1F, Ch. VI, Section 3a
FTA C 9070.1F, Ch. VI, Section 4a
FTA C 9050.1, Ch. VI, Section 4a
FTA C 9045.1, Ch. VI, Section 4a
FTA C 5010.1D, Ch. II, Section 3.a(11) and Ch. IV Sections 3.a and 3.m

SOURCES OF INFORMATION
Review the state management plan, subrecipient application packages, subrecipient agreements, maintenance plans and other documentation of maintenance requirements. On site, discuss maintenance requirements.

DETERMINATION
The state is deficient if it does not have requirements for maintenance of FTA funded equipment that are adequate to protect the Federal interest and ensure vehicles are maintained in good operating order. (***DEFICIENCY CODE****:* Insufficient maintenance standards)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office updated state management plans and subrecipient agreements with maintenance requirements for subrecipients.

11. *Does the state have or require subrecipients to have maintenance plans for FTA funded facilities and facility related equipment?*

EXPLANATION
States or their subrecipients are required to develop written maintenance plans for FTA funded facilities and facility related equipment. The plan should

identify the goals and objectives of a maintenance program and establish the means by which such goals and objectives will be attained.

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

SOURCES OF INFORMATION
Review the state management plan, subrecipient application packages subrecipient agreements, maintenance plans, and other documentation of maintenance requirements. On site, discuss maintenance requirements with state staff. Review a sample of written subrecipient facility maintenance plans.

DETERMINATION
The state is deficient if it does not have or does not ensure that subrecipients have written maintenance procedures for FTA funded facilities and facility related equipment. (***DEFICIENCY CODE**:* Facility maintenance plan lacking or inadequate)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office written maintenance plans for FTA funded facilities and facility related equipment.

12. *What procedures does the state use to monitor maintenance of vehicles, facilities and facility related equipment?*

EXPLANATION
The state is responsible for ensuring that subrecipients maintain FTA funded vehicles, facilities and facility related equipment in good operating order. FTA does not prescribe a monitoring system or specific monitoring activities. Each state is responsible for developing and implementing a monitoring system that provides adequate assurance that FTA funded equipment and facilities are properly maintained. Most states use a combination of monitoring mechanisms: periodic reporting, maintenance record review, visual inspections, and maintenance audits.

REFERENCE
49 CFR 18.37
Master Agreement, Section 2.e

SOURCES OF INFORMATION
Review the state management plans, which should identify the monitoring mechanisms used by the state to ensure that subrecipients maintain equipment and facilities. Review monitoring mechanisms, such as reports and site visit checklists.

On site, discuss the state's monitoring approach. Review reporting requirements, including the frequency of reporting, the information required, how the state analyzes the information, and the actions the state may take for insufficient maintenance. If the state conducts site visits, determine: how often site visits are conducted, the activities undertaken during the site visits, and any finding resolution processes. Review samples of completed forms, reports or other documentation of site visit findings.

Review sample records and visually inspect vehicles and facilities during site visits to determine whether the state is following its procedures.

DETERMINATION
The state is deficient if it does not have or follow procedures for monitoring maintenance activities to ensure that FTA funded vehicles, facilities and facility related equipment are adequately maintained. (***DEFICIENCY CODE**:* Insufficient oversight of maintenance)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office an updated state management plan(s) with procedures for effectively monitoring maintenance activities and ensuring that FTA funded vehicles, facilities, and facility related equipment are maintained in good operating order.

13. *Is any FTA funded equipment operated by a subrecipient under warranty? If yes, what is the system(s) for recovering warranty claims? Are claims pursued satisfactorily?*

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

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

SOURCES OF INFORMATION

Identify the vehicles and equipment under warranty. Review the state management plans for warranty recovery procedures or requirements. Ask the state for a copy of warranty recovery programs, or, if the programs are not in writing, to describe the warranty recovery system.

During site visits, review warranty claims to learn how timely and aggressive warranty claims have been pursued and collected. Compare the records of claims submitted with claims settled.

DETERMINATION

The state is deficient if it or its subrecipient does not have a warranty recovery system, does not have records documenting that warranty claims are pursued, or is not pursuing warranty claims diligently. (***DEFICIENCY CODE***: Warranty claims not pursued effectively)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) with a written system for managing and documenting warranty claims, along with a plan for implementation.

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

7. LOBBYING

BASIC REQUIREMENT

Recipients of Federal grants and contracts exceeding $100,000 must certify compliance with restrictions on lobbying before they can receive funds.

AREAS TO BE EXAMINED

1. ***Certification***

2. ***Disclosure***

3. ***Oversight***

REFERENCES

1. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEB LINKS

Best Practices Procurement Manual

Standard Form LLL

COMPLIANCE

An entity that fails to file or amend the lobbying disclosure may be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure to file.

QUESTIONS FOR THE REVIEW

1. *Has the state included the lobbying certification in all FTA funded agreements and procurement solicitations exceeding $100,000? Have subrecipients, contractors, and subcontractors signed certifications?*

2. *How does the state monitor subrecipients and contractors to ensure that they include the lobbying certifications in solicitations and obtain signed certifications from contractors awarded contracts in excess of $100,000?*

EXPLANATION
Grantees are required to include the 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 subrecipients fulfill the requirements in applicable direct procurements exceeding $100,000.

REFERENCE
49 CFR Part 20

SOURCES OF INFORMATION
Review solicitation documents, contract files, and subrecipient applications and agreements. On site, discuss the mechanisms used to inform subrecipients and contractors and to monitor compliance with lobbying requirements.

DETERMINATION
The state is deficient if it has not included the lobbying certification in its agreements and procurement solicitations. (***DEFICIENCY CODE***: Lobbying certifications not included in agreements/procurement solicitations)

The state is deficient if it has not obtained the proper certifications from contractors and subrecipients. (***DEFICIENCY CODE***: Lobbying certifications not signed by subgrantees, contractors, or subcontractors)

The state is deficient if it does not ensure subrecipient and contractor compliance with restrictions on lobbying requirements. (***DEFICIENCY CODE:*** Insufficient oversight of lobbying)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office updated written procurement procedures that include the requirement to obtain signed certifications from subgrantees, contractors, and/or subcontractors.

Direct the state to submit to FTA regional office procedures in its state management plan for ensuring that subrecipients and/or contractors comply with lobbying requirements.

3. *Has the state used non-Federal funds for lobbying activities? If yes, have proper disclosures been made and filed with FTA on Standard Form LLL? Have all disclosures been updated quarterly, if needed, and so reported?*

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, Standard Form LLL. 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:

- The awarding of any Federal contract
- The making of any Federal grant
- The making of any Federal loan
- The entering into any Federal cooperative agreement
- The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement

Updates to 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

REFERENCE
49 CFR Part 20
Standard Form LLL

SOURCES OF INFORMATION
During the desk review, interview the regional counsel for information on submission of Standard Form LLLs and quarterly updates. During the site visit, discuss the process for receiving and forwarding the disclosure statements.

DETERMINATION
The state is deficient if it did not file a Standard Form LLL and/or a quarterly report for an event that should have been reported. (***DEFICIENCY CODE***: Grantee did not submit Standard Form LLL/quarterly update)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office the documentation as required and to submit an updated state management plan(s) that includes a procedure for ensuring timely reporting in the future.

4. *Have subrecipients, contractors, and subcontractors that filed certifications used non-Federal funds for lobbying activities? If yes, have proper disclosures been made and filed with the state on Standard Form LLL? Did the state file the disclosures with FTA?*

EXPLANATION
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 which must forward them to FTA.

REFERENCE
49 CFR Part 20
Standard Form LLL

SOURCES OF INFORMATION
During the desk review, interview the regional counsel. During the site visit, discuss the process for receiving and forwarding the disclosure statements.

DETERMINATION
The state is deficient if it did not obtain a Standard Form LLL or a quarterly update from a subrecipient, contractor, or subcontractor for an event that should have been reported. (***DEFICIENCY CODE***: Subgrantee, contractor, or subcontractor did not submit Standard Form LLL/quarterly update)

The state is deficient if it did not forward a Standard Form LLL or quarterly update submitted by a subrecipient, contractor, or subcontractor to FTA. (***DEFICIENCY CODE***: Lacking process for receiving and filing the certifications and disclosure statements)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit the documentation to FTA regional office as required and to submit an updated state management plan(s) that includes a procedure for ensuring timely reporting in the future.

8. 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. ***Oversight***

2. ***Charter Service***

3. ***Reporting***

REFERENCE

1. 49 CFR Part 604, “Charter Service”; Final Rule; Federal Register, January 14, 2008
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

USEFUL WEB LINKS

ombudsman.charterservice@dot.gov

Charter Home Page

Charter Registration Website

Questions and Answers

Charter Resources

Charter Dockets

Reporting form and instructions

Other Forms

Petitions to the Administrator

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for ensuring that subrecipients comply with the charter regulations?*

How does the state handle charter complaints/violations by subrecipients?

2. *Do subrecipients operate any charter service, as defined in the regulation?*

If yes, does the service fall under one or more of the allowed exceptions? If so, under what exception(s) is the charter service operated?

Were the requirements of the exception followed?

EXPLANATION

As part of its oversight responsibilities, the state shall ensure that any subrecipient providing charter service operates the service in accordance with the regulation. 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. A third party pays a negotiated price for the group
   b. Any fares charged to individual members of the group are collected by a third party
   c. The service is not part of the regularly scheduled service, or is offered for a limited period of time
   d. 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. A premium fare is charged that is greater than the usual or customary fixed route fare; or
   b. The service is paid for in whole or in part by a third party.

Examples of service that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the grantee does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the grantee, the grantee charges its customary fixed route fare and there is no third party involvement.
- When a university pays the grantee a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the grantee provides the service on a regular basis along a fixed route and the service is open to the public.
- When the grantee sees a need and wants to provide service for a limited duration at the customary fixed route fare.

The charter regulations include **exemptions** and **exceptions**. Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. 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 do 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 **excepts** 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.

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.

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
   d. The 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: 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 pm, in which case the notice shall be sent by the close of business the next business day.

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.

REFERENCES

49 CFR Part 18.40
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

SOURCES OF INFORMATION

Review oversight materials, such as reports, questionnaires, and site visit checklists. Review the subrecipient grant agreements to ensure that they contain the required charter bus clause. On site, discuss the oversight procedures. During subrecipient site visits, look for indications that charter service is operated. Ask the subrecipient if it operates charter service and, if so, under what exception. Ask if the subrecipient reported the information to the grantee for reporting to FTA. Review information on charter complaints filed.

DETERMINATION

The state is deficient if it does not ensure that subrecipients operate charter service in accordance with the regulation. (***DEFICIENCY CODE**:* Insufficient oversight of charter service)

The state is deficient if it does not have a process to address charter complaints. (***DEFICIENCY CODE**:* Insufficient oversight of charter complaints)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for ensuring that subrecipients comply with the charter regulations.

Direct the state to submit to the FTA regional office an updated state management plan(s) that includes procedures for addressing charter complaints.

3. *Did the state report all charter services provided under the exceptions by subrecipients?*

Were the quarterly reports submitted on time?

Did they note under which exception the charter service was provided?

EXPLANATION

Beginning July 30, 2008, grantees providing charter service under four of the exceptions shall 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 reporting requirement applies to the following four exceptions:

- Government officials (604.6)

- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9)

The grantee reports for itself and its subrecipients. 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 or subrecipient 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.

REFERENCE

49 CFR Part 604.12
FTA Charter Reports

SOURCES OF INFORMATION

Before the desk review, review charter logs and quarterly reports submitted to FTA in TEAM-Web. Review state management plans or other documents for procedures for obtaining the information from subrecipients for reporting to FTA.

DETERMINATION

The state is deficient if it did not submit information for subrecipients for all applicable exceptions on time. (***DEFICIENCY CODE**:* Charter reporting issues)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit missing quarterly reports in TEAM-Web and to submit to the FTA regional office an updated state management plan that includes procedures for submitting the required information for all applicable exceptions on time.

Instructions for filling out the FTA Charter Exceptions Quarterly Reporting Form

There are four exceptions for which a quarterly report is required:

- government officials (Section 604.6);
- qualified human service organizations (Section 604.7);
- leasing (Section 604.8); and
- no response from a registered charter provider (Section 604.9).

The form is broken into three sections.

Section 1 – For All Exceptions

- This section is filled out for all exceptions.
- In the first column specify which exception you relied upon to perform the charter service according to the following codes:
    - 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.

Section 2 – For GO, QH, and WN Exceptions Only

- This section is filled out for the government officials, qualified human service organizations, and when no registered charter provider responds to notice from a recipient only.
- Provide the requested trip information as indicated.
- For vehicle numbers please list all vehicle numbers separated by semicolons. If there's not enough room to include this information, please attach a separate sheet with the required information. When doing this, please indicate the line number by referring to the number in column "A".

Section 3 – For LE Exception Only

- This section is filled out for the leasing exception only.
- For this exception supporting documentation is required.
- In column "P" list the title(s) of any documentation that supports the requirements of Section 604.8.b.3.

***It is very important that if you are reporting any LE exceptions that you print the form out and scan it as a PDF with the supporting documentation.**

FTA Charter Exceptions Quarterly Reporting Form

	Section 1					Section 2								Section 3	
	Exception	Name	Address	Phone #	Email Address	Date of Service	Start Time of Service	# of Passengers	Trip Origination	Trip Destination	Trip Duration (hours)	Fee Collected (per capita or total)	Vehicle #s (separate by semicolon)	# of Vehicles	Supporting Documentation (Document Title)
1															
2															
3															
4															
5															
6															
7															
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9. 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. ***Oversight***

2. ***School Bus Service***

3. ***Tripper Service***

REFERENCES

1. 49 CFR Part 605, "School Bus Operations"

USEFUL WEBLINKS

School bus home page

Questions and answers

School bus decisions

QUESTIONS FOR THE REVIEW

1. *What are the state's procedures for ensuring that subrecipients comply with school bus regulations?*

2. *Do any subrecipients operate exclusive school bus service? If yes, does the service qualify for one of the statutory exemptions? Has the state received approval from the FTA Administrator? Does the service operate only with non-FTA funded equipment and facilities?*

3. *Do any subrecipients provide school "tripper service"? If yes, is the service open and promoted to the general public?*

EXPLANATION

The state must ensure that exclusive school bus service operated by subrecipients is done under one of the statutory exemptions and does not involve FTA funded equipment or facilities and must ensure that school tripper service operated by subrecipients operates and looks like all other regular service.

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
- The grantee, a public entity, has operated the service prior to August 12, 1973 or has received a grant for facilities before November 26, 1974

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
- Publishing notice in the local newspaper

The FTA Administrator makes the determination 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.

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. It may involve use of various fare collections or subsidy systems.

Buses used in tripper service must:

- be open to the public
- not carry designations such as "school bus" or "school special"
- stop only at regular bus stops

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. School tripper service should operate and look like all other regular service.

REFERENCE

49 CFR Part 605

SOURCES OF INFORMATION

Review subrecipient agreements for the required school bus clause. Review state management plans for a discussion of school bus restrictions and oversight procedures. Review oversight materials, such as reports, questionnaires, and site visit checklists. Ask the state to identify any subrecipients operating exclusive school bus service. Ask the state to identify subrecipients that operate school tripper service. During subrecipient site visits, look for indications that exclusive school bus or tripper service is operated. Ask the subrecipient 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 state is deficient if it does not ensure that subrecipients comply with the regulations. (***DEFICIENCY CODE****:* Insufficient oversight of school bus service)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to FTA regional office procedures for ensuring that subrecipients comply with the school bus regulations.

10. AMERICANS WITH DISABILITIES ACT

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. ***Complaints and Lawsuits***
2. ***Vehicle Accessibility***
3. ***Facility Accessibility***
4. ***Subrecipient Oversight***
5. ***Ferry Service***

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 WEB LINKS

Department of Transportation Disability Law Guidance

ADA Standards for Transportation Facilities

FTA ADA Website

Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities

Project ACTION

Disability.gov

U.S. Department of Justice ADA Homepage

Note that these Useful Web Links are not a basis for deficiencies and that any deficiencies (or lack thereof) cannot be based solely on their content.

OFFICE OF CIVIL RIGHTS ADA TEAM LEADER

Mr. John Day
202-366-1671
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QUESTIONS FOR THE REVIEW

Part A: Complaints/Lawsuits

1. *Does the state have a procedure for responding to and tracking complaints? Who handles the complaints? Does the state require subrecipients to report complaints?*

2. *Has the state or its subrecipients received any complaints of discrimination due to disability? What is the status of the complaints?*

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

EXPLANATION
Complaints or legal actions may indicate a problem with implementation of the ADA requirements. Requiring subrecipients to notify the grantee of any complaints may be part of the grantee's oversight program. The Office of Civil Rights (TCR) should be advised of any pending lawsuits.

REFERENCE
49 CFR 27.13
FTA Master Agreement, Section 56

SOURCES OF INFORMATION
During the desk review, obtain information regarding complaints and lawsuits from TCR headquarters and the regional civil rights officer (RCRO). During the site visit, discuss with the state.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part B: Buses

4. *What are the state's procedures for ensuring that subrecipients comply with the ADA requirements for the acquisition of accessible vehicles?*

5. *Has the state obtained a certification of equivalent service from Section 5311 subrecipients that acquire non-accessible vehicles for demand-responsive service?*

6. *How does the state monitor its subrecipients' compliance with equivalent service provisions?*

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. States must ensure that subrecipients comply with the ADA requirements when acquiring vehicles and must ensure that subrecipients provide equivalent service when acquiring non-accessible vehicles for general public demand responsive service.

The requirements for acquisition of accessible vehicles differ for public and private entities. 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 ADA Team Leader in TCR for guidance.

Public Entities
All new bus vehicles purchased or leased by public entities operating fixed route service must be accessible (must comply with 49 CFR Part 38 standards).

Public entities operating demand responsive service for the general public must purchase or lease accessible vehicles unless it can be demonstrated 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 must be provided in the most integrated setting feasible and 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
- constraints on capacity or service availability

Before procuring any non-accessible vehicle for demand responsive service, the entity must file an equivalent service certification with FTA. A state must obtain certifications from Section 5311 subrecipients. Appendix C to 49 CFR Part 37 of the Department of Transportation (DOT) ADA regulations includes a copy of the certification of equivalent service. Entities should signify that they have filed certifications of equivalent service by checking certification number 11 of the annual certifications and assurances. The grantee should monitor its service to ensure that equivalent service, that is, equal opportunity for each individual with a disability to use the transportation service, exists. The grantee should 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.

Private Entities
A private entity primarily engaged in the provision of transportation services may purchase a vehicle that is not accessible under the following circumstances:

- When acquiring a sedan
- When acquiring a new van with capacity of fewer than eight persons, including the driver, for fixed route service if the service, when viewed in its entirety, meets the equivalent service standard
- When acquiring a vehicle for demand response service if the service, when viewed in its entirety, meets the equivalent service standard

A private entity not primarily engaged in the provision of transportation service may purchase a vehicle that is not accessible under the following circumstances if the service, when viewed in its entirety, meets the equivalent service standard:

- When acquiring a non-accessible vehicle for fixed route service with capacity of fewer than 16 persons, including the driver
- When acquiring a vehicle for demand response service

Intercity Bus Operators
The ADA has separate bus accessibility requirements for private entities, including intercity bus operators, that operate over the road buses in fixed route service. New buses purchased or leased by large operators (Class I carriers) must be accessible. Small operators must either purchase or lease new accessible vehicles or ensure that equivalent service is provided to individuals with disabilities, including persons using wheelchairs. This requirement applies to intercity bus operators who are providing service in their own right. Intercity bus operators who are providing service on behalf of a public entity under a contract or other arrangement are subject to the same requirements as the public entity itself.

REFERENCE
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, Subpart H
49 CFR Part 37, Appendix C
49 CFR Part 38
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION
Review programs of projects in TEAM-Web to determine the types of vehicles acquired. If subrecipients have acquired non-accessible vehicles, on site discuss how the state monitors equivalent service and review a sample of certifications of equivalent service.

DETERMINATION
The state 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. The state is deficient if it did not obtain a certification of equivalent service from a 5311 subrecipient acquiring a non-accessible vehicle for demand responsive service. (***DEFICIENCY CODE***: Insufficient oversight of ADA vehicle accessibility requirements)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients provide equivalent service when acquiring non-accessible vehicles for demand responsive service.

Direct the state to submit to the FTA RCRO an updated state management plan that includes a procedure for obtaining a certification of equivalent service from 5311 subrecipients acquiring non-accessible vehicles for demand responsive service.

Part C: Facilities

7. *Since the last review, has the state or a subrecipient constructed any new transit facilities (please list)? Are the facilities accessible?*

8. *Since the last review, has the state or a subrecipient altered any transit facilities in any way? If yes, were the modifications in accordance with 49 CFR 37.9 and Subpart C to 49 CFR Part 37? If no, does the state have 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 state ensure that they 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. 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 and the bathrooms, telephones and drinking fountains 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 regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility features.

An entity must have documentation sufficient to support that it has made 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.

Passenger vessel operators are required to ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including wheelchair users, by meeting the requirements specified under and referenced in 49 CFR 37.9. There must also be an accessible route between the main terminal or other passenger waiting area and the boarding ramp or device used for the vessel. When a facility is altered, the altered portion must meet the same standards that would apply to a new facility.

States must ensure that subrecipients comply with ADA requirements when constructing or altering a facility. If there are parties other than the state or subrecipients responsible for portions of the facility, the state must ensure that they also comply with the ADA requirements.

REFERENCE

49 CFR 37.9
49 CFR Part 37 Subpart C (37.41-37.45)
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

Before the site visit, review grants in TEAM-Web for facility projects. Obtain a list of facility construction or modification projects begun since the last site visit. During the site visit, discuss with the state and inspect the facility if it is included in a site visit. Ensure that procurement documents for architectural/engineering services reference the ADA requirements. If the state has undertaken alterations to an area that serves a primary function but has not made the path of travel accessible due to disproportionality, examine supporting documentation, including the cost calculations. Discuss subrecipient oversight procedures. Tour facilities during site visits.

DETERMINATION

The state is deficient if the new facilities do not comply with the standards referenced in 49 CFR 37.9. The state is deficient if alterations do not comply with the standards referenced in 49 CFR 37.9, and it does not have documentation supporting the reasons for not making alterations fully accessible. (***DEFICIENCY CODE***: Facility accessibility standards deficiency)

The state is deficient if it has not ensured that subrecipients that construct or modify facilities comply with ADA requirements. (***DEFICIENCY CODE***: Insufficient oversight of ADA facility accessibility requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a schedule for making the necessary modifications to bring the facility into compliance and report quarterly on progress until full compliance is attained.

Direct the state to submit to the FTA RCRO documentation supporting the reasons for not making facility alterations fully accessible. For noncompliant new construction or alterations, and paths of travel, the regional office and headquarters will determine corrective actions.

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

Part D: Subrecipient Oversight

10. *What are the state's procedures for ensuring subrecipients comply with the general service provision requirements in Subpart G of Part 37?*

11. *What are the state's procedures for ensuring that subrecipients 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 and courtesy? What training does the state provide? How often? How does the state define proficiency?*

EXPLANATION

The DOT ADA regulations (49 CFR 37.161-167) detail specific requirements for bus service. (For ferry service requirements, please see question 16.) The state must monitor subrecipients for compliance with applicable ADA service provision and training requirements.

- **Stop announcements**. 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 or other disability can identify the route on which he or she wants to travel.

- **Service animals**. An entity must allow service animals to accompany individuals with disabilities in vehicles and facilities. The DOT ADA regulations define a service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal. Policies or practices that have the effect of limiting service animal use are prohibited. An entity may not require passengers to make prior arrangements when boarding a fixed route vehicle with a service animal.

  The Department of Justice issued a new ADA rule that went into effect March 15, 2011, which largely limited its definition of service animals to dogs. This change does not affect the DOT ADA regulations. Therefore, states and subrecipients need to transport service animals other than dogs if they meet the training-based definition. For questions involving service animals, please contact the ADA Team Leader in TCR.

- **Transporting of wheelchairs**. The new DOT ADA rule effective October 19, 2011, removed the term "common wheelchair," which was defined as "a three or four wheeled mobility device that does not exceed 30 inches in width and 48 inches in length as measured two inches above the ground and does not weigh more than 600 pounds when occupied." The definition of "wheelchair" no longer includes a weight or dimensional standard. A wheelchair is defined in 37.3 as "a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered." Transit providers must carry any wheelchair and occupant if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with "legitimate safety requirements." Legitimate safety requirements include such circumstances as a wheelchair of such size that it would block an aisle; however, they explicitly do not include circumstances under which a transit operator may find it

difficult or impossible to secure a passenger's wheelchair to its satisfaction.

- **Wheelchair securement**. The DOT ADA regulations do not require that wheelchairs be secured; however, entities may establish policies requiring passengers to allow their mobility devices to be secured and may deny service if a passenger refuses. Entities must transport passengers when the securement system cannot accommodate the rider's wheelchair. Entities may not establish requirements concerning wheelchair equipment or specifications, such as brakes, footrests, or wheel locks.

- **Priority seating**. Vehicles used in fixed route service shall have signs designating priority seating for elderly persons and persons with disabilities. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the entity shall 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 handicapped persons (or other seat as necessary); and (ii) individuals sitting in a fold-down or other movable seat in a wheelchair securement location. The entity is not required to enforce the request, but is not prevented from adopting a policy requiring people to move.

- **Public information**. Public information and communications must be made available in accessible formats.

- **Lift deployment**. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees. 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).

- **Service to persons using respirators or portable oxygen**. Entities may not deny service to individuals using respirators or portable oxygen.

- **Training**. 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.

REFERENCE

49 CFR 37.161-167
49 CFR 37.173
Disability Law Guidance on Use of Segways
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding service provision. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with the ADA service provisions in Subpart G of Part 37. The state is deficient if it does not ensure that subrecipients have trained personnel, as appropriate to their duties, to operate vehicles and equipment safely and to appropriately interact with and assist persons with disabilities. (***DEFICIENCY CODE**:* Insufficient oversight of ADA service provision/training requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients comply with required service provisions.

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for confirming that subrecipient training programs ensure personnel remain trained to proficiency in operating vehicles and equipment safely, and in interacting with and assisting persons with disabilities.

12. *What are the state's procedures for ensuring that subrecipients comply with ADA vehicle and facility maintenance requirements? For ensuring subrecipients comply with ADA requirements regarding lift and ramp failures on in-service vehicles, and the provision of alternate transportation?*

EXPLANATION

The state is responsible for ensuring maintenance of ADA accessibility features for vehicles, facilities and facility related equipment used in public transportation service, even if the assets were not purchased or constructed with FTA funds.

The ADA has specific requirements for vehicle maintenance and operations:

- Entities must 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 operative. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement. The adequacy of the procedures may be reflected in the frequency of in-service failures.

- 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. If a lift or ramp failure occurs on a route where the headway is greater than 30 minutes and the passenger cannot be served, the entity is required to provide alternative service within 30 minutes. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired 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 more than 50,000 persons in population) or five days (if the entity serves an area of 50,000 persons or fewer in population). If the grantee has Section 5309, 5316 or 5317 subrecipients that are not public entities, consult the ADA Team Leader in TCR.

FTA does not prescribe a monitoring system or specific monitoring activities. Each state is responsible for developing and implementing a monitoring system that provides adequate assurance that ADA features are maintained in operative condition. Most states use a combination of monitoring mechanisms: periodic reporting, maintenance record review, visual inspections, and maintenance audits.

REFERENCE

49 CFR 37.161-163
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding maintenance of ADA accessibility features and lift and ramp failures on in-service vehicles. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients comply with ADA maintenance requirements. The state is deficient if it does not ensure that subrecipients comply with ADA requirements regarding in-service lift or ramp failures. (***DEFICIENCY CODE****:* Insufficient oversight of ADA maintenance requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients comply with ADA maintenance requirements.

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients comply with ADA requirements regarding in-service lift or ramp failures.

13. *Do any subrecipients provide route deviation service (please list)? What are the state's procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service, i.e., that the service deviates for people with and without disabilities and the availability of route deviation service is advertised to the public?*

EXPLANATION

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

are defined as demand responsive systems, which do not require ADA complementary paratransit. One key factor to consider in determining if 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 should provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for the general public as specified in 49 CFR 37.77.

REFERENCE

49 CFR Part 37.77
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
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding route deviation service. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited. Review schedules, timetables, system maps, the website and other public information for up to three subrecipients to ensure that the service is promoted as general public route deviation service. Discuss during the site visit with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients deviate for the general public, promote the service as route deviation service, and provide equivalent service to persons with disabilities. (***DEFICIENCY CODE***: Insufficient oversight of route deviation service)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service.

14. *Do any subrecipients provide fixed route service (please list)? Do they also provide ADA complementary paratransit service? If not, do the subrecipients provide commuter or "university" service? What are the state's procedures for ensuring that commuter service is properly classified and meets the characteristics specified in the DOT ADA regulations?*

EXPLANATION

The state must monitor subrecipients that provide fixed route service for compliance with applicable ADA requirements. The DOT ADA regulations require public entities operating fixed route transit to provide complementary paratransit to persons with disabilities who are unable to use the regular fixed route system. For the purposes of the regulation, all Section 5311 subrecipients must comply with the rules for public entities, including those that are nonprofits. The requirement to provide ADA complementary paratransit service does not apply to commuter bus and rail service and university transportation systems.

Commuter bus service is fixed route bus service characterized by service predominately in one direction during peak periods, and 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 no attempt to comprehensively cover a service area, limited purposes of travel, and a coordinated relationship to another mode of transportation. An entity operating commuter bus service must be able to demonstrate that the service can be characterized 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 have to have a formal arrangement with the transit operator. In some cases, the transit provider may provide funding directly to an institution of higher education for purposes of providing university transportation service.

REFERENCE

49 CFR Part 37.25
49 CFR Part 37.77
49 CFR Part 37.121
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
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the state management plans and other documents published by the state for policies regarding fixed route and ADA complementary paratransit service. Review subrecipient agreements for ADA requirements. Review documentation of oversight activities, including surveys, checklists, interview forms and follow-up correspondence. Review training materials provided by the state. During the site visit, discuss with the state and subrecipients visited.

DETERMINATION

The state is deficient if it does not ensure that subrecipients that operate fixed route service that is not commuter or university service provide ADA complementary paratransit service. The state is deficient if it does not ensure that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations. (***DEFICIENCY CODE****:* Insufficient oversight of fixed route service)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients that operate fixed route service provide ADA complementary paratransit service. Direct the state to submit to the FTA RCRO subrecipient plans for implementing ADA complementary paratransit service and to report quarterly on the progress in meeting the plans.

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

15. *What are the state's procedures for ensuring that the complementary paratransit service provided by subrecipients meets ADA requirements in the following areas:*

- *Eligibility determinations*
- *Service criteria*
- *Service capacity*
- *Origin-to-destination service*
- *Visitors' service*

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. All Section 5311 subrecipients operating public fixed route service, including private non-profit entities, must comply with this requirement as they operate the service on behalf of the grantee, a public entity. The requirement to provide complementary paratransit service does not apply to intercity bus, commuter bus and rail, or university service.

The state must monitor subrecipients that provide complementary paratransit service for compliance with applicable ADA requirements.

Eligibility Determinations

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:

- 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 entity can determine eligibility. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be part of the process, but 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.

The goal of the process is to ensure that only persons who meet the regulatory criteria are regarded as eligible for complementary paratransit under the ADA. If decisions are based solely on a note from a physician, and 100 percent of applicants are approved, the entity may not have an appropriate process. The entity is not prohibited from providing service to other persons; however, the eligibility process must distinguish between someone who is eligible for paratransit under the ADA and someone who is provided service on some other basis. Information on the eligibility process is particularly important if the entity is encountering difficulty with its ability to meet the demand for service.

The entity must process a completed application within 21 days of submittal. If after 21 days, the entity has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the entity later denies the application. The entity may require passengers to be recertified at reasonable intervals.

Conditional eligibility must account for all factors that may prevent a given individual from using the regular 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 a lack of pedestrian infrastructure 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.

The applicant must be given a written reason for the determination and notice of 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 relate the evidence in the matter to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional eligibility. Applicants should be required only to submit to the grantee their intent to appeal, not be required to give a full justification in writing prior to an opportunity to be heard. The entity may require that an appeal be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard and to present information. The person hearing the appeal must be separate from the person who made the original decision to deny eligibility.

The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

Service Criteria

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

a. ADA complementary paratransit must be provided to an ADA eligible individual, a PCA if one is necessary, and one other individual accompanying the ADA eligible individual, if requested. Additional companions should be provided service if space is available.

b. No fare may be charged for PCAs. Companions pay the same fare as the ADA-eligible individual.

c. Requests for reservations must be accepted during normal business hours on a "next day" basis (not 24 hours in advance) on all days prior to days of service (e.g., weekends, holidays). Reservations for next day service must be taken during administrative office hours. Reservations can be accepted using mechanical means (e.g., answering machines, voice mail, internet).

d. Trips must be scheduled within a maximum of one hour of the requested pickup time.

e. No restrictions or priorities may be placed on trip purpose.

f. The days and hours of service for fixed route service and ADA complementary paratransit service must be the same.

g. The ADA service area at a minimum includes all origins and destinations within corridors within ¾ mile 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 is not required to provide

paratransit service in areas it does not have the legal authority to operate. The entity may provide additional service.

h. 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.

Service Capacity

The DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by restrictions. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., limited phone reservation capacity, substantial numbers of late pick-ups, trip denials, missed trips, or excessively long trips).

If on a regular basis, the phone lines are busy, average or long phone hold times are excessive, 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. Limits on the number of reservations in a phone call are a capacity constraint.

The regulations allow grantees to negotiate pick-up 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 should 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.

Paratransit service is by nature a shared ride service that is intended to provide a level of service comparable to that of the fixed route system. A paratransit trip should be comparable in length to an identical trip on the fixed route system, including the time necessary to travel to the bus stop, wait for the bus, actual riding time, transfers, and travel from the final stop to the person's ultimate destination. "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 and the late arrivals in question must be significant in length to trigger this provision.

In order to determine whether capacity constraints exist, entities should have a definition of what constitutes a missed trip, what on-time performance means, when a trip has been denied, and when travel time is too long. For example, at what point in time does a trip go from being late to being missed? Entities are required to plan and budget for 100 percent of demand for next day service. Intentionally planning to deny a percentage of trips is not in compliance with ADA requirements.

Entities should have a mechanism in place for monitoring its on-time performance and tracking these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, unless the entity has no trip denials and few complaints about other performance indicators, the entity must be able to demonstrate that the denials it does have, as well as the missed trips, late pickups, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA eligible trips separately from non-eligible trips.

Origin-to-Destination Service

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.

Visitors' Service

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, proof of 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.

DETERMINATION

The state is deficient if it does not ensure that subrecipients provide ADA complementary paratransit

service in accordance with all regulations. (***DEFICIENCY CODE:*** Insufficient oversight of ADA complementary paratransit service requirements)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that subrecipients that operate complementary paratransit service in accordance with the ADA regulations.

Part E: Ferry Service

16. *If the state operates or oversees the operation of ferry service:*

a. *Does the entity limit the number of persons with disabilities aboard its vessels, require medical documentation or advance notice, or otherwise subject passengers with disabilities to restrictions that do not apply to other passengers? Does the entity impose higher fares, surcharges, or other fees upon persons with disabilities?*

b. *Does the entity have a policy that determines how it will make reasonable modifications in policies, practices or procedures when necessary 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. *Does the entity ensure that assistance is promptly provided to passengers with disabilities who are not able to board or disembark without assistance?*

f. *Are briefings and other safety-related information provided through means that effectively communicate their content to passengers with hearing or vision impairments? Are written materials provided in alternative formats?*

g. *Are individuals with mobility disabilities able to use wheelchairs (power and manual) and mobility aids such as walkers, crutches, canes, braces or similar devices in any areas that are open to pedestrian use?*

17. *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? What are the state's procedures for ensuring that the service complies with 49 CFR Part 39 requirements?*

EXPLANATION
Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," 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.

The state must ensure that ferry service that it operates or oversees or is operated or overseen by a subrecipient complies with the following requirements:

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 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.

REFERENCE

49 CFR Part 39 Subpart F
49 CFR 18.37 and 18.40

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 state 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 state is deficient if any required procedures are not in effect. The state is deficient if there are policies or procedures that are contrary to the ADA requirements. The state is deficient if policies are not enforced or internal operations are not monitored. (***DEFICIENCY CODE***: Ferry service deficiencies)

The state is deficient if it does not ensure that the ferry service provided by subrecipients meets ADA requirements. (***DEFICIENCY CODE****:* Insufficient oversight of ADA ferry service requirements)

SUGGESTED CORRECTIVE ACTION

Direct the state 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 state to submit to the FTA RCRO a plan for providing reasonable modifications to policies and practices for its ferry services.

Direct the state to submit to the FTA RCRO procedures for ensuring that transfer service is accessible to and usable by persons with disabilities.

Direct the state 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 state to submit to the FTA RCRO its procedures for providing briefings and safety-related materials in alternative formats.

Direct the state 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 state to submit to the FTA RCRO documentation of the availability and responsibilities of its CROs, including the ability to override any other personnel.

Direct the state to submit to the FTA RCRO an updated state management plan that includes procedures for ensuring that the ferry service provided by subrecipients complies with ADA requirements.

11. 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. The grantee must ensure that Federally supported transit services and related benefits are distributed in an equitable manner.

AREAS TO BE EXAMINED

1. ***Public Information and Complaint Procedures***
2. ***Limited English Proficiency (LEP)***
3. ***Outreach***
4. ***Subrecipient Monitoring***
5. ***Program Specific Requirements for State Programs***

REFERENCES

1. FTA C 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients"
2. 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"
3. 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"
4. Executive Order 13166: "Improving Access to Services for Persons with Limited English Proficiency"
5. Federal Register: December 14, 2005 (Volume 70, Number 239, pp. 74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"

USEFUL WEB LINKS

FTA Title VI page

DOT Limited English Proficiency (LEP) Guidance

QUESTIONS FOR THE REVIEW

1. *How does the state identify, investigate and track Title VI complaints? Do these procedures afford the public due process for resolving complaints?*

EXPLANATION
FTA requires its grantees to maintain, as part of their records, a description of the process that they use to investigate Title VI complaints filed against the agency. FTA C 4702.1A states that, "recipients and subrecipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to the public upon request."

The process for filing a complaint should be easy to understand for the general public and not include unnecessary obstacles. The state should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the state. Although the complainant may not refer to Title VI in the complaint to the state, the state should be able to identify and classify this type of complaint as a Title VI complaint.

Most states have a well-established process and schedule for receiving, acknowledging, and screening complaints, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints as long as it provides an adequate process for complaints.

REFERENCE
49 CFR 21.9(b)
FTA C 4702.1A, Ch. IV, Section 2

SOURCES OF INFORMATION
Review the state's instructions for filing complaints and its procedures for receiving, investigating and tracking complaints in its Title VI submission. During the site visit, verify implementation. Request a copy of Title VI complaints received since the last review. Ask the state who or what office receives complaints and how staff is trained to identify complaints of discrimination under Title VI.

DETERMINATION
The state is deficient if it cannot provide information on how it receives, identifies, and investigates Title VI complaints and/or if the state cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin. The state is deficient if the process for filing a complaint includes unnecessary timeframes or barriers or requires the complainant to enter into any agreements with the state prior to complaint resolution. (***DEFICIENCY CODE:*** Complaints not addressed properly)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO a written document that describes its procedures for investigating and tracking Title VI complaints.

2. *Has the state conducted an analysis of how the four factors in the DOT limited English proficient (LEP) guidance apply to the state's programs and activities? What steps has the state taken to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are LEP?*

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). The DOT LEP Guidance advises grantees to determine what steps are necessary to provide "meaningful access" on the basis of four factors:

- the number and proportion of LEP persons served or encountered in the eligible service population
- the frequency with which LEP individuals come into contact with the program, activity, or service
- the nature and importance of the program, activity, or service provided by the program
- the resources available to the recipient and costs

The DOT LEP Guidance also recommends that grantees 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

States and subrecipients can ensure that LEP persons have meaningful access to their programs and activities by developing and carrying out a language implementation plan pursuant to the recommendations in Section VII of the DOT LEP Guidance. Certain grantees or subrecipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written LEP plan. However the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a state's program or activities. States or subrecipients electing not to prepare a written language implementation plan should consider other ways to reasonably provide meaningful access.

Such methods can include the following actions:

- translating vital written materials into the language of each frequently encountered LEP group
- training bilingual staff to act as interpreters and translators
- using telephonic and video conferencing interpretation services
- formalizing use of qualified community volunteers
- using centralized interpreter and translator services
- hiring staff interpreters
- using symbolic signs (pictographs)
- translating into languages other than English vital written materials, such as applications or instructions on how to participate in a state's program, signs in bus and train stations, notices of public hearings and other community outreach, and notices advising LEP persons of free language assistance

REFERENCE

Executive Order 13166
DOT LEP Guidance
FTA C 4702.1A, Ch. IV, Section 4

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

The state is deficient if it has not conducted an analysis of how the four factors in the DOT LEP Guidance apply to the state's programs and activities. Even if the state has taken specific actions, the state is deficient if it has not conducted the four factor analysis. (***DEFICIENCY CODE:*** Lacking assessment or provisions for LEP persons)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA RCRO a document that describes its plans for conducting the four-factor analysis and provides a timeline for when the analysis will be completed.

Direct the state to submit to the FTA RCRO the completed analysis along with a list of language assistance it has provided or intends to provide and a timeline for providing this assistance.

3. *In the implementation of FTA programs, does the state conduct public outreach and involvement activities? How has the state sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of these activities? Is this consistent with the state's approved Title VI program?*

EXPLANATION

States and subrecipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. 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.

Some effective practices to promote inclusive public involvement include:

- coordinating with individuals, institutions, or organizations, and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities
- 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

- using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities
- using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population
- implementing DOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation

REFERENCE
EO 12898, DOT Order 5610.2
FTA C 4702.1A, Ch. IV, Section 9

SOURCES OF INFORMATION
Review the state'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 and STIP development.

DETERMINATION
The state 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. (***DEFICIENCY CODE:*** Public outreach deficiencies)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO a document that describes the measures it will take to promote inclusive public participation in future public involvement activities, as well as a timeline for implementing the proposed procedures.

4. *How does the state monitor to ensure that subrecipients comply with Title VI requirements? Does this monitoring include MPOs? What process does the state have in place to be made aware of Title VI complaints received by its subrecipients?*

EXPLANATION
The state is responsible for ensuring that subrecipients comply with Title VI requirements. The oversight program should ensure that subrecipients:

- notify the public of their rights under Title VI;
- have Title VI complaint procedures. The state should be informed of any Title VI complaints received by its subrecipients;
- take reasonable steps to ensure access to LEP populations;
- seek out the viewpoints of minority, low-income and LEP populations when conducting public outreach and involvement activities.

REFERENCE
49 CFR 18.37 and 18.40
49 CFR 21.9(b) (d)
FTA C 4702.1A, Ch. IV
Executive Order 13166
DOT LEP Guidance
EO 12898, DOT Order 5610.2

SOURCES OF INFORMATION
During the site visit, discuss the state's procedures, along with documentation that the procedures have been implemented. Review the state's monitoring tools and the oversight files on subrecipients.

DETERMINATION
The state is deficient if it does not ensure that subrecipients comply with applicable Title VI requirements. (***DEFICIENCY CODE:*** Insufficient oversight of Title VI)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO a document that describes the measures it will take to monitor subrecipients for compliance with applicable Title VI requirements.

5. *What processes does the state use to evaluate if it is distributing funds in a nondiscriminatory manner? Does it analyze the overall allocation of the benefits and burdens of transportation investments in light of Title VI considerations?*

EXPLANATION
States should have a basis for certifying their state-wide compliance with Title VI. As a starting point for much of this analysis, the state should have a demographic profile of the state that includes identification of the locations of socioeconomic groups, including low-income and minority populations, along with how it uses that data. For many state DOTs, this information may not be generated by the transit division, but may be generated or assisted by the highway or planning

division of the state. Examples of this analysis can include:

(1) A demographic profile of the state that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI.

(2) A statewide transportation planning process that identifies the needs of low-income and minority populations.

(3) An analytical process that identifies the benefits and burdens of the state's transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced.

In addition to demographic data showing a profile of the state and how its FTA funds are distributed, the Title VI Circular includes information that should be evaluated in order for the state to determine its compliance with and efforts regarding Title VI principles. These include:

- efforts to receive applications from agencies serving predominantly minority and low-income populations
- fair and equitable competitive selection or annual program of projects processes
- maintenance of the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities

REFERENCE

FTA C. 4702.1A, Ch. VI, Section 1

SOURCES OF INFORMATION

Review the state's most recent Title VI program submission. The state should be able to provide recent demographic and analytical data to support its certification that it is in compliance with Title VI.

DETERMINATION

The state is deficient if it cannot provide the analytical information on which it has based its certification. (***DEFICIENCY CODE***: No existing basis for Title VI certification)

SUGGESTED CORRECTIVE ACTION

Direct the state to provide the RCRO the analytical data on which it is certifying its compliance with Title VI.

12. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The state 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. *Oversight of Subrecipients*

REFERENCES

1. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"

USEFUL WEB LINKS

FTA EEO page

Instructions for uploading programs to TEAM-Web

QUESTIONS FOR THE REVIEW

1. *Which subrecipients meet the threshold for submission of a formal EEO program? For those subrecipients:*

- *What is the process the state uses to receive and review the EEO plans?*
- *Does the state's oversight process include obtaining program updates every three years? If not, provide an explanation.*

EXPLANATION
Subrecipients 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 state an EEO plan. Program updates are due every three years.

Note: In some circumstances, the RCRO may require the state to submit the EEO program of a subrecipient to FTA for review. If the state has a subrecipient that meets the employee threshold, seek additional guidance from the RCRO on the submittal of its program.

REFERENCE
FTA C 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION
During the desk review, review information to determine whether any subrecipient 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 state for use by a subrecipient, are counted towards the subrecipient's threshold. Ask if the subrecipients have approved EEO plans on file with FTA or if they are on file with the state. A self-assessment worksheet for determining threshold status is attached at the end of this section for informational purposes.

DETERMINATION
The state is deficient if it does not have on file an approved EEO plan from subrecipients that meet threshold requirements. (***DEFICIENCY CODE****:* Failure to obtain EEO plans from subrecipients)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO documentation that it has reviewed and approved EEO plans from subrecipients that meet threshold requirements. Confer with the RCRO to determine if a plan should be submitted to FTA.

2. *Does the state adequately review applicable subrecipient EEO plans for compliance in the following areas:*

- *EEO Officer designation*
- *Utilization analysis*
- *Narrative and statistical assessment of employment practices*
- *Monitoring and reporting system*

EXPLANATION
For subrecipients that meet the threshold described in Question 1, the state must review the adequacy of their plans. That review should include the following items at a minimum.

EEO Officer
The EEO officer should be identified in the subrecipient's EEO program submission. 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 state's EEO program, including EEO program submissions.

Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment. 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 EEO goals and processing of employment discrimination complaints, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office.

Underutilization Analysis
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. Appendix A of FTA C 4704.1 includes a chart that details the information that should be included in the EEO underutilization analysis. 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 assure 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 justify this failure.

Narrative and Statistical Assessment
In conjunction with the utilization analysis and EEO goal establishment, applicable subrecipients 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, national origin and sex applying for employment; and the number who were actually hired
- The number of individuals by race, national origin and sex who applied for a promotion or transfer within the past three years; and the number who were promoted or transferred
- The number and types of disciplinary actions and terminations by race, national origin and sex

All problem areas must be identified and a proposed program of remedial, affirmative actions enumerated in the state's EEO plan.

Monitoring and Reporting
An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should:

- assess EEO accomplishments
- enable the evaluation of the program during the year
- enable the taking of necessary action regarding goals and timetables
- identify those units which have failed to achieve a goal or to implement affirmative actions
- provide a factual data base 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.

Examples of what would be monitored include workforce analysis, statistical employment practices, and EEO complaints. An example of reporting would be how often the EEO officer reports to management on the effectiveness of their EEO program.

REFERENCE
FTA C 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION
Review documentation of the state review process for applicable subrecipient EEO plans.

DETERMINATION
The state is deficient if it does not have documentation supporting its review of EEO plans from subrecipients that meet threshold requirements. (***DEFICIENCY CODE**:* Failure to adequately review EEO plans)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA RCRO an updated state management plan(s) that documents the process for adequately reviewing EEO plans from subrecipients that meet threshold requirements.

EEO QUESTIONNAIRE

Threshold Requirements: Any applicant, recipient, or sub-recipient is required to comply with program requirements in Chapter III if it meets the following thresholds:

a. **Employs 50 or more transit-related employees*; and**
b. **Requests or receives capital or operating assistance in excess of $1 million in the previous Federal fiscal year; or**
c. **Request and receives planning assistance under in excess of $250,000 in the previous Federal fiscal year.**

Name of Organization_____

_____State DOT _____MPO _____Transit Agency _____ City

TEAM ID:_____

1. How many employees do you have in your organization? _____

2. How many of those employees are *transit related? _____
   *A transit related employee is an employee of an FTA applicant, recipient, or subrecipient who is involved in an aspect of an agency's mass transit operation funded by FTA. For example, a city planner involved in a planning bus routes would be counted as part of the recipient's work force, but a city planner involved in land use would not be counted.

3. How much did your organization receive in capital or operating assistance the previous fiscal year?

   _____

4. How much did your organization receive in planning assistance the previous fiscal year?

   _____

5. Does your agency submit an EEO Program? _____ Yes _____ No.

   If yes, what is the date of your last submission? _____

6. Do you contract out any of your transit services? _____ Yes _____ No.
   If no, skip to question 7. If yes,
   a. What is the name of agency (s)?_____
   b. How much does the agency receive in capital or operating assistance?_____
   c. How much does the agency receive in planning assistance?_____
   d. How many transit employees does the agency have? _____
   e. Does the agency submit a EEO Program to you?_____ Yes _____ No

      If yes, what is the date of their last EEO submission?_____

7. What is the date of your last Triennial Review (If applicable)?_____
   a. Were there any deficiencies? _____ Yes _____ No.

      If yes, in what area(s)_____

      _____

   b. Are any of the deficiencies still open _____ Yes _____No.

      If yes, in what area(s)?_____

      _____

8. What is the date of your last State Management review (If Applicable)?_____

   a. Were there any deficiencies? _____ Yes _____ No.

   If yes, in what area(s)_____

   _____

   b. Are any of the deficiencies still open _____ Yes _____No.

   If yes, in what area(s)?_____

   _____

9. Has your agency participated in a EEO compliance review?_____
   If yes,

   a. Were there any deficiencies? _____ Yes _____ No.

   If yes, in what area(s)_____

   _____

   b. Are any of the deficiencies still open _____ Yes _____No.

   If yes, in what area(s)?_____

   _____

I declare (or certify, verify, or state) that the foregoing is true and correct.

Signature_____ Date _____

Title_____

13. DRUG AND ALCOHOL AND DRUG-FREE WORKPLACE ACT PROGRAMS

BASIC REQUIREMENT

Recipients of Section 5307, 5309 or 5311 funds must have a drug and alcohol testing program in place for all safety-sensitive employees.

Grantees are required to maintain a drug-free workplace for all employees and to have an ongoing drug-free awareness program.

AREAS TO BE EXAMINED

1. ***Drug and Alcohol Testing of Safety-sensitive Employees***
2. ***Policy Statement on Prohibited Drug Use and Alcohol Misuse in the Workplace***
3. ***Types of Tests and Substances***
4. ***Rate of Random Testing***
5. ***Post-Accident Determinations***
6. ***New Hire Data***
7. ***Monitoring Program Vendors (e.g., Collection Sites, MROs, and SAP)***
8. ***Drug-free Workplace Act Policy and Program***

REFERENCES

1. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"
2. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"
3. 49 CFR Part 32 "Governmentwide Requirements for a Drug-free Workplace (Grants)"
4. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988

USEFUL WEB LINKS

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 the Secretary Prior Employer Records Release Form

List of Department of Health and Human Services Certified Laboratories

APPLICABILITY

FTA program funds can be segregated from other funds. Therefore, FTA drug and alcohol testing requirements may not apply to grantees that receive FTA funds exclusively for facilities and do not operate service under Sections 5307, 5309, or 5311 if these funds can be segregated from other program funds. If a question arises whether FTA funds can be segregated, please contact your project manager, who can contact the FTA Drug and Alcohol Program Manager, Jerry Powers at gerald.powers@dot.gov.

Drug-Free Workplace Act requirements apply to direct recipients of FTA funds. The requirements do not apply to subrecipients.

QUESTIONS FOR THE REVIEW

1. *Do subrecipients and their contractors, subcontractors and lessees have drug and alcohol testing programs for safety-sensitive employees as defined by FTA?*

EXPLANATION

Section 5311 and, under most circumstances, 5309 subrecipients 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 commercial driver's license (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:

- operating a revenue vehicle including when not in revenue service
- operating a non-revenue vehicle when required to be operated by a holder of a commercial driver's license (CDL)
- controlling dispatch or movement of a revenue service vehicle
- maintaining, repairing, overhauling, and rebuilding a revenue service vehicle or equipment used in revenue service with the exception of:
  - all maintenance contractors of grantees in UZAs under 200,000; and
  - 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.
- carrying a firearm for security purposes

Subrecipients that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the U.S. Coast Guard's (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.

Subrecipients that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Subrecipients with contractors, subcontractors or lessees performing safety-sensitive work, such as tire maintenance and overhaul or rebuild of vehicles, engines and parts or body work 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 subrecipient 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 there is a contract with one or more taxicab companies and the subrecipient 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 subrecipient or a contractor to a subrecipient 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 subrecipient 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.

REFERENCE

49 CFR 655.3 and 655.4
Body work interpretation letter
Police officer interpretation letter

SOURCES OF INFORMATION

Ask the state to provide evidence that all safety-sensitive employees of subrecipients are covered by a drug and alcohol testing program. Request a list of all Section 5311 and 5309 subrecipients and their contractors and subcontractors in order to determine if the requirement applies.

DETERMINATION

The state is deficient if any of its subrecipients (and/or their contractors, subcontractors, or lessees) has not

adopted an FTA drug and alcohol program. (***DEFICIENCY CODE**:* No subrecipient drug and alcohol testing program)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit evidence to the FTA regional office that its subrecipients (and/or their contractors, subcontractors, or lessees) with safety-sensitive employees implemented a program. Direct the state to submit to the FTA regional office a revised state management plan with procedures for ensuring subrecipients with safety-sensitive employees have an FTA drug and alcohol program.

2. *Do subrecipients and their contractors, subcontractors, and lessees with safety-sensitive employees have a drug and alcohol policy as required by FTA drug and alcohol regulations? Do the policies contain the required elements?*

EXPLANATION

Subrecipients with safety-sensitive employees covered by 49 CFR Part 655 must have a drug and alcohol policy detailing the provisions of their drug and alcohol program. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments.

The following checklist identifies the minimum requirements of a policy as defined by 49 CFR 655.15:

- Proof of policy adoption by the appropriate governing body with effective date indicated
- Identity of the person designated by the employer to answer questions about the anti-drug and alcohol misuse program
- Categories of employees who are subject to testing
- Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs
- Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing)
- Drug and alcohol testing procedures consistent with 49 CFR Part 40, as amended
- Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations
- 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:

1. 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
2. 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)
3. Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations
4. Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
5. Fail or decline to take an additional drug test the employer or collector has directed you to take
6. Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or employer. 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.
7. 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)
8. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen
9. For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
10. Possess or wear a prosthetic or other device that could be used to interfere with the collection process

11. Admit to the collector or MRO that you adulterated or substituted the specimen

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 urine collections 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.

- 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.
- Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04

In addition to the requirements listed above, the policy should include the subrecipient's policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 which 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 subrecipient must not retest some employees and not others. The subrecipient 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.

Some subrecipients may have modeled their testing programs after FMCSA regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, FMCSA only covers CDL holders. If the program refers to "covered employee" as an employee with a commercial driver's license, the program is probably fashioned after FMCSA regulations.

REFERENCE

49 CFR 655.15
49 CFR 40.191; 40.197; 40.261

SOURCES OF INFORMATION

Review the policies of subrecipients to be visited and their contractors, subcontractors, or lessees with safety-sensitive employees. If the subrecipient is covered by USCG, ensure that the policy requires crew members to submit to random alcohol tests under FTA authority.

DETERMINATION

The state is deficient if the policies of subrecipients (and/or their 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**:* Contractors, subrecipients, and/or lessees drug and alcohol policy lacking required elements)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office the amended policy of the subrecipient (and/or their contractors, subcontractors, or lessees) and an updated state management plan that includes procedures to ensure oversight of drug and alcohol testing policies.

3. *Do subrecipients and their contractors, subcontractors, and lessees with safety-sensitive employees conduct the required types of drug and alcohol testing?*

4. *Do subrecipients and their contractors, subcontractors and lessees with safety-sensitive employees test for the required substances?*

EXPLANATION

Six types of testing are required by the drug and alcohol testing regulations:

- Pre-employment (mandatory for drugs and optional but consistent for alcohol)
- Random
- Post-accident
- Reasonable suspicion
- Return to duty (only for employers with a second chance policy)
- Follow-up (only for employers with a second chance policy)

If pre-employment tests are conducted under FTA authority, Part 40 testing procedures must be followed. Employees who have returned to duty from an absence of 90 days or more *and* have been removed from the random testing pool during that time must pass a pre-employment test(s), not a return to duty test, before being placed back into safety-sensitive duty.

If there is a second chance policy for employees who admit to drug or alcohol use outside the testing process, any return to duty and follow up testing is done under the employer's, not FTA's, authority as 49

CFR Part 655 does not address employees who admit to drug or alcohol use.

The following substances are required to be tested for: marijuana, cocaine, opiates, phencyclidine, and amphetamines (includes ecstasy (MDMA, MDEA, MDA) – employer may or may not add this separately in the policy), as well as alcohol. If the employer lists sub-categories under the amphetamines and opiates, they must list them all and be consistent with Part 40: Opiates (Morphine, Codeine, and Heroin/6-Acetylmorphine), Amphetamines (Amphetamine, Methamphetamine, MDMA, MDEA, and MDA). Employers should not list cut-off concentrations for drugs unless they agree exactly with 49 CFR 40.87.

REFERENCE
49 CFR 655.31, 655.33, 655.34, 655.41, 655.42, 655.43, 655.44, 655.45, 655.46, and 655.47
49 CFR Part 40.87

SOURCES OF INFORMATION
Review the policies of subrecipients to be visited and their contractors, subcontractors, or lessees with safety-sensitive employees to ensure that they indicate clearly when and under what circumstances employees will be tested for drugs and alcohol. Do not examine specific employee records.

DETERMINATION
The state is deficient if subrecipients (and/or their contractors, subcontractors, or lessees) are not conducting the required tests or substances are not being tested. (***DEFICIENCY CODE**:* Required types of testing not being performed by subrecipients) or (***DEFICIENCY CODE**:* Required substances not being tested by subrecipients)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office the amended policy of the subrecipient (and/or their contractors, subcontractors, or lessees) and an updated state management plan that includes procedures to ensure oversight of drug and alcohol programs.

5. *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.

States with subrecipients that have a separate random pool for FTA safety sensitive employees must be able to document that subrecipients meet the required random testing rates. States with subrecipients that are part of a larger consortium random pool must be able to document that the consortium's random testing rates meet the FTA required rates.

REFERENCE
49 CFR 655.45

SOURCES OF INFORMATION
Review MIS reports for subrecipients to be visited and their contractors, subcontractors and lessees. To determine the appropriate number of random tests for the most recent calendar year, perform the calculations in the review package. Note that most subrecipients and consortiums perform random selections four times a year.

DETERMINATION
The state is deficient if, as of the date of the site visit, the number of random tests for its subrecipients (and/or their contractors, subcontractors, or lessees) is below 90 percent of the required number for the year. (***DEFICIENCY CODE:*** Random testing rate below required level)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office a plan to bring the random testing rate to the required level.

6. *Do subrecipients and their contractors, subcontractors, and lessees with safety-sensitive employees conduct post accident testing under FTA authority only when the conditions set forth in Part 655 are met?*

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:

- One or more individuals is immediately transported for medical treatment away from the accident

- Any rubber-tired vehicle incurs disabling damage requiring a tow truck
- A rail transit vehicle is taken out of service as a result of the accident

Following a fatal accident involving a transit vehicle, employers 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 employers 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 employer's own authority. Non-DOT custody and control forms (CCF) 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. During subrecipient site visits, review a sample of accident reports in which post accident testing was performed, as well as copies of accident reports in which post accident testing was not performed.

DETERMINATION
The state is deficient if, for a subrecipient (and/or their contractors, subcontractors, or lessees): a covered employee was not tested after an accident that required testing; a covered employee was not tested following a nonfatal accident and the subrecipient cannot properly document its decision not to test; or, a post-accident test was conducted under FTA's authority for an accident that does not meet the Part 655 definition of accident. (***DEFICIENCY CODE**:* Improper post accident determination)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that subrecipients (and/or their contractors, subcontractors, or lessees) with safety-sensitive employees make proper post accident testing decisions.

7. *Do subrecipients and their contractors, subcontractors, and lessees with safety-sensitive employees check on the drug and alcohol testing records of new hires and transfers that they are intending to use to perform safety-sensitive duties?*

EXPLANATION
Subrecipients with safety-sensitive employees, 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 subrecipient for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Subrecipients 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 subrecipient must obtain this information from the employee.

Subrecipients must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the subrecipient must obtain and review the information as soon as possible. After 30 days, the employer 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 employer must not permit the employee to perform safety-sensitive functions. If the employer 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.

The subrecipient 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 subrecipient 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.

REFERENCE

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. Do not request to see copies of employee drug test results, consent forms, and/or any other potentially confidential material.

DETERMINATION

The state is deficient if subrecipients (and/or their contractors, subcontractors, or lessees) do not obtain an applicant's consent, the required information, or the information for the past two years. (***DEFICIENCY CODE:*** Deficiencies in subrecipient process of checking previous drug and alcohol testing records)

SUGGESTED CORRECTIVE ACTION

Direct the state to submit to the FTA regional office an updated state management plan that includes procedures for ensuring that subrecipients (and/or their contractors, subcontractors, or lessees) review the previous drug and alcohol testing records of first-time safety-sensitive employees.

8. *How does the state monitor subrecipients and their contractors, subcontractors, and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

EXPLANATION

States are responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, 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, including use of vendors and vendor activities, 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 states 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)

REFERENCE

49 CFR 655.81
49 CFR 40.15
Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit
Drug and Alcohol program compliance audit questionnaires

SOURCES OF INFORMATION

Review subrecipient agreements and monitoring documents (reports, questionnaires, site visit checklists) for a description and the details of the state's drug and alcohol oversight program. Discuss the program with the state. Review the files for the subrecipients to be visited during the site visit.

DETERMINATION
The state 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**:* Subrecipients not properly monitored)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office a revised state management plan that includes drug and alcohol program oversight procedures for its subrecipients (and/or their contractors, subcontractors, or lessees).

9. *How does the state monitor vendors (e.g., consortia, third party administrators, collection sites, MROs) that support the programs of subrecipients and their contractors, subcontractors, and lessees to ensure compliance with program requirements?*

EXPLANATION
The state, as the grantee, is ultimately responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the state should ensure that subrecipients have a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of testing service vendors, including collection sites, MROs, and SAPs. States need only ensure that testing laboratories are HHS certified.

The state should not assume that vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a state must monitor vendors. The state 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 of employees or subrecipients of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training.

As it is the responsibility of the employer to ensure that program records are accurate and current and that they comply fully with FTA regulations, states and subrecipients should review copies of CCFs and ATFs to ensure they are completed accurately and legibly and should follow up with collections when forms are not completed correctly or indicate proper procedures have not been followed.

Note that 49 CFR 40.121, as amended, requires MROs to be re-qualified and tested every five years after the completion of a continuing education requirement.

REFERENCE
49 CFR 40.15
HHS certified laboratories

SOURCES OF INFORMATION
Review copies of contracts and monitoring reports for the subrecipients to be visited.

DETERMINATION
The state is deficient if its subrecipients (and/or their contractors, subcontractors, or lessees) do not have contracts with vendors and/or they cannot show that they are monitoring vendor operations. (***DEFICIENCY CODE**:* Drug and/or alcohol program vendors not properly monitored)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office executed contract(s) between subrecipients (and/or their contractors, subcontractors, or lessees) and vendor(s) and an updated state management plan that includes monitoring procedures.

10. *Does the state have a written policy as prescribed in the Drug-Free Workplace Act (DFWA)? Has the state distributed it to all transit-related employees? Does the policy notify employees that:*

- *The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace?*
- *They must abide by the terms of the policy statement as a condition of employment?*
- *If convicted of a drug statute violation occurring in the workplace, they are to report such to the employer in writing no later than five days after such a conviction?*

EXPLANATION
The state is required to have and distribute to transit related employees a written policy that states that the workplace is drug-free and that it prohibits the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace. The

state must notify employees that they must abide by the terms of the policy statement as a condition of employment. The state is required to inform all employees that, if convicted of a drug statute violation that occurred in the workplace, they are to report it to the employer in writing no later than five calendar days after such a conviction. The DFWA policy can be in the FTA Drug and Alcohol Testing Policy as long as it is clearly differentiated and its applicability is extended to all employees, not just safety-sensitive employees.

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 state's payroll, or employees of subrecipients or contractors in covered workplaces. 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.

REFERENCE
49 CFR 32.200; 205; and 210

SOURCES OF INFORMATION
Obtain and review a copy of the state's drug-free workplace policy.

DETERMINATION
The state is deficient it if does not have a written policy. (***DEFICIENCY CODE**:* No written DFWA policy)

The state is deficient if it has not provided written notification to its employees, has not notified all transit related employees, or its policy does not include the required elements. *(**DEFICIENCY CODE***: DFWA policy lacking required elements)

SUGGESTED CORRECTIVE ACTION
Direct the state 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.

11. *Has the state established an ongoing drug-free awareness program? How and how often does the state 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 state 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, states 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.

REFERENCE
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 state is deficient if it does not periodically inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, the opportunities for assistance, and the penalties. The state is deficient if it has provided such information in the past but has not provided information on a consistent basis. (***DEFICIENCY CODE**:* No ongoing drug-free awareness program)

SUGGESTED CORRECTIVE ACTION
Direct the state 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.