WORKBOOK

TRIENNIAL REVIEW PROGRAM FY2012 WORKSHOP

FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

Rev.1

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INTRODUCTION

Background

The triennial review is one of the Federal Transit Administration's (FTA) management tools for examining grantee performance and adherence to current FTA requirements and policies. Mandated by Congress in 1982, the triennial review occurs once every three years. It examines how recipients of Urbanized Area Formula Program funds meet statutory and administrative requirements, especially those that are included in the Annual Certifications and Assurances that grantees submit. Consistent with SAFETEA-LU, at least once every three years, the Secretary of Transportation shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed.

Currently, the review examines 24 areas. In addition to helping evaluate grantees, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements and aids FTA in reporting to the Congress, Secretary, oversight agencies, and the transit community on the Urbanized Area Formula Program.

In 1989, FTA issued Order 9010.1A to provide guidance to FTA staff on conducting triennial reviews as required by Section 5307 of the Federal Transit Act. Regional office and headquarters staff performed these original reviews. The following year, FTA began using contractors to assist with triennial reviews. By 1996, contractors participated in all reviews. The Triennial Review Order was updated and superseded by FTA Order 9010.1B, issued in April 1993. This guidance was later rescinded, and as of November 1, 1994, requisite guidance FTA Order 5400.1 "Oversight Reviews" was provided.

The triennial review has been fine-tuned continuously. FTA has added areas to be reviewed to reflect new requirements, most recently adding area 24. American Recovery and Reinvestment Act (ARRA). The format and delivery schedule for the draft and final reports has changed. The terms used when making findings have been revised. In 1993, FTA issued the first annual detailed Triennial Review Handbook, now known as the Contractors' Guide.

From 1989-1999, FTA required reviewers to prepare a comprehensive draft triennial review report that addressed the grantee's performance in each triennial review area and specified corrective actions. These reports, due within 30 days after the site visit, documented the grantee's activities and procedures for each particular area, including actions that were in compliance. During this decade, reviewers made determinations that the grantee was in compliance, in compliance with follow up, or not in compliance in each review area.

In April 1999, FTA instituted major changes in the Triennial Review process that revised the report format and time frame as well as the nature of the findings. With these changes, FTA instructed reviewers to deliver draft reports on site at the exit conference, with regional office concurrence. The report format was streamlined. The new reports documented deficiencies only; narrative information not pertinent to deficiencies was omitted. The grantee was required to submit comments on the draft report to the FTA regional office within seven days. The regional office had another seven days to forward comments to the lead reviewer, and the final report was due 30 days after the site visit. A standard 90-day time frame for responding to the corrective actions was established as a guideline.

Concurrent with these changes, areas were categorized as in compliance, deficient, not applicable, or not reviewed. Reviewers no longer made findings of non-compliance, and the follow-up category was eliminated. Similarly, though the final report would acknowledge any actions taken by the grantee to close deficiencies before the issuance of the final report, the discussion of the deficiencies and the deficiency codes shown on the report's summary table remained unchanged and were included in OTrak, FTA's automated oversight tracking system.

In May 2000, FTA instituted an additional change in the triennial review finding categories. The finding of in compliance was changed to not deficient. The other finding categories remained as before.

Beginning with the reviews for FY2001, FTA also added questions in the Safety and Security area for which advisory comments are made. Beginning in FY2010, FTA eliminated the finding of not reviewed and added the ARRA review area.

This guide provides an overview of FTA requirements. It does not replace FTA guidance. If there are any conflicts between the guide and other FTA guidance, the FTA guidance takes precedence. For additional details, refer to the statutes, regulations, or FTA circulars cited in the "Reference" sections. This guide is not a substitute for these primary reference documents, but is a portable summary for the reviewer's use, particularly during a site visit. Reviewers should periodically consult FTA's website (http://www.fta.dot.gov) for the most recent policies and directives.

SUMMARY OF CHANGES FYs 2010-2012

OVERALL CHANGES

FY 2010
Removed the guidance to eliminate questions (or note "not reviewed") if a specialty review has occurred or is scheduled.

Addition of subrecipient oversight to most areas. Sections 5316 and 5317 have increased the potential for subrecipients in many areas, in addition to historical subrecipients in the Sections 5307 and 5309 program activities.

Included useful web links in many sections.

FY2011 and FY2012
No significant changes

1. LEGAL

FY2010
- Added information on designations for Section 5316 and 5317
- Updated information on supplemental agreements to reflect TEAM-Web
- Added question on source of authority for the official from the designated recipient official who PINs the supplemental agreement

FY2011 and FY 2012
No significant changes

2. FINANCIAL

FY2010
- Added question on grantee's internal financial management systems
- Added deficiency code for ineligible expenses charged to grant
- Clarified how to determine what is eligible for the capital costs of ADA complementary paratransit in small urbanized areas
- Added question on Sections 5316 and 5317 administration costs
- Clarified what is eligible for local match
- Moved FSR (now FFR) question to Technical to accompany MPR/progress reports questions
- Added question on SF-SAC and other submittals
- Added question on subrecipient A-133 audits

FY2011
- Moved discussion of eligible match from operating assistance discussion to local match discussion
- Clarified what is eligible for local match, including clarifying that Temporary Assistance for Needy Families funds and other non-DOT Federal funds, if authorized by the originating program to be used for transportation, can be used as local match for Section 5307
- Added deficiency code for ineligible local match
- Added question regarding financial capacity of subrecipients
- Pulled together questions on eligible activities under new section titled "eligible expenditures"
- Moved question from Technical on incidental and ineligible services to this new section

FY2012
- Deleted the question regarding the capital cost of ADA complementary paratransit
- Deleted the question regarding use of Sections 5316 and 5317 funds for administration
- Added to question 11 a discussion of central service cost allocation plans and indirect cost rate proposals and a clarification of cost allocation plan submission requirements to other cognizant agencies
- Clarified in question 15 when copies of single audits must be submitted to FTA

3. TECHNICAL

FY2010
- Added Sections 5316 and 5317 to progress reporting questions
- Added question on new FFR
- Added question on Sections 5316 and 5317 performance reporting
- Included additional grant management strategies and information to question on grant closeouts
- Added question on ineligible services
- Added information on preventive maintenance force account plans
- Revised question on leasing to reflect the new requirements of 5010.1D
- Revised question to focus on oversight of projects other than major capital projects covered by PMOCs
- Narrowed focus of question on oversight of contractors to oversight of service contractors

FY2011
- Expanded the discussion in question on Federal Financial Reports
- Added question on Section 5310 performance reporting
- Added question regarding reporting of subawards to the Federal Funding Accountability and Transparency Act Subaward Reporting System for grants awarded by FTA after October 1, 2010

- Clarified that all costs, not just labor costs, should be included when determining if a project meets the threshold for a force account plan
- Clarified that a force account plan is prepared at the project, not grant, level

FY2012
- Deleted questions regarding Section 5310 reporting requirements
- In question 4, expanded the discussion on Federal Financial Reports to address Federal cash receipts and disbursements and eliminated the discussion of program income
- Eliminated from question 8 the discussion of force account plans for preventive maintenance

4. SATISFACTORY CONTINUING CONTROL

FY2010
- Clarified requirements as they apply to states and subrecipients of states
- Separated questions regarding real property and equipment
- Added question on leasing equipment to private operators
- Added disposition of supplies to question regarding disposition of equipment
- Added question on use of insurance proceeds
- Clarified that the 20 percent spare ratio requirement only applies to urban fixed route service

FY2011
- Deleted from question 1 classification of use of an intermodal facility by an intercity bus operator as incidental use, as such use is eligible under USC 5302(a)(1)(G)
- Clarified that the spare ratio requirement only applies to urban fixed route service, how the spare ratio is to be calculated, and the information to be submitted with the plan for bringing the spare ratio within the cap

FY2012
Added to Question 4, deficiency for *Real Property Issues*

5. MAINTENANCE

FY2010
- Added subsection headers
- Separated discussion of maintenance of ADA accessibility equipment on vehicles and facilities
- Changed process so that ADA maintenance deficiencies appear in ADA
- Required written maintenance plans regardless of whether the grantee, contractor or subrecipient maintains the equipment

FY2011
Clarified reporting requirements for the corrective actions for late preventive maintenance inspections

FY2012
Included clarification of maintenance program versus maintenance plan

6. PROCUREMENT

FY2010
- Updated question on written procedures to reference 4220.1F
- Incorporated selection procedures question into question on solicitation elements to align with 4220.1F
- Added more information on protest procedures
- Added elements to be included in written record of procurement history
- Added question on independent cost estimate
- Added question on responsibility determinations
- Added eligibility information to change order question
- Added information from 4220.1F on sole source justifications
- Added question on evaluating option prices when exercising options
- Added information on crediting liquidated damages to the project
- Updated Exhibits 6.1 and 6.2, deleted Exhibit 6.3 on bus testing and included reference to testing website

FY2011
- Updated applicability information on procurement of art
- Added compliance section to first page for potential return of funds
- Updated architectural and engineering question with design/build information
- Added information on effect of change orders on thresholds
- Updated clause chart

FY2012
- Added a deficiency code in Question 9 for Qualifications-based procurement deficiencies
- Added Question 10 on competitive procurements for operations contracts

7. DBE

FY2010
- Reorganized to ask questions on threshold first, allowing reviewer to skip questions that don't apply if threshold not met by grantee
- Eliminated question on financial institutions
- Revised question on good faith efforts to focus on how determinations are being made

- Added information to prompt payment question for appropriate prompt return of retain options (also added prompt payment and return of retainage clause to procurement checklist)
- Separated monitoring question to ask how grantee is ensuring that first tiers (subrecipients and prime contractors) are monitored for their commitments and that DBEs are actually performing the work
- Added clarifications for TVM certifications
- Gave more instructions on what to look for in UCPs agreements and certifications
- Added protests to complaints question

FY2011
- Added new deficiency code for lack of resources
- Revised overall goal question to conform to 3-year goal setting cycle
- Removed deficiency for goal calculation
- Added new deficiency code for incomplete semi-annual reporting
- Added information to question on DBEs being certified as part of good faith efforts
- Included additional person for receipt of corrective actions resulting from certification questions

FY2012
- Consistently referred to overall agency goals as "three-year" goals
- Added deficiency for failure to upload program to TEAM-Web
- Added Question 5 on new "Fostering Small Business" element to be added to DBE program by February 28, 2012
- In Question 7, added requirement to submit ARRA and semiannual reports in TEAM reporting module
- Added Question 8 on analysis of DBE achievements (through reports) vs. overall three-year goal
- Added to Question 11 the new requirements for DBE termination procedures
- Added to Question 12 the new requirement to certify that contract and site monitoring has been accomplished
- Added two elements to Question 15 certification questions regarding new interstate certification and directory contents requirements

8. BUY AMERICA

FY2010
- Added questions regarding oversight
- Clarified that purchaser's requirements and FMVSS applies to purchases under $100,000

FY2011
- Added statement that FTA may decide to not participate in a procurement that does not comply with Buy America
- Clarified that Buy America applies to purchases of used items
- Added a discussion of purchases of used revenue rolling stock
- Added discussion of waiver for final assembly of minivans
- Combined the oversight questions into one oversight question

FY2012
No significant changes

9. DEBARMENT AND SUSPENSION

FY2010
- Added question on checking EPLS.gov
- Added information about principals, officers, etc. of the grantee as being covered by debarment and suspension also
- Added question on oversight

FY2011
No significant changes

FY2012
Added to Question 1, a discussion clarifying that if a grantee ensures that prospective contractors are not on the EPLS, they may award a contract without a Suspension and Debarment certification.

10. LOBBYING

FY2010
No significant changes

FY2011
Added a statement that FTA may assess financial penalties for failure to comply with the disclosure provisions

FY2012
No significant changes

11. PLANNING/POP

FY2010
- Eliminated questions that are addressed during Planning Certification Reviews
- Clarified Sources of Information and Determination as these relate to MPO agreements that precede TEA-21 or SAFETEA-LU

- Expanded discussion of requirements for selection of Sections 5316 and 5317 projects
- Eliminated question regarding oversight of Sections 5316 and 5317 subrecipients

FY2011 and FY2012
No significant changes

12. TITLE VI

FY2010
- Added emphasis on how (not if) a grantee's Title VI program is being implemented
- Added question on oversight

FY2011
- Deleted question on who at the grantee is responsible for Title VI
- Added information on Sections 5316 and 5317
- Added information that process to file complaint should be easily understood and not present obstacles
- Deleted environmental justice question
- Added question on defining major service changes

FY2012
- Added deficiency for failure to upload program to TEAM-Web
- Added consistent language for threshold discussion in Questions 2 and 8
- Incorporated new guidance on fare and service change equity analysis

13. PUBLIC COMMENT ON FARE AND SERVICE CHANGES

FY2010
- Clarified that grantees must solicit public comment for all fare increases, not just changes in the basic fare structure
- Added question on oversight

FY2011
- Changed section title to correspond with title used in FTA C 9030.1D
- Expanded question 1 to address procedures for soliciting public comment and considering comments received

FY2012
No significant changes

14. HALF FARE

FY2010
- Clarified that half fare requirements apply to fixed routes services for which the grantee has not defined peak hours
- Clarified that peak hours can be seasonal
- Added question on oversight

FY2011
- Added a useful web link for Medicare eligibility
- Clarified that half fare does not apply to demand response service, including route deviation service
- Updated explanation of Medicare eligibility to reflect changes to the Medicare eligibility website

FY2012
- Eliminated statement in explanation for Questions 1 and 2 that grantees are not required to offer half fares on payment options such as monthly passes.

15. ADA

FY2010
- Added subsection headers
- Added questions regarding oversight
- Deleted discussion of waivers for purchase of non-accessible equipment for fixed route service
- Added question regarding use of accessible buses for contracted fixed route service
- Added questions regarding equivalent service
- Added explanatory information regarding accessibility requirements of modified facilities
- Added questions relating to lift and securement use
- Separated questions regarding maintenance of accessibility features from question regarding maintenance of lifts and ramps
- Added questions regarding commuter service, university service and deviated fixed route service
- Added questions on conditional eligibility and service for appeals not decided within 30 days to question regarding the eligibility process
- Added clarifying information on complementary paratransit fares
- Added questions regarding a no-show policy

FY2011
- Eliminated the discussion of intercity bus operators regarding the use of accessible equipment for contracted service as the requirements of 49 CFR Part 37 Subpart H, not Subpart D, apply to the private intercity bus industry
- Added a note to existing question stating that DOT is developing guidance in light of recent amendments to the Department of Justice ADA regulations regarding service animals
- Clarified the definition of "university service"
- Deleted question regarding ADA complementary paratransit fares for grantees offering free fare zones or shuttles

- Added a discussion to question regarding no-show policies stating that FTA has elected not to intervene in situations where transit operators and riders facing suspension have mutually agreed to accept payment for the missed trips in lieu of suspension
- Added question regarding operating policies regarding single point accessible boarding at rail stations
- Added question regarding adequate dwell times for boarding and disembarking rail vehicles for persons with disabilities

FY2012
- Added a discussion to Part A: Bus and Rail Vehicles of the requirements for acquiring accessible vehicles for vanpools
- Clarified in Part B: Facilities the requirements relating to modifications to the path of travel when a facility is being modified
- Added in Part B: Facilities a discussion of ferry terminal accessibility requirements
- Grouped questions into two new sections, Part F: Fixed Route Service, and Part G: Route Deviation Service
- Clarified in question 23 the requirements for ADA complementary paratransit determination letters
- Clarified in the explanation to questions 25-30 that grantees may not limit the number of reservations made during a phone call
- Clarified in Part I: Rail Service the requirements and due dates for key station plan time extensions
- Added Part J: Ferry Service to incorporate the requirements of 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"

16. CHARTER BUS

FY2010
- Consolidated questions regarding provision of charter service into one question
- Clarified that service exempt from the regulation is not charter service
- Clarified quarterly reporting requirements in table and question
- Add question regarding oversight

FY2011 and FY2012
No significant changes

17. SCHOOL BUS

FY2010
Added oversight questions

FY2011
No significant changes

FY2012
Included reference for the "Final Policy Statement on FTA's School Bus Operations"

18. NATIONAL TRANSIT DATABASE

FY2010
- Deleted questions on timely submissions
- Added information on "complete" reporting
- Added information on subrecipient reporting
- Deleted declaration and auditor's statement questions
- Added question on passenger mile data

FY2011
- Added question regarding reporting of total ADA complementary paratransit operating expenses as part of the reporting of operating expenses for demand response service
- Expanded definition of subrecipients to include contractors and lessees who are not reimbursed for the full cost of the service by the grantee
- Moved NTD reporting questions regarding safety and security incidents from Safety and Security area to new, updated question

FY2012
- Added to question 1 a discussion of the new "small systems waiver" that replaces the "nine-or-fewer-vehicles" waiver
- Added to question 2 a discussion of Rural NTD module reporting
- Clarified in question 5 a discussion of the requirements for collecting unlinked passenger trip and passenger mile information

19. SAFETY AND SECURITY

FY2010
Added information on FTA's Bus Safety Website

FY2011
- Added safety questions 7, 10, and 11 based on most recent Dear Colleague letters regarding use of cell phones, audio frequency track circuits, and train control systems
- Added security question on TSA BASE assessments and reformatted remainder of security section to reduce questions for those that had successfully completed a BASE review and for <200,000 grantees
- Moved NTD reporting questions from Safety and Security area to NTD area

FY2012
No significant changes

20. DRUG FREE WORKPLACE

FY2010, FY2011 and FY2012
No significant changes

21. DRUG AND ALCOHOL PROGRAM

FY2010
- Added clarifying information and references for applicability for off duty police officers
- Revised question on post accident testing to address only conducting this testing under FTA authority in appropriate instances
- Added information in question on MIS reports requiring FTA funded ferry operations to submit reports
- Added question on oversight of private operators

FY2011
- Added discussion of security personnel for commuter rail operators
- Clarified requirements for ferry operators regarding drug and alcohol testing policies and MIS reporting
- Added discussion of testing for ecstasy (MDMA)

FY2012
- Added information on substances tested in Question 5 and how they are listed in policies
- Clarified information in Question 12 on private carriers

22. EQUAL EMPLOYMENT OPPORTUNITY

FY2010
- Added clarifying information on meeting
- Added subrecipient threshold

FY2011
- Added clarifying information for EEO officer

FY2012
- Added deficiency for failure to upload program to TEAM-Web
- Clarified that if EEO Officer does not report to CEO it is a deficiency
- Divided previous single question on goals, assessments and monitoring in to three distinct questions (4, 5, and 6)

23. ITS ARCHITECTURE

FY2010
Added question on project scope changes for ITS projects and related systems engineering analysis

FY2011 and FY2012
No significant changes

24. ARRA

FY2010
- Added the review area
- Added question to ensure listing of 100 percent Federal share for property/equipment purchased with ARRA funds

FY2011
- Added question regarding spare ratio
- Eliminated Title VI environmental justice question
- Added question regarding ARRA-specific DBE quarterly reporting
- Eliminated drug and alcohol testing question

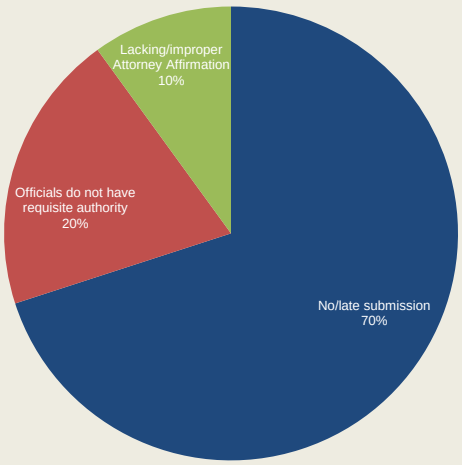
FY2012
No significant changes

1. Legal

Basic Requirement

- Grantees must be eligible and authorized to request, receive and dispense funds
- The authority to take actions on the grantee's behalf must be properly delegated and executed

Legal Deficiencies



FY 2011 OTrak Data

1. Legal

Items Reviewed

- Designated recipient/supplemental agreement *[Question 1]*
- Definition and source of authority *[Question 2]*
- Supplemental agreement and source of authority *[Question 3]*
- Annual list of certifications and assurances *[Question 4]*
- Notification of change in laws and/or litigation *[Question 5]*

1. Legal

Typical Deficiencies

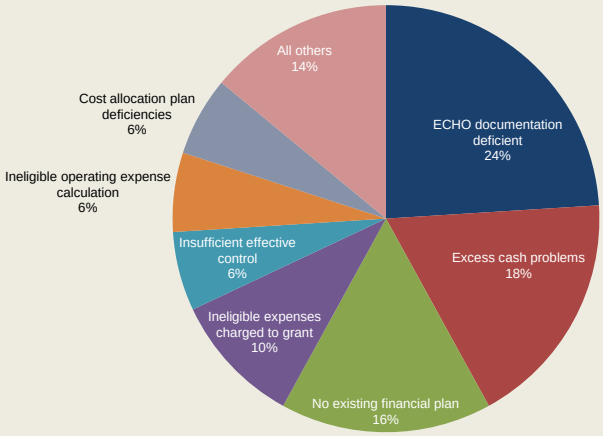
- No/late submission
- Officials do not have requisite authority
- Lacking/improper Attorney Affirmation

2. Financial

Basic Requirement

- Grantees must demonstrate ability to match and manage FTA grant funds and conduct and respond to applicable audits

Financial Deficiencies



FY 2011 OTrak Data

2. Financial

Items Reviewed

- FMO/FCA? *[Question 1]*
- Financial Capacity
  - Sources/eligibility of local funds *[Question 2]*
  - Subrecipient local match *[Questions 3 and 4]*
  - Adequacy of local funds *[Questions 5 and 6]*
  - Multi-year financial plans *[Question 7]*
  - Deficits and liabilities *[Question 8]*

2. Financial

Items Reviewed

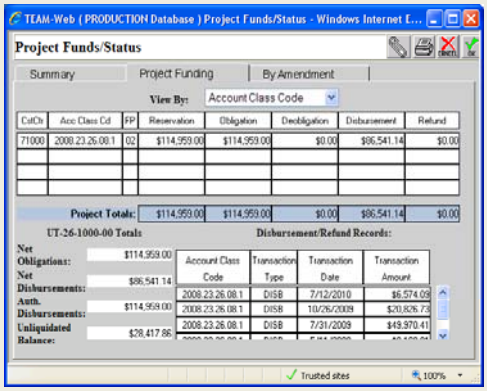
- Eligible Expenditures
  - Service *[Question 9]*
  - Operating assistance *[Question 10]*
  - Indirect costs *[Question 11; ARRA Question 12]*

2. Financial

Items Reviewed

- Funds Management
  - Financial management systems *[Questions 12 and 13]*
  - ECHO documentation *[Question 14; ARRA Question 11]*
  - Eligible expenses *[Question 15; ARRA Question 11]*

Project Funds Status



- Project Funding is second tab under Project/Funds Status located by clicking on Project Management link on left hand side of TEAM. Lists ECHO drawdowns by financial purpose code.
- "Account Class Code" shows year and type of funding
- "FP" is the financial purpose code under which funds have been reserved
- Can view by account class code or financial purpose code

2. Financial

Items Reviewed

- Audits
  - Single audit reports (OMB Circular A-133) *[Questions 16 and 17]*
  - Other (GAO, OIG, state/local governments, internal audits) *[Questions 18 and 19]*

2. Financial

Typical Deficiencies

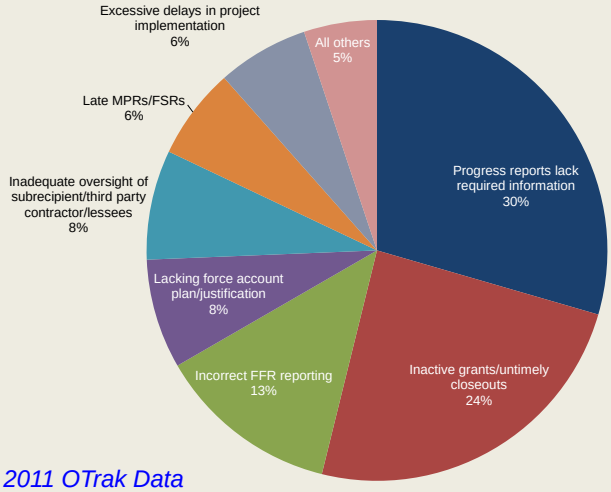
- Financial capacity
  - No existing financial plan
- Funds management
  - Insufficient ECHO documentation
  - Excess cash problems
  - Ineligible expenses charged to grant
  - Insufficient effective control
  - Ineligible operating expense calculation
  - Cost allocation plan deficiencies

3. Technical

Basic Requirement

- Grantees must have the ability to implement and manage grants properly

Technical Deficiencies



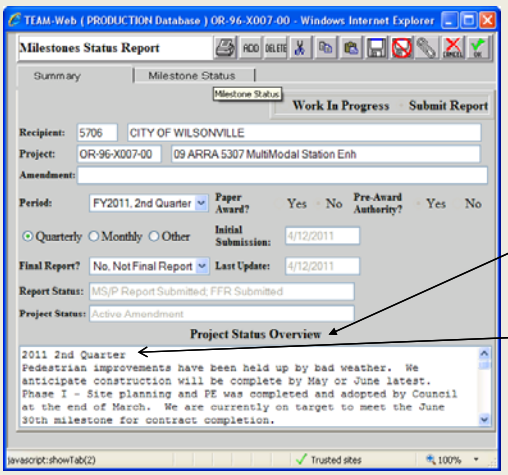
FY 2011 OTrak Data

3. Technical

Items Reviewed

- Responsibilities *[Question 1]*
- Milestone Progress Reports (MPRs) *[Questions 2 and 3; ARRA Questions 7 and 8]*
- Federal Financial Reports *[Question 4; ARRA Questions 9 and 10]*
- Performance reports (5316 and 5317) *[Question 5]*
- Grant subaward reporting *[Question 6]*
- Project completion and grant closeout *[Question 7; ARRA question 1]*

Milestone Progress Reports

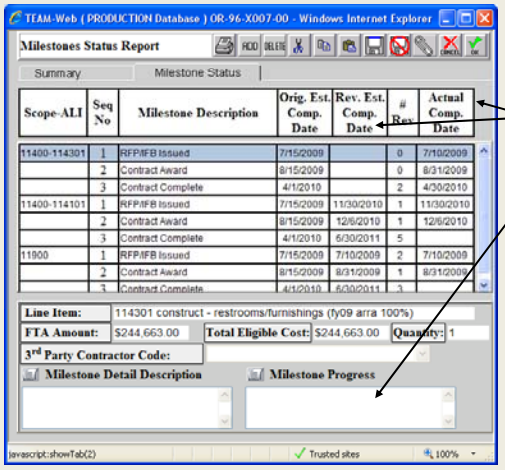


Summary Tab

Provide overall project update

Date stamp entry

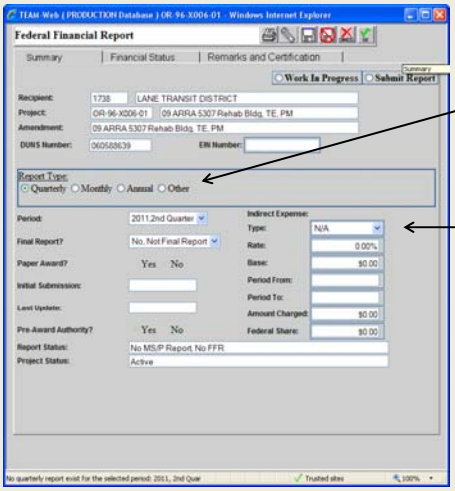
Milestone Progress Reports



Milestone Status Tab

- Update milestone dates
- Discuss milestone progress
- Date stamp entry

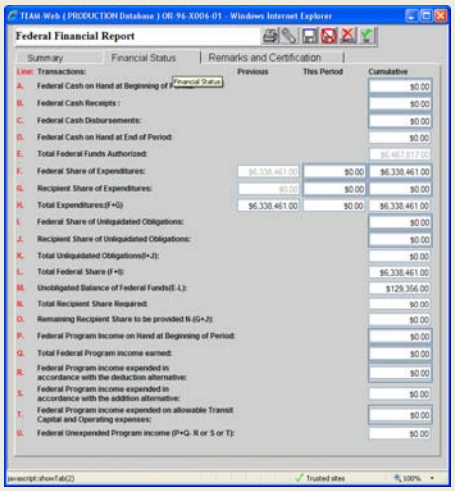
Federal Financial Reports



Summary Tab

- Report Type
  - Quarterly
  - Annual
- Indirect Expenses
  - Must be pre-approved with FTA

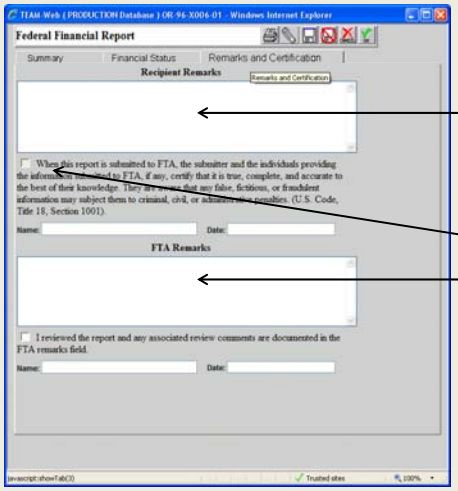
Federal Financial Reports



Financial Status Tab

- Include all information requested in boxes with blue outlines
- Report cumulative amounts on lines A-D on the cash basis of accounting
- Report lines F-P on the accrual basis of accounting

Federal Financial Reports



Remarks and Certification

- Include recipient remarks regarding any financial issues or if cash on hand
- Check the certification box when complete
- Respond to FTA remarks

3. Technical

Items Reviewed

- Force account activities *[Question 8]*
- Capital leasing *[Question 9]*
- Oversight of contractors/subrecipients *[Questions 10 and 11; ARRA Question 3]*

3. Technical

Typical Deficiencies

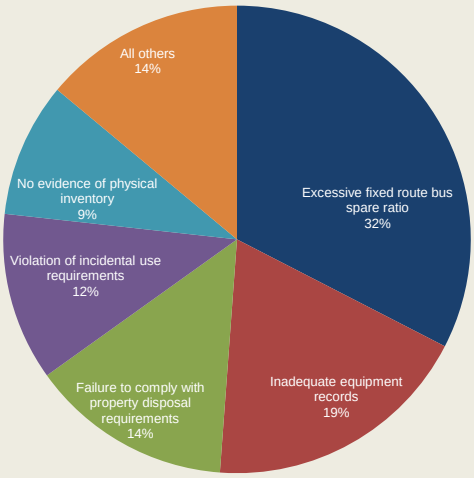
- Progress reports lack required information
- Inactive grants/late grant closeouts
- Incorrect FFR reporting
- Lacking force account plan/justification
- Inadequate oversight of subrecipient/third-party contractor/lessees
- Late MPRs/FSRs

4. Satisfactory Continuing Control

Basic Requirement

- Grantees must maintain control over FTA funded real property, facilities, and equipment

Satisfactory Continuing Control Deficiencies



FY 2011 OTrak Data

4. Satisfactory Continuing Control

Items Reviewed

- Real property
  - Incidental use *[Question 1]*
  - Removed/excess real property *[Questions 2 and 3]*
  - Disposals *[Question 4]*
  - Third-party property use monitoring *[Question 5]*

4. Satisfactory Continuing Control

Items Reviewed

- Equipment
  - State control of FTA equipment *[Question 6]*
  - Equipment records *[Question 7; ARRA Question 13]*
  - Inventory/reconciliation *[Question 8]*
  - Inventory control *[Question 9]*
  - Assets leased to others *[Questions 10 and 11]*
  - Removals and disposals *[Questions 12, 13 and 14]*
  - Spare ratios/contingency fleets *[Questions 15 and 16; ARRA Question 14]*
  - Rail fleet management plan *[Question 17]*

4. Satisfactory Continuing Control

Typical Deficiencies

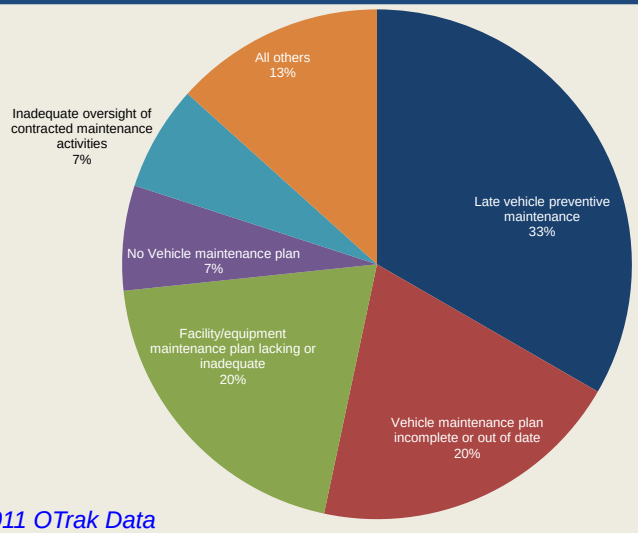
- Excessive fixed route bus spare ratio
- Inadequate equipment records
- Failure to comply with property disposal requirements
- All others
- Violation of incidental use requirements
- No evidence of physical inventory

5. Maintenance

Basic Requirement

- Grantees must ensure that Federally funded equipment and facilities are kept in good operating order

Maintenance Deficiencies



FY 2011 OTrak Data

5. Maintenance

Items Reviewed

- Vehicle maintenance *[Questions 1, 2 and 3]*
  - Plans
  - Records/inspections
  - ADA features
- Facility and equipment maintenance *[Questions 4, 5 and 6]*
  - Plans
  - Records/inspections
  - ADA features
- Warranties *[Question 7]*
- Oversight of contractors/subrecipients/lessees *[Question 8]*

5. Maintenance

Typical Deficiencies

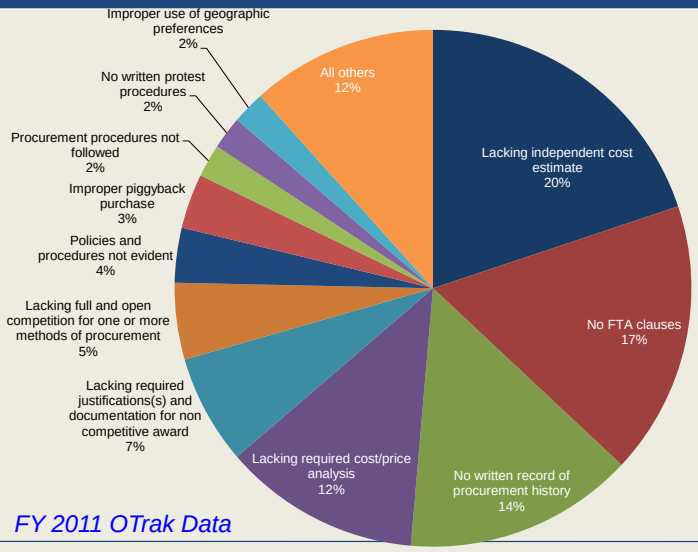
- Late vehicle preventive maintenance
- Vehicle maintenance plan incomplete or out of date
- Facility/equipment maintenance plan lacking or inadequate
- No facility/equipment maintenance plan
- Inadequate oversight of contracted maintenance activities

6. Procurement

Basic Requirement

- Grantees will have procurement procedures reflecting applicable state and local law that ensure competitive procurements and conform to Federal law, including FTA Circular 4220.1F

Procurement Deficiencies



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6. Procurement

Items Reviewed

- PSR? *[Question 1]*
- Policies and procedures *[Question 2]*
- Personal/organizational conflicts of interest *[Questions 3 and 4]*
- Prequalification *[Question 5]*
- Solicitation elements *[Question 6]*
- Duplicative or unnecessary procurements *[Question 7]*

6. Procurement

Items Reviewed

- Protest procedures *[Question 8]*
- Full and open competition *[Question 9]*
- Transit operations and management contracts *[Question 10]*
- Written procurement history *[Question 11]*
- Contract administration *[Question 12]*
- Oversight *[Question 13]*
- Geographic preferences *[Question 14]*

6. Procurement

Items Reviewed

- Applicable clauses *[Question 15]*
- Five-year limitation *[Question 16]*
- Independent cost estimate *[Question 17; ARRA Question 15]*
- Cost/price analysis *[Question 18; ARRA Question 16]*
- Responsible contractors *[Question 19]*
- Change orders *[Question 20]*
- Time and materials type contracts *[Question 21]*

6. Procurement

Items Reviewed

- Non-competitive awards *[Question 22; ARRA Question 17]*
- Piggyback procurements *[Question 23; ARRA Question 18]*
- Option clauses *[Question 24]*
- Advance/progress payments *[Questions 25-26]*
- Liquidated damages *[Question 27]*
- Bus testing *[Question 28]*

6. Procurement

Typical Deficiencies

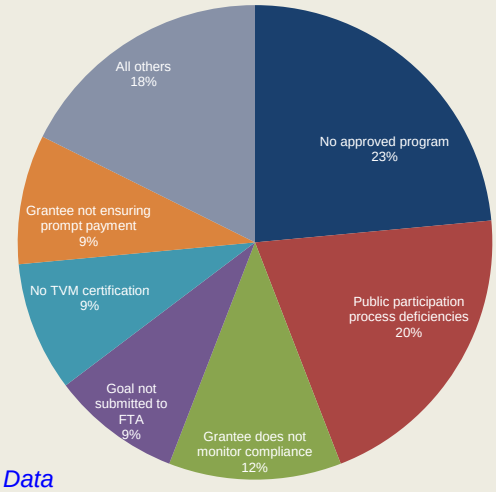
- Lacking independent cost estimate
- No FTA clauses
- No written record of procurement history
- Lacking required cost/price analysis
- Lacking required justifications(s) and documentation for non competitive award
- Lacking full and open competition for one or more methods of procurement
- Policies and procedures not evident
- Improper piggyback purchase

7. DBE

Basic Requirement

- Grantees must create a level playing field on which DBEs can compete fairly for federally funded contracts
- **Upload program to TEAM-Web**

DBE Deficiencies



FY 2011 OTrak Data

7. DBE

Items Reviewed

- DBE review? *[Question 1]*
- DBE program and responsibilities *[Questions 2, 3 and 4; ARRA Question 19]*
- Fostering small business *[Question 5]*
- Three-year overall goals *[Question 6]*
- Semi-annual reports *[Question 7; ARRA Question 20]*
- Attainment analysis *[Question 8]*

7. DBE

Items Reviewed

- Good faith efforts *[Question 9]*
- Prompt payment *[Question 10]*
- Monitoring *[Questions 11 and 12]*
- TVM certification *[Question 13]*
- DBE certifications *[Questions 14 and 15]*
- Complaints/protests *[Question 16]*

7. DBE

Typical Deficiencies

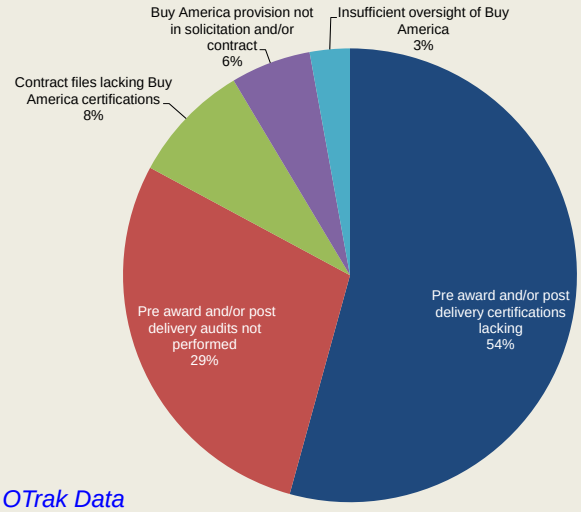
- No approved program
- Public participation process deficiencies
- Grantee does not monitor compliance
- Goal not submitted to FTA
- No TVM certification
- Grantee not ensuring prompt payment

8. Buy America

Basic Requirement

- Grantees must meet Buy America requirements for procurements of steel, iron or manufactured goods
- Grantees must comply with pre-award/post-delivery audit requirements for procurements of revenue rolling stock

Buy America Deficiencies



FY 2011 OTrak Data

8. Buy America

Items Reviewed

- Buy America provision/certifications *[Question 1]*
- Rolling stock
  - Pre-award/post-delivery audits and certifications *[Question 2]*
  - Multiple delivery dates *[Question 3]*
  - On-site inspection of manufacturing process *[Question 4]*
- Oversight *[Question 5]*

8. Buy America

Typical Deficiencies

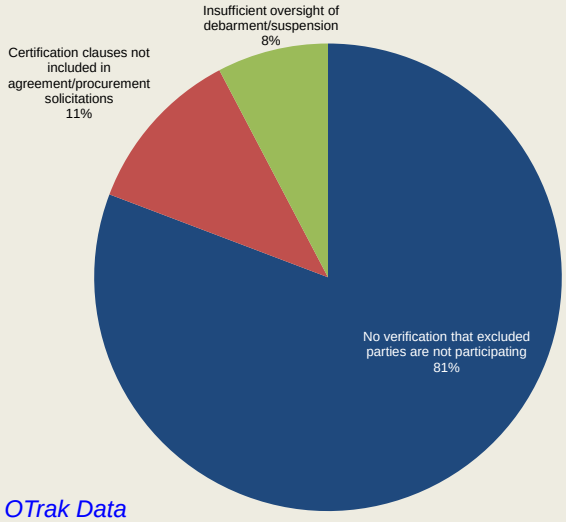
- Pre award and/or post delivery certifications lacking
- Pre award and/or post delivery audits not performed
- Contract files lacking Buy America certifications
- Buy America provision not in solicitation and/or contract

9. Debarment and Suspension

Basic Requirement

- Grantees are required to ensure that none of their principals, subrecipients, and third-party contractors and subcontractors are debarred, suspended, ineligible, or voluntarily excluded from participation in Federally assisted transactions

Debarment and Suspension Deficiencies



FY 2011 OTrak Data

9. Debarment and Suspension

Items Reviewed

- Clause *[Question 1]*
- EPLS search *[Question 2]*
- Excluded parties *[Question 3]*
- Oversight *[Question 4]*

Typical Deficiencies

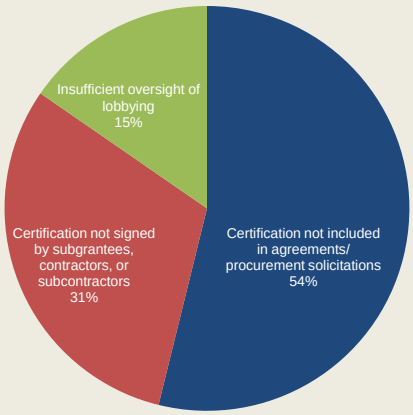
- No verification that excluded parties are not participating
- Certification clauses not included in agreement/procurement solicitations
- Insufficient oversight of debarment/suspension

10. Lobbying

Basic Requirement

- Grantees and certain contractors/subcontractors/ subrecipients must certify compliance with the restrictions on lobbying before receiving Federal funds

Lobbying Deficiencies



FY 2011 OTrak Data

10. Lobbying

Items Reviewed

- Procurements/agreements/oversight *[Questions 1 and 2]*
- Disclosure on Form LLL and quarterly updates *[Questions 3 and 4]*

Typical Deficiencies

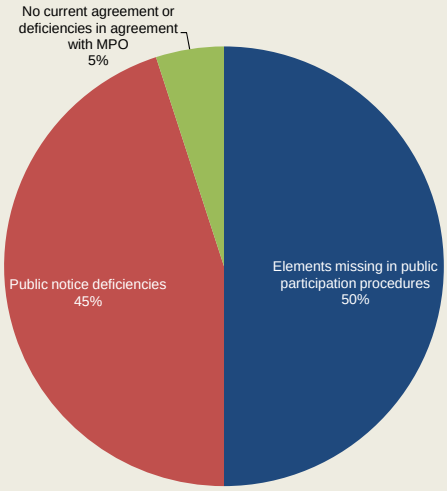
- Certification not included in agreements/ procurement solicitations
- Certification not signed by subgrantees, contractors, or subcontractors
- Insufficient oversight of lobbying

11. Planning/POP

Basic Requirement

- Grantees must participate in the transportation planning process in compliance with metropolitan planning requirements
- Grantees must participate in coordinated human services transportation planning
- Grantees must comply with POP public participation requirements

Planning/POP Deficiencies



FY 2011 OTrak Data

11. Planning/POP

Items Reviewed

- Metropolitan planning process
  - Planning Certification Review *[Question 1]*
  - Designated MPO *[Question 2]*
  - MPO agreements *[Question 3]*
  - Grantee participation in MPO *[Questions 4 through 8]*
  - Complaints/lawsuits *[Question 9]*

11. Planning/POP

Items Reviewed

- Coordinated planning for 5316 and 5317 *[Questions 10 and 11]*
- Public participation requirements *[Question 12]*

11. Planning/POP

Typical Deficiencies

- Elements missing in public participation procedures
- Public notice deficiencies
- No current agreement or deficiencies in agreement with MPO

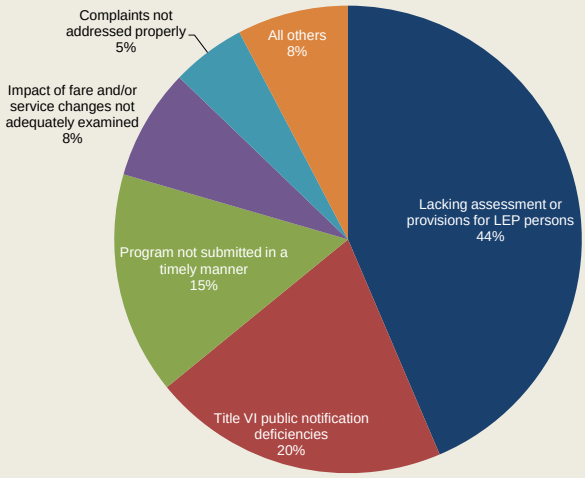
12. Title VI

Basic Requirement

- Transit services and related benefits must be distributed in an equitable manner with no discrimination on the grounds of race, color or national origin

- **Upload program to TEAM-Web**

Title VI Deficiencies



FY 2011 OTrak Data

12. Title VI

Items Reviewed

- Title VI review? *[Question 1]*
- Program submissions *[Question 2]*
- Public information on rights and complaints *[Questions 3 and 4]*
- Limited English proficiency (LEP) and outreach *[Questions 5 and 6]*
- Subrecipient compliance *[Question 7]*
- Demographic data *[Question 8]*
- Standards and monitoring procedures *[Questions 9 and 10]*
- Service and fare changes *[Questions 11 and 12]*

12. Title VI

Typical Deficiencies

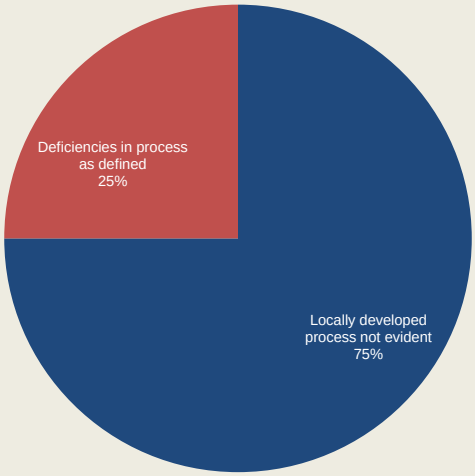
- Lacking assessment or provisions for LEP persons
- Title VI public notification deficiencies
- Program not submitted in a timely manner
- Impact of fare and/or service changes not adequately examined

13. Public Comment for Fare and Service Changes

Basic Requirement

- Grantees must have a local process to solicit and consider public comments before raising fares or carrying out major service reductions

Public Comment Deficiencies



FY 2011 OTrak Data

13. Public Comment on Fare and Service Changes

Items Reviewed

- Local process *[Question 1]*
- Adherence to local process *[Question 2]*
- Subrecipient compliance/oversight *[Question 3]*

13. Public Comment on Fare and Service Changes

Typical Deficiencies

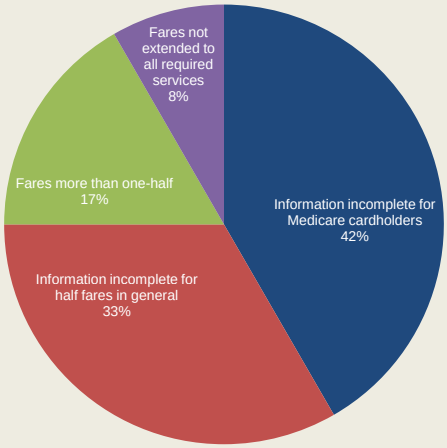
- Locally developed process not evident
- Deficiencies in process as defined

14. Half Fare

Basic Requirement

- For 5307 fixed-route service, fares charged elderly persons, persons with disabilities, and individuals with a Medicare card during non-peak hours must not exceed one half the rate charged to others during peak hours

Half Fare Deficiencies



FY 2011 OTrak Data

14. Half Fare

Items Reviewed

- Fare policy *[Questions 1 and 2]*
- Identification requirements *[Question 3]*
- Materials and training *[Question 4]*
- Oversight *[Question 5]*

14. Half Fare

Typical Deficiencies

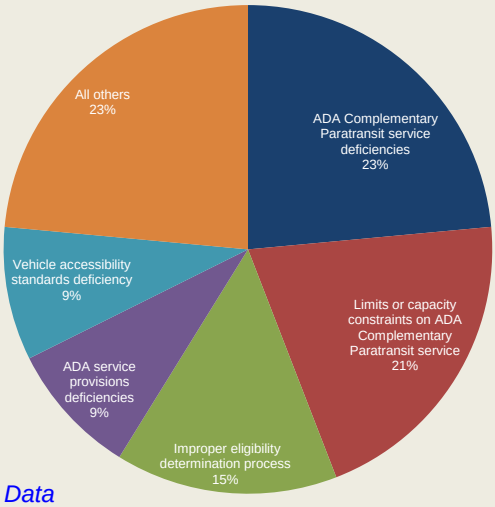
- Information incomplete for Medicare cardholders
- Information incomplete for half fares in general
- Fares more than one half
- Fares not extended to all required services

15. ADA

Basic Requirement

- Grantees must not discriminate against persons with disabilities in the provision of transit service

ADA Deficiencies



FY 2011 OTrak Data

15. ADA

Items Reviewed

- ADA review? *[Question 1]*
- Bus and rail vehicles
  - Purchase of new or used vehicles *[Questions 2 and 3]*
  - Remanufacture of vehicles *[Question 4]*
  - Accessibility of contracted services *[Question 5]*
  - Accessibility of demand response vehicles *[Question 6]*
  - Oversight *[Question 7]*

15. ADA

Items Reviewed

- Facilities
  - Construction and alterations *[Questions 8 and 9]*
  - Oversight *[Question 10]*
- Service provision *[Questions 11, 12 and 13]*
- Sensitivity/proficiency training *[Question 14]*
- Maintenance *[Questions 15, 16, and 17]*

15. ADA

Items Reviewed

- Fixed route service *[Questions 18, 19, and 20]*
- Route deviation service *[Questions 21 and 22]*
- Complementary paratransit *[Questions 23 through 31]*
- Rail operations *[Question 32]*
- Ferry service *[Question 33]*
- Complaints/lawsuits *[Questions 34, 35 and 36]*

15. ADA

Typical Deficiencies

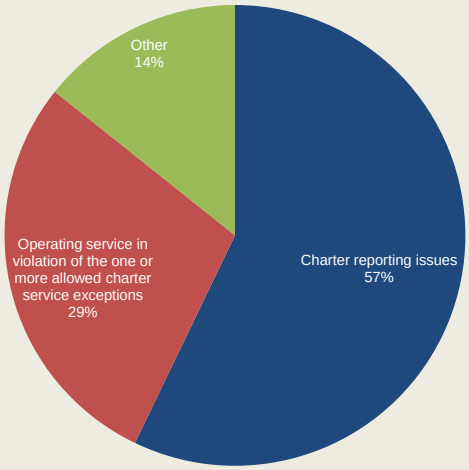
- ADA complementary paratransit service deficiencies
- Limits or capacity constraints on ADA complementary paratransit service
- Improper eligibility determination process
- ADA service provisions deficiencies
- Vehicle accessibility standards deficiency

16. 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 by the regulation

Charter Bus Deficiencies



FY 2011 OTrak Data

16. Charter Bus

Items Reviewed

- Charter service provided? *[Question 1]*
- Quarterly reporting *[Question 2]*
- Locally owned vehicles *[Question 3]*
- Oversight *[Questions 4 and 5]*
- Advisory opinions *[Question 6]*
- Cease and desist orders *[Question 7]*
- Complaints *[Question 8]*

16. Charter Bus

Typical Deficiencies

- Charter reporting issues
- Operating service in violation of the one or more allowed charter service exceptions

17. School Bus

Basic Requirement

- Grantees are prohibited from operating exclusive school bus service
- Tripper service must meet specified criteria

17. School Bus

Items Reviewed

- Statutory exemption *[Question 1]*
- Tripper service *[Question 2]*
- Oversight *[Questions 3 and 4]*

Typical Deficiencies

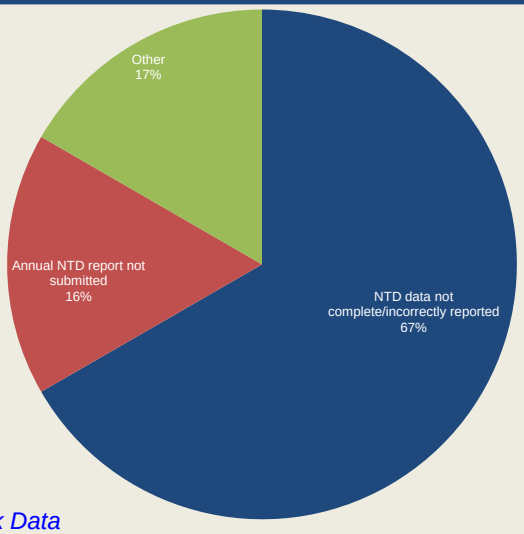
- School tripper violations

18. NTD

Basic Requirement

- Grantees must collect, record and report required data annually according to FTA's procedures

NTD Deficiencies



FY 2011 OTrak Data

18. NTD

Items Reviewed

- Annual reporting *[Question 1]*
- Complete reporting *[Question 2]*
- Paratransit operating expense reporting *[Question 3]*
- Subrecipients *[Question 4]*
- Passenger mile information *[Question 5]*
- Safety and security data *[Question 6]*

18. NTD

Typical Deficiencies

- NTD data not complete/incorrectly reported
- Annual NTD report not submitted

19. Safety and Security

Basic Requirement

- Grantees must certify regarding Urbanized Area Formula Funds spent on security projects
- FTA encourages implementation of safety programs
- FTA encourages implementation of security and emergency preparedness programs

19. Safety and Security

Items Reviewed

- Safety
  - Safety policies and program plans *[Questions 1 through 3]*
  - Incident investigation/hazard identification *[Questions 4 through 6]*
  - Cell phone/electronic device policies *[Question 7]*
  - Safety accountability *[Question 8]*
  - Safety training *[Question 9]*
  - Dear Colleague Letter recommendations (rail service) *[Questions 10 and 11]*

19. Safety and Security

Items Reviewed

- Security and Emergency Management
  - Security expenditures *[Question 12]*
  - TSA BASE review *[Question 13]*
  - Security plan management and accountability *[Questions 14 through16]*
  - Local coordination *[Question 17]*
  - Security and emergency response training *[Question 18]*
  - Risk management process *[Question 19]*
  - ID badges/facility security and access control *[Questions 20 and 21]*

19. Safety and Security

Items Reviewed

- Security and Emergency Management (continued)
  - Background investigations *[Questions 22 and 23]*
  - Homeland security advisory system *[Question 24]*
  - Public awareness *[Question 25]*
  - Drills and exercises *[Question 26]*
  - Information sharing networks *[Question 27]*
  - Document control *[Questions 28 and 29]*
  - Security audits *[Question 30]*

19. Safety and Security

Typical Deficiency – One percent security requirement issues

Typical Advisory Comments

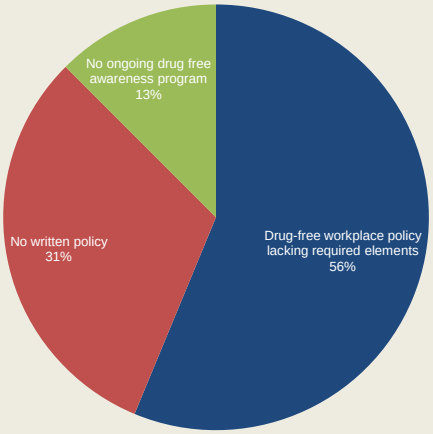
- No safety policy/plan
- No security plan
- Security information not given to passengers
- No security audits/assessments
- No criminal background checks

20. Drug-Free Workplace

Basic Requirement

- Grantees must maintain a drug-free workplace and establish an on-going drug-free awareness program

Drug-Free Workplace Deficiencies



FY 2011 OTrak Data

20. Drug-Free Workplace

Items Reviewed

- Written policy *[Question 1]*
- On-going awareness program *[Question 2]*
- Actions following a conviction *[Question 3]*

20. Drug-Free Workplace

Typical Deficiencies

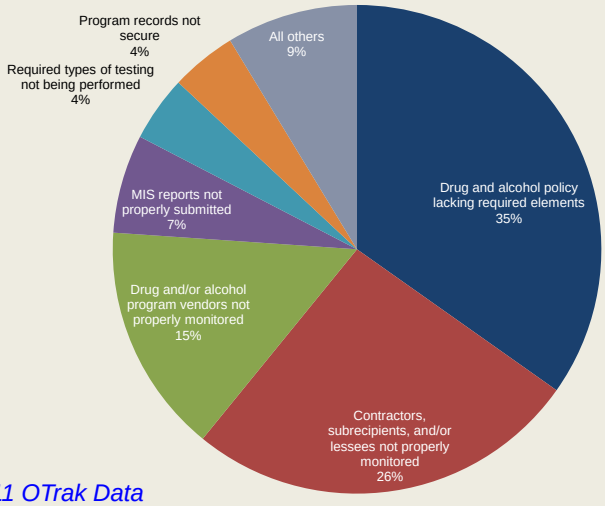
- Drug-free workplace policy lacking required elements
- No written policy
- No ongoing drug free awareness program

21. Drug and Alcohol Program

Basic Requirement

- Drug and alcohol testing program must be in place for all grantees with safety sensitive employees

Drug and Alcohol Program Deficiencies



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21. Drug and Alcohol Program

Items Reviewed

- Drug and alcohol audit ? *[Question 1]*
- Safety-sensitive functions *[Question 2; ARRA Question 19]*
- Policy contents *[Question 3]*
- Types of testing *[Questions 4 and 5]*
- Testing rates *[Question 6]*
- Post-accident determinations *[Question 7]*

21. Drug and Alcohol Program

Items Reviewed

- Records of new hires *[Question 8]*
- Records control and MIS reports *[Questions 9 and 10]*
- Oversight of transportation providers *[Questions 11 and 12]*
- Oversight of vendors *[Question 13]*

21. Drug and Alcohol Program

Typical Deficiencies

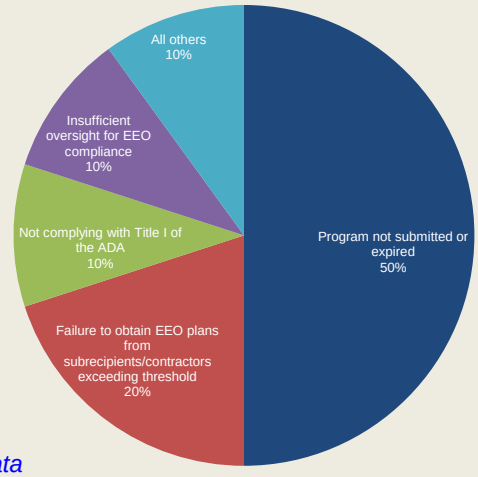
- Drug and alcohol policy lacking required elements
- Contractors, subrecipients, and/or lessees not properly monitored
- Drug and/or alcohol program vendors not properly monitored
- MIS reports not properly submitted
- Required types of testing not being performed

22. EEO

Basic Requirement

- Grantees must assure that no persons be subject to discrimination in employment
- **Upload program to TEAM-Web**

EEO Deficiencies



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22. EEO

Items Reviewed

- EEO review? *[Question 1]*
- Program *[Question 2; ARRA Question 21]*
- EEO Officer *[Question 3]*
- Areas of underutilization *[Question 4]*
- Assessment of employment practices *[Question 5]*
- Monitoring and reporting system *[Question 6]*
- Subrecipients *[Question 7; ARRA Question 21]*
- Reasonable accommodation (ADA) *[Question 8]*

22. EEO

Typical Deficiencies

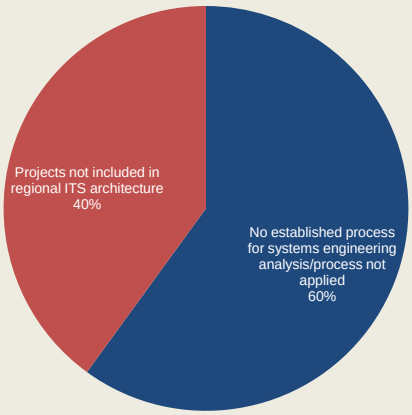
- Program not submitted or expired
- Failure to obtain EEO plans from subrecipients/ contractors exceeding threshold
- Not complying with Title I of the ADA
- Insufficient oversight for EEO compliance

23. ITS Architecture

Basic Requirement

- Intelligent transportation systems (ITS) projects must conform to the National ITS Architecture and USDOT adopted ITS standards

ITS Architecture Deficiencies



FY 2011 OTrak Data

23. ITS Architecture

Items Reviewed

- ITS projects *[Question 1]*
- Systems engineering analysis of ITS projects *[Question 2]*

Typical Deficiencies

- No established process for systems engineering analysis/process not applied
- Projects not included in regional ITS architecture

24. ARRA

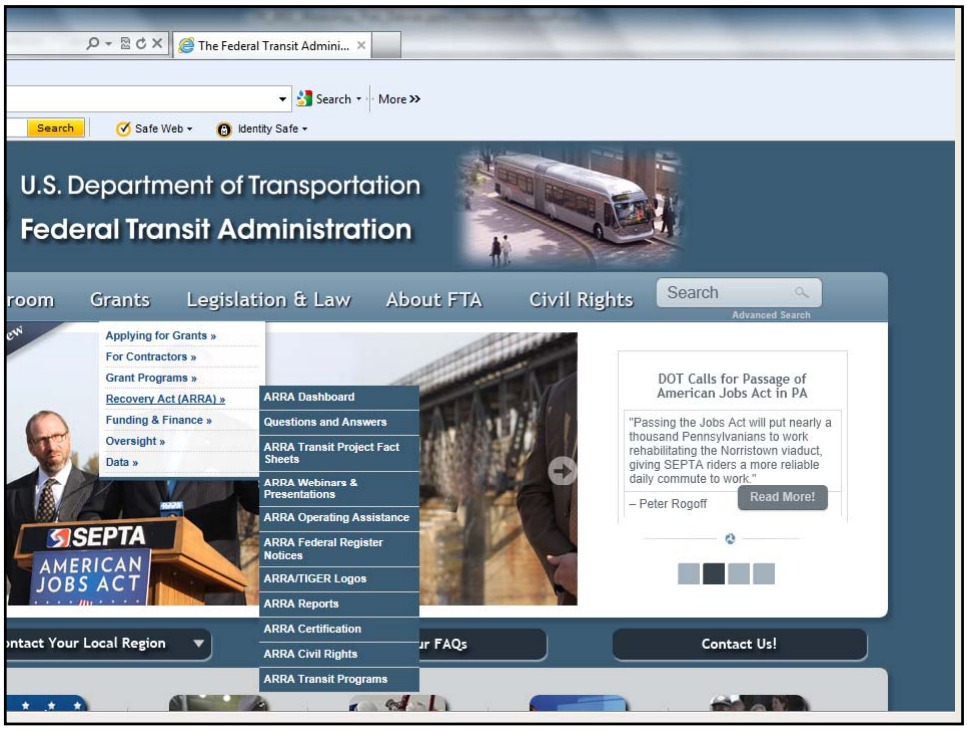
Basic Requirement

- Grantees must have the legal, financial, and technical capacity to carry out the proposed program of projects and comply with program reporting requirements

24. ARRA

Transparency and Accountability

- FTA and its grantees are under heightened scrutiny
- GAO/OIG may review grantees as part of review of FTA
- Law established “citizen watchdogs”
- FTA oversight of grantees is not limited to every 3 years



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The American Recovery & Reinvestment Act (ARRA)

What's New

Section 1512 reports for the period ending June 30, 2011 were due by midnight on July 14, 2011. Please visit FTA's ARRA Reports page for reporting resources.

New OMB Guidance
The Office of Management and Budget (OMB) revised their guidance relating to the aggregation of vendor payments. OMB has re-posted the guidance document M-10-34 to reflect this change. OMB has also re-posted M-10-08 FAQs outlining the reporting responsibilities for recipients related to vendor payments. Go to http://www.federalreporting.gov/ for updated information from OMB.

FTA has awarded **100 percent** of its ARRA funding. Read the News Release for more information.

Information on renewing your Central Contractor Registry (CCR) account.

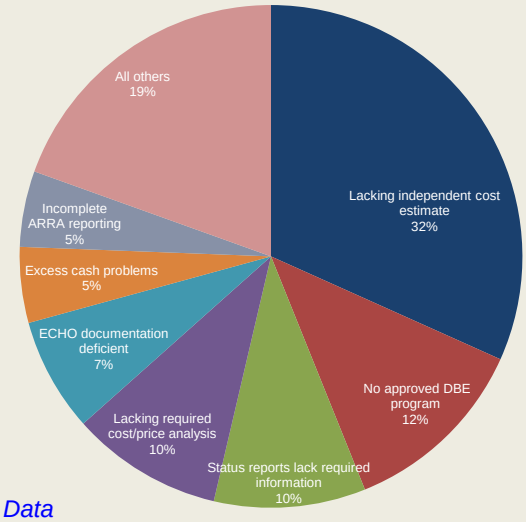
ARRA Overview

Since President Obama signed the American Recovery and Reinvestment Act (ARRA) [Pub. L. 111-5] in February 2009, FTA has awarded 1,072 grants for over $8.78 billion, including FHWA flex funding, and all the transit formula and discretionary funds provided by ARRA have now been "obligated" or committed to specific transit projects. Once funds are obligated to a project, contracts can be bid, workers can be hired, buses and rail cars can be purchased, and work can begin or continue on transit construction projects that create jobs and drive economic growth. Recovery Act transit projects have already generated enough work to employ thousands of people nationwide and activity is expected to ramp up even further in the months ahead as new projects break ground and equipment orders are fulfilled.

ARRA includes appropriations and tax law changes totaling approximately $787 billion to support government wide efforts to stimulate the economy. Over $48 billion of those funds are being invested in transportation infrastructure, including $8.4 billion for transit capital improvements made available through FTA programs. In addition, transit has benefited from $443 million in flexible funding transferred from highway program allocations as well as discretionary allocations under a $1.5 billion multimodal

- ARRA Transit Programs
- ARRA and Civil Rights
- ARRA Certification
- ARRA Reports
- ARRA/TIGER Logos
- ARRA Federal Register Notices
- ARRA Operating Assistance
- ARRA Webinars & Presentations
- ARRA Transit Project Fact Sheets
- Questions and Answers
- ARRA Dashboard

ARRA Deficiencies



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24. ARRA

Items Reviewed

- Project management *[Question 1]*
- Program resources *[Questions 2 and 3]*
- Project eligibility *[Question 4]*
- Budget revisions and amendments *[Question 5]*
- 1512 and 1201(c) reporting *[Question 6]*
- MPR/FFR reporting *[Questions 7 through 10]*
- Funds management *[Questions 11 and 12]*

24. ARRA

Items Reviewed

- Property records *[Question 13]*
- Spare ratio *[Question 14]*
- Procurement *[Questions 15 - 18]*
- DBE program/reporting *[Questions 19 and 20]*
- EEO program *[Question 21]*

24. ARRA

Typical Deficiencies

- Lacking independent cost estimate
- No approved DBE program
- Status reports lack required information
- Lacking required cost/price analysis
- ECHO documentation deficient
- Excess cash problems
- Incomplete ARRA reporting

24. ARRA

Resources

- FTA ARRA Webpage
- Recovery.gov

1. LEGAL

BASIC REQUIREMENT

The grantee must be eligible and authorized under state and local law to request, receive, and dispense FTA funds and to execute and administer FTA funded projects. The authority to take actions and responsibility on behalf of the grantee must be properly delegated and executed.

AREAS TO BE EXAMINED

1. ***Designation of Recipient/ Supplemental Agreements***
2. ***Source and Delegation of Authority***
3. ***Annual List of Certifications and Assurances***
4. ***Changes in Law and Litigation Affecting Recipient Status***

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. FTA Master Agreement
3. Annual List of Certifications and Assurances
4. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
5. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
6. FTA C 9050.1, The Job Access and Reverse Commute Program Guidance and Application Instructions"
7. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
8. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions"
9. FTA Team-Web

QUESTIONS FOR THE REVIEW

1. *Is the grantee a designated recipient? If not, is there a signed supplemental agreement?*

EXPLANATION
By law, funding for the Section 5307 program is provided to the "designated recipient" as defined by 49 USC 5307(a)(2).

- For urbanized areas with a population of 200,000 or more and transportation management areas (TMAs) in urbanized areas with a population under 200,000, an entity designated in accordance with the planning process under sections 5303, 5304, and 5306 by the Governor, responsible local officials, and publicly owned operators of mass transportation services; or a state or regional authority responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- For urbanized areas with a population under 200,000 that are not TMAs, the Governor or the Governor's designee(s) is (are) the designated recipient(s).

The designations remain in effect until amended or rescinded.

Documents designating recipients must include:

- For urbanized areas with a population of 200,000 or more and TMAs in urbanized areas with a population under 200,000, concurrence by the Governor or agent with authority delegated by the Governor; concurrence of publicly owned operators of mass transportation in the area; certified resolution of the officials authorized to establish policy for the MPO concurring in the designation; and an opinion of counsel.
- For urbanized areas with a population under 200,000 that are not TMAs, a letter from the Governor to FTA and an opinion of counsel.

For Section 5316 and 5317 funds, the requirements for designating a recipient for urbanized areas with a population of 200,000 or more are the same as those for Section 5307. For urbanized areas with a population under 200,000 and non-urbanized areas, the state is the designated recipient.

If the grantee is not a designated recipient of Section 5307 funds, the designated recipient PINs the supplemental agreement in FTA's Transportation Electronic Award and Management web-based system (TEAM-Web) before the grantee can execute the grant.

REFERENCE
49 USC 5307(a)(2)
49 USC 5316(a)(3)
49 USC 5317(a)(1)
FTA C 9030.1D, Ch. II Section 4
FTA C 9045.1, Ch. III
FTA C 9050.1, Ch. III
FTA TEAM-Web

SOURCES OF INFORMATION
During the desk review at the regional office, confirm the selection of the designated recipient. Review TEAM-Web to ensure that a supplemental agreement has been PINned for Section 5307 grants if the grantee is not the designated recipient.

DETERMINATION
The grantee is deficient if it is not a designated recipient and there is no supplemental agreement.

The grantee is deficient if a supplemental agreement has not been PINned for an applicable grant.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to obtain designated recipient status, obtain an appointment as the Governor's designee, or enter into a supplemental agreement with the designated recipient. Submit evidence of the applicable corrective action to the FTA regional office.

2. *Are grants executed by an authorized official? What is the definition and source of the authority of officials acting on behalf of the grantee?*

3. *Are supplemental agreements executed by an authorized official? What is the definition and source of the authority of officials acting on behalf of the designated recipient?*

EXPLANATION
Officials executing grants on behalf of the grantee and the designated recipient must have appropriate authority as required by state or local law or the grantee's governing body. The authority must be delegated properly by an authorized official of the agency to the individual who executes the grant in TEAM-Web. If the grantee is not a designated recipient of Section 5307 funds, an authorized official

of the designated recipient must execute the supplemental agreement in TEAM-Web before the grantee can execute the grant.

REFERENCE
49 USC 5307(a)(2)
FTA C 9030.1D, Ch. IV, Section 8(1)
FTA C 9300.1B, Ch. II, Section 9.a
FTA C 9050.1, Ch. III, Section 1
FTA C 9045.1, Ch. III, Section 1
FTA C 9070.1F, Ch. III, Section 1

SOURCES OF INFORMATION
During the desk review, review the Designation of Signature Authority for the Transportation Electronic Award & Management Process forms for the grantee and the designated recipient. Review TEAM-Web to determine the identity of the official that executed recent grants and, if applicable, executed the supplemental agreement for the recent Section 5307 grants awarded to a direct recipient. Obtain documentation indicating the source of authority of officials acting on behalf of the grantee and designated recipient. The source of authority may be state or local laws, an authorizing resolution, or by-laws.

DETERMINATION
The grantee is deficient if it cannot demonstrate that the person executing the grant has the authority to act on its behalf. The grantee is deficient if it cannot demonstrate that the person executing the supplemental agreement is authorized to act on behalf of the designated recipient.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office delegation of authority for the appropriate individual(s) to execute grants in TEAM-Web.

Direct the grantee to submit to the FTA regional office the delegation of authority by the designated recipient to the official who executes the supplemental agreement in TEAM-Web.

4. *Was the Annual List of Certifications and Assurances submitted on time? Was it or PINned or signed by an authorized official and attorney?*

EXPLANATION
The certifications and assurances required of FTA grantees are compiled in a single record published annually in the *Federal Register*, either before or in conjunction with the publication of FTA's annual apportionment notice. Once each year, a grant applicant or a grantee with open grants must file the certifications and assurances. FTA expects the grantee to record its certifications and assurances in TEAM-Web and provide the appropriate electronic signatures. Should it become necessary for the grant applicant to provide paper certifications and assurances, the *Federal Register* notice includes a signature page that may be signed by the grant applicant's authorized official and attorney and submitted to the appropriate regional office.

The grantee must make the requisite certifications and assurances by: 1) selecting, from a list provided, those certifications and assurances that will apply to all grants for the fiscal year; 2) PINning in TEAM-Web or submitting the signature page signed by the authorized representative and by the legal counsel; and 3) submitting properly signed certifications and assurances on time. FTA recommends that grantees select all certifications and assurances, even those that may not currently apply.

Certifications and assurances are due with the first grant application in the fiscal year or within 90 days from the date of the publication of the notice in the *Federal Register*, whichever comes first.

The certifications and assurances require two signatures or electronic PINs: one from an authorized official and another from an attorney. If the attorney does not PIN in TEAM-Web, he or she must sign a hard copy of the affirmation and the grantee must maintain the hard copy in the file.

REFERENCE
49 USC 5307(d)(1)
FTA C 9030.1D, Ch. IV Section 8
FTA C 9045.1, Ch. IV, Section 10
FTA C 9050.1, Ch. IV, Section 10
FTA C 9070.1F, Ch. IV, Section 7
Annual List of Certifications and Assurances

SOURCES OF INFORMATION
During the desk review, review TEAM-Web to ensure that the grantee has submitted the Annual List of Certifications and Assurances on time. Review the Designation of Signature Authority for the Transportation Electronic Award & Management Process forms. Note the person who has PINned on behalf of the agency and review state or local laws, authorizing resolutions and delegations of authority to ensure that the person has the authority to PIN on the grantee's behalf. Typically, the person who PINs or signs the certifications and assurances is also the person who executes the grant. Note whether the attorney has PINned directly in TEAM-Web. If not, obtain a hard copy of the signed affirmations for certifications and assurances submitted since the last review.

DETERMINATION

The grantee is deficient if someone other than an authorized individual PINned the certifications and assurances.

The grantee is deficient if it did not submit the annual certifications and assurances or submitted them late.

The grantee is deficient if the attorney has not affirmed the legal authority of the grantee either by PINing in TEAM-Web or signing a hard copy of the certifications and assurances.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office either the delegation of authority to PIN the annual certifications and assurances, procedures to submit the annual certifications and assurances on time, or procedures to ensure that the attorney affirms the grantee's legal status.

5. *Since the last review, has there been a change in local or state laws and/or litigation that affects the grantee's FTA program? If yes, please describe. Was the FTA notified?*

EXPLANATION

The grantee is required to notify the regional counsel of any change in local or state law and/or pending litigation that may significantly affect the grantee's eligibility to receive grants or ability to perform projects in accordance with the terms of the Master Agreement. Any significant change in status will require a new opinion of counsel.

REFERENCE

FTA Master Agreement, Sections 2.g. and 56.a.
FTA C 9030.1D, Ch. IV, Section 8.a
FTA C 9300.1B, Ch. II, Section 9.a

SOURCES OF INFORMATION

During the desk review, determine if the grantee has notified the regional counsel of any changes in local or state laws and/or litigation in a timely manner. This type of notification may be in the form of a letter or an e-mail correspondence. Obtain and review authorizing legislation to determine whether the grantee's legal status has or will change. During the site visit, discuss any changes in local or state laws and/or pending litigation since the last triennial review.

DETERMINATION

The grantee is deficient if it has not notified FTA of changes in local or state laws.

The grantee is deficient if it has not notified FTA of pending litigation that may significantly affect the grantee's eligibility to receive grants or ability to perform projects in accordance with the terms of the Master Agreement.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the regional counsel the applicable information and a process to ensure timely notification in the future.

2. FINANCIAL

BASIC REQUIREMENT

The grantee must demonstrate the ability to match and manage FTA grant funds, cover cost increases and operating deficits, financially maintain and operate FTA funded facilities and equipment, and conduct and respond to applicable audits.

AREAS TO BE EXAMINED

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

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 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. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
7. FTA Master Agreement
8. FTA Circular 5010.1D, "Grant Management Requirements"
9. FTA Circular 7008.1A, "Financial Capacity Policy"
10. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
11. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
12. FTA C 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
13. FTA C 9045.1, "New Freedom Program Guidance and Application Instructions"
14. FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"
15. FTA C 9070.1F, "Elderly Individuals and Individuals with Disabilities 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

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

ECHO Web User Manual for FTA and FAA Grantees

Federal Audit Clearinghouse

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a Financial Management Oversight review or a Financial Capacity Assessment during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current Federal fiscal year?*

EXPLANATION
Financial Management Oversight Reviews (FMOs) and Financial Capacity Assessments (FCAs) are oversight mechanisms of FTA. Even if such a review is scheduled for the current Federal fiscal year or has been conducted within the past two Federal fiscal years, all questions in this section are still asked.

REFERENCE
None

SOURCES OF INFORMATION
Review OTrak. During the desk review, discuss with the regional office and obtain any FMO or FCA reports.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part A. Financial Capacity

2. *What are the grantee's sources of non-FTA funding for operating and capital expenses? Are the funds eligible?*

3. *How does the grantee determine the availability of subrecipients' local match and operating funds? Does the grantee fully document volunteered services or in-kind revenue used as local match?*

4. *How does the grantee ensure that only eligible funds are used by subrecipients for local match? How does the grantee ensure that subrecipients fully document volunteered services or in-kind revenue used as local match?*

EXPLANATION
Annually, the grantee certifies to FTA (as part of the annual certifications and assurances process) that it and its subrecipients have the financial capacity to carry out its proposed program of projects. Grantees generally have three basic sources of local funding: a perpetual or permanent local tax (e.g., a sales tax, income tax, or property tax); a limited or "sunset" source of funding that expires at some future date; and/or annual appropriations from local, regional, and state governments. 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 grantee must ensure each subrecipient has or will have the required local match for the project and has or will have sufficient funds to operate and maintain the vehicles and equipment purchased under the project. Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs. The grantee must obtain and maintain sufficient documentation from each subrecipient to support its certification to FTA. The grantee must ensure that subrecipients use only eligible funds as local match and that volunteer or in-kind services are fully documented. Generally, grantees require applicants to list the sources of funding that will be applied to the project. For capital items, such as vehicle purchases or facility

construction, a grantee may request a three to five year financial plan.

REFERENCE

Annual Certifications and Assurances
49 USC 5307(d)(1)(a)
FTA Circular 7008.1A
FTA Master Agreement, Section 5
FTA Circular 5010.1D, Ch. VI, Section 4
FTA C 9030.1D, Ch. III, Sections 11 and 12, Ch. IV, Section 8.a(2)
FTA C 9300.1B, Ch. II, Sections 7 and 9.b
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12
FTA C 9040.1F, Ch. III, Sections 1.a and 3
FTA C 9070.1F, Ch. III, Sections 1 and 9

SOURCES OF INFORMATION

Review annual audit reports, budgets, local or state legislation, multi-year financial plans, National Transit Database (NTD) reports, and the transportation improvement program (TIP) for information on local funding sources. Review the section 5316 and 5317 project management plan(s), application package(s) and standard subrecipient agreement(s) for information on how the grantee ensures that subrecipients have the necessary local match and sufficient funds to operate and maintain capital projects. Review site visit checklists or other monitoring materials. On site, discuss how the grantee considers local match in the evaluation process and ensures that subrecipients have the necessary local match and funds to operate and maintain capital projects.

DETERMINATION

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

The grantee is deficient if it does not ensure that subrecipients have the required local match and sufficient operating funds to operate and maintain the capital project. The grantee is deficient if it does not ensure that only eligible funds are used as local match. The grantee is deficient if it does not ensure that the value of non-cash share is documented and supported, 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.

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office procedures for ensuring that the value of non-cash share is documented, the non-cash share represents a cost 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 grantee to submit to the FTA regional office procedures for obtaining information from subrecipients on the sources and amounts of local match available for projects and the anticipated sources and amounts of operating revenue and subsidies for continued operation and maintenance of equipment or facilities.

Direct the grantee to submit to the FTA regional office procedures for ensuring that local match used by subrecipients is eligible.

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

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

6. *In the next few years, does the grantee 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.*

7. *Does the grantee have a financial plan that projects revenue and expenses for the next three to five years?*

8. *Has the grantee had unfunded operating or capital deficits or liabilities? If so, what are the amounts, nature and forecast of these deficits/liabilities?*

EXPLANATION

A grantee's financial condition, future financial capacity, and ability to match FTA funds could be impacted greatly if one of its sources of non-FTA

funding is affected by pending legislation or "sunset" provisions in current legislation. Grantees should make capital investment plans on the basis of current and projected capability to maintain and operate current assets, and to operate and maintain new assets. Grantees should have adequate financial capacity to provide at least the same level of service for at least one replacement cycle of such assets or 20 years, as appropriate.

Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves, and the present status of depreciation accounts. Grantees shall have multi-year financial plans (three to five years) that project operating and capital revenues and expenses. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects. Revenue sources must be stable and reliable enough to meet future capital and operating costs. Any sign of major decreases in service levels or operations must be explained. If grantees are involved in a New Starts project, the financial plan must have a 20-year horizon.

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

REFERENCE

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

SOURCES OF INFORMATION

Review annual audit reports, budgets, local or state legislation, multi-year financial plans, NTD reports, and the TIP for information on local funding sources. Review the 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 grantee about pending legislation or "sunset" provisions in current legislation.

DETERMINATION

The grantee is deficient if local sources of revenue are not sufficient. If there is pending legislation that could affect local funding sources negatively, the grantee may be deficient, 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.

The grantee is deficient if it does not have a multi-year financial plan or the plan is insufficient.

SUGGESTED CORRECTIVE ACTION

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

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

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

Part B. Eligible Expenditures

9. *Does the service supported with FTA operating and capital 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. Intercity bus and intercity rail stations are eligible under Section 5307. A grantee may not use FTA operating assistance to support ineligible activities. A grantee may use FTA-funded equipment and facilities to support incidental activities that do not detract from the provision of public transportation. Unless required by regulation, classes of people, including residents of an area, cannot be given preferential treatment for service.

REFERENCE

49 USC 5302(a)(10)
FTA C 5010.1D, Ch. IV, Section 3.e(3)
FTA C 9030.1D, Ch. I, Section 5 and Ch. III, Sections 5, 6, 7, 8 and 9
FTA C 9300.1B, Ch. I, Section 5 and Ch. III, Section 4
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION
Review the grantee's marketing materials. Discuss on site.

DETERMINATION
The grantee is deficient if it uses FTA operating assistance to support ineligible services, if incidental use of FTA-funded equipment or facilities detracts from public transportation service, or if the grantee gives preferential treatment to classes of people not required by regulation.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to cease using FTA operating assistance to support ineligible services. Work with the regional office to determine if the grantee owes FTA funds back or if draws need to be recalculated.

Direct the grantee to submit to the FTA regional office implemented controls to ensure that the incidental service does not interfere with the provision of public transportation.

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

10. *Does the grantee receive Section 5307, 5316 or 5317 operating assistance? If yes, is the amount eligible for operating assistance calculated appropriately?*

EXPLANATION
Section 5307 operating assistance is available to all grantees in urbanized areas (UZAs) with populations under 200,000. Section 5307 operating assistance is also provided in UZAs with populations over 200,000 under the following circumstances:

- The UZA had a population of less than 200,000, as determined by the 1990 decennial census of population. The UZA may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2002.
- A portion of the UZA was a separate UZA with a population of less than 200,000, as determined by the 1990 decennial census of population. The UZA may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2002.
- The area was not designated as a UZA, as determined by the 1990 decennial census of population. Such an area may expend for operating expenses not more than 50 percent of the amount apportioned to it in FY2003.
- A portion of the area was not designated as a UZA, as determined by the 1990 decennial census. The portion of the area shall receive for operating expenses not less than 50 percent of the amount the portion of the area received under Section 5311 in FY2002.

Section 5316 and 5317 operating assistance is available to all UZAs.

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

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

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

REFERENCE
FTA C 9030.1D, Ch. III, Sections 6.m, 6.o, 7.d and 8, Appendices C and E
FTA C 9040.1F, Ch. III Sections 2.e and 3.b, Appendix G
FTA C 9050.1, Ch. III, Section 12
FTA C 9045.1, Ch. III, Section 12

SOURCES OF INFORMATION
Review the detailed operating budgets for the past three years showing eligible operating expenses. During the site visit, discuss how the amount eligible for operating assistance is calculated.

DETERMINATION
The grantee is deficient if the documentation is lacking or shows ineligible project costs included in the calculation of operating expenses.

SUGGESTED CORRECTIVE ACTION

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

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

11. *Are indirect costs being charged to grants? If yes, does the grantee or subrecipient have a cost allocation plan to support indirect administrative costs related to a grant program? What agency approved the plan? Has the plan been updated annually? Has the plan been retained for audit? Has the grantee or subrecipient been following the plan?*

EXPLANATION

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

A central service cost allocation plan, sometimes referred to as a statewide or local-wide cost allocation plan, is used by a state or local government to distribute executive and central level support functions to operating units which benefit from them. All statewide central service cost allocation plans must be submitted to the U.S. Department of Health and Human Services (DHHS) annually. Each local government that has been designated a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant Federal agency annually. OMB published the list of major local governments and their cognizant Federal agencies in the *Federal Register* January 6, 1986 (51 CFR 552, "Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Government"). The cognizant agency for all governmental units or agencies not identified by OMB is determined based on the Federal agency providing the largest amount of Federal funds. Unless required by 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.

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. 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. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency) annually. A governmental unit or agency that does not have a cognizant Federal agency identified by OMB must develop an indirect cost rate proposal annually and maintain the proposal and related supporting documentation for audit. Unless required by FTA or the cognizant agency, these governmental units are not required to submit their proposals for review and approval.

FTA requires that it or another cognizant agency approve the initial central service cost allocation plan and/or indirect rate cost proposal. If the cognizant agency does not require the grantee to submit the plan to it for approval, FTA reserves the right to review the plan. In addition to initial approval, FTA requires updates to be submitted to it or another cognizant agency when:

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

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

REFERENCE

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

FTA C 9070.1F, Ch VI, Section 12

SOURCES OF INFORMATION
During the desk review, ask the regional office if the grantee has an FTA approved cost allocation plan. 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 grantee reports indirect cost charges to grants. On site, discuss with grantee staff.

Discuss the grantee's process for monitoring subrecipients that charge indirect costs to FTA grants. If the plans are on file with the grantee, review a copy. During the site visit to a subrecipient, determine whether the subrecipient has a cost allocation plan, the plan was approved by a Federal or other agency, and the plan is updated annually and maintained for audit.

DETERMINATION
The grantee is deficient if it has not submitted its cost allocation plan to FTA or the cognizant agency, when required. The grantee is deficient if it has not updated the cost allocation plan annually. The grantee 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 question 16.)

The grantee is deficient if it does not monitor subrecipients' application of cost allocation plans.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to obtain FTA or cognizant agency approval of the cost allocation plan and to submit to the regional office procedures for submitting the plan annually.

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

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

Part C. Funds Management

12. *Do the grantee's financial management systems enable it to track grant balances accurately? Are there any discrepancies between TEAM-Web and grantee grant balances?*

13. *How does the grantee ensure subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds?*

EXPLANATION
The Common Rule requires that the financial management systems of the grantee and its subrecipients meet standards for financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management. The systems must enable the grantee to track grant balances, request drawdowns of Federal funds, report financial data to FTA in FFRs, and close out grants. For states, the Common Rule requires that the state have fiscal control and accounting procedures sufficient to: permit preparation of required reports and 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.

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

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

The grantee is responsible for ensuring that subrecipients have adequate financial management systems for expending and accounting for FTA funds properly. The grantee is not required to monitor the financial management systems of subrecipients that do not receive Federal cash (e.g., subrecipients for which the grantee procures vehicles).

Some grantees require applicants, especially first-time applicants, to describe their accounting systems or may perform a pre-award review of accounting systems. Other grantees require subrecipients to maintain separate accounting records for projects. Grantees review financial audits and are required to obtain and review A-133 audits (see question 16). In addition to an audit, some grantees require subrecipients to have their auditors certify year-end financial statements for their transit operations.

REFERENCE
49 CFR 18.20
FTA C 5010.1D, Ch. VI

SOURCES OF INFORMATION
Discuss the grantee's financial management systems and grant accounting with regional office staff. The regional office may know when a grantee's grant balances differ through review of FFRs and processing of ECHO rejections. Review TEAM-Web for current grant balances. On site, discuss with staff.

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

DETERMINATION
The grantee is deficient if its financial management systems do not allow it to track grant balances accurately.

The grantee is deficient if it does not ensure that subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds.

SUGGESTED CORRECTIVE ACTION
Direct the grantee 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 grantee to submit to the FTA regional office procedures for ensuring that subrecipients can account for Federal funds.

14. *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?*

15. *Are only eligible expenses charged to grants?*

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

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

Grantees may only request funds for expenses that are eligible under the grant. For example, a grant project for preventive maintenance entitles a grantee to draw funds for 80 percent of the preventive maintenance expenses accrued at the time funds are drawn. FTA defines preventive maintenance expenses as all maintenance expenses (i.e., those items that meet the NTD definition of maintenance expenses). Fuel is not an eligible preventive maintenance expense. Similarly, funds in a grant project to purchase vehicles may not be used to purchase bus shelters.

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

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 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.

DETERMINATION

The grantee is deficient if it does not maintain documentation adequate to support the ECHO draws.

The grantee is deficient if it held FTA funds for four or more business days after FTA funds were received. The grantee is deficient if it drew more funds than were allowed.

The grantee is deficient if an authorized official does not approve the ECHO draws or the approving official draws the funds.

The grantee is deficient if funds were drawn down for expenses not eligible under the grant.

SUGGESTED CORRECTIVE ACTION

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

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

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

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

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

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

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

Part D. Audits

16. *Have annual single audits been conducted? Has the grantee submitted the single audit reporting form (SF-SAC) and, if there are findings related to the FTA programs, the single audit report and the management letter comments to FTA? Are there unresolved audit issues relating to FTA programs?*

EXPLANATION

Non-federal entities that expend $500,000 or more in Federal awards in a year are required to have conducted an independent single audit in accordance with OMB Circular A-133. In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger governmental organization, the audit may cover the entire organization, including the Federal funds used for transit.

If the single audit contained FTA or other DOT program findings, grantees are required to submit a copy of the entire audit report, management letter comments, and the single audit reporting form (SF-SAC) to the regional office.

If the annual single audit report contains no FTA or other DOT program findings grantees are only required to submit a copy of the SF-SAC to the regional office.

Single audit reports are to be issued within the earlier of 30 days after receipt or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant agency.

The grantee must resolve single audit findings promptly.

REFERENCE

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

SOURCES OF INFORMATION

Review OTrak for information on A-133 audits and findings under its reporting function and download SF-SACs from the Federal Audit Clearinghouse. The Federal Audit Clearinghouse can be accessed at http://harvester.census.gov/sac/. If there are findings related to FTA or other DOT programs, during the desk review examine audit reports and management letter comments. If the reports and management letter comments are not available at the desk review, prior to the site visit request and review the audits and management letter comments.

DETERMINATION

The grantee is deficient if it meets the threshold for a single audit and has not had one conducted.

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

The grantee is deficient if it has not taken appropriate action to resolve audit issues promptly.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to have annual single audits conducted. Direct the grantee to submit single audits, management letter comments, and/or SF-SACs to the FTA regional office. Direct the grantee to submit to the FTA regional office procedures and a schedule for resolving single audit findings.

17. *How does the grantee ensure that single audits of subrecipients are conducted and findings resolved?*

EXPLANATION
The grantee must ensure that subrecipients that expend $500,000 or more in Federal awards in a year have annual independent audits conducted in accordance with OMB Circular A-133. Items purchased by the grantee for a subrecipient count towards a subrecipient's single audit threshold. As an exception to this requirement, FTA has not required an annual financial audit of a subrecipient when assistance is provided solely in the form of capital equipment procured directly by the state or direct recipient. Single audits are an eligible grant expense only if the subrecipient meets the threshold. Financial audits are an eligible grant expense even if the subrecipient does not meet the threshold for a single audit. The grantee must ensure that subrecipients resolve audit findings related to FTA funded programs within six months of receipt of the audit report.

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 9050.1, Ch VI, Section 13
FTA C 9045.1,Ch VI, Section 13
FTA C 9070.1F, Ch VI, Section 14
Dear Colleague Letter, C-05-04, June 17, 2004

SOURCES OF INFORMATION
Review the project/state management plan for a discussion of the grantee's process for obtaining and reviewing audits and monitoring the resolution of findings related to FTA funded programs. On site, discuss the process with the grantee. Review documentation of follow-up of subrecipients' single audit activities. Review the single audit and follow-up correspondence for subrecipients visited.

DETERMINATION
The grantee is deficient if it does not review audits and ensure that subrecipients resolve audit findings related to the FTA funded programs.

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

18. *Since the last review, have any Government Accountability Office (GAO) or Office of Inspector General (OIG) reports had findings related to FTA program requirements? If yes, have these findings been resolved?*

EXPLANATION
The GAO and OIG periodically conduct independent audits. Audits may be of a grantee, but often are programmatic audits addressing a national issue (e.g., spare ratios, extended warranties) where the grantee may have had a specific part of its operation audited. Audit findings should be resolved within one year.

REFERENCE
None

SOURCES OF INFORMATION
During the desk review, review available GAO and OIG audits. If the documents are not available in the regional offices, obtain copies prior to the site visit. During the site visit, determine if proper follow-up actions have been taken to resolve findings.

DETERMINATION
The grantee is deficient if it has not taken appropriate action to resolve GAO or OIG audit findings promptly.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit evidence to the FTA regional office of the resolution of outstanding GAO or OIG audit findings.

19. *Since the last review, have any internal, state or local governmental reviews or audits covered the grantee's transit program? If yes, are all findings related to FTA program requirements resolved?*

EXPLANATION

Some transit authorities and local or state governments conduct internal audits or reviews. Also, as most states provide transit assistance, the state may conduct audits or performance reviews of grantees. These audits or reviews may address FTA requirements.

REFERENCE

None

SOURCES OF INFORMATION

Before the site visit, obtain a list of internal audit and local or state review reports to determine if any of the reports address FTA requirements. Review reports that address FTA requirements. During the site visit, discuss specific findings of reports with the internal auditor or other staff.

DETERMINATION

The grantee is deficient if it has not taken appropriate action to resolve internal, state or local audit or review findings related to FTA requirements promptly.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit evidence to the FTA regional office of the resolution of open audit or review findings. These findings may relate to other sections of the triennial review.

3. TECHNICAL

BASIC REQUIREMENT

The grantee must be able to implement the 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. ***Grant Reporting and Administration***
2. ***Force Account Activities***
3. ***Capital Leasing***
4. ***Technical Oversight of Capital Projects***
5. ***Oversight of Subrecipients, Transit Management and Service Contractors, and Lessees***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 639, "Capital Leases"
4. FTA Master Agreement
5. FTA Circular 5010.1D, "Grant Management Requirements"
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 Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects"

USEFUL WEBLINKS

Section 5316 Frequently Asked Questions

Section 5317 Frequently Asked Questions

Section 5316 and 5317 Performance Reporting

Federal Funding Accountability and Transparency Act Subaward Reporting System

www.USASpending.gov/news

P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006

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

Construction Project Management Handbook (2009 Update)

Project and Construction Management Guidelines (2003 Update)

Project Management Oversight Lessons Learned

Quality Assurance and Quality Control Guidelines

Handbook for Purchasing a Small Transit Vehicle

ADDITIONAL USEFUL INFORMATION

The Federal Financial Report

FFR Instruction Guide for Grantees

QUESTIONS FOR THE REVIEW

1. *Who is responsible for grant administration?*

2. *Are Milestone/Progress Reports (MPRs) submitted for each open Section 5307 and 5309 grant at the required intervals (quarterly or annually) and on time? Are transit enhancement reports submitted annually? Are program status reports for each open Section 5310, 5316 and 5317 grant submitted by October 31?*

3. *Do reports contain all required information?*

EXPLANATION

The grantee 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 reports to FTA.

MPRs

MPRs are the primary written communication between Section 5307 and 5309 grantees and FTA. Grantees in small urbanized areas (populations less than 200,000) submit MPRs annually, no later than 30 days after the end of the Federal fiscal year (by October 30). However, FTA, at its discretion, can require quarterly reporting. For Section 5309 grants that include facility construction projects, the reports are due quarterly. Grantees in large urbanized areas (populations of 200,000 or more) submit MPRs quarterly, no later than 30 days after the end of each Federal fiscal quarter. The first quarter begins October 1. Reports are due even when there is no grant activity. These reports should be submitted electronically using TEAM-Web.

The Common Rule (49 CFR Part 18) and FTA C 5010.1D detail the information that, at a minimum, must be included in these reports. Reporting on operating assistance is limited to the estimated and actual date when funding has been expended. Reports for other projects must include:

a) Current status of each open ALI within the active/executed grant

b) Narrative description of projects, status, problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and contract awards

c) Detailed discussion of all budget or schedule changes

d) Dates of expected or actual requests for bid, delivery, etc.

e) Actual completion dates for completed milestones

f) Revised estimated completion dates when original estimated completion dates are not met accompanied by:
   - Explanation of why scheduled milestones or completion dates were not met
   - Identification of problem areas
   - Narrative on how the problems will be solved

g) Discussion of the expected impacts and the efforts to recover from the delays

h) Analysis of significant project cost variances using quantitative measures, such as hours worked, sections completed, or units delivered and discussion of completion and acceptance of equipment and construction or other work, together with a breakout of the costs incurred and required to complete the project

i) List of all outstanding claims exceeding $100,000, and all claims settled during the reporting period accompanied by a brief description, estimated costs and the reasons for the claims

j) List and brief description of all potential and executed change orders of amounts exceeding $100,000, pending or settled, during the reporting period

k) List of claims or litigation involving third party contracts and potential third party contracts that:
   - Have a value exceeding $100,000;
   - Involve a controversial matter, irrespective of amount; or
   - Involve a highly publicized matter, irrespective of amount

l) List of all real property acquisition actions, including just compensation, property(s) under litigation, administrative settlements, and condemnation for each parcel during the reporting period

Transit Enhancement Reports

A grantee in a UZA with a population of at least 200,000 must certify that it will: 1) expend not less than one percent of the amount it receives each

Federal fiscal year under Section 5307 for transit enhancements, and 2) submit with its fourth quarter MPR a report listing projects carried out in the preceding fiscal year with those funds. When several grantees are in a UZA with at least 200,000 in population, each individual grantee is not required to spend one percent of its Section 5307 program funds on transit enhancements. Rather, the grantees together must spend one percent of the UZA's apportionment on projects and project elements that qualify as enhancements. The designated recipient or recipients have the responsibility for selecting (programming) all Section 5307 projects, including transit enhancements. Where there are multiple designated recipients, they must coordinate the use of the one percent for transit enhancements and include the transit enhancements in the letter to FTA regarding the split of the urbanized area apportionment.

Transit enhancement reports are submitted as a narrative attachment to the fourth quarter MPR in TEAM-Web. The reports should include:

- Name of grantee(s) expending the enhancement funds
- UZA name and number
- FTA project number(s)
- Transit enhancement category or categories for which enhancement funds were obligated
- Brief description of enhancement by Federal fiscal year of funding and progress towards project implementation
- Activity line item codes from the approved budget(s)
- Amount awarded by FTA for the enhancement

Program Status Reports

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

Reports must include:

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

REFERENCE

49 CFR 18.40
FTA C 5010.1D, Ch. II, Section 3 and Ch. III, Section 3
FTA C 9070.1F, Ch. VI, Section 17
FTA C 9045.1, Ch. VI, Section 16
FTC C 9050.1, Ch. VI, Section 16

SOURCES OF INFORMATION

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

DETERMINATION

The grantee is deficient if its reports are consistently late. (***DEFICIENCY CODE 02***: Late MPRs/FSRs)

The grantee is deficient if it does not include sufficient detail about schedule delays or omits other required information. (***DEFICIENCY CODE 03***: Progress reports lack required information)

SUGGESTED CORRECTIVE ACTION

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

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

4. *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 approved cost allocation plan or indirect cost proposal?*

d. *Does the grantee 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?*

EXPLANATION

FFRs accompany MPRs and program status reports. The FFR reports on the use of project funds using the standard Office of Management Budget (OMB) form.

Grantees in small urbanized areas (populations less than 200,000) submit FFRs 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. Grantees in large urbanized areas (populations of 200,000 or more) submit FFRs quarterly no later than 30 days after the end of each Federal fiscal quarter. The first quarter begins October 1. Reports are due even when there is no grant activity. These 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** is the amount of indirect costs charged to a grant. Information on the rate and amounts charged during the reporting period are to be entered on the FFR. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate being charged during the reporting period, the base amount to which the rate was applied, the indirect costs charged during the reporting period, and the Federal share amount of the indirect costs charged. The rate must be based on a previously approved cost allocation plan or indirect cost proposal.

d. The grantee 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.

REFERENCE

49 CFR 18.41
SF-425
The Federal Financial Report
FFR Instruction Guide for Grantees
FTA C 5010.1D, Ch. III, Section 3
FTA C 9045.1, Ch. VI, Section 16
FTC C 9050.1, Ch. VI, Section 16

SOURCES OF INFORMATION

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. 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 grantee is deficient if it does not submit FFRs for each open grant or does not submit the reports on time at the required intervals. (***DEFICIENCY CODE 02***: Late MPRs/FFRs)

The grantee is deficient if it does not report Federal cash receipts, cash disbursements or cash on hand, or if there is an unexplained balance. The grantee is deficient if it reports unliquidated obligations incorrectly. The grantee is deficient if it enters indirect expense information incorrectly. The grantee is deficient if it has not certified in the remarks and certification tab. (***DEFICIENCY CODE 16****:* Incorrect FFR reporting)

SUGGESTED CORRECTIVE ACTION

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

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

5. *Have designated and direct recipients of Section 5316 and 5317 funds submitted annual performance reports?*

EXPLANATION

Designated and direct recipients with active Section 5316 and/or 5317 projects are required to report on activities of themselves and their subrecipients via FTA's JARC and New Freedom Report Support Center. Designated recipients can report information on behalf of subrecipients or forward the reporting portal to subrecipients to allow them to enter information themselves. Direct recipients of funds transferred from a designated recipient should report directly. FTA sets the due date for the report annually. The due date for FFYs' 2007 and 2008 projects was August 7, 2009. The due date for FFY 2009 projects was May 15, 2010. The due date for FFY 2010 projects was May 15, 2011.

REFERENCE

FTC C 9050.1, Ch. VI, Section 16
FTA C 9045.1, Ch. VI, Section 16
JARC and New Freedom Report Support Center

SOURCES OF INFORMATION

Review TEAM-Web to see if the grantee has any Section 5316 or 5317 grants. Please note that grantees in small urbanized areas apply for Section 5316 and 5317 in a "Section 5307" grant. To determine whether a Section 5307 grant contains Section 5316 or 5317 funds, review the project description or account classification codes. Follow up with the grantee during the site visit.

DETERMINATION

The grantee is deficient if it did not submit annual Section 5316 and/or 5317 performance reports. (***DEFICIENCY CODE 13****:* Program measures not submitted)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a procedure for submitting annual performance on active Section 5316 and 5317 projects.

6. *For grants received after October 1, 2010, did the grantee report subawards by the end of the month following the month it made the subaward?*

EXPLANATION

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

must also have DUNS but is not required to register in CCR.

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

The U.S. Department of Transportation submits a file of all awards made the previous month on the fifth day of each month. Grantees will be able to view and report on subawards after the information is downloaded to FSRS. The 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 subaward reporting and FSRS are posted on www.USASpending.gov/news. To receive new information on changes and updates to USASpending.gov as soon as it becomes available, subscribe by visiting www.USASpending.gov/news and adding your email address under the "What's New" section.

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. Search www.fsrs.gov for the date that the grantee filed its report for a sample of subrecipients. On site, discuss with the grantee.

DETERMINATION

The grantee is deficient if it has not reported subawards over $25,000 from grants or grant amendments awarded by FTA after October 1, 2010. The grantee is deficient if it has not reported sub-awards on time. (***DEFICIENCY CODE 15***: FFATA reporting deficiencies)

SUGGESTED CORRECTIVE ACTION

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

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

7. *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?*

EXPLANATION

FTA expects projects to be completed within a reasonable, specified time frame. For Section 5307 and 5309 projects, a good "rule of thumb" is to complete the project within the period of availability, which is the time funds are available for obligation. Once grant funds are past the period of availability, the ability to amend the grant to change the scope is limited, thus restricting the use of remaining grant funds to the original scope of the grant. For large, complicated construction projects, completing the project and closing the grant within the period of availability may not be feasible. Section 5316 and 5317 programs of projects should be implemented within two years of grant approval. FTA may terminate and close out grants not implemented within two years and deobligate the funds. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds	
5307	Year of apportionment plus 3
5309 fixed guideway modernization	Year of apportionment plus 3
5309 discretionary	Year of apportionment 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

Funds deobligated within the period of availability are available for reobligation to a new grant.

The grantee should initiate closeout with FTA within 90 days after all work activities for a program of projects (POP) are completed. A final FSR, budget, and, for Section 5316 and 5317 grants, POP are

required at the time of closeout. It is not necessary to wait for the single audit before closing a grant.

Sometimes projects may not require the amount of funds originally requested and obligated and therefore funds may remain after the project is completed. The grantee may reprogram remaining funds to other projects. However, it should not excessively prolong the life of the grant. Frequently, grantees allow small balances in completed projects to delay project closeout. The grantee should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the projects.

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 that are then tied to grants, not directly to grants
- Set project time limits (less than 2 years)
- Add new projects to older grants with available funds
- 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 places a priority on closing out grants for which activity has ceased. FTA defines an inactive grant as a grant that was obligated more than five years before and has not had a disbursement within the past 18 months. Grants that have been inactive for a substantial length of time also should be closed unless the grantee has a good explanation, and activity is likely to resume soon. Grant inactivity may be a result of delays in project implementation or lack of resources. If a grant has been delayed for a substantial period of time and the grantee does not have a reasonable explanation, FTA may determine that the funds should be deobligated and the grant closed. Occasionally, a project may be delayed indefinitely because of factors beyond the grantee's control. If there is no realistic chance of a project going forward, FTA will deobligate the grant funds and make them available for other projects that are ready to proceed.

REFERENCE

49 CFR 18.20(4)
49 CFR 18.50
FTA C 5010.1D, Ch. III, Section 5
FTA C 9030.1D, Ch. III, Section 4
FTA C 9300.1B, Ch. III, Section 2, Ch. IV Section 3, Ch. V Section 2
FTA C 9050.1, Ch. III, Section 7
FTA C 9045.1, Ch. III, Section 7

SOURCES OF INFORMATION

Review policies and procedures for documentation of grant administration and closeout processes. For on-going expenses, such as operating assistance, determine whether the grantee draws from the oldest funds first. Identify grants that are old, have small balances remaining, or have not had disbursement activity within the past six months. Review progress reports in TEAM-Web to identify major delays in projects. During the desk review, discuss the status of grants with regional office staff. Some regional offices notify grantees when grants have been inactive for more than six months (e.g., have not had any disbursements). Obtain a schedule for closing all open grants.

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

DETERMINATION

The grantee is deficient if it does not track projects, close out completed projects, reprogram unused balances to other projects, or initiate grant closeout timely. The grantee is deficient if there are open grants that should be closed. (***DEFICIENCY CODE 04***: Inactive grants/untimely closeouts)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office procedures for spending older funds first, tracking

projects, identifying project balances, reprogramming the unused project funds to other projects, or closing out the projects.

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

8. *Is the grantee'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
FTA C 9030.1D Appendix E

SOURCES OF INFORMATION

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

DETERMINATION

The grantee is deficient if it has not submitted for prior FTA approval plans for force account projects that cost $10,000,000 or more. The grantee is deficient if force account projects costing between $100,000 and $10,000,000 are not supported by a proper force account plan and justification. The grantee is deficient if subrecipients do not have proper force account plans. (***DEFICIENCY CODE 06***: Lacking force account plan/justification)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA regional office a force account plan and justification as detailed in FTA Circular 5010.1D for use of its own workforce on capital improvement projects.

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

9. *During the review period, did the grantee or a subrecipient use FTA capital assistance to finance the lease of any transit facilities or equipment? If yes, did the grantee submit the cost-effectiveness determination for prior FTA review?*

EXPLANATION

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

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

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

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

SOURCES OF INFORMATION
During the desk review, determine if the grantee uses FTA funds to finance the lease of capital items and submitted the cost-effectiveness evaluation for prior FTA review. Review projects in TEAM-Web. Discuss with the grantee during the site visit. Please note that many grantees use capital funds to lease instead of purchase tires.

DETERMINATION
The grantee is deficient if it did not submit the cost-effectiveness evaluation for prior FTA review. (***DEFICIENCY CODE 07***: No cost effectiveness documentation for capital lease)

SUGGESTED CORRECTIVE ACTION
Consult the regional office for deficiencies related to capital leasing. The grantee may be required to conduct a cost-effectiveness comparison if one is not on file, but FTA will determine if corrective action is possible or if Federal participation in the project must be withdrawn.

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

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

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

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

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

REFERENCE
49 USC Section 5327
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4
FTA C 5800.1

SOURCES OF INFORMATION
Review MPRs for discussions of delays. During the desk review, discuss project delays and project management concerns with the regional office. Obtain copies of project management plans and quality control procedures, if written. During the site visit, ask the grantee to describe its quality control procedures for construction projects, revenue rolling stock procurements, and technology projects. If the grantee contracts for such services, review the scope of services of these contracts along with progress reports from the contractors.

If project delays are the result of inadequate actions by the grantee or failure in performance by a contractor, there may be deficiencies in the grantee's technical oversight of projects. The grantee's organizational structure and actions may contribute to continuing problems with project delays. When delays are due to poor performance by contractors, examine how the grantee 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.

DETERMINATION
The grantee is deficient if capital projects have proceeded without proper quality control procedures.

(***DEFICIENCY CODE 10***: No procedures for technical inspection/supervision of work in progress)

The grantee is deficient if it has continuing problems with project delays. (***DEFICIENCY CODE 05***: Excessive delay in project implementation)

SUGGESTED CORRECTIVE ACTION

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

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

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

EXPLANATION

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

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

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

- applications/requests for proposals
- monthly, quarterly or annual reports
- meetings
- site visits
- vehicle/facility inspections

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

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

REFERENCE

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

SOURCES OF INFORMATION

As applicable, review a sample subrecipient agreement, transit management or service contract, and lease. Review a sample monthly, quarterly or annual report. Review a site visit checklist. Review a sample follow-up letter regarding a compliance issue. Review the file for the subrecipient(s), contractor(s) or lessee(s) to be visited during the site visit. Discuss procedures with the grantee at the site visit.

DETERMINATION

The grantee is deficient if it does not have appropriate systems for monitoring compliance with a broad range of requirements or is not applying the resources required to carry out an effective monitoring program. (***DEFICIENCY CODE 11***: Inadequate oversight of subrecipient/third-party contractor/lessees)

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

SUGGESTED CORRECTIVE ACTION

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

4. SATISFACTORY CONTINUING CONTROL

BASIC REQUIREMENT

The grantee must maintain control over real property, facilities, and equipment and ensure that they are used in transit service.

AREAS TO BE EXAMINED

1. ***Real Property***
   a. Incidental use
   b. Project use
   c. Excess real property
   d. Disposition
   e. Oversight

2. ***Equipment***
   a. State procedures
   b. Equipment records
   c. Biennial physical inventory and reconciliation
   d. Property control system
   e. Oversight
   f. Leases
   g. Project use
   h. Disposition
   i. Insurance proceeds
   j. Fixed route bus spare ratio
   k. Contingency fleet
   l. Rail fleet management plan

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws, Section 5307
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. FTA Master Agreement
4. FTA Circular 5010.1D, "Grant Management Requirements"
5. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
6. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"

APPLICABILITY

Under 49 CFR 18.32(b), a state will use, manage and dispose of equipment acquired under a grant by the state in accordance with state laws and procedures. Therefore, grantees that are a state or receive FTA funds as a subrecipient to a state follow state, not FTA equipment management procedures. If the grantee is a state agency, ask question 6 and skip questions 7, 8, 9, 12, 13, and 14. If the grantee is a subrecipient of a state, ask the above questions for equipment purchased with assistance received directly from FTA.

QUESTIONS FOR THE REVIEW

Part A: Real Property

1. *Does the grantee or a subrecipient make incidental use of any FTA funded real property? If yes, was FTA approval obtained? Does the grantee maintain continuing control over the property? Is revenue used for transit planning, capital, or operating expenses?*

EXPLANATION

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, non-profit uses are permitted, under certain circumstances.

REFERENCE

49 CFR 18.25 (g) and 18.31
FTA Master Agreement, Section 19
FTA C 5010.1D, Ch. I, Section 5.hh and Ch. IV, Section 2.i
FTA C 9040.1F, Ch. VIII

SOURCES OF INFORMATION

During the desk review, examine grantee files or TEAM-Web for correspondence regarding incidental use. Review a sample lease agreement to ensure that it enables the grantee to maintain continuing control of the property. During the site visit, if incidental use of project property is observed, ask the grantee to provide documentation that FTA approved the incidental use. Review budgets or financial reports to ensure that proceeds are used to support the transit program.

DETERMINATION

The grantee is deficient if FTA did not approve the incidental use, the incidental use interferes with transit purposes, the grantee does not maintain control over the leased real property, or the grantee does not use revenues for transit purposes. (***DEFICIENCY CODE 01***: Violation of incidental use requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for obtaining prior FTA approval for future incidental uses and to obtain FTA approval for any unapproved incidental uses.

Direct the grantee to submit to the FTA regional office procedures for maintaining continuing control over real property used for incidental purposes.

Direct the grantee to submit documentation to the FTA regional office that it has ceased incidental uses that interfere with transit purposes.

Direct the grantee to submit documentation to the FTA regional office that it has applied lease income to transit purposes.

2. *Since the last review, did the grantee notify FTA when real property was removed from the service originally intended at grant approval or when property was put to additional or substitute uses?*

3. *Does the grantee or a subrecipient have any excess FTA funded real property? If yes, is there an excess real property inventory and utilization*

plan? Has the plan been updated, if necessary?

4. *Since the last review, did the grantee or a subrecipient dispose of any FTA funded real property? If yes, did FTA provide prior concurrence in the method of disposition of real property? Was FTA reimbursed for its share of disposition proceeds, if required?*

EXPLANATION

Grantees are required to notify FTA when property is removed from the service originally intended at grant approval or if property is put to additional or substitute uses.

If FTA funded real property is no longer needed for any transit purpose, grantees are required to prepare or update an excess property inventory and utilization plan. The grantee's plan should identify and explain the reason for excess property. FTA C 5010.1D describes that the inventory list should include such things as: property location, summary of any conditions on the title, original acquisition cost, Federal participation ratio, FTA grant number, appraised value and date, description of improvements, current use of the property, and anticipated or proposed disposition or action. Unless FTA and the grantee agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the grantee and made available upon request and during an FTA review.

The Common Rule (49 CFR Part 18), Master Agreement, and FTA C 5010.1D have requirements for removing assets from transit service. Grantees must request FTA instructions on proper procedures for disposition of real property. Depending on the approved method of disposition, the grantee may be required to reimburse FTA.

REFERENCE

49 CFR 18.31
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 grantee to provide a list of real property removed from the service originally intended or put to additional or substitute uses since the last review. Ask the grantee to provide excess property utilization plans and documentation of disposition of FTA funded property. Discuss during the site visit.

DETERMINATION

The grantee is deficient if it did not notify FTA when real property was removed from the service originally intended or when property was put to additional or substitute uses. (***DEFICIENCY CODE 13****:* Real property use issues)

The grantee is deficient if it or a subrecipient has excess real property and has not prepared a written plan for disposing of it or if the plan does not include all the elements required by FTA C 5010.1D. The grantee is deficient if the plan is out of date. (***DEFICIENCY CODE 02***: Lacking excess real property utilization inventory/plan out of date)

The grantee is deficient if it did not obtain prior FTA approval for the method of disposition of FTA funded property or did not reimburse FTA for its share of disposition proceeds. (***DEFICIENCY CODE 07***: Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to inform FTA of real property that has been removed from service or put to additional or substitute uses without FTA approval and to submit to the FTA regional office procedures for notifying FTA when FTA funded real property has been removed from service or put to additional or substitute uses.

Direct the grantee to submit to the FTA regional office a written excess real property utilization plan or update the existing plan.

Direct the grantee to work with the FTA regional office to determine proceeds owed FTA from the disposition of FTA funded real property.

5. *How does the grantee monitor use of FTA funded real property used by subrecipients, contractors, and lessees?*

EXPLANATION

The grantee must ensure that subrecipients, contractors, and lessees use FTA funded real property for project purposes. Examples of procedures include: annual certifications of use, site visit inspections, or a deed restriction. 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.

REFERENCES

FTA C 5010.1D, Ch. IV, Section 2.i
FTA C 9070.1F, Ch. VI, Section 8
FTA C 9050.1, Ch. VI, Section 7
FTA C 9045.1, Ch. VI, Section 7

SOURCES OF INFORMATION
Review subrecipient agreements, contracts, or lease agreements, for requirements imposed on the use of FTA funded real property. Review oversight procedures, such as reports or site visit checklists. On site, discuss the procedures with the grantee.

DETERMINATION
The grantee is deficient if it does not control the use of FTA funded real property used by subrecipients, contractors, or lessees. (***DEFICIENCY CODE: 12****:* Inadequate control of real property)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures for controlling the use of FTA funded real property by subrecipients, contractors, or lessees.

Part B: Equipment

6. *If the grantee is a state, how does it maintain control over FTA funded equipment?*

EXPLANATION
Under the Common Rule, states use, manage and dispose of equipment in accordance with state laws and procedures. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA funded equipment.

REFERENCES
49 CFR 18.32(a)
FTA C 5010.1D, Ch. II, Section 3.a

SOURCES OF INFORMATION
Obtain and review equipment management procedures, if written, and sample records. Review the state's equipment inventory, if it has one, and document the data elements tracked. Obtain and review disposition procedures, if written. On site, confirm the procedures.

DETERMINATION
The state is deficient if it does not have or implement procedures for maintaining control of FTA funded equipment or the procedures are insufficient to maintain continuing control of FTA funded equipment. (***DEFICIENCY CODE 06****:* Inadequate property control system)

SUGGESTED CORRECTIVE ACTION
Direct the state to submit to the FTA regional office revised procedures for maintaining control over FTA funded equipment.

7. *Does the grantee have equipment records that provide the required information?*

EXPLANATION
FTA defines equipment as all tangible, nonexpendable, personal property that has a service life of more than one year and an acquisition and installation cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition includes at least all equipment defined above. A grantee must keep records of FTA funded equipment that include the following required information:

- description
- I.D. number
- acquisition date
- cost
- Federal percentage
- grant number
- location
- use and condition
- disposition action
- vested title
- useful life (for equipment placed in service on or after November 1, 2008)

FTA strongly recommends, but does not require, that grantees update their property records to include useful life for items put into service prior to the above date. A grantee's records must include equipment purchased or used by subrecipients.

Many grantees have computerized databases for property records. It is acceptable if no single report shows all the required data as long as the grantee can demonstrate that the records are complete.

REFERENCE
49 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.k

SOURCES OF INFORMATION
Review the grantee's property records. Information on useful life may be included in grantee depreciation schedules or in other fixed asset accounting records. Review recent grant purchases in TEAM-Web Milestone Progress Reports to verify inclusion of newly acquired assets in property records.

DETERMINATION
The grantee is deficient if records are missing required information or if the records are not current. (***DEFICIENCY CODE 03***: Inadequate equipment records)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office updated records with the required information.

8. *Did the grantee conduct a physical inventory of FTA funded equipment in the past two years? Were the results of the inventory reconciled to equipment records?*

9. *What is the grantee's control system to prevent loss, damage or theft of FTA funded property? Does the grantee investigate and document any loss, damage or theft of FTA funded property?*

10. *How does the grantee maintain control of FTA funded contractor, lessee or subrecipient operated equipment?*

11. *Does the grantee lease FTA funded equipment to private 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
The Common Rule and FTA C 5010.1D require grantees to conduct a physical inventory of equipment and to reconcile the results to equipment records at least once every two years. The grantee must have a control system to prevent loss, damage, or theft of property. Typically, grantees tag all FTA funded equipment with a property control number, but other systems can be used such as serial numbers or vehicle identification numbers; tags are not required. Additional control procedures include secure storage, surveillance systems, and insurance. Any loss, damage, or theft must be investigated and documented by the grantee.

FTA requires grantees to exercise control over FTA funded property leased to contractors, subrecipients, and others and to ensure that it is used for general public transportation. The requirements for a biennial physical inventory and other control measures also apply to equipment that is leased or provided to a service contractor, lessee, or subrecipient. Other potential control measures include vehicle use certifications, vehicle use reports, retention of or liens on titles, insurance requirements, and site visits.

Grantees may lease FTA funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the grant application, FTA approval of the grant constitutes approval of the lease. 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.

REFERENCE
49 CFR 18.32
FTA C 5010.1D, Ch. II, Section 3 and Ch. IV, Sections 3.e(1), 3.j(1), and 3.k

SOURCES OF INFORMATION
During the desk review, determine if the state notified obtained prior FTA approval for leases of FTA funded equipment to private operators. Review fixed asset procedures. Review the grantee's records for evidence that the biennial inventory was completed and inventory results were reconciled to equipment records. Review annual financial audit reports and any internal audit reports to learn if any discrepancies have been identified. Financial reports will show any changes in the book value of property and may reflect adjustments for missing equipment. Ask the grantee to describe and demonstrate the safeguards that are in place to prevent loss, damage, or theft. Review documentation of control over contractor, lessee, and subrecipient operated equipment. Review a lease of an FTA funded asset to a private operator to ensure that it includes the required provisions.

DETERMINATION
The grantee is deficient if it has not conducted a biennial physical inventory of all FTA funded equipment, including equipment operated by contractors, lessees, and subrecipients, within two years of the site visit. (***DEFICIENCY CODE 04***: No evidence of physical inventory)

The grantee is deficient if a physical inventory has been conducted but results have not been reconciled to records. (***DEFICIENCY CODE 05***: Inventory results not reconciled to equipment records)

The grantee is deficient if procedures, leases, subrecipient agreements and/or service agreements do not provide for property use and control. The grantee is deficient if it has not investigated and documented any loss, damage, or theft of FTA funded property. (***DEFICIENCY CODE 06***: Inadequate property control system)

The grantee is deficient if it does not have FTA concurrence for leasing FTA funded assets to private operators or if the lease does not include the required provisions. (***DEFICIENCY CODE 14:*** Lease issues)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office evidence that it has conducted a physical inventory and that the inventory results have been reconciled to equipment records.

Direct the grantee to submit to the regional office an adequate control system to prevent loss, damage, or theft of FTA funded property.

Direct the grantee to submit to the FTA regional office documentation of any loss, damage, or theft of FTA funded property.

Direct the grantee to submit to the FTA regional office procedures for improved control of equipment operated by contractors, lessees, or subrecipients.

Direct the grantee to submit procedures to the FTA regional office and obtain FTA approval for leases of FTA funded equipment.

12. *Did the grantee notify FTA when it withdrew equipment with remaining useful life from project use or applied it to a different use?*

13. *Did the grantee or a subrecipient dispose of any FTA funded equipment or supplies during the past three years? If yes, did FTA provide prior concurrence in the method of disposition of equipment removed from service before the end of service life? Has FTA been reimbursed for its share of proceeds, if required? For retained proceeds, did the grantee correctly apply the proceeds to reduce the gross project cost?*

14. *Did the grantee apply insurance proceeds to the cost of replacing damaged or destroyed project property or return to FTA an amount equal to its remaining interest in the lost, damaged, or destroyed project property?*

EXPLANATION
The grantee must use project property for appropriate project purposes for the duration of the useful life of that property. If the grantee unreasonably delays or fails to use the project property during the useful life of that property, the grantee may be required to return the Federal assistance expended on that property. The grantee must notify FTA immediately when any project property is withdrawn from project use or when any project property is used in a manner substantially different from the representations the grantee made in the grantee agreement or cooperative agreement for the project.

Disposition of equipment before the end of useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C 5010.1D Appendix D, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The grantee should have a mechanism to adjust the service life of any FTA funded vehicle for time not spent in regular transit use.

FTA is entitled to its share of the remaining Federal interest. The Federal interest is the greater of the FTA share of the straight line depreciated value (based on years or miles for rolling stock) or the sale price. The grantee may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Equipment with a unit market value of $5,000 or less that has reached the end of its service life requires no FTA reimbursement. Equipment that has reached the end of its service life and for which the unit market value exceeds $5,000 requires reimbursement to FTA of the proportionate share of the fair market value or

the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and any necessary expenses associated with repairs to make saleable.

With prior FTA approval, the grantee can use sale proceeds to reduce the gross project cost of other FTA eligible capital transit grants. The grantee is expected to record the receipt of the proceeds in the grantee's accounting system, showing that the funds are restricted for use in a subsequent capital grant, and reduce the liability as the proceeds are applied to one or more FTA approved capital grants. The subsequent capital grant application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.

For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds $5,000, the grantee must compensate FTA for its share or transfer the sales proceeds to reduce the gross project cost of another capital project.

If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee must:

- Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
- Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

Item	FTA-Defined Service Life
35'-40' heavy duty and articulated transit bus	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus	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, regular and specialized vans)	4 years or 100,000 miles
Rail vehicles	25 years
Fixed guideway steel-wheeled trolley	25 years
Fixed guideway electric trolleybus	15 years
Passenger ferry	25 years
Other ferries without refurbishment	30 years
Other ferries with refurbishment	60 years
Railroad or highway structure	50 years
Most other buildings and facilities (concrete, steel and frame construction)	40 years
Note: A heavy-duty transit bus is built as a bus whereas a medium-duty bus is built on a truck chasis.	

REFERENCE

49 USC 5334 v (h) (4), as amended by SAFETEA-LU
FTA C 5010.1D, Ch. IV, Section 3.l and Appendix D
FTA C 9030.1D, Ch. VI, Section 4.a and b
FTA C 9300.1B, Ch. III, Section 7.b(1)
FTA Master Agreement, Section 19

SOURCES OF INFORMATION

During the desk review, examine grant files for approval of like-kind exchange of rolling stock or retention of the proceeds from the sale of assets. Review the list of FTA funded equipment removed from transit service since the last review. Examine fleet availability reports and maintenance records for indications that vehicles have been out of service for an extended period. Examine sales records and financial reports. Review records documenting how fair market value was arrived at for any equipment not sold competitively. Check for unused, parked buses during facility tours.

DETERMINATION

The grantee is deficient if FTA funded equipment has been removed from service prematurely without FTA approval. The grantee is deficient if it has not reimbursed FTA proportionately for the depreciated value of items that have not yet reached the end of service life and has not received permission for a like-kind vehicle exchange. The grantee is deficient if it has not reimbursed FTA proportionately for items valued greater than $5,000 that have reached the end of service life and has not obtained approval for retaining the proceeds. The grantee is deficient if it has disposed of unneeded supplies with a total aggregate fair market value that exceeds $5,000 and has not reimbursed FTA proportionately and has not received approval for retaining the proceeds. The grantee is deficient if it has neither applied insurance proceeds to the cost of replacing the lost, damaged,

or destroyed property nor returned to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed property. (***DEFICIENCY CODE 07***: Failure to comply with property disposal requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for notifying FTA of any premature removal of equipment from service.

Direct the grantee to work with the regional office for reimbursement of FTA's share of disposed property or to obtain approval for retaining the proceeds to apply to another capital project.

Direct the grantee to work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

15. *For fixed route buses operated in urban service (NTD motorbus category), does the spare ratio exceed FTA's 20 percent guideline for bus fleets of 50 or more revenue vehicles? For fleets of fewer than 50 buses, does the spare ratio appear reasonable?*

16. *Is there a bus contingency fleet? If yes, is there a contingency plan?*

EXPLANATION

For grantees with 50 or more fixed route buses in urban service, a reasonable spare ratio should not exceed 20 percent of the vehicles operated in maximum fixed route service. For fleets of fewer than 50 fixed route vehicles, judgment must be applied based on the age of the fleet and operating conditions to determine the reasonable number of spare vehicles.

Calculate the spare ratio, as follows:

a. **Total number of revenue vehicles**. Count the whole fleet; the spare ratio is not calculated for each vehicle type or location. Do not include buses delivered for future expansion, that have been replaced but are in the process of being disposed of, are part of a contingency fleet, are historic and used for parades or public relations, or have been converted to non-transit use (e.g., mobile offices). Whether vehicles are locally funded, FTA funded, or have exceeded their service life are not relevant factors.

b. **Number of vehicles required for maximum service**. Use the revenue vehicle count during the peak season of the year on the week and day that maximum service is provided, excluding atypical days and one-time special events.

c. **Number of spare vehicles** (a minus b)

d. **Spare ratio** (c divided by b)

Buses may be stockpiled in an inactive contingency fleet in preparation for emergencies. No bus may be stockpiled before it has reached the end of its service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan. The plan should be updated as necessary to support the continuation of a contingency fleet.

REFERENCE

49 CFR 18.32
FTA C 5010.1D, Ch. IV, Section 3.i
FTA C 9030.1D, Ch. VI, Section 4.c (1) and (3)
FTA C 9300.1B, Ch. III, Section 7.b (2) and (3)

SOURCES OF INFORMATION

Review the fleet status report in TEAM-Web and discuss the report with the regional office during the desk review. Ask the grantee to provide a rolling stock roster. Check pull-out logs or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. Ask for a print out from the scheduling software or other dispatch records documenting the peak of the peak. Review equipment records for a listing of the fleet. If the grantee has a contingency fleet, ask for a copy of its contingency plan.

DETERMINATION

The grantee is deficient if the active urban fixed route bus fleet is 50 or more vehicles and the spare ratio is more than 20 percent of the peak fleet. The grantee is deficient if the active fixed route bus fleet is less than 50 vehicles and the spare ratio is excessive. (***DEFICIENCY CODE 08***: Excessive fixed route bus spare ratio)

The grantee is deficient if it has a contingency fleet but no current contingency plan. (***DEFICIENCY CODE 09***: Lacking contingency plan/plan out-of-date)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for reducing the spare ratio to 20 percent. The plan should include a spreadsheet listing, for each bus type, the number of buses, and, for each year until the spare ratio reaches 20 percent, the number of buses to be disposed of, the number of buses to be added, the projected peak requirement, and the projected spare ratio. The plan should include detailed justifications for years in which spare ratios

exceed 20 percent. If the grantee submits a plan for reducing its spare ratio that cannot be completed within 90 days, direct the grantee to report progress in Milestone/Progress Reports.

Direct the grantee to develop and submit to the FTA regional office a plan for its contingency fleet.

17. *If the grantee is a rail operator, is a rail fleet management plan on file? If yes, does the plan include the required elements?*

EXPLANATION

Because rail transit operations tend to be distinct from grantee to grantee, FTA requires rail operators to develop rail fleet management plans. The plans must discuss:

- operating policies
- peak requirements
- maintenance/overhaul program
- system and service expansions
- railcar procurements/schedules
- spare ratio justification

The spare ratio justification should consider the average number of cars out of service for scheduled maintenance, unscheduled maintenance, and overhaul programs. It should take into account historical variations in ridership and ridership changes that affect car needs due to system or service expansions. The justification should account for contingency needs due to destroyed cars and procurement schedules for fleet replacement and expansion. Cars delivered for future expansion and cars that have been replaced but are in the process of being disposed of should be identified and separated from other spares so as not to inflate the spare ratio. FTA has defined peak vehicle requirement to include "standby" trains that are scheduled, ready for service, and have a designated crew.

REFERENCE

49 CFR 18.32
FTA C 5010.1D, Ch. IV, Sections 3.i and k
FTA C 9030.1D, Ch. VI, Section 4.c (2)

SOURCES OF INFORMATION

During the desk review, check to see that the rail fleet management plan is on file in the regional office. If it is, check with the grantee to ensure that it is current. If it is not, request the plan from the grantee.

DETERMINATION

The grantee is deficient if it has not prepared a plan or the plan is incomplete or out of date. (***DEFICIENCY CODE 10***: Lacking rail fleet management plan/plan incomplete)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a revised or updated rail fleet management plan that includes all required elements.

5. MAINTENANCE

BASIC REQUIREMENT

Grantees and subrecipients must keep Federally funded equipment and facilities in good operating order and maintain ADA accessibility features.

AREAS TO BE EXAMINED

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

REFERENCES

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

USEFUL WEB LINKS

Transit State of Good Repair--Beginning the Dialogue

QUESTIONS FOR THE REVIEW

Part A: Vehicle Maintenance

1. *Does the grantee have a current written maintenance program/ plan for FTA funded rolling stock? Does the program include goals and objectives? Are the plan and preventive maintenance checklists consistent with the current operating fleet? Are the plan and checklists consistent with manufacturers' minimum maintenance requirements for vehicles under warranty? How does the grantee track the manufacturer's recommendations and updates on requirements?*

EXPLANATION

Grantees are required to have a current written maintenance program for FTA funded rolling stock that documents the maintenance plan. The vehicle maintenance program should include goals and objectives, such as extending vehicle life, reducing the frequency of road calls, and tracking maintenance costs compared to total operating costs. The maintenance plan should detail how such goals and objectives are achieved. The maintenance plan should be updated with the purchase of new rolling stock to account for new technology and/or new manufacturer's recommended maintenance intervals and programs. An effective vehicle maintenance program incorporates actions to maintain each vehicle type and model on a specific cycle. These actions should be designed to ensure proper care and maximize vehicle longevity.

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

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

REFERENCE

49 CFR 18.32(d)(4)
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k and m
FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION

Examine the grantee's vehicle maintenance plan(s) and/or program(s), the maintenance checklists, and the recommended maintenance procedures and updates of the manufacturer.

When performing a review of a bus system, compare the interval for the change of engine oil and filters in the grantee's maintenance plan and checklists with the maximum interval specified in the engine manufacturer's maintenance manual.

When performing a review of a rail or ferry system, check that the maintenance plan prescribes a scheduled series of maintenance actions to be performed at predetermined intervals.

DETERMINATION

The grantee is deficient if it does not have a written vehicle maintenance program/plan.

The grantee is deficient if its program omits some requirements (e.g., goals and objectives) or its plan does not include the latest additions to the fleet.

For vehicles under warranty, the grantee is deficient if the maintenance interval for oil changes is longer than the manufacturer's maximum interval defined for "urban transit service" or approved alternative interval.

SUGGESTED CORRECTIVE ACTION

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

2. *What is the grantee's schedule for vehicle preventive maintenance inspections? Are they completed on time?*

EXPLANATION

Fleet deterioration takes a long time to occur and an equally long time to correct after the deterioration has taken place. Both take a toll on the grantee's resources and put FTA's investment at risk.

Actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance inspections as planned, the grantee's entire maintenance program may be effective. A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life. If preventive maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the maintenance program are lacking as well and the grantee is putting FTA's investment and its warranties at risk.

REFERENCE

49 CFR 18.32(d)(4)
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k and m
FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION

Review the maintenance plan(s) for the interval (miles or operated hours) between preventive maintenance inspections. Determine what this interval is for each mode operated. In some cases, intervals also may vary by subfleet. Examine preventive maintenance records to determine whether the grantee is performing inspections according to its maintenance plan.

Check preventive maintenance inspection intervals by reviewing management reports used by the grantee for monitoring preventive maintenance inspections and by reviewing records for a selected sample of FTA funded vehicles.

For each vehicle chosen, examine the preventive maintenance history for the preceding 12 months. Note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection. Inspections that are no later than 10 percent of schedule or 500 miles, whichever is greater, are considered on time. For example, a scheduled 6,000 mile inspection would be considered "on time" if it was performed any time before 6,600 miles. If the grantee uses a different definition of an "on time" inspection, use the grantee's definition if deemed appropriate.

Most grantees schedule preventive maintenance inspections based on relative miles (e.g., 6,000 miles since the last inspection). Others schedule based on absolute miles. Grantees may choose either method. Focus on whether the inspections are conducted when due.

For commuter rail locomotives and cars, in lieu of selecting a sample of preventive maintenance records, examine Federal Railroad Administration (FRA) inspection records. Sample maintenance records of ferry vessels.

DETERMINATION

The grantee is deficient if fewer than 80 percent of the inspections for any mode occurred on time. Grantees are not penalized for early inspections, only late ones. For commuter rail locomotives and cars, the grantee is deficient if FRA compliance letters indicate that the grantee does not meet the FRA scheduled maintenance intervals.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for completing preventive maintenance inspections on time. Direct the grantee to submit a report signed by the chief executive officer on its results monthly until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on time for three consecutive months. For each bus that received a preventive maintenance inspection during the month, include with the submittal a report that lists the bus number, date of the inspection, mileage of the current inspection, mileage of the previous inspection, and the mileage interval between the two inspections. List the percentage of the inspections performed on time. Submit back-up documentation for each bus (e.g., copy of work order, printout from the maintenance management system) documenting the date and mileage of the inspection. If a repeat deficiency from the prior review, direct the grantee to submit the above data monthly until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on time for 12 consecutive months.

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

EXPLANATION

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

show that accessibility features are checked regularly for proper operation and receive periodic maintenance.

REFERENCE
49 CFR 37.161-163

SOURCES OF INFORMATION
Review the grantee's maintenance plan and the maintenance checklists for ADA equipment. When sampling vehicle maintenance records, ensure that accessibility features are maintained regularly and repaired promptly if out of order. Interview the person responsible for the grantee's maintenance activities.

DETERMINATION
The grantee is deficient in ADA requirements if it does not include maintenance of accessibility features in its maintenance plan, does not follow its program, or does not maintain accessibility equipment promptly.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the regional civil rights officer a preventive maintenance program for ADA accessibility equipment.

Direct the grantee to revise or fully implement its program and submit evidence of implementation to the regional civil rights officer.

Part B: Facility and Equipment Maintenance

4. *Does the grantee have a current written maintenance program for its FTA funded facilities and facility related equipment? Does the program include inspections and preventive maintenance activities to ensure that assets are protected from deterioration and reach their maximum useful life? Is the program consistent with manufacturers' minimum maintenance requirements for equipment under warranty? Does the program prescribe a record-keeping system so that the maintenance history of facilities and equipment is permanently recorded? How is the program documented?*

EXPLANATION
Public transit requires a considerable investment in buildings, equipment, and machinery. As with vehicle maintenance, the proper maintenance of facilities, machinery, and equipment is key to protecting the FTA investment and prolonging the useful life of the asset. Grantees are required to have a current written maintenance program for FTA funded facilities and facility related equipment. A model program for FTA funded facilities would include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure proper care and maximize useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment.

The facility/equipment maintenance program should identify specific items, such as buildings, elevators, escalators, parking lots, electric distribution and control equipment, plumbing systems, overhead doors, vehicle maintenance lifts, vehicle washers and wash water recycling systems, heating and/or air conditioning units, power substations, etc. The facility/equipment maintenance program should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Maintenance intervals might be measured in terms of time (daily, monthly, annually) or in terms of usage (hours of use).

In the case of rail systems, FTA's investment often involves the construction of passenger stations, rights-of-way, signals, and other related facilities and equipment. FRA regulates commuter rail systems and has detailed maintenance requirements for rolling stock, signals, and right-of-way that it enforces with a frequent inspection program. However, proper maintenance is needed by grantees for those components of the rail system not subject to FRA maintenance requirements, such as passenger stations, maintenance facilities, buildings, and equipment. Proper maintenance of all FTA funded facilities and equipment is necessary to protect the FTA investment and ensure that maximum service longevity is achieved.

REFERENCE
49 CFR 18.32(d)(4)
Master Agreement, Section 19.c
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION
Examine the grantee's facility and equipment maintenance plan and/or program, the maintenance checklists, and preventive maintenance program.

DETERMINATION
The grantee is deficient if it does not have a facility and equipment maintenance program that addresses the current mix of FTA funded assets. The grantee is deficient if the program does not include a series of maintenance and inspection activities to be performed at appropriate intervals.

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

5. *What is the grantee's schedule for facility and equipment preventive maintenance inspections? Are they completed on time?*

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

REFERENCE
49 CFR 18.32(d)(4)
Master Agreement, Section 19.c
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C 9030.1D, Ch. IV, Section 8.c

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

DETERMINATION
The grantee is deficient if fewer than 80 percent of the inspections occurred on time. Grantees are not penalized for early inspections, only late ones.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures for completing preventive maintenance inspections on time. Direct the grantee to submit a report signed by the chief executive officer on its results monthly until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on time for three consecutive months. For the items reported on, submit a report listing the items, the dates the inspections are due, and the dates of the actual inspections. List the percentage of the inspections performed on time. (e.g., copy of work order, printout from the maintenance management system). If a repeat deficiency from the prior review, direct the grantee to submit the above information monthly until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on time for 12 consecutive months.

6. *Does the grantee's facility maintenance program address maintenance procedures for accessibility features? Do maintenance records indicate that accessibility features are maintained in operative condition?*

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

REFERENCE
49 CFR 37.161

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

DETERMINATION
The grantee is deficient in ADA requirements if it does not have a program to maintain accessibility features, does not follow the system, or does not maintain the accessibility equipment promptly.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional civil rights officer a preventive maintenance program for ADA accessibility equipment.

Direct the grantee to revise or fully implement its program and submit evidence of implementation to the regional civil rights officer.

Part C: Warranty Program

7. *Is any FTA funded equipment under warranty? If yes, what is the grantee's system for recovering warranty claims? Are claims pursued satisfactorily?*

EXPLANATION
If the grantee has equipment under warranty, FTA requires that the grantee have a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the grantee and FTA. There should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow up on unpaid claims.

REFERENCE
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.k
FTA C 9030.1D, Ch. IV, Section 8.c

SOURCES OF INFORMATION
Identify the vehicles and equipment under warranty. Ask the grantee to explain how the preventive maintenance program meets or exceeds the manufacturer's recommended program.

Ask the grantee for a copy of its warranty recovery program, or, if the program is not in writing, to describe the warranty recovery system. Review the records and files for the program to learn how timely and aggressive the grantee has been in pursuing and collecting warranty claims. Compare the records of claims submitted with claims settled.

DETERMINATION
The grantee is deficient if it does not have a warranty recovery system, does not have records documenting that warranty claims are pursued, or is not pursuing warranty claims diligently.

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

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

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

Part D: Oversight

8. *Does the grantee have FTA funded vehicles or facilities that are maintained by subrecipients, leased to service providers or maintained under contract by other than the grantee's employees? If yes, does the grantee have written maintenance standards? Do the standards address ADA requirements for maintenance of accessibility features? Does the grantee have or require written maintenance plans? How does the grantee ensure that subrecipients, contractors and lessees follow the required maintenance standards/ plans?*

EXPLANATION
FTA funded vehicles and facilities must be maintained regardless of who operates and maintains them. Subrecipients, third-party contractors, and lessees "stand in the shoes" of the grantee as far as FTA maintenance requirements are concerned. The grantee must require subrecipients, contractors, and lessees to follow acceptable maintenance standards. The subrecipient agreement, contract or lease should address maintenance standards or maintenance performance indicators. The grantee may have its own maintenance plan or require its subrecipients, contractors, and lessees to develop their own maintenance plans.

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

REFERENCE
49 CFR 18.37 and 18.40
FTA C 5010.1D, Ch. II, Section 3.a and Ch. IV, Sections 3.j(1), 3.k and 3.m
FTA C 9030.1D, Ch. IV, Section 8.c
FTA Master Agreement, Section 19.c

SOURCES OF INFORMATION
Review sample subrecipient agreements, contracts, and leases for maintenance requirements. Review a sample of maintenance plans. Often the plan is found either in the request for proposals or in the contractor's proposal. Determine who is responsible for monitoring the maintenance activities of subrecipients, contractors, and lessees and determine whether the grantee has

assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues. Visit a subrecipient, contractor, and/or lessee to visually inspect vehicles and facilities and to sample maintenance records.

DETERMINATION

The grantee is deficient if it does not have or require a maintenance plan or does not oversee the contractor's maintenance activities through periodic reports and inspections of facilities and vehicles.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit a written maintenance plan to the FTA regional office and an amended subrecipient agreement, contract, or lease incorporating the plan.

Direct the grantee to submit to the FTA regional office an amended subrecipient agreement, contract, or lease that incorporates maintenance standards compatible with FTA requirements or performance measures for timely maintenance.

Direct the grantee to submit to the FTA regional office a copy of the letter signed by the CEO to the subrecipient, contractor, or lessee citing the maintenance requirements, stating that the entity is not meeting the maintenance requirements, and directing the entity to implement steps to meet the requirements.

Direct the grantee to submit to the FTA regional office an oversight program.

6. PROCUREMENT

BASIC REQUIREMENT

FTA grantees use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 49 CFR Part 18 (specifically Section 18.36) and FTA Circular 4220.1F, "Third Party Contracting Guidance."

AREAS TO BE EXAMINED

1. ***Procurement Policies and Procedures***

2. ***Third-Party Contracts***

3. ***Bus Testing***

APPLICABILITY OF REQUIREMENTS

As a general rule, where FTA funds are used in procurements for services or supplies, or where FTA funded facilities or assets are used in revenue contracts, FTA C 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA C 4220.1F does not apply to wholly locally funded capital procurements.

A grantee that is a state agency may follow its own procurement procedures but, at a minimum, must comply with the following statutory requirements:

- Provide full and open competition
- Include all applicable FTA clauses
- Comply with the Brooks Act if the state does not have a statute governing the procurement of architectural and engineering services
- Prohibit geographic preferences
- Comply with the five-year limitation on purchases of rolling stock or replacement parts
- Award only to responsible contractors

Instrumentalities of the state are considered state agencies. Regional transit authorities are not state agencies. If a triennial review is conducted of a state agency, the requirements in questions 9, 10, 13, 14, 15, 16, 19, 23, and 28 apply.

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

Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA C 4220.1F. Real property acquisition is addressed in 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." For further guidance, see also FTA C 5010.1D, "Grant Management Requirements."

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

COMPLIANCE

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

REFERENCE

1. 49 USC Chapter 53, Federal Transit Laws

2. Transportation Equity Act for the 21st Century, Public Law No. 105-178

3. 49 CFR Part18.36, "Procurement"

4. FTA C 4220.1F, "Third-Party Contracting Guidance"

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

6. FTA C 9030.1D, “Urbanized Area Formula Program: Program Guidance and Grant Application Instructions”

7. FTA Master Agreement

8. FTA Circular 9400.1A, “Federal Transit Administration Design and Art in Transit Projects”

USEFUL WEB LINKS

FTA's Best Practice Procurement Manual

FTA Procurement Frequently Asked Questions

FTA Procurement Helpline

Bus Testing Website

National RTAP ProcurementPRO

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a Procurement System Review (PSR) during the past two Federal fiscal years? If yes, when was the site visit? Is there a PSR scheduled for the current fiscal year?*

EXPLANATION
As part of its oversight functions, FTA periodically conducts PSRs of selected grantees. Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still reviewed.

REFERENCE
49 CFR 18.36(g)
FTA C 4220.1F, Ch. I, Section 6.c

SOURCES OF INFORMATION
Prior to conducting the desk review, review OTrak to determine if a PSR has occurred or has been scheduled. Analyze findings and corrective actions from completed PSRs for input into the review process. Obtain reports from the regional office, headquarters, or OTrak.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee have written procurement policies and procedures?*

EXPLANATION
The Common Grant Rule for non-governmental recipients requires the grantee to have written procurement procedures, and by implication, the Common Grant Rule for governmental grantees requires written procurement procedures as a condition of self-certification. Grantees are required to use their own procurement policies and procedures that reflect applicable state and local laws and regulations, provided that they conform to applicable Federal law. These policies and procedures must be followed when procuring materials and/or services using FTA funds.

The procurement policies and procedures are not required to be part of a single document. As such, the reviewer should request from the grantee all materials that may be relevant to the procurement area (e.g., municipal ordinances, operations manuals, employee handbooks, etc.). Procurement procedures may be included in general operating procedures. FTA C 4220.1F includes items that it expects written procedures to cover, such as nonrestrictive specifications, necessity, procurement methods, and resolution of third party contracting issues. Many of these items are addressed further in other questions within this section.

REFERENCE
49 CFR 18.36(b)(1)
FTA C 4220.1F, Ch. III, Section 3.a

SOURCES OF INFORMATION
Review the grantee's procurement policies and procedures to gain an understanding of processes and personnel involved in third party procurement actions.

DETERMINATION
The grantee is deficient if it does not have written procurement policies and/or procedures.

The grantee is deficient if it has policies and procedures, but has not followed them for FTA funded procurements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office written procurement policies and procedures, along with a description of how they will be implemented. The grantee must cease immediately any practices that do not conform to applicable laws and regulations.

3. *Does the grantee have written standards of conduct that address personal conflicts of interest, gifts, and disciplinary actions?*

EXPLANATION
Grantees are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards should:

- Preclude any employee, officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the selection, award, or administration of a contract supported with FTA assistance. Such a conflict would arise when

any of those previously listed has a financial or other interest in the firm selected for award.

- Include information that the grantee's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The grantee may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- Provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, agents, board members, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

REFERENCE
49 CFR 18.36(b)(3)
FTA C 4220.1F, Ch. III, Section 1

SOURCES OF INFORMATION
Before the site visit, review the procurement policies and procedures and any other documents relevant to the procurement area to determine if standards of conduct are addressed. Standards of conduct may be in a separate policy adopted by the grantee's policy board or by state statute or local ordinance.

DETERMINATION
The grantee is deficient if it does not have a written policy that addresses standards of conduct in the award and administration of a contract. The grantee is deficient if any required item of such a policy is missing.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office written standards of conduct which include all the required elements, along with evidence that the policy has been adopted and distributed to appropriate persons.

4. *Does the grantee analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest?*

EXPLANATION
FTA expects grantees to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate potential conflicts before contract award.

An organizational conflict of interest occurs when any of the following circumstances arise:

- Lack of impartiality or impaired objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the grantee due to other activities, relationships, contracts, or circumstances.
- Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- Biased ground rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

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

SOURCES OF INFORMATION
Review the grantee's procurement policies and procedures for a discussion of how organizational conflicts of interest are addressed. Examine procurement files to determine how the grantee analyzes each procurement for organizational conflicts of interest. In addition to asking this question, during the site visit examine procurement files to determine if there are any potential organizational conflicts of interest. If a conflict of interest appears to exist in the procurement of goods or services, examine how the award was made.

DETERMINATION
The grantee is deficient if there is no evidence that it analyzes potential organizational conflicts of interest or a conflict of interest is identified.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office procedures that describe how potential conflicts of interest will be avoided. If a potentially serious conflict of interest is identified, contact the regional counsel for further guidance.

5. *Does the grantee require prospective bidders to prequalify for any of its procurements? If yes, how does the grantee ensure full and open competition?*

EXPLANATION
Grantees are not required to prequalify potential bidders. However, grantees that place such a

requirement on potential bidders must adhere to FTA's requirements. If a grantee requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Grantees must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

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

SOURCES OF INFORMATION
At the site visit, review the grantee's list of prequalified persons, firms, and products. Discuss the prequalification process with those who are responsible for it. Review solicitations to ensure that information related to prequalification is made available to potential bidders.

DETERMINATION
The grantee is deficient if its list of prequalified firms is out of date, to the extent that full and open competition is impeded. The grantee is deficient If potential bidders are precluded from qualifying during the solicitation period.

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

6. *Do the grantee's procedures address required solicitation elements?*

EXPLANATION
Grantees must ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured, as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. Descriptions must not contain features that unduly restrict competition. Detailed product specifications should be avoided. "Brand name or equal" descriptions should be avoided unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

REFERENCE
49 CFR 18.36(c)(3)
FTA C 4220.1F, Ch. VI, Section 2

SOURCES OF INFORMATION
Review procurement policies and procedures to determine if solicitation elements are addressed. During the site visit, review selected procurement files to review specifications.

DETERMINATION
The grantee is deficient if it uses noncompetitive specifications.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures to ensure that all solicitations incorporate a clear and accurate description of the material, product, or services being procured as well as identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals. The grantee must cease any practice that violates FTA requirements.

7. *Does the grantee have a procedure to review procurement requests to avoid duplicative or unnecessary purchases?*

EXPLANATION
Grantees' procedures must provide for a review of procurements to avoid purchasing unnecessary or duplicative items. During such a review, consideration should be given to consolidating or breaking out procurements or any other appropriate means to obtain a more economical purchase. An adequate system usually restricts the authority to initiate purchases to relatively few individuals. Also, all purchase requests typically would be reviewed and/or approved by one person, designated as the purchasing agent for a given department in the case of large grantees, or for the entire organization, in the case of small grantees. The value of a purchase may determine the procedures that the grantee follows. The level of scrutiny would be expected to increase with the dollar value of the purchase.

REFERENCE
49 CFR 18.36(b)(4)
FTA C 4220.1F, Ch. IV, Section 1.b

SOURCES OF INFORMATION
Review the grantee's procurement procedures. During the site visit, discuss the grantee's procurement procedures to determine if an adequate level of review is given to each procurement. Review selected procurement files to verify that these procedures are being implemented.

DETERMINATION
The grantee is deficient if it is lacking procedures for reviewing procurements. The grantee is deficient If such procedures exist, but are not followed.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office procedures that include adequate review of procurements to avoid unnecessary or duplicative purchases. Direct the grantee to provide the FTA regional office evidence that deficiencies in the implementation of such procedures have been corrected.

8. *Does the grantee have written protest procedures?*

EXPLANATION
Grantees must have written protest procedures to handle and resolve protests of award of its procurements. A grantee is to notify FTA when it receives a third party contract protest and keep FTA informed about the status of the protest. When a grantee denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects the grantee to inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly.

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

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

SOURCES OF INFORMATION
Before the site visit, examine the grantee's procurement policies and procedures to determine if there are written protest procedures. During the site visit, examine solicitation documents in the grantee's procurement files for written protest procedures. Ask the grantee if there have been any protests during the review period. If so, request copies of all documentation described above (e.g., disclosure to FTA, written protest decisions, etc.).

DETERMINATION
The grantee is deficient if it does not have written protest procedures. The grantee is deficient if written protest procedures exist, but are not followed, or if the it has not disclosed information regarding protests to FTA.

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

9. *How does the grantee allow for full and open competition for all transactions under the following methods of procurement?*

a. *Micro-Purchases ($3,000 or less)*

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

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

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

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

f. *Revenue Contracts*

EXPLANATION
Grantees must conduct procurement transactions in a manner providing full and open competition. Grantees are prohibited from restricting competition in Federally supported procurement transactions. Some situations that restrict competition include, but are not limited to: unreasonable qualification requirements, unnecessary experience requirements, excessive bonding, noncompetitive pricing practices between firms, noncompetitive awards to firms on retainer, organizational conflicts of interest, "brand name" only specifications, or any arbitrary action in the procurement process.

Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.

For items exceeding the Federal simplified acquisition threshold, currently fixed at $100,000, sealed bids or competitive proposals are generally required.

- Sealed Bids/IFB – Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.
- Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the firm whose offer is most advantageous to the grantee, with price and other factors considered. Grantees must identify their evaluation factors and indicate the relative importance that each has towards the award.

Architectural and Engineering (A&E) services must be procured using a qualifications-based process in accordance with the Brooks Act. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services which lead to construction. Unlike other two-step procurement procedures, in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the grantee may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the grantee determines is fair and reasonable.

Unless FTA determines otherwise in writing, a grantee may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though the other necessary services would not typically be procured by that method.

Revenue contracts are those in which the grantee or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the grantee should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the grantee is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the grantee to determine appropriate procedures, as necessary.

REFERENCE

49 CFR 18.36(c)(1)
49 CFR 18.36(d)(1)(2)(3)
FTA C 4220.1F, Ch. VI, Section 1
FTA C 4220.1F, Ch. VI, Sections 3.a-f
FTA C 4220.1F, Ch. II, Section 2.b. (4)

SOURCES OF INFORMATION

Before the site visit, review the grantee's written procurement policies. During the site visit, review procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted competitively and appropriately. Pay particular attention to product specifications to ensure that "brand name" specifications have been used appropriately (i.e., the grantee also must describe the product's salient characteristics in the specification). Records for phone solicitations may be examined when appropriate.

DETERMINATION

The grantee is deficient if it has not provided for full and open competition (has placed restrictive requirements on prospective bidders).

The grantee is deficient if it does not follow the Brooks Act when using FTA assistance to contract for A&E services or has used qualifications-based procedures when not appropriate.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office revised procurement procedures that ensure full and open competition in all procurement transactions. The grantee must cease immediately any practice that is in violation of FTA guidelines.

Direct the grantee to submit to the FTA regional office procedures for following the Brooks Act when using FTA assistance to contract for A&E services.

10. *Does the grantee contract for transit operations and/or management services? Do FTA funds support these contracts through grant funds (i.e.,*

preventative maintenance, operating, capital cost of contracting)? If yes, were these contracts competitively procured? When was the last time a procurement was conducted for these services?

EXPLANATION
Grantees must conduct procurement transactions in a manner providing full and open competition. This question is targeted to transit operations contracts that are FTA-funded, especially those that may have been in place prior to a grantee receiving preventative maintenance funding from FTA, which were not considered at the time to be Federally funded by the grantee.

If a grantee uses its FTA assistance to support specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, and if, through its accounting procedures, a grantee can allocate and trace all its Federal assistance for capital preventive maintenance to those separate and distinct preventive maintenance contracts, FTA Circular 4220.1F applies only to those specific FTA assisted contracts. If, however, the grantee applies its Federal capital assistance for preventive maintenance as a percentage of its total maintenance costs, and the grantee cannot allocate all of its Federal assistance for capital maintenance to specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, FTA Circular 4220.1F applies to all the grantee's preventive maintenance contracts, even if specific maintenance or operations contracts were initially financed wholly without FTA assistance.

REFERENCE
FTA C 4220.1F, Ch. II, Section 2.b. (3)

SOURCES OF INFORMATION
During the desk review, ask the regional office if the grantee contracts for service. Before the site visit, examine information from TEAM-Web and information on service delivery provided by the grantee. Examine the grantee's written procurement policies and listing of procurements. During the site visit, examine procurement files, particularly legal notices and solicitation documents, to determine whether procurements have been conducted competitively.

DETERMINATION
The grantee is deficient if it has not provided for full and open competition for FTA funded transit operations and/or management contracts.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to cease immediately any practice that is in violation of FTA guidelines. Refer the issue to the regional counsel for resolution.

11. *Does the grantee maintain a written record of procurement history?*

EXPLANATION
Grantees must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- sole source justification for any purchase that is not competitive
- selection of contract type (i.e., fixed price, cost reimbursement)
- reason for contractor selection or rejection
- written responsibility determination for the successful contractor
- basis for the contract price (i.e., cost/price analysis)

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements.

REFERENCE
49 CFR 18.36(b)(9)
FTA C 4220.1F, Ch. III, Section 3.d. (1)

SOURCES OF INFORMATION
At the site visit, examine procurement files for evidence of each of the items mentioned above. For most grantees, the procurement file will be the official record of the procurement history.

DETERMINATION
The grantee is deficient if its procurement records do not contain a significant history for each procurement that was examined.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected.

12. *What is the grantee's system or procedure for administering contracts once awarded?*

EXPLANATION
Grantees are required to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders.

Many FTA grantees assign contracting duties to technical, financial, or management personnel. If the grantee lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the grantee, FTA expects the grantee to acquire the necessary services from sources outside the grantee's organization. When using outside sources, the grantee should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

Although a grantee may not have written procedures addressing contract administration specifically, overall procurement procedures combined with a grantee's business practices may ensure adequate contract administration.

REFERENCE
49 CFR 18.36(b)(2)
FTA C 4220.1F, Ch. III, Section 3

SOURCES OF INFORMATION
Before the site visit, review procurement policies and procedures to determine if there is an adequate contract administration system. During the review of specific procurement files, verify that these procedures are being implemented. Note any correspondence between the grantee and its contractors for evidence of on-going contract administration.

DETERMINATION
If contractors have not performed according to the terms and conditions of their contracts, the grantee may be deficient depending on the extent to which it has taken remedial action. The grantee is deficient If non-performance of contractors is a persistent problem, or the grantee cannot provide any evidence of a contract administration system. Note: if contract administration appears to be an organizational problem (i.e., deficiencies in a contractor's performance with respect to maintenance, procurement, ADA, drug and alcohol, etc.), a deficiency in the technical area also may be warranted.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office documentation of an adequate contract administration system and/or evidence of remedial actions taken against contractors that have not performed in accordance with the terms and conditions of their contracts.

13. *For a grantee that contracts for services funded with Federal monies or has passed through funding to a subrecipient, has the grantee included competitive procurement requirements in its contract? How does the grantee monitor the procurement process of the contractor and/or subrecipient to ensure that Federal requirements are met?*

EXPLANATION
When a grantee has contracted out a portion of its Federally funded operation or has passed through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient operations. In such circumstances, the procurement process of the contractor/subrecipient should meet Federal requirements contained in the Master Agreement, including Buy America, debarment and suspension, and lobbying requirements, which are in other areas of the review. Furthermore, a grantee needs to have a mechanism to ensure contractor/subrecipient compliance. Requiring written procurement procedures, overseeing selected procurement processes, and auditing the contractor/subrecipient annually are measures that a grantee could use.

Typically, this requirement would apply to any third-party or subrecipient agreement in which the contractor or subrecipient performs primary project activities normally performed by the grantee directly.

REFERENCE
FTA Master Agreement, Sections2. d-e

SOURCES OF INFORMATION
Review contracts and subrecipient agreements to ensure that they contain FTA third-party procurement requirements. Determine how applicable contract clauses are implemented and who on the grantee staff monitors the contractor/subrecipient operations, including procurement. Determine how the grantee monitors adherence to the requirements. Ask how the grantee monitors the procurement process of a contractor/subrecipient and examine written reports or audit reports of the process.

DETERMINATION
The grantee is deficient if the contractor or subrecipient is not following procurement standards and is not being monitored.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office with documentation that it has changed contract language to include procurement requirements when services are rebid or when a new subrecipient agreement is executed.

Direct the grantee to provide the FTA regional office with documentation that it has implemented a procurement monitoring program.

14. *Has the grantee included geographic preferences in any of its procurements?*

EXPLANATION
Grantees are prohibited from specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA grantee from limiting its bus purchases to in-state dealers. Exceptions expressly mandated or encouraged by 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 are requirements for geographic preferences. During the site visit, review procurement files including solicitation documents to determine if procurements contain geographic preferences.

DETERMINATION
The grantee is deficient if it has used geographic preferences in any procurement for other than one of the exceptions. The grantee is deficient if the use of geographic preferences in A&E procurements restricted competition.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide to the FTA regional office documentation of a revised procurement process which prohibits the improper use of geographic preferences. The grantee must cease any practice that violates FTA guidelines.

15. *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
Grantees are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. The Master Agreement identifies certain clauses that apply to third-party contracts. Clauses addressing lobbying, debarment and suspension, DBE, and Buy America provisions are addressed in other sections of the triennial review.

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.

Grantees may not modify their own contracts after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. Grantees may, however, modify the state GSA-type contracts to add Federal clauses when they issue orders against those state contracts.

Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract. Procurements above the micro-purchase thresholds must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA guidelines is not sufficient to meet this requirement.

A checklist of required clauses is provided in Exhibit 6.1, Part A. The checklist provides a citation from the Master Agreement for each required clause. Exhibit 6.1 lists certifications, reports, and forms that are required for DBE, Buy America, debarment, and suspension, and lobbying. Part C lists other required items to assist in determining whether the grantee's policies and procedures are actually being followed.

The applicability of FTA clauses to different types of procurements is shown in Exhibit 6.2. Note that the construction of ferry vessels using Federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable.

REFERENCE

49 CFR 18.36(i)(1-13)
49 CFR 18.36(j-o)
29 CFR Parts 4 and 5, 41 CFR Parts 50-201 and 50-206, Amendments to Federal Contract Labor Laws by the Federal Acquisition Act Streamlining Act of 1994; Final Rule
Master Agreement
FTA C 4220.1F, Ch. IV, Section 2
FTA C 4220.1F, 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 grantee is deficient if it has not included any reference to FTA requirements or any FTA clauses in contracts, intergovernmental agreements, or subrecipient agreements. The reviewer should not find the grantee deficient if it missed some clauses that should have been included. However, refer the grantee to the matrix in Exhibit 6.2 and any other resource that may assist it in determining the applicability of clauses in the future.

If a grantee is missing DBE, Buy America, Debarment and Suspension, or Lobbying certifications or clauses, document it as a deficiency only in those applicable review areas. It should not be a double finding in the procurement area.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office revised procurement procedures that address inclusion of all FTA required third party contract clauses.

16. *Does the grantee have any contracts for revenue rolling stock and replacement parts that exceed five years in total length including base and options? If yes, identify.*

EXPLANATION

Grantees 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 grantee must obtain delivery, acceptance, or even fabrication in five years. However, the maximum quantity specified in such multi-year contracts must represent the grantee's reasonably foreseeable need. Typically, grantees use indefinite-delivery, indefinite-quantity (IDIQ) contracts for this type of purchase. While IDIQ contracts are permissible, they must meet the requirements described above.

Grantees may seek a waiver from the five-year 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 grantee is deficient if a revenue rolling stock contract represents more than five years' requirements. The grantee 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.

SUGGESTED CORRECTIVE ACTION

Direct the grantee 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 grantee to provide the FTA regional office with an assurance that

unexecuted options will not be executed on an existing contract that exceeds the five-year restriction.

17. *Does the grantee perform an independent cost estimate before receiving bids or proposals?*

EXPLANATION
The independent cost estimate is a tool to assist in the determination of the reasonableness or unreasonableness of the bid or proposal being evaluated and is required for all procurements regardless of dollar amount. Independent cost estimates can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications, and prior data. The word "independent" does not imply that it is performed by someone other than the grantee. This could be the case, however, if the grantee does not have the expertise for a large complex procurement.

The independent cost estimate is especially critical whenever there is no price competition (e.g., for architect-engineer procurements where only one price proposal is received), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert the agency when all competitors are submitting unreasonably high or low cost proposals.

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

SOURCES OF INFORMATION
Examine procurement files during the site visit to determine the extent to which the grantee conducts independent cost estimates. Pay particular attention to sole source procurements.

DETERMINATION
The grantee is deficient if it has not conducted independent cost estimates.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office documentation that it has updated its procurement process to include development of independent cost estimates prior to receipt of bids or proposals.

18. *Does the grantee perform a cost or price analysis in connection with every procurement action, including contract modification?*

EXPLANATION
Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Cost analysis must be performed for procurements requiring the offeror to submit estimates for labor hours, overhead, and materials; procurements where adequate price competition is lacking; and sole source procurements unless price reasonableness can be established based on market prices. Price analysis (i.e., catalog or market prices) may be performed for all other procurements.

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

SOURCES OF INFORMATION
Before the site visit, review the grantee's procurement policies. During the site visit, examine procurement files to determine the extent to which the grantee conducts cost and/or price analysis. Pay particular attention to sole source procurements.

DETERMINATION
The grantee is deficient if it has not conducted a cost or price analysis for every procurement action.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office documentation that it has updated its procurement process to include performing cost and price analysis for every procurement action including contract modifications.

19. *What procedures does the grantee follow to ensure award to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract?*

EXPLANATION
SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA assisted contract awards be made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the grantee after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate

affirmatively to the grantee that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible."

Factors to consider when making responsibility determinations include:

Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).

Debarment and Suspension. Is neither debarred nor suspended from Federal programs under U.S. Department of Transportation (DOT) regulations, "Nonprocurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.

Affirmative Action and DBE. Is in compliance with the Common Grant Rules' affirmative action and DOT's Disadvantaged Business Enterprise requirements.

Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B).

Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).

Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations.

Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).

Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities.

Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

Performance Record. Is able to provide a satisfactory current and past performance record.

REFERENCE
49 USC Section 5325
49 CFR 18.36(b)(8)
FTA C 4220.1F, Ch. VI, Section 8.b

SOURCES OF INFORMATION
Before the site visit, review procurement policies and procedures for a discussion of responsibility determinations. Although a grantee may not have written procedures addressing these determinations specifically, overall procurement procedures combined with a grantee's business practices may ensure that adequate determinations are being made. During the review of specific procurement files verify that responsibility determinations are being made. Note any correspondence between the grantee and its contractors for evidence of determinations.

DETERMINATION
The grantee is deficient if there is no evidence that grantees are making responsibility determinations prior to award.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract.

20. *Since the last review, were there any change orders to FTA funded contracts? If yes, describe in terms of numbers of change orders and dollars. What approvals are required? Were all change orders approved by authorized officials? Were all change orders eligible for FTA assistance?*

EXPLANATION
A change order is an order authorized by the grantee directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Change orders must be approved by authorized grantee officials. Change orders are, in effect, sole source procurements. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

To be eligible for FTA assistance under the grantee's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

REFERENCE
FTA C 5010.1D, Ch. III, 3.c
FTA C 4220.1F, Ch. VII, Section 2
FTA Third Party Contracting FAQs

SOURCES OF INFORMATION
Review the grantee's procedures for change orders. Large grantees are likely to have written change order procedures. Small grantees that have few procurements are less likely to have formal, written change order procedures. Review procurement files for approvals and justifications for any change orders.

Consider the effect of change orders on clause and other thresholds. Ensure that any change orders include clauses required by the new cumulative

contract value. If necessary, ensure that the grantee obtained signed Buy America and lobbying certifications with the change order.

DETERMINATION

The grantee is deficient if change orders occurred and there is not adequate supporting documentation. If the grantee did not consider the effect of change orders on other requirements (clauses, Buy America, lobbying), note the deficiency in the respective area.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit change order procedures to the FTA regional office if the grantee has a history of change orders without any apparent change order procedures.

Direct the grantee to submit documentation that it has prepared required approvals and justifications missing from the files and that it has developed a process to ensure that future files are complete.

21. *Has the grantee entered into any time and materials type contracts using FTA funds? If yes, identify.*

EXPLANATION

Time and materials type contracts are those in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a time and materials type contract is an indeterminate amount. As such, grantees are not permitted to use FTA funds for time and materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time and materials type contracts are used, grantees must specify a ceiling price that the contractor shall not exceed except at its own risk.

REFERENCE

49 CFR 18.36(b)(10)
FTA C 4220.1F, Ch. VI, Section 2.c. (2)(b)

SOURCES OF INFORMATION

Review the grantee's procurement procedures. If the grantee indicates that it has used time and materials contracts involving FTA funds, examine the procurement files for these contracts for documentation supporting the grantee's decision to use a time and materials contract. The contract must specify a ceiling price.

DETERMINATION

The grantee is deficient if FTA funds were used in a time and materials contract and the files do not support the grantee's decision or if there is no ceiling price specified in the contract.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time and materials contracts.

22. *Has the grantee had any sole source, single bid, or brand name or equal awards since the last review? If yes, identify. Do the files contain the appropriate justification and/or documentation for such awards?*

EXPLANATION

FTA requires full and open competition in procurements for goods and services and encourages grantees to award contracts to the lowest responsive and responsible bidder. However, sole source, single bid, and brand name or equal awards can be used. In such situations, the grantee should have appropriate documentation for the award.

When the grantee requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the grantee may make a sole source award. When the grantee requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the grantee has made a sole source award that must be justified. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the grantee only from one source and has not in the past been available to the grantee from another source.
- Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in

unacceptable delays in fulfilling the grantee's needs.

In the case of a sole source award, the documentation should be a written sole source justification, which includes a cost analysis.

With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the grantee should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The grantee must identify the salient characteristics of the named brand that offerors must provide. When using a "brand name" specification, the grantee does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics.

A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole source basis if justified, in general, a competitive environment does exist for professional services and the grantee needs to follow the requirements of FTA C 4220.1F when Federal funds are used to pay for these services.

REFERENCE

49 CFR 18.36(d)(4)
FTA C 4220.1F, Ch. III, Section 3.a.(1)(e)
FTA C 4220.1F, Ch. VI, Section 3.i

SOURCES OF INFORMATION

Before the site visit, review the grantee's procurement procedures. During the site visit, examine RFPs, IFBs, and other solicitation documents, bid evaluation files, and contracts. Additionally, review policy board minutes for additional detail on these and other types of procurements. Although the grantee is not required to obtain prior FTA approval for a non-competitive award, the grantee's files must contain an appropriate level of justification for such awards.

DETERMINATION

The grantee is deficient if it does not have the appropriate documentation in the files to support the basis for the award. The grantee is deficient if professional services have not been bid competitively. The grantee is deficient if it has used "brand name" only specifications inappropriately.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office evidence of an implemented policy to ensure that future sole source procurements are properly documented. Where contracts are ongoing, require the grantee not to exercise any options, possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with Federal requirements. When procurements exceeding $100,000 have violated Federal requirements, advise the regional counsel.

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

EXPLANATION

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

FTA expects the grantee seeking the assignment to review the original contract to be sure that the quantities the assigning grantee acquired, coupled with the quantities the acquiring grantee seeks, do not exceed the amounts available under the assigning grantee's contract. Otherwise, the purchase is a "tag-on" and is considered an improper sole source procurement.

Any changes in the vehicle must be within the original scope (i.e., no major changes in configuration or design). Although FTA has provided additional

guidance in the BPPM, FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar changes to be permissible changes.

Vehicles added to the base or option amounts originally specified are called "tag-ons." Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

REFERENCE
FTA C 4220.1F, Ch. V, Section 7.a.(2)
Piggybacking Worksheet from FTA BPPM

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, cost/price analysis conducted, five year contract term, etc.). Ask the grantee if any changes to the vehicle were required and determine if these were within the original scope.

DETERMINATION
The grantee is deficient if it cannot document that the original award contains an assignability clause, that vehicles are still available for assignment, or that FTA requirements were met. The grantee is deficient if the grantee conducted a "tag-on" purchase. The grantee is deficient if changes were beyond the original contract scope.

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

Direct the grantee 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.

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

24. *Has the grantee used option clauses? If yes, identify. Were options evaluated at the time of the initial bid? Was the option price evaluated before it was exercised?*

EXPLANATION
Grantees may include options in contracts. If a grantee chooses to use options, the option quantities or periods in the bid must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price or as a percentage increase of the base price. If the options have not been evaluated as part of the award, the exercise of the options is considered a sole source procurement.

A grantee also must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award, and the grantee must determine that the option price is better than prices available in the market or the option is the more advantageous offer at the time it is exercised.

Note: If the option quantities on a rolling stock or replacement parts purchase appear to exceed the grantee's reasonably foreseeable needs, the grantee may be in violation of the five-year limitation (see Question 15).

REFERENCE
49 USC 5307 (d)(1)(E)
FTA C 4220.1F, Ch. VI, Section 7.b and Ch. V, Section 7.a.(1)

SOURCES OF INFORMATION
Before the site visit, review written procurement procedures. At the site visit, review contracts and other procurement documents to determine whether options and periods of contract exceed the limits and whether options were priced, evaluated and are exercisable. In some cases, the grantee may have assigned options on a vehicle procurement to another party (i.e., "piggy-backing"). In these cases, ensure that the options available to the grantee have been reduced by the number assigned to the other party.

DETERMINATION
The grantee is deficient if the options were not evaluated with the initial bid and were exercised. The

grantee is deficient if options were assigned improperly to another grantee. The grantee is deficient if options are unpriced. The grantee is deficient if the options were established appropriately but were exercised without the requisite price analysis.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide to the FTA regional office a written assurance that it will not exercise the options unless FTA approval is granted for instances where options that violate the requirements have not been exercised. Direct the grantee to develop procedures for complying with FTA requirements when exercising options in instances where the grantee has exercised options that were not evaluated and priced initially, or were assigned improperly to another grantee.

25. *Has the grantee used advance payments? If yes, identify. Was prior, written approval obtained from FTA headquarters?*

26. *Were progress payments used? If yes, identify. Has the grantee obtained title of the property or taken alternative measures to protect FTA's interest?*

EXPLANATION

FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A grantee may use its local share funds for advance payments. However, advance payments made with local funds before a grant has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The grantee may use FTA assistance to support progress payments provided the grantee obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the grantee's financial interest in the progress payment.

REFERENCE

FTA C 4220.1F, Ch. IV, Sections 2.b.(5)(b) and (c)

SOURCES OF INFORMATION

Before the site visit, review the grantee's written procurement procedures. During the site visit, discuss with the grantee and examine procurement files.

DETERMINATION

The grantee is deficient if it has used advance payments without prior FTA approval. The grantee is deficient if it has made progress payments but has not obtained adequate security for those payments and does not have sufficient written documentation to substantiate the work for which payment was made.

SUGGESTED CORRECTIVE ACTION

The grantee must cease any practice that violates FTA guidelines. Direct the grantee to report immediately to the FTA regional office any improper advance or progress payments with an explanation of the circumstances surrounding the payments. Direct the grantee to submit to the FTA regional office proper procedures for advance or progress payments.

27. *Has the grantee used liquidated damage clauses in any of its procurements? If yes, how is the damage rate specified in the contract? Were liquidated damages assessed in any FTA-funded contracts? If yes, were they credited to the project account?*

EXPLANATION

Grantees are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if weight requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be used to impose a penalty, limit or restrict competition, or in situations where delayed performance will not affect the grantee adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of the damages assessed.

The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise.

REFERENCE
49 USC 5307(d)(1)(E)
FTA C 4220.1F, Ch. IV, Section 2.b.(6)(b)1

SOURCES OF INFORMATION
During the desk review, ask the regional office if FTA has been credited for liquidated damages and review grant files. Before the site visit, review the grantee's procurement procedures. During the site visit, examine procurement files (both solicitations and contract documents) for liquidated damage information. These types of clauses typically are found in large procurements of vehicles and equipment or in construction contracts.

DETERMINATION
The grantee is deficient if a damage rate is not specified in the contract or the grantee cannot provide a reasonable explanation regarding expected damages as a result of late completion. The grantee is deficient if it assessed liquidated damages, but did not credit these funds back to the project account.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA regional office a written procedure for correct use of liquidated damage clauses. If clauses are in existing contracts improperly, direct the grantee to modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages.

28. *Have buses been purchased or leased with FTA funds? If yes:*

a. What is the bus model(s)?

b. Has this model already been Altoona tested?

- *If yes, was a copy of the test report received prior to final acceptance of the first vehicle and the expenditure of FTA funds?*
- *If no, was a certification received from the manufacturer that the bus does not need to be tested?*

EXPLANATION
A grantee purchasing buses must certify to FTA that any new bus model has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania. A new bus model is a bus design or variation of a bus design (usually designated by a manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date but is being procured with a major change in configuration or components. Bus testing requirements apply to different mass transit vehicles including small vehicles, medium- and light-duty mid-size buses, and heavy-duty small and large buses. A test must be conducted and a report received before the final acceptance of the first bus and the expenditure of FTA funds. Bus testing does not apply to unmodified mass produced vans, bus prototypes, electric buses, or trolleybuses (meaning genuine trolleys, not replica trolleys popularly in use today).

REFERENCE
49 CFR Part 665
Master Agreement Section 15.n(4)
FTA C 9030.1D, Ch. VI, Section 4.d.(3)
Bus Testing Website

SOURCES OF INFORMATION
Review procurement procedures for a discussion of bus testing requirements. If the grantee has conducted a recent bus purchase, determine if the bus model was tested. A copy of the most recent list of models tested is available at the bus testing web site.

Examine the procurement files for a bus purchase to ensure it contains information from the manufacturer regarding the particular vehicle's testing status. If the vehicle has been tested, the grantee should have a copy of the report in its files, regardless of whether or not the agency was the lead agency for the purchase, "piggy-backed" with another agency, or bought the vehicle off the state list.

DETERMINATION
The grantee is deficient if it has not included a certification for qualified buses, has not required bus testing, or has not received a test report. The grantee is deficient if buses were accepted or Federal funds expended prior to the receipt of the report.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that it has changed its procurement procedures, and/or changed its bus acceptance procedures to comply with bus testing requirements.

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
All FTA-Assisted Third-Party Contracts and Subcontracts		
No Federal government obligations to third-parties by use of a disclaimer		§2.f
Program fraud and false or fraudulent statements and related acts		§3.f
Access to Records		§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

Exhibit 6.1.
A. REQUIRED THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Copeland Anti-Kickback Act Section 1 Section 2	 All Contracts >$2,000	§24.a
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.a
State Requirements		
Special Notification Requirements for States		§38

Exhibit 6.1

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)

Exhibit 6.1
C. OTHER REQUIRED ITEMS

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3.d(1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8.b
Justification for Noncompetitive Awards	If applicable	Ch VI, §3.i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2.a(4)
No geographic preferences	Except for A&E services	Ch. VI, §2.a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7.b
Exercise of Options		Ch. V, §7.a

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
No Federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>$10,000	>$10,000	>$10,000	>$10,000	>$10,000
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000	>$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 Section 2				All >$2,000 (including ferry vessels)	

Exhibit 6.2
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	**Operations/ Management/ Subrecipients**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
Contract Work Hours & Safety Standards Act		>$100,000	>$100,000	>$100,000 (including ferry vessels)	
Bonding (not required of states)				>$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings &additions			New buildings &additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research &development				
Rights in Data and Copyrights requirements	Research &development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met
Recycled Products		Contracts for items designated by EPA, when procuring $10,000 or more per year		Contracts for items designated by EPA, when procuring $10,000 or more per year	Contracts for items designated by EPA, when procuring $10,000 or more per year
ADA Access	A&E	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

7. DISADVANTAGED BUSINESS ENTERPRISE

BASIC REQUIREMENT

The grantee must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

AREAS TO BE EXAMINED

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

REFERENCES

1. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"
2. Deputy Administrator Letter on TEAM-Web reporting
3. Instructions for uploading programs to TEAM-Web

USEFUL WEBLINKS

FTA DBE Website

DOT Office of Small and Disadvantaged Business Utilization (OSDBU)

OSDBU's Guidance for DBE Program Administrators

OSDBU and Minority Resource Center

DOT DBE Regulation Questions and Answers

Tips for Goal Setting

List of Transit Vehicle Manufacturers

Sample DBE Program

OFFICE OF CIVIL RIGHTS DBE TECHNICAL LEAD

DBE Technical Lead
1200 New Jersey Ave., SE
East Bldg., 5th Floor
Washington, DC 20590

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a DBE Compliance Review during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current fiscal year?*

EXPLANATION
As part of its program oversight functions, FTA periodically conducts DBE reviews of selected grantees. Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked.

REFERENCE
Input to triennial review

SOURCES OF INFORMATION
Prior to conducting the desk review, review OTrak to determine if a DBE review has occurred or has been scheduled and to analyze findings and corrective actions from completed DBE reviews. The regional civil rights officer (RCRO) will also have information on DBE review activities. Obtain a copy of the most recent report (draft or final) for input into the triennial review. Reports may be available at the regional office or headquarters during the desk review, or on FTA's website.

DETERMINATION
None

2. *Does the grantee meet the threshold for a DBE program?*

a. If no, skip to Question 13.

b. If yes, has the grantee'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 grantees do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted for approval. Grantees (particularly new grantees) that do not meet the threshold are not required to develop a written DBE program.

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.** (See Question 5).

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 grantee'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 grantees 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 grantee's subrecipients when determining whether a grantee 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, grantees must add an element to their program addressing the fostering of small business (see Question 5). Because of this new requirement, it is anticipated that new program plans will be submitted by grantees prior to that date. This requirement is discussed further in Question 5.

DETERMINATION
A grantee 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. The grantee is deficient if it has not uploaded its program to TEAM-Web.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit its DBE program to the FTA RCRO and/or upload it to TEAM-Web.

3. *Who is the grantee's DBE liaison officer (DBELO)? 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 grantee have adequate staff to administer the program?*

EXPLANATION
For grantees that meet the threshold requiring that they have a DBE program, the grantee's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. 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 grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles.

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."

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. The current DBELO is also 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 grantee's DBE program plan should indicate the staffing that should be in place to administer the program.

DETERMINATION
The grantee is deficient if the DBELO cannot demonstrate direct and independent access to the CEO.

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.

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

4. *Does the approved DBE program on file with FTA reflect the current organizational structure of the agency?*

EXPLANATION
Grantees are required to follow their approved DBE programs, and such programs need to be updated when significant changes occur. FTA has found in its DBE reviews that organizational changes have occurred and grantees have not updated their programs. A typical organizational change has been a

revision to the position of the DBELO and the resulting reporting relationship to the CEO. FTA considers this to be a significant change to a grantee's DBE program that should be communicated to the RCRO for approval.

REFERENCE
49 CFR 26.21

SOURCES OF INFORMATION
Review the information gathered from Questions 2 and 3 along with interviews on site. Review a current organization chart and job description for the DBELO to determine if the DBE program on file with FTA is current.

DETERMINATION
The grantee is deficient if organizational changes that affect the DBE program have occurred and the DBE program on file with FTA has not been updated or resubmitted to FTA.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit an update of its DBE program to the FTA RCRO for approval.

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

EXPLANATION
By February 28, 2012, grantees 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. Grantees must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

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

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

REFERENCE
49 CFR 26.39

SOURCES OF INFORMATION
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 grantee to demonstrate implementation of small business participation strategies.

DETERMINATION
The grantee 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 grantee is deficient if it is not implementing small business strategies as described in its program.

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

6. *Were overall three-year goals submitted to FTA by August 1 preceding the designated submission year? Did the grantee conduct a consultative process in setting these goals? Did the grantee publish its goals for 45 days 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, grantees will submit their overall goals every three fiscal years in lieu of each fiscal year if a grantee 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 grantee is required to make this submission. Waivers may be sought by grantees from RCROs as appropriate for goal submissions.

Contracting opportunities are counted in the aggregate, and include FTA funded purchase orders, capital projects, professional services, TIFIA loan funded projects, and contracting activities of 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 grantee will expend in FTA-assisted contracts during the period covered. With prior FTA approval or at FTA's direction, grantees 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.

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 grantee's determination of the level of DBE participation the grantee would expect absent the effects of discrimination. Grantees 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.

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 grantee 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 grantee, adjust the overall three-year goal or require the grantee to make the adjustment.

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.

In establishing an overall three-year goal, grantees must provide for public participation. This public participation must include the following steps in this order:

- Consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and a grantee's efforts to establish a level playing field for the participation of DBEs.
- A published notice announcing the proposed overall three-year goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the principal office for 30 days following the date of the notice, and informing the public that comments on the goals will be accepted for 45 days from the date of the notice. The notice must include addresses (including the FTA RCRO's address) to which comments may be sent. The notice must be published in general circulation media, minority-focused media, and trade association publications. Publication of DBE goals on the entity's website or any website is not sufficient to meet the publication requirement.

Because of the 45-day requirement for receiving comments, a grantee 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 grantee is to submit its three-year goal. During the site visit, obtain any outstanding materials (e.g., goal submission).

Evaluate and verify contracting opportunities if the grantee 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 grantee is deficient if overall DBE goals were not submitted to FTA by August 1 (or by another date established by FTA based on an extension request).

The grantee is deficient if the goal setting process did not include a public participation process.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO its overall three-year DBE goal or adjusted goal and implement a procedure to ensure that future goals will be submitted by August 1.

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

7. *Has the grantee submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually? Does the report include the contracting opportunities of subrecipients?*

EXPLANATION

Each grantee that meets the threshold requiring it to have a DBE program and overall goal is also required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TEAM-Web. The report addresses the contracting opportunities of the grantee and its subrecipients. It includes information on awarded and completed contracts; **those that included DBE participation, as well as those that did not**. Reports are due by June 1 (for the period covering October 1 – March 31) and by December 1 (for the period covering April 1 – September 30).

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

REFERENCE

49 CFR 26.11
DBE Semi-Annual Reporting Form
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 grantee's reports.

DETERMINATION

The grantee is deficient if it has not submitted the reports semi-annually, has not submitted them timely, or is not using the current form.

The grantee is deficient if its reports do not include all applicable FTA funded contracting activity of itself and any subrecipients.

SUGGESTED CORRECTIVE ACTION

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

8. *Did the grantee's DBE reports for FY2011 indicate that the grantee's awards to DBEs were less than the overall goal applicable to that year? If yes, did the grantee conduct the required analysis? If the grantee is one of the top 50 transit grantees, did it provide this analysis to its RCRO?*

EXPLANATION

Beginning with reports for FY 2011, if the awards and commitments shown on a grantee's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that three-year period, it must do the following:

- Analyze in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year
- Establish specific steps and milestones to correct the problems identified in the analysis and to enable the grantee to meet fully the goal for the new fiscal year

State highway agencies and the 50 largest transit agencies as determined by the FTA must submit, within 90 days of the end of the fiscal year, the

analysis and corrective actions described above for approval. In FY2012, FTA will notify grantees if they are in this group. All other grantees must retain the analysis and corrective actions in their records for three years and make it available to FTA upon request for review.

REFERENCE
49 CFR 26.47

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 by applicable grantees. On site, review the analysis if it has not been submitted.

DETERMINATION
For reviews conducted after December 30, 2011, the grantee is deficient if its achievements were less than its overall goal, and the analysis was not conducted. The grantee is deficient if it is required to submit the analysis to FTA and did not.

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

9. *Since the last review, did the grantee award a contract to a firm that did not meet the specified DBE contract goal? How did the grantee determine if "good faith efforts" were sufficient?*

EXPLANATION
Not every FTA funded contract is required to have a DBE goal. However, prior to awarding a contract to a firm that did not meet a specific DBE contract goal; the grantee must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goal. Examples of efforts the grantee may consider include: whether the contractor attended any pre-bid meetings held by the grantee to inform DBEs of contracting opportunities or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR Part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, DBEs named must be certified to do the scopes of work that they are contracted to perform.

REFERENCE
49 CFR 26.53 and Appendix A

SOURCES OF INFORMATION
At the site visit, ask the grantee to explain its methods for determining "good faith efforts." During the review of the procurement area, if any solicitations include a DBE contract goal, document the goal and the DBE commitment stated in award documents. Determine how the grantee 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 grantee's documented good faith efforts review.

DETERMINATION
The grantee is deficient if it cannot describe the methods, or applicable procurement files do not include documentation of the consideration of "good faith efforts." The grantee is deficient if it does not verify that DBEs are certified to perform the type of work that they are being named for prior to award.

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

10. *Has the grantee included required prompt payment and return of retainage clauses in its procurement documents? How does the grantee monitor and enforce the clause?*

EXPLANATION
Grantees must have a 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 grantee. Grantees must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The grantee must use one of the following methods to comply with this requirement:

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors
- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed

- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after grantee's payment to the prime contractor

For purposes of the retainage requirement, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the grantee. When a grantee has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

A grantee's DBE program must provide appropriate means to enforce prompt payment. The grantee should be able to document **implemented** processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

REFERENCE
49 CFR 26.29

SOURCES OF INFORMATION
Review procurement files for information on the inclusion of appropriate prompt payment and return of retainage clauses and policies. Note whether the clause is included in Exhibit 6.1 Required Third Party Contract Clauses in the review package. Review the grantee's DBE program plan for methods described for monitoring and enforcement. Review contract administration or contract compliance documentation for verification of the grantee's implementation of monitoring and enforcement.

DETERMINATION
The grantee is deficient if it has not included appropriate prompt payment and return of retainage clauses in its contracts. The grantee is deficient if it does not have and/or has not implemented a monitoring and enforcement process for ensuring prompt payment and return of retainage.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO documentation of efforts to ensure compliance with prompt payment and return of retainage requirements.

11. *How does the grantee monitor contractors and subrecipients to ensure that DBE obligations are fulfilled? What enforcement mechanisms does the grantee use for DBE requirements? Does the grantee require contractors to obtain prior written grantee 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. Grantees must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

Prior to awarding a project with a DBE goal to a contractor, the grantee is required to collect from the awardee the names, dollar amounts, and types of work for each DBE. This information forms the DBE commitment (not goal) of the awarded contract. The grantee should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

In February 2011, the regulation added the requirement that grantees must require that a prime contractor not terminate or substitute a DBE subcontractor listed on a contract with a DBE goal without good cause and prior written consent from the grantee. Details on what constitutes good cause is contained in 49 CFR Part 26.53(f). Grantee written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the grantee) in writing of its intent to request substitution or termination and allows the DBE five days to respond. Grantees must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

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

REFERENCE
49 CFR 26.37
49 CFR 26.53
49 CFR 18.37 and 18.40

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

DETERMINATION
The grantee is deficient if it cannot demonstrate how it is monitoring its contractors and subrecipients.

The grantee 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.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO documentation that it has begun monitoring contractors and subrecipients.

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

12. *How does the grantee monitor projects to ensure that DBEs are actually performing work committed to at the time of contract award? Does the grantee review contracting records for compliance with DBE requirements? Does the grantee monitor worksites for compliance with DBE requirements? Does the grantee complete a written certification that it has done the above activities?*

EXPLANATION
Grantees must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local law). These mechanisms must be set forth in the grantee's DBE program. A grantee must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

In February 2011, the regulation added the requirement that the grantee include a written certification that it has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

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

The reviewer should ask how the grantee 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 grantee's DBE program to identify the methods that the grantee states it will use to monitor that DBEs are actually performing the stated work on contracts. At the site visit, ask the grantee to provide examples of actual monitoring activities/reports from the past three years. At the site visit, review contract files for evidence of on-site monitoring and written certifications for recent contracts with DBE contract goals.

DETERMINATION
The grantee is deficient if it cannot demonstrate how it is monitoring that DBEs are actually performing the stated work. The grantee is deficient if it does not perform on-site and contract document monitoring and make a written certification that the monitoring activities have occurred.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO documentation that it has implemented a monitoring process to ensure that DBEs are actually performing the stated work. This process must include review of contracting records and site visits. Direct the grantee to submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures. Direct the grantee to submit to the FTA RCRO the implemented process for making written certifications of monitoring.

13. *For procurements of transit vehicles (e.g., buses, railcars) conducted since the last review, did the grantee obtain DBE certifications from the transit*

vehicle manufacturer (TVM) with the bids/proposals submitted?

EXPLANATION
All grantees 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 grantee is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23). 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 grantee's overall agency three-year goal calculation.

A list of TVMs that have submitted required DBE information to FTA is available at the FTA website: www.fta.dot.gov/dbe. Evidence that this website has been checked to validate the TVM certification, prior to award, should be included in applicable procurement files. FTA has instructed TVMs to submit to grantees a copy of their FTA approval letters along with the TVM certifications.

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

REFERENCE
49 CFR 26.49
FTA's DBE Website

SOURCES OF INFORMATION
At the site visit, review grantee transit vehicle procurement files for signed TVM certifications. Note whether the grantee obtained the certification in Exhibit 6.2 Required Certifications, Reports, and Forms in the review package.

DETERMINATION
The grantee is deficient if it does not include a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out of date (references Part 23 instead of Part 26). The grantee is deficient if it cannot provide evidence that it checked FTA's DBE website to ensure that the manufacturer is listed as an eligible TVM.

SUGGESTED CORRECTIVE ACTION
Direct the grantee 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 grantee to submit evidence to the FTA RCRO that it has implemented a process to verify TVM certifications through review of FTA's website.

14. *Is the grantee signatory to its state's Unified Certification Program (UCP)?*

15. *Does the grantee certify DBEs itself? If yes, does the grantee:*

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

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 grantees 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 grantee provide information regarding its participation in a UCP. Obtain a copy of the signed UCP agreement.

If a grantee 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 grantee's process for interstate certifications. Review the UCP directory to determine if NAICS codes for DBEs are being listed.

DETERMINATION
The grantee is deficient if it is not participating (through at least being signatory to the state's agreement) in the UCP.

The grantee is deficient if it certifies DBEs and is not using the correct forms or has not followed the procedures.

The grantee is deficient if it has not implemented the requirements in 49 CFR Part 26.85 on interstate certifications.

The grantee is deficient if it certifies DBEs but does not include their NAICS codes on the UCP directory.

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

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

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.

16. *Since the last review, did the grantee receive any complaints or procurement protests alleging that it did not comply with the DBE regulations? What is the grantee's process for handling and resolving such complaints? Do the complaints indicate any problems with the DBE program?*

EXPLANATION
Any person who believes that the DBE regulations have been violated may file a written complaint.

REFERENCE
49 CFR 26.103

SOURCES OF INFORMATION

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

DETERMINATION

The grantee is deficient if complaints indicate that it is violating DBE program regulations or if the complaints do not receive a response.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit evidence that it has resolved any outstanding complaints and/or implemented procedures for handling DBE complaints to the FTA RCRO.

8. BUY AMERICA

BASIC REQUIREMENT

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.

AREAS TO BE EXAMINED

1. ***Buy America Provisions and Certifications***

2. ***Pre-Award and Post-Delivery Audits of Revenue Rolling Stock***

REFERENCES

1. 49 CFR Part 661, "Buy America Requirements"

2. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"

3. FTA "Dear Colleague" Letter, March 18, 1997

4. Federal Register Vol. 71, No. 54, pp. 14112-14118, Buy America Requirements; Amendments to Definitions

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

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

USEFUL WEB LINKS

FTA Buy America Home Page

Best Practices Procurement Manual

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

FTA Third Party Contracting FAQs

U.S. DOT Buy America Webpage

COMPLIANCE

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

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a Buy America provision in all procurements of steel, iron, and manufactured products, except for products with a waiver or purchases under the simplified acquisition threshold (currently $100,000)? Has the grantee 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 the simplified acquisition threshold (currently $100,000). The small purchase limitation is based on the value of the procurement, not the price of the item. For example, a purchase of four 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 small purchase limitation is based on the total value of the project, not the value of the steel, iron, and manufactured products purchased for the project.

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

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

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

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 amount of its purchase, not the contract amount of the whole state GSA-type contract, when determining whether Buy America requirements apply to those purchases.

REFERENCE

49 CFR 661.6
49 CFR 661.7
49 CFR 661.12
49 CFR 661.13
Federal Register Vol. 71, No. 54, pp. 14112-14118
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 grantee applied for any waivers from Buy America requirements. Review the grantee's written procurement procedures. On site, discuss the procedures for incorporating Buy America provisions in procurements and obtaining certifications from vendors. Select a sample of

procurements and review the files for evidence that Buy America requirements have been met. Focus on procurements of vehicles and other procurements of steel, iron, or manufactured products greater than the simplified acquisition threshold. Review 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 grantee is deficient if it did not include Buy America provisions in solicitations or obtain signed Buy America certifications from vendors.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office revised procurement procedures that require the grantee to include Buy America provisions in solicitation documents and to obtain signed certifications from vendors when procuring steel, iron, or manufactured products not subject to a general waiver.

For procurements for which a Buy America certification was not obtained, direct the grantee to provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

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

Direct the grantee to submit to the regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

2. *Did the grantee 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 grantee 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 the simplified acquisition threshold, 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 the simplified acquisition threshold (currently $100,000). Thus, a procurement of small buses and vans which totals less than $100,000 is not subject to the general Buy America requirements of 49 CFR Part 661. This waiver does not exempt rolling stock from the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR Part 663.

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 the Federal simplified acquisition threshold.

FMVSS

The grantee must complete, at the post-delivery stage, a certification that the grantee has received from the vehicle manufacturer at both the pre-award and post-delivery stages a certification that the vehicles comply with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR Part 571). The requirement to conduct an audit for compliance with FMVSS and sign a certification applies to all purchases of revenue rolling stock, even those under the Federal simplified acquisition threshold.

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 Buses

SOURCES OF INFORMATION

Review the grantee's procurement procedures for a discussion of pre-award and post-delivery audits. On site, discuss the process for completing the pre-award and post-delivery audits and certifications. 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 grantee is deficient if it did not conduct all of the required audits for revenue rolling stock procurements.

The grantee is deficient if it conducted the required pre-award and post-delivery audits and documented the procedures but did not sign all required certifications.

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA regional office pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds for the next revenue rolling stock procurement.

If the grantee did not sign the pre-award and/or post-delivery certifications, direct the grantee to submit to the FTA regional office the certifications for the procurement reviewed and procedures for completing the applicable pre-award and post-delivery audits certifications for future revenue rolling stock procurements.

Direct the grantee to submit to the FTA regional office pre-award audit certifications before awarding the contract and post-delivery audit certifications before drawing FTA funds for the next revenue rolling stock procurement.

3. *If the grantee 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 grantee is deficient if it ordered a group of vehicles before the pre-award audit was conducted.

SUGGESTED CORRECTIVE ACTION

Direct the grantee 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 grantee to submit to the FTA regional office procedures for conducting pre-award audits for options and/or multi-year contracts so that future procurements will comply with this requirement.

Direct the grantee 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.

4. *Did the grantee use in-plant inspectors when required?*

EXPLANATION

Grantees are required to have an in-plant inspector throughout the manufacturing process if it meets the following criteria:

- Grantees purchasing any number of rail vehicles
- Grantees in urbanized areas with populations of more than 200,000 that purchase more than 10 buses
- Grantees in areas with populations of 200,000 or less that purchase more than 20 buses

Grantees that purchase buses for subrecipients are only required to use an in-plant inspector if more than 10 of the vehicles are purchased for a subrecipient in an urbanized area with a population of more than 200,000, or more than 20 of the vehicles are purchased for a subrecipient in an area with a population of 200,000 or less. The grantee or the subrecipient may provide the inspector.

FTA does not require in-plant inspectors for any number of unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

One in-plant inspector can meet the requirement for multiple grantees. The inspector may not be an agent or employee of the manufacturer. The inspector must prepare a report providing accurate records of all vehicle construction activities and summarizing how the construction and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Upon delivery of the vehicles and following receipt and review of the inspector's report, if applicable, the grantee must visually inspect and road test the vehicles.

REFERENCE

49 CFR 663.37 (a) and (c)

SOURCES OF INFORMATION

Review projects in TEAM-Web for recent grants to determine the type and quantity of vehicles procured. On site, discuss the vehicles procured over the last several years and the need for in-plant inspectors. If an in-plant inspector was required, discuss how the requirement for an in-plant inspector was fulfilled. Identify the organization providing the in-plant inspector, e.g., the grantee, the subrecipient, or third-party contractor to the grantee or subrecipient. Review procurement files.

DETERMINATION
The grantee is deficient if it did not provide for an independent in-plant inspector during manufacture of the vehicles when required or did not prepare a report documenting the construction of the vehicles and how they meet the bid specifications.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures for providing, or requiring subrecipients to provide, in-plant inspectors during the construction of vehicles.

Direct the grantee to submit to the FTA regional office the inspector's report before drawing FTA funds for the next procurement requiring in-plant inspectors.

5. *How does the grantee ensure that subrecipients and contractors making procurements on its behalf include Buy America provisions in applicable solicitations, obtain signed Buy America certifications from vendors for applicable procurements, and comply with pre-award and post-delivery audit requirements?*

EXPLANATION
Buy America and pre-award and post-delivery audit requirements flow through to subrecipients and management or service contractors making FTA funded procurements on the grantee's behalf. The grantee is responsible for ensuring that subrecipients and management or service contractors comply with the requirements.

REFERENCE
49 CFR 661.6
49 CFR 661.13
49 CFR 663
Federal Register Vol. 71, No. 54, pp. 14112-14118

SOURCES OF INFORMATION
Review subrecipient agreements, management or service contracts, project/state management plans, and other documentation of procurement procedures for information on the Buy America and pre-award and post-delivery audit requirements and the responsibilities of the grantee, contractors, and subrecipients in the procurement process. On site, discuss oversight procedures. If the grantee has subrecipients' or contractors' documentation of direct procurements on file, review a sample. Otherwise, review procurement files during a site visit to subrecipients or contractors.

DETERMINATION
The grantee is deficient if it does not ensure compliance with the Buy America requirements.

The grantee is deficient if it does not ensure compliance with pre-award and post-delivery audit requirements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients and management or service contractors comply with Buy America or pre-award and post-delivery audit requirements.

9. DEBARMENT AND SUSPENSION

BASIC REQUIREMENT

Debarment and suspension are tools used to protect the public from fraud, waste, and abuse in Federal transactions. Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

AREAS TO BE EXAMINED

1. ***Inclusion of Clause in Procurements exceeding $25,000***
2. ***Search of the Excluded Parties Listing System***
3. ***Disclosure***
4. ***Oversight***

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"
3. FTA Master Agreement

USEFUL WEB LINKS

Excluded Parties Listing System

Best Practices Procurement Manual

QUESTIONS FOR THE REVIEW

1. *Has the grantee included a term or condition requiring compliance with the debarment and suspension requirement in subgrants, procurement solicitations, and lower tiered transactions of $25,000 or more?*

EXPLANATION
Any subrecipient, third-party contractor, and subcontractor with a contract of $25,000 or more must agree to comply with the debarment and suspension requirements. The prime contractor makes this agreement by submitting a bid or offer that includes the clause or certification found in the Appendix A of the *Best Practices Procurement Manual*. If the grantee ensures that the prospective contractor is not included on the EPLS, they may award the contract without a Suspension and Debarment certification. Debarment and suspension certifications may be obtained at any time prior to award. The grantee also must require that proposed subcontractors with subcontracts expected to equal or exceed $25,000 similarly agree. It is not necessary to include a separate certification for this requirement.

REFERENCE
2 CFR Part 180
FTA Master Agreement, Section 3.b
Best Practices Procurement Manual

SOURCES OF INFORMATION
Review the grantee's written procurement procedures to see if this requirement is addressed correctly. Review a standard subrecipient agreement to ensure that the certification language is included. During the site visit, review a sample of procurement files.

DETERMINATION
The grantee is deficient if the debarment and suspension clause is not included in procurement solicitation documents or agreements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that demonstrates how it will comply with the debarment and suspension requirements for all future, applicable procurements. Direct the grantee to submit to FTA updated procurement procedures that include the requirement. Direct the grantee to submit to FTA revised subrecipient agreements that include the debarment and suspension clause.

2. *Did the grantee 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, and subcontractors 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.

2 CFR Part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The grantee should have a similar review process for its principals as it does for its contractors and subrecipients regarding suspension and debarment.

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

SOURCES OF INFORMATION
Review the grantee'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 and subrecipient files to determine if the EPLS is being searched before entering into any third party contracts.

DETERMINATION
The grantee is deficient if it has not reviewed the EPLS prior to applicable awards or actions.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures to search EPLS before entering into applicable transactions.

3. *Are excluded parties participating in covered transactions? If yes, did the grantee 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 grantee if it has become aware of any situation in which an excluded party is participating in a covered transaction. If so, obtain a copy of the grantee's written notification to FTA.

DETERMINATION
The grantee is deficient if it has not promptly informed FTA in writing after becoming aware that an excluded party is participating in a covered transaction.

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

4. *Have subrecipients included a term or condition requiring compliance with the debarment and suspension requirement in procurement solicitations and lower tiered transactions expected to equal or exceed $25,000? How does the grantee monitor subrecipients' compliance with requirements regarding debarment and suspension?*

EXPLANATION
The grantee is responsible for informing subrecipients of the requirements and for ensuring that they fulfill the requirements in covered contracts ($25,000 and over). Subrecipients are also subject to a continuing duty of disclosure. A subrecipient must provide immediate written notice to the grantee if it learns that a party involved in a covered transaction has been excluded. The grantee must then provide written notice to FTA.

REFERENCE
2 CFR Part 180

SOURCES OF INFORMATION
Review subrecipient agreements, project/state management plans, and other documentation for discussion of the requirements regarding debarment and suspension. On site, discuss the mechanisms used to monitor subrecipients' compliance with these requirements.

DETERMINATION
The grantee is deficient if it does not require subrecipients to comply with the requirements or does not have an appropriate process for monitoring compliance.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office an appropriate process for monitoring subrecipients for compliance with debarment and suspension requirements.

10. 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 grantee 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 grantee 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 they 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 grantee is deficient if it has not included the lobbying certification in its agreements and procurement solicitations.

The grantee is deficient if it has not obtained the proper certifications from contractors and subrecipients.

The grantee is deficient if it does not ensure subrecipient and contractor compliance with restrictions on lobbying requirements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee 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 grantee to submit to the FTA regional office procedures for ensuring that subrecipients and/or contractors comply with lobbying requirements.

3. *Has the grantee 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. The Standard Form LLL and quarterly reports updates are forwarded to the regional counsel. During the site visit, discuss the process for receiving and forwarding the disclosure statements.

DETERMINATION
The grantee is deficient if it did not file a Standard Form LLL and/or a quarterly report for an event that should have been reported.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office the documentation as required and to develop and/or document the process to ensure 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 grantee on Standard Form LLL? Did the grantee 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. The Standard Form LLL and quarterly reports are forwarded to the regional counsel. During the site visit, discuss the process for receiving and forwarding the disclosure statements.

DETERMINATION
The grantee is deficient if it did not obtain a Standard Form LLL or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should have been reported.

The grantee is deficient if it did not forward a Standard Form LLL or quarterly report update submitted by a subrecipient, contractor, or subcontractor to FTA.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit the documentation to the FTA regional office as required and to develop and/or document the process to ensure timely reporting in the future.

11. PLANNING/PROGRAM OF PROJECTS

BASIC REQUIREMENT (PLANNING)

The grantee must participate in the transportation planning process in accordance with FTA requirements, SAFETEA-LU, and the metropolitan and statewide planning regulations.

BASIC REQUIREMENT (HUMAN SERVICES TRANSPORTATION)

Grantees must participate in a coordinated public transit-human services transportation planning process that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.

BASIC REQUIREMENT (PROGRAM OF PROJECTS (POP))

Each recipient of a Section 5307 grant shall develop, publish, afford an opportunity for a public hearing on, and submit for approval a POP.

AREAS TO BE EXAMINED

1. ***Metropolitan Planning Process***
2. ***Coordinated Planning Process for Human Services Transportation***
3. ***POP Public Participation Requirements***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 23 USC Section 134, Federal Aid Highways, "Metropolitan Planning"
3. 23 CFR Part 450, "Planning Assistance and Standards"
4. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
5. FTA Circular 9050.1, "The Job Access and Reverse Commute (JARC) Program"
6. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"

USEFUL WEB LINKS

Metropolitan and Statewide Planning

Major Policy and Planning Issues

Planning Index: A to Z

Planning Certification Reviews

Transportation Planning Newsletter

Transportation Planning Capacity Building

NTI Courses

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

QUESTIONS FOR THE REVIEW

Part A. Metropolitan Planning Process

1. *If the grantee is located in a designated Transportation Management Area (TMA) (population 200,000 or more), when was the last Planning Certification Review (PCR) completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FTA/FHWA)? Did the grantee participate in the review? Are there any outstanding corrective actions from the PCR that pertain to the grantee?*

If the grantee is not in a TMA (population under 200,000), are there any outstanding corrective actions from the metropolitan planning or statewide planning findings that pertain to the grantee?

EXPLANATION
FTA and FHWA conduct PCRs of MPOs in TMAs at least every four years. The PCR process includes input from participants in the planning process, including the grantee. The triennial review verifies the status of corrective actions from the PCR that pertain to the grantee.

In non-TMA areas (population of less than 200,000), FTA and FHWA assess the metropolitan planning processes and make a metropolitan planning finding. All states, at the time of an update to or amendment of the statewide transportation improvement program (STIP), must self-certify that the transportation planning process is being carried out in accordance with all applicable statutes and regulations. Subsequently, FTA and FHWA jointly make a statewide planning finding as the basis for approving the STIP update or amendment. The finding lists all concerns with the performance of planning processes in all urbanized (and non-urbanized) areas throughout the state.

REFERENCE
None

SOURCES OF INFORMATION
During the desk review, determine if the grantee is located in a TMA for planning purposes. Look in the planning files and discuss issues with the planners on the regional staff. Review PCR files for the final report and documentation of follow-up actions. Note when the review was completed, what the corrective actions were, and if they pertain to the grantee. Ask the planners if there are any metropolitan planning findings or statewide planning findings that pertain to the grantee. At the site visit, ask the grantee about its participation in the PCR and discuss any findings that pertain to the grantee.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *What is the name of the designated metropolitan planning organization (MPO) for the area?*

3. *Does the grantee have an agreement with the MPO that specifies cooperative procedures for carrying out transportation planning and programming? What is the date of the agreement/document?*

4. *How does the grantee participate in the MPO planning process? Is the grantee a voting or ex officio member of the MPO policy board?*

5. *How does the grantee participate in developing the metropolitan transportation (20-year) plan? How is transit included in the plan?*

6. *How does the grantee participate in developing the transportation improvement program (TIP)?*

7. *How does the grantee participate cooperatively with the MPO in developing financial forecasts that are used in preparing the TIP and the metropolitan transportation plan?*

8. *How does the grantee participate cooperatively with the MPO in developing the listing of projects for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year?*

EXPLANATION

An MPO is designated for each urbanized area with a population of 50,000 or more individuals (as determined by the Bureau of the Census) to carry out the metropolitan transportation planning process. The planning regulations require the MPO, the state(s), and the public transportation operator(s) to cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the state(s), and the public transportation operator(s) serving the metropolitan planning area. Written agreements are required to address at least: 1) the grantee's responsibilities, 2) the development and sharing of information for financial plans and 3) the development of the annual listing of obligated projects.

The MPO is composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation in the region. Typically, the MPO comprises a policy committee of local elected officials and a technical advisory committee of the senior transportation planning staff of the participating agencies. As the provider of public transportation, the grantee should have a meaningful role in the planning process.

The MPO, the state(s), and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the metropolitan transportation plan and shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation.

The MPO, in cooperation with the state(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53, including transportation enhancements, Federal Lands Highway Program projects, safety projects included in the State's Strategic Highway Safety Plan, trails projects, pedestrian walkways, and bicycle facilities.

Any financial or travel demand forecasts related to transit services that appear in the TIP and the metropolitan transportation plan need to be developed cooperatively by the MPO and the transit operator.

Annually no later than 90 calendar days following the end of the program year, the state, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

REFERENCE

23 USC 134
49 USC 5303
49 USC 5304
23 CFR 450.314, 322, and 324

SOURCES OF INFORMATION

At the desk review, check the planning files for a copy of a current agreement. Obtain this information from the grantee if it is not available in the regional office.

DETERMINATION

The grantee is deficient if it does not have an agreement with the MPO. The grantee is deficient if the agreement does not specify the cooperative procedures for carrying out transportation planning and programming, including participation in the development of the metropolitan plan, TIP, financial forecasts, or the listing of obligated projects.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with a schedule for providing a fully executed agreement that specifies the cooperative procedures for carrying out transportation planning and programming.

9. *Since the last review, has the grantee had any complaints or lawsuits with respect to transit operator involvement in the metropolitan planning process? If yes, what was the nature of each complaint/lawsuit? How were these complaints/lawsuits resolved? Are any pending?*

EXPLANATION

The existence of complaints and lawsuits can indicate shortcomings in the metropolitan transportation planning process.

REFERENCE

None

SOURCES OF INFORMATION
Obtain this information during the desk review from FTA staff that works with the grantee or from the regional counsel. Obtain additional information from the grantee at the site visit. Notify the FTA regional office of any complaints or lawsuits identified during the site visit.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part B. Coordinated Planning Process for Human Services Transportation

10. *If the grantee is a designated recipient of Section 5316 and/or Section 5317 funds, does the grantee:*

a. *Document procedures for administering these programs in a Program Management Plan?*

b. *Derive projects from a coordinated public transit-human services transportation plan developed through a process that consisted of participation from public, private, and non-profit transportation providers, human services providers, and members of the public?*

c. *Notify eligible local entities of funding availability and project selection criteria?*

d. *Conduct a competitive selection process?*

e. *Allocate funds to subrecipients on a fair and equitable basis?*

f. *Award funds only to eligible applicants?*

g. *Publish a list of selected projects?*

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 Chapter III Section 11 lists potential eligible projects.

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. FTA C 9045.1 Chapter III Section 11 lists potential eligible projects.

a. The grantee must document its procedures for administering the program(s), including eligibility requirements and the competitive selection process, in a Program Management Plan.

b. Federal Transit Law, as amended by SAFETEA–LU, requires that projects funded with Section 5310, 5316, or 5317 funds be derived from a locally developed, coordinated public transit-human service transportation plan (coordinated plan). A coordinated plan should maximize the programs' collective coverage by minimizing duplication of services. Further, a coordinated plan should be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers, and participation by the public. In particular, it is important for the designated recipient of these funds to provide evidence of outreach to local entities for participation in the planning process.

c. The grantee shall publicly advertise the availability of funds and selection criteria in formats and forums appropriate to the potential subrecipients. Potential mechanisms include websites and newspaper notices.

d. The grantee shall conduct a competitive selection process that is separate from, but coordinated with, the planning process. The competition allocates funding to subrecipients to implement projects. Grantees may not allocate/suballocate funds without conducting a competitive selection process covering the large urbanized areas. The process should be transparent. The process may be conducted annually or at intervals not to exceed three years. Even if the process is conducted annually, the grantee may select projects that will be implemented over multiple years.

e. The grantee must demonstrate that the competition was open and transparent and that 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.

f. There are three categories of eligible subrecipients of Section 5316 and 5317 funds: private non-profit organizations, state or local governmental authorities, and operators of public transportation services, including private operators of public transportation services.

g. The grantee shall publish a list of selected projects following the competitive selection process in formats and forums appropriate to potential subrecipients. Many grantees publish the list of selected projects on their websites.

REFERENCE

Federal Transit Laws, Title 49, United States Code, Chapter 53
Federal Register notice published March 29, 2007 (72 FR 14851)
FTA C 9045.1, Ch. II, Section 4.a-i
FTA C 9050.1, Ch. II, Section 4.a-i

SOURCES OF INFORMATION

During the desk review, examine the Program Management Plan (and coordinated plan if available) on file with the regional office and list of funded projects in TEAM-Web. Obtain and review the public notification of availability of funding and published list of selected projects. During the site visit, discuss the competitive selection process.

DETERMINATION

The grantee is deficient if it does not have a Program Management Plan(s) for administering the program, does not derive projects from a coordinated public transit-human services transportation plan, does not notify eligible entities of funding availability and project selection criteria, conduct a competitive selection process, allocate funds to subrecipients on a fair and equitable basis, or publish a list of selected projects. It is deficient if it awards funds to ineligible applicants.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office an updated Program Management Plan incorporating any missing elements from the Section 5316 and 5317 process. Direct the grantee to provide the FTA regional office a plan with milestones for correcting any deficient part of the process.

11. *If the grantee is not the designated recipient, direct recipient, or subrecipient of Section 5316 or 5317 funds, is the grantee participating in the coordinated public transit-human service transportation planning process?*

EXPLANATION

FTA's Section 5316 and 5317 circulars note that recipients of Section 5307 and Section 5311 assistance are the "public transit" in the public transit-human services transportation plan and their participation is assumed and expected. Further, Section 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects (POP) provides for the coordination of public transportation services … with transportation services assisted from other United States Government sources."

REFERENCE

FTA C 9045.1, Ch. V, Section 4.d
FTA C 9050.1, Ch. V, Section 4.d

SOURCES OF INFORMATION

During the site visit, request information that demonstrates that the grantee is participating in the coordinated planning process. Participation can include attendance at meetings and provision of information to the designated recipient of Section 5316 or 5317 funds or the MPO.

DETERMINATION

The grantee is deficient if it has not participated in, or does not have plans to participate in, the coordinated public transit-human services transportation planning process.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation that it has contacted the designated recipient of Section 5316 and 5317 funds to notify it of its intent to participate in the development of future coordination plans.

Part C. Public Participation Requirements

12. *Does the grantee rely on the MPO's public participation process to satisfy its public participation requirements for the Program of Projects (POP)?*

If yes:

a. *Does the MPO have an adopted public participation plan? What is the date of the document?*

b. *Does the plan clearly state that the MPO's public participation process satisfies the grantee's public participation requirements for the POP?*

c. *Does the public notice for the TIP state that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy POP requirements?*

If no:

d. *How does the grantee develop proposed POPs in consultation with interested parties, including private transportation providers?*

e. *How does the grantee ensure that proposed POPs provide for coordination of mass transportation services assisted by other Federal sources?*

f. *Does the grantee make available to the public information on amounts available to the recipient under Section 5307 and the POPs it proposes to undertake?*

g. *Are proposed POPs published in a manner that affords citizens, private transportation providers, and local elected officials an opportunity to examine their content and to submit comments on the proposed program and the performance of the recipient?*

h. *Is an opportunity for a public hearing provided?*

i. *Were comments or complaints filed as a result of the publication of the POPs? How were such comments considered in preparing the final POPs?*

j. *Are final POPs made available to the public?*

EXPLANATION

Both the planning regulations and Section 5307 require public participation. The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that: provides complete information, timely public notice, and reasonable public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs. (The grantee's projects must be programmed in the TIP to be eligible for funding.) Section 5307 grantees also have specific requirements for public participation related to the POP. POP public participation requirements do not apply to funds flexed into a Section 5307 grant.

FTA allows a grantee to rely on the locally adopted public participation requirements for the TIP in lieu of the process required in the development of the POP if the grantee has coordinated with the MPO and ensured that the public is aware that the TIP development process is being used to satisfy the POP public participation requirements. To comply with the latter requirement, the MPO's public participation plan should state that the MPO's public participation process satisfies the grantee's public participation process for the POP and the public notice for the TIP must have an explicit statement that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy the POP requirements.

If the grantee relies on its own process to satisfy POP public participation requirements, it must:

- Develop a proposed POP in consultation with interested parties, including private transportation providers. The grantee may rely on the MPO to assist in this process. A transportation advisory committee of the MPO may be informed or used as a reviewer of the POP. Private providers should be involved throughout this process.

- Ensure that the proposed POP provides for the coordination of Section 5307 public transportation projects with transportation projects assisted with other Federal sources. Coordination may occur at many levels, from simple information sharing to total consolidation of services. Participation in the public transportation-human services planning process satisfies this requirement.
- Make available to the public information concerning the amount of funds available under the Section 5307 program and the POP that the recipient proposes to undertake with such funds.
- Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on it and on the performance of the grantee. The public notice is published in the general circulation newspaper in the service area of the grantee and should indicate where citizens can examine the proposed program and budget in detail and submit comments on the proposed program and the performance of the grantee. If the service area includes a significant number of persons with limited English proficiency, the grantee should distribute the notice to these populations. (See the Title VI section of this guide.)
- Provide an opportunity for a public hearing to obtain the views of citizens on the proposed POP. Most grantees include in the public notice an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or grantee policies make the public hearing mandatory.
- Consider comments and views received, including those of private transportation providers, in preparing the final POP.
- Make the final POP available to the public. If the proposed POP is not amended, including a statement that the proposed program will be the final program, unless amended, satisfies the requirements regarding the final POP.

REFERENCE

23 CFR 450.314, 316, 322 and 324
FTA C 9030.1D, Ch. IV, Section 6

SOURCES OF INFORMATION

At the site visit, discuss how the grantee handles the public participation requirements. If the grantee relies on the public involvement process for the TIP, review the MPO's public participation plan to ensure that it states the public involvement process for the TIP is used to satisfy the grantee's public participation process for the POP. Review the TIP public notices to ensure that they state that public notice of public involvement activities and time established for public review of and comments on the TIP will satisfy the POP requirements. The grantee may need to obtain the documentation from the MPO in preparation for the site visit. It is recommended that a representative of the MPO participate in the discussion during the site visit.

If the grantee is publishing a separate notice of its POP, review public notices for the past three years. Ask the grantee to describe the consultative process and how coordination was ensured as the POP was developed. Review written comments received by the grantee, transcripts of public hearings, and internal reports that address the comments.

DETERMINATION

The grantee is deficient if it relies on the public involvement process for the TIP to meet public involvement requirements for the POP, and:

- The MPO's public participation plan does not state that the MPO's public participation process is used to satisfy the grantee's public participation process for the POP.
- The public notices for the TIP do not have an explicit statement that public notice of public involvement activities and time established for public review and comments on the TIP will satisfy the POP requirements.

The grantee is deficient if it is responsible for publishing the POP, and:

- The grantee has failed to publish a POP in an appropriate local publication, has failed to provide sufficient detail in the announcement, has failed to offer an opportunity for a public hearing, or has failed to communicate to a significant population of non-English speaking individuals.
- The proposed POP does not contain a statement that the proposed program also will be the final program unless amended and a final notice is not published.
- The grantee does not have a consultative process (e.g., does not attempt to solicit opinions of others, does not mail a notice of its plans for developing the POP to private providers, does not have an ongoing public participation process, etc.) or there is no evidence that a good faith effort toward service

coordination was made as the POP was being developed.

SUGGESTED CORRECTIVE ACTION

If the grantee is relying on the MPO for public participation activities, direct it to work with the MPO to submit to the FTA regional office a revised public participation plan for the TIP and/or to include the required language in the TIP notice. Since the publication of the notice is an annual event, the timetable of the corrective action will depend upon the next publication date. Before the next notice is due to be published, direct the grantee to submit to the regional office proposed public notice language with the required language. After the notice is published, direct the grantee to submit a copy of the published notice.

If the grantee publishes a separate POP, direct the grantee to make appropriate changes, e.g., change the wording of the announcement to indicate where the POP is available for review or to include sufficient detail describing the POP. Since the publication of the POP is an annual event, the timetable of the corrective action will depend upon the next publication date. Before the next POP is due to be published, direct the grantee to submit to the regional office proposed public notice language. After the POP is published, direct the grantee to submit a copy of the published notice.

12. 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. ***Approved Title VI Program***
2. ***Public Information and Complaint Procedures***
3. ***Limited English Proficiency (LEP)***
4. ***Outreach***
5. ***Subrecipient Monitoring***
6. ***Program Specific Requirements for grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding***

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. *Has FTA conducted a Title VI Compliance Review during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current fiscal year?*

EXPLANATION
As part of its project oversight functions, FTA periodically conducts Title VI reviews of selected grantees. Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked.

REFERENCE
Input to review

SOURCES OF INFORMATION
Prior to conducting the desk review, review OTrak to determine if a Title VI review has occurred or has been scheduled and to analyze findings and corrective actions from completed Title VI reviews. The regional civil rights officer (RCRO) will also have information on Title VI review activities. Obtain a copy of the most recent report (draft or final) for input into the review. Reports may be available at the regional office or from headquarters during the desk review, or on FTA's website.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Has the grantee submitted a Title VI program to FTA? If yes, when does the approval expire? If the program has expired, please provide an explanation. Has the program been uploaded to TEAM-Web?*

EXPLANATION
Every three years (every four years for MPOs that are direct recipients), all direct grantees must submit a Title VI program that documents their compliance with Chapter IV of FTA C 4702.1A.

FTA has established a policy that all civil rights programs must be uploaded 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 21.9(b)
FTA C 4702.1A, Ch. II, Section 4; Ch. IV, Section 7; Ch. V, Section 6; Chapter VI, Section 2; Appendices A and B
Instructions for uploading programs to TEAM-Web

SOURCES OF INFORMATION
Review TEAM-Web and, if necessary, the RCRO's files for a copy of the most recently submitted program. There should be correspondence indicating when it was approved by FTA and when the approval expires.

DETERMINATION
The grantee is deficient if no Title VI program has been submitted or if the Title VI program has expired and the grantee has not made a submission or requested and received a conditional approval for submitting a new program or program update. The grantee is deficient if it has not uploaded its program to TEAM-Web.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO and/or upload to TEAM-Web the required Title VI Program.

3. *How does the grantee notify the public of its rights under Title VI?*

EXPLANATION
Grantees and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Grantees and subrecipients that provide transit service shall disseminate this information to the public through measures that can include, but shall not be limited to, a posting on the agency's Web site.

The notice shall include:

- a statement that the agency operates programs without regard to race, color, and national origin;
- a description of the procedures that members of the public should follow in order to request additional information on the recipient's or subrecipient's nondiscrimination obligations; and

- a description of the procedures that members of the public should follow in order to file a discrimination complaint against the grantee or subrecipient.

FTA C 4702.1A, Chapter IV section 5b provides guidance on how to disseminate this notification.

REFERENCE
49 CFR 21.9(d)
FTA C 4702.1A, Ch. IV, Section 5

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

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

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO documentation of having notified the public of its rights under Title VI.

4. *How does the grantee 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 grantee should have a system in place whereby it can identify which, if any, of its complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the grantee. Although the complainant may not refer to Title VI in the complaint to the grantee, the grantee should be able to identify and classify this type of complaint as a Title VI complaint.

Most grantees have a well-established process and schedule for receiving, acknowledging, and screening complaints, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints as long as it provides an adequate process for complaints.

REFERENCE
49 CFR 21.9(b)
FTA C 4702.1A, Ch. IV, Section 2

SOURCES OF INFORMATION
Review the grantee's instructions for filing complaints and its procedures for receiving, investigating and tracking complaints in its Title VI submission. During the site visit, verify implementation. Request a copy of Title VI complaints received since the last review. Ask the grantee who or what office receives complaints and how staff is trained to identify complaints of discrimination under Title VI.

DETERMINATION
The grantee is deficient if it cannot provide information on how it receives, identifies, and investigates Title VI complaints and/or if the grantee cannot demonstrate that it has a process for tracking discrimination complaints on the basis of race, color, or national origin. The grantee is deficient if the process for filing a complaint includes unnecessary timeframes or barriers or requires the complainant to enter into any agreements with the grantee prior to complaint resolution.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a written document that describes its procedures for investigating and tracking Title VI complaints.

5. *Has the grantee conducted an analysis of how the four factors in the DOT limited English proficient (LEP) guidance apply to the grantee's programs and activities? What steps has the grantee taken to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are LEP?*

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

Grantees 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 grantee's program or activities. Grantees 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 grantee'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 grantee is deficient if it has not conducted an analysis of how the four factors in the DOT LEP Guidance apply to the grantee's programs and activities. Even if the grantee has taken specific actions, the grantee is deficient if it has not conducted the four factor analysis.

SUGGESTED CORRECTIVE ACTION

Direct the grantee 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 grantee 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.

6. *How has the grantee sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities?*

EXPLANATION

Grantees 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 grantee's procedures for outreach in its Title VI program submissions. Verify that these procedures have been implemented by reviewing public involvement activities conducted since the last review and a description of the methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. Review public hearings, planning activities and program of projects development.

DETERMINATION
The grantee is deficient if it has conducted public outreach activities since the last review but cannot demonstrate that it implemented the public involvement strategies listed in its Title VI program or the bulleted list above.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide 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.

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

EXPLANATION
The grantee is responsible for ensuring that subrecipients comply with Title VI requirements. The oversight program should ensure that subrecipients notify customers of their rights under Title VI; have Title VI complaint procedures; take reasonable steps to ensure access to LEP populations; and seek out the viewpoints of minority, low-income and LEP populations when conducting public outreach and involvement activities. The grantee should be informed of any Title VI complaints received by its subrecipients.

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 grantee's procedures, along with documentation that the procedures have been implemented. Review the grantee's monitoring tools and the oversight files on any subrecipients to be visited.

DETERMINATION
The grantee is deficient if it does not ensure that subrecipients comply with applicable Title VI requirements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to provide the FTA RCRO a document that describes the measures it will take to monitor subrecipients for compliance with applicable Title VI requirements.

Questions 8-12 apply to grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding.

8. *How has the grantee collected and analyzed demographic data showing the extent to which members of minority groups are beneficiaries of*

programs receiving FTA financial assistance?

- *If it prepares demographic and service profile maps and charts, how often are they updated?*
- *If it collects demographic information as part of agency ridership surveys, how and how often is it collected?*
- *If it has developed its own procedures to collect and analyze demographic data on its beneficiaries, how is this implemented?*

EXPLANATION

Grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding must collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance. This provision of the circular recommends that grantees fulfill this requirement either by preparing demographic and service profile maps and charts (described in Chapter V section 1a), by collecting demographic information as part of agency ridership surveys (described in Chapter V section 1b), or by developing procedures to collect and analyze demographic data on their beneficiaries (described in Chapter V section 1c).

If the grantee prepares demographic and service profile maps and charts, it should update them after each decennial census and prior to proposed service reductions or eliminations. If the grantee collects demographic information as part of agency ridership surveys, it should provide information about how often it collects this information and should include methods to make these surveys accessible to LEP persons. If the grantee uses a locally-developed analysis process, it should provide information on how the analysis is conducted and how it meets the overall requirement to collect and analyze racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

REFERENCE

49 CFR 21.9(b)
FTA C 4702.1A, Ch. V, Section 1

SOURCES OF INFORMATION

Review the Title VI program submission for demographic maps and overlays, results of customer surveys, or information on procedures to collect and analyze demographic data of beneficiaries.

DETERMINATION

The grantee is deficient if it cannot provide maps and overlays, the results of customer surveys, or results of a locally developed method. The grantee is deficient if it has made major service changes, but has not updated its maps or charts. The grantee is deficient if it collects demographic information as part of agency ridership surveys, but a survey has not been conducted in the past three years or if it was not conducted in a manner that was inclusive of LEP persons.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO an analysis of demographic information that is consistent with one of the three options for collecting this information.

9. *Are the grantee's system-wide service standards and system-wide service policies reflected in overall agency policies?*

EXPLANATION

Grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding must set system-wide service standards and policies necessary to guard against discriminatory service design or operational decisions.

Examples of service standards are: (1) vehicle load; (2) vehicle headway; (3) on-time performance; (4) distribution of transit amenities; and (5) service availability. Grantees are free to adopt additional service standards or other standards in lieu of the ones cited in this provision.

Service policies differ from service standards in that they are not necessarily based on a quantitative threshold. Examples of system-wide service policies are vehicle assignment and transit security. Grantees are free to adopt additional service policies or other policies in lieu of those cited in this provision.

The service standards and policies in the Title VI submission should be the same as those used by the agency to monitor its operations. The reviewer should be able to validate the system-wide service standards and policies stated in the Title VI submission with operational information provided by the grantee.

REFERENCE

49 CFR 21.9(b); Appendix C
FTA C 4702.1A, Ch. V, Sections 2 and 3

SOURCES OF INFORMATION
Obtain a list of service standards and service policies that the agency has adopted and a description of how the agency defines its standards and policies.

DETERMINATION
The grantee is deficient if it cannot document that system-wide service standards and policies in its Title VI program submission are reflective of overall agency policies. The grantee is also deficient if it has not established any system-wide standards and policies.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a document that describes its plans for adopting system-wide service standards and policies and provides a timeline for doing so, along with a copy of the adopted standards and policies.

10. *How and how often does the grantee monitor the service it provides to identify any disparities in the level and quality of service provided to different demographic groups? Has the grantee taken corrective action if it determined that disparities exist?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding shall monitor the transit service provided throughout the grantee's service area. Periodic service monitoring activities shall be undertaken to compare the level and quality of service provided to predominantly minority areas with service provided in other areas to ensure that the end result of policies and decision-making is equitable service.

Grantees must implement one of four service monitoring procedures as follows:

- Option A: Level of Service Methodology, based on a sample of bus routes and (if applicable) fixed guideway routes that provide service to a demographic cross-section of grantee's population
- Option B: Quality of Service Methodology, based on an appropriate number of Census tracts or traffic analysis zones that represent a cross-section of grantees population
- Option C: Title VI Analysis of Customer Surveys, based on a recent passenger survey that compares the responses from individuals who identified themselves as members of minority groups and/or in low-income brackets with the responses of those who identified themselves white and/or in middle and upper-income brackets
- Option D: Locally Developed Alternative, based on a modified version of the above options or other locally developed procedures

Monitoring shall be conducted at a minimum once every three years. If a grantee's monitoring determines that prior decisions have resulted in disparate impacts, agencies shall take corrective action to remedy the disparities.

REFERENCE
49 CFR 21.9(b) and Appendix C
FTA C 4702.1A, Ch. V, Section 5

SOURCES OF INFORMATION
Review the monitoring procedures in the Title VI program submission. Review documentation that service monitoring procedures have been conducted within the past three years.

DETERMINATION
The grantee is deficient if it has no acceptable procedures for monitoring service or cannot document that it has monitored service within the past three years.

The grantee is also deficient if its monitoring identified disparities in the level and quality of service provided to minority and non-minority users but did not take corrective action.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a document that describes its plans for conducting service monitoring, consistent with the procedures in FTA C 4702.1A, Chapter V Section 5, as well as a timeline for and the results of the monitoring conducted.

11. *Has the grantee established guidelines or thresholds for what it considers a "major" service change to be?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. This requirement applies to fare changes and "major service changes" only. The grantee should have established guidelines or thresholds for what it considers a "major service change" to

be. Often, this is defined as a numerical standard, such as a change that affects 25 percent of service hours of a route.

REFERENCE
49 CFR 21.5(b)(2); (b)(7); and Appendix C
U.S. DOT Order 5610.2
FTA C 4702.1A, Ch. V, Section 4

SOURCES OF INFORMATION
Obtain the threshold for a "major service change" under Title VI in the grantee's Title VI plan or directly from the grantee.

DETERMINATION
The grantee is deficient if it has not defined a major service change under Title VI.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO its policies for what it constitutes a major service change for the purposes of Title VI.

12. *Has the grantee had a major service change or a fare change since the last review? If yes, has it conducted an analysis of the change(s) to determine whether proposed changes would have a discriminatory impact?*

EXPLANATION
Grantees that provide service to geographic areas with a population of 200,000 or more and receive 49 USC 5307 funding shall evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders.

Chapter V Section 4a recommends specific procedures for conducting an analysis of service changes and fare changes. Chapter V Section 4b states that grantees can conduct an analysis of service and fare changes using a modified version of the procedures in Chapter V Section 4a or a locally-developed set of procedures. Whatever methodology is used, the analytical assessment should adequately evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. This analysis should measure the impacts borne by the service or fare changes.

On March 8, 2011, a Dear Colleague letter was issued addressing Title VI analysis for fare and service changes. If a grantee was contemplating a major service change or fare increase during fiscal years 2011 or 2012, it was to inform its RCRO and submit the service and fare equity analysis to the RCRO. Grantees should refer to the Title VI Service and Fare Equity Analysis Questionnaire available on FTA's website (entitled Fare and Service Equity Guidance) when completing such analysis. This questionnaire augments the guidance in the Circular concerning the structure and content of equity analyses.

Note: This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions. (*See Triennial Review Section 13 Public Comment on Fare and Service Changes.*) Section 5307 requires a *public comment process* before *raising* a fare or carrying out a major *reduction* of transportation service. For purposes of Title VI, grantees to which this requirement applies must perform an equity evaluation for "major service changes" (both increases and reductions), as locally defined, and fare changes (both increases and reductions).

REFERENCE
49 CFR 21.5(b)(2); (b)(7); and Appendix C
U.S. DOT Order 5610.2
FTA C 4702.1A, Ch. V, Section 4
Fare and Service Equity Guidance

SOURCES OF INFORMATION
Obtain a list of service and fare changes that have occurred since the last review and a description of the nature of the changes. Review a description of the methodology used to determine the impact of the service and fare change.

DETERMINATION
The grantee is deficient if it has not established a methodology and/or conducted an analysis of the effects of one or more major service change and/or fare change that have occurred since the last triennial review. The grantee is deficient if the analytical assessment is not adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The grantee is deficient if it has not established a methodology and/or conducted an analysis of any service changes, under the pretense that none of the changes constituted "major service changes" for the purpose of Title VI. The grantee is deficient if it has not submitted an applicable fare or service change analysis to its RCRO.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a document that describes a methodology to analyze the impacts of future fare and major service changes.

13. PUBLIC COMMENT ON FARE AND SERVICE CHANGES

BASIC REQUIREMENT

Section 5307 grantees are expected to have a written locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

AREAS TO BE EXAMINED

1. ***Existence and Application of a Locally Developed Process***

2. ***Oversight***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a process for soliciting and considering public comments prior to a fare increase or a major service reduction? If yes:*

a. What is considered to be a "major" service reduction?

b. How are public comments solicited?

c. How are comments considered in the decision-making process?

d. How are these procedures documented?

2. *Since the last review, has the grantee raised a fare or reduced service? Was the reduction considered major? Was the locally developed process followed? If not, what was done differently?*

EXPLANATION

Annually, Section 5307 grantees certify that they have a locally developed process to solicit and consider public comment prior to raising a fare or implementing major reduction in public transportation service. Grantees are expected to have a written policy that describes the public comment process. The grantee is responsible for defining a major service reduction. This can be defined as a standard, such as elimination of a route or reduction of "X" percent of service hours or miles.

The policy should provide an opportunity for a public hearing or meeting for any fare increase or major service reduction. It should describe how such meetings will be conducted and how the results will be considered. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. Some grantees offer an opportunity for public comment for all fare and service changes. This meets the requirement.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(I)
FTA C 9030.1D, Ch. IV, Section 8.k

SOURCES OF INFORMATION

Obtain and review a copy of the grantee's policy. The policy may be a separate stand-alone document or part of a larger set of administrative procedures of the agency or local government.

Obtain and review a description of any fare increases or major service reductions implemented by the grantee since the last review. Compare current fares with the fares described in the grantee's previous review report. Note effective dates, the process used to solicit public comment, and the dates of public meetings, if any, to discuss the changes. Review transcripts from public hearings, minutes of board meetings, and staff summaries or other internal memoranda that document whether the public participation process was followed and how comments were considered.

Review internal working documents that show the original plans proposed by the grantee compared to the actual plans that were implemented. Compare changes in these plans to public hearing transcripts and other sources documenting public participation.

DETERMINATION

The grantee is deficient if it does not have a written policy for soliciting and considering public comments prior to a fare increase or a major service reduction.

The grantee is deficient if the process does not address fare increases, define a threshold for what constitutes a major service reduction, describe the process for soliciting public comments, or specify how comments will be considered.

The grantee is deficient if it increased fares or implemented a major service reduction but did not solicit public comment.

The grantee is deficient if it did not consider the comments received in the implementation of the final plan. Note that it is not necessary for the grantee to have changed its original plans.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a written policy for soliciting and considering public comments prior to a fare increase or major service reduction that addresses fare increases, defines a major service reduction, describes how public comment will be solicited, and specifies how comments will be considered.

Direct the grantee to submit to the FTA regional office an amended process to solicit public comment for fare increases and major service reductions.

Direct the grantee to submit to the FTA regional office amended procedures that incorporate consideration and documentation of public comment.

3. *Do Section 5307 subrecipients have a process for soliciting and considering public comments prior to a fare increase or a major service reduction? How are these procedures documented? How does the grantee ensure that the subrecipients comply with public comment process requirements?*

EXPLANATION

The grantee must ensure that Section 5307 subrecipients have a process for obtaining public comment for fare increases and major service reductions. Either the grantee or its subrecipients are expected to have a written policy that describes the public comment process. The grantee must also ensure that subrecipients follow the process and consider public comment when they raise fares or implement major service reductions.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(I)
49 CFR Part 18.37
FTA C 9030.1D, Ch. IV, Section 8.k

SOURCES OF INFORMATION

Review oversight mechanisms and correspondence. Discuss on site. Review the policy and files for subrecipients. Discuss the policy and recent subrecipient fare increases and/or major service reductions. Discuss the requirement during the subrecipient site visit.

DETERMINATION

The grantee is deficient if it does not ensure that Section 5307 subrecipients have and follow processes for obtaining public comment for fare increases and major service reductions.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office procedures for ensuring Section 5307 subrecipients have and follow processes for obtaining public comment for fare increases and major service reductions.

14. HALF FARE

BASIC REQUIREMENT

For fixed route service supported with Section 5307 assistance, fares charged elderly persons, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than half the peak hour fare.

AREAS TO BE EXAMINED

1. ***Half Fares***
2. ***Proof of Eligibility***
3. ***Internal and Public Information***
4. ***Oversight***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 49 CFR Part 609, "Transportation for Elderly and Handicapped Persons"
3. FTA Circular 9030.1D, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

USEFUL WEB LINKS

Medicare Eligibility

QUESTIONS FOR THE REVIEW

1. *Does the grantee allow elderly persons, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours?*

2. *What is the full fare? What is the half fare? During what hours are half fares available (all hours or off peak hours only)? Are there any fixed route services not included in the half fare program?*

EXPLANATION

Fares charged elderly persons, persons with disabilities, and Medicare cardholders during off peak hours for Section 5307 funded fixed route transportation must not be more than half the peak hours fare. If there are services such as neighborhood circulator and shuttle services with fares that are different from the grantee's fare for its regular local service, separate half fares are needed for each type of service.

The requirement is applicable to:

- All fixed route services, including service to sporting events, that operate in both peak and off peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the grantee directly, by a contractor, by a subrecipient, or by another entity that leases facilities and/or equipment from the grantee
- Any express and commuter service that operates beyond peak hours
- Fixed route services for which the grantee has not defined peak hours

This requirement is not applicable to:

- Demand responsive services, including route deviation services
- Services that operate only during peak hours, such as express and commuter routes
- Services that operate only in the off peak hours (e.g., lunchtime circulators and weekend routes to sporting events)
- Services funded with other FTA assistance that do not use Section 5307 funded equipment or are not operated out of Section 5307 funded facilities

"Elderly" by FTA regulations is to "at a minimum, include all persons 65 years of age or over." Grantees are permitted to use a definition that extends this fare to younger (e.g., 62 and over) persons. Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility."

Medicare is available for people age 65 or older, younger people with disabilities, and people with end stage renal disease (permanent kidney failure required dialysis or transplant).

The grantee determines its peak hours. Peak hours can be seasonal. If the grantee determines it is not large enough, or demand is not strong enough, to identify or justify peak hour service, then its entire service should be defined as "off peak." In this instance, the grantee has two options:

- Review ridership data and determine the peak ridership hours and develop a policy for half fare, or
- Choose not to determine a peak period and offer half fares during all hours.

REFERENCE

49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1D, Ch. 1V, Section 8d

SOURCES OF INFORMATION

Review the grantee's general public information that presents its fare structure. Common examples are the system map, pocket timetables, signs within the system (e.g., decals on fareboxes, ticket vending machine decals and menus, signs in stations, and car cards on vehicles) and the website. Other sources are brochures describing the fare structure and the reduced fare program, and application forms for the reduced fare program or special ID cards. Documents such as fare policies/tariffs and internal policy memoranda may also describe the program.

If the grantee limits half fares to off peak hours, verify that the definition of "off peak" is reasonable. For example, if the grantee has both peak and off peak fares in its overall fare structure, the off peak time periods for the general public and the half fare program should be defined consistently. The times should be consistent with the hours reported to NTD.

Ensure that the grantee has not limited acceptance of a Medicare card to seniors only.

DETERMINATION
The grantee is deficient if it charges more than one half the peak hour fare during off peak hours.

The grantee is deficient if it does not provide a half fare for a service that should be included.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that it has implemented a half fare program.

Direct the grantee to provide the FTA regional office with a plan and schedule for correcting its half fare program.

3. *For the half fare, what proof of eligibility is required at time of boarding for elderly persons? For persons with disabilities? For Medicare cardholders? If a special identification card is accepted as the sole basis for determining some or all eligibility, what are the procedures for obtaining the card? Does the grantee require any additional information from a Medicare cardholder? If yes, what?*

EXPLANATION
The half fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. Examples of proof of eligibility include a driver's license, Medicare card, special identification card, and ADA eligibility card. The grantee may require more than one piece of identification for determining age or disability-related qualifications.

A grantee may require passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility for obtaining the identification card. Obtaining a special identification card must be relatively easy. For example, though not strictly prohibited, requiring individuals to travel to a single office, which may be inconveniently located, is not consistent with the intent of this requirement.

In order to ensure that the person presenting a Medicare card is the authorized individual, the grantee may request proof of identity (another card with a photograph). There is no specific prohibition against this, provided the grantee is not asking for further proof of eligibility from the Medicare cardholder but is only checking the validity of the Medicare card.

REFERENCE
49 USC Chapter 53, Section 5307 (d)(1)(D)
49 CFR 609.23
FTA C 9030.1D, Ch. IV, Section 8.d

SOURCES OF INFORMATION
Review public informational materials (described above) and application materials for special identification cards for a description of the process and the identification necessary to qualify for half fare. Discuss the application procedures with the grantee to ascertain whether the program is implemented properly.

DETERMINATION
The grantee is deficient if the location(s) for obtaining a special identification card is/are not accessible by transit, open during convenient hours, and publicized.

The grantee is deficient if it does not accept a Medicare card as the basis for payment of half fare or as a means to obtain a special identification card. The grantee is deficient if it requires more than a Medicare card as proof of eligibility for half fares.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit a plan to the FTA regional office for making passengers aware of any need for a special identification card and enabling identification cards to be easily obtained.

Direct the grantee to submit documentation to the FTA regional office that it accepts a Medicare card as proof of eligibility for the half fare program.

4. *How has the grantee informed its employees and the public that half fares are available? Do internal and external materials describing fares show half fares and eligibility?*

EXPLANATION
A policy is not effective unless it is communicated to those who will carry it out and to those who can take advantage of it. Training documents and communication with operators and others responsible for implementing the fare program should demonstrate that the grantee has notified staff of the program and included the correct information. Public information should include half fare information, including Medicare eligibility, if it contains fare information. For example, if a brochure says the fare to ride the bus is $1.00, it also should say that the fare for elderly persons, persons with disabilities, and Medicare cardholders is $0.50 during off peak hours.

Though it is not necessary to have a separate fare category for Medicare cardholders, the grantee's readily available public information must be clear that Medicare cards are accepted as proof of eligibility for the half fare program, including for persons who are not elderly.

REFERENCE
49 USC Chapter 53, Section 5307(d)(1)(D)
49 CFR 609.23
FTA C 9030.1D, Ch. IV, Section 8.d

SOURCES OF INFORMATION
Review both internal and public information. Obtain and review training documents and communication with drivers (e.g., driver bulletins) and others responsible for implementing the fare program. Obtain and review system maps, route timetables, and general system fare brochures. Check other common public information items, such as the website, ticket vending machine decals and menus, station signs, and farebox decals to see that they include the proper information for half fares.

DETERMINATION
The grantee is deficient if internal or public information regarding half fares is incomplete or does not include half fare information.

The grantee is deficient if half fare information is included but Medicare eligibility is not mentioned.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that it has made complete information on the half fare program available where fare information is presented.

Direct the grantee to submit to the FTA regional office the revised text for its public information (e.g., maps and timetables), for the next reprint. Give grantees up to a year to reprint materials.

Direct the grantee to submit to the FTA regional office documentation that it has updated and redistributed the materials for drivers and other operating personnel which did not convey the current program requirements.

5. *Do subrecipients, contractors, and lessees operating fixed route service supported with Section 5307 funds allow elderly persons, persons with disabilities, and persons with a Medicare card to pay, during off peak hours, one half the fare generally paid during peak hours? How does the grantee ensure that they comply with half fare requirements?*

EXPLANATION
The grantee is responsible for ensuring that subrecipients, contractors, and lessees that operate services to which the half fare requirement applies comply. The oversight program should ensure that a half fare is offered for applicable services during off peak hours, the definition of off peak hours is reasonable, identification requirements ensure that eligible persons can obtain the half fare, and internal and public fare information show the half fare and eligibility, including Medicare cardholder eligibility.

REFERENCE
49 USC Ch. 53, Section 5307(d)(1)(D)
49 CFR 18.37 and 18.40
49 CFR 609.23
FTA C 9030.1D, Ch. IV, Section 8.d

SOURCES OF INFORMATION
Review the grantee's monitoring tools, oversight files, and fare material for subrecipients, contractors, and lessees. During site visits, discuss the half fare program with the entity and review fare information on vehicles and stations, in employee training information, in brochures, and other printed information, and on the entity's website.

DETERMINATION
The grantee is deficient if procedures are inadequate to ensure that subrecipients, contractors, and lessees comply with half fare requirements.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with half fare requirements.

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

REFERENCES

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

USEFUL WEB LINKS

DOT 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
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QUESTIONS FOR THE REVIEW

1. *During the past two Federal fiscal years, did the FTA Office of Civil Rights conduct an ADA compliance review? Is a review scheduled for the current Federal fiscal year? If yes, what is the scope of the review(s)?*

EXPLANATION
Consistent with FTA's oversight responsibilities, FTA has a program of ADA compliance reviews. The reviews target a particular area of the ADA and the implementing regulations, such as ADA complementary paratransit; key, new, and renovated rail stations; fixed route stop announcements and route identification; and fixed route bus lift and maintenance reliability. Even if an ADA review site visit has been conducted within the past two Federal fiscal years or one is scheduled for the current fiscal year, ask the relevant questions in this section.

REFERENCE
None

SOURCES OF INFORMATION
Prior to the site visit, contact the regional civil rights officer (RCRO) to determine if an ADA compliance review of the grantee has been conducted during the review period.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

Part A: Bus and Rail Vehicles

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

3. *Since the last review, has the grantee or a subrecipient purchased or leased any used bus or rail vehicles for use in fixed route service? If yes, do the vehicles comply with the applicable accessibility standards under 49 CFR Part 38? If no, does the grantee have documentation of good faith efforts meeting the requirements of 49 CFR 37.73(c), 37.81(c), or 37.87(c) to obtain accessible used equipment?*

4. *Since the last review, has the grantee or a subrecipient remanufactured any existing bus or rail vehicles for use in fixed route service? If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs? If no, has the grantee documented the results of the engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle as required under 49 CFR 37.75(c), 37.83 (c), or 37.89(c)?*

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

6. *Since the last review, has the grantee or a subrecipient purchased or leased any new vehicles that are not accessible for demand responsive service, including route deviation service? If yes:*

a. Is the grantee or subrecipient providing equivalent service as specified under 49 CFR 37.77(c) and 37.105?

b. Has the grantee or subrecipient documented its analysis of equivalent service?

c. Has the grantee filed a certification of equivalent service?

d. If the grantee is a state, has it obtained a certification of equivalent service from Section 5307 and 5311 subrecipients?

e. How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?

7. *How does the grantee ensure that subrecipients comply with the ADA requirements for the acquisition of accessible vehicles?*

EXPLANATION

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

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

Public Entities

All new bus and rail vehicles purchased or leased by public entities operating fixed route service must be accessible (must comply with 49 CFR Part 38 standards).

All used bus and rail vehicles must be accessible. Used bus and rail vehicles that are not accessible may only be purchased or leased if, after making demonstrated good-faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good faith efforts are defined in 49 CFR 37.73(c) and 37.81(c) as including at least the following steps:

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

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

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

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

Public entities operating demand responsive service for the general public must purchase or lease accessible vehicles unless it can 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 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the DOT ADA regulations includes a copy of the certification of equivalent service. 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

Subrecipient Oversight
Grantees must ensure that subrecipients comply with the ADA requirements when acquiring new, used or remanufactured vehicles or when remanufacturing vehicles. The grantee must ensure that subrecipients provide equivalent service when acquiring non-accessible vehicles for general public demand responsive service.

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, 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 and if the grantee has filed the certification of equivalent service with FTA. On site, discuss each instance in which a non-accessible vehicle was acquired since the last review. For each non-accessible vehicle acquired determine whether the conditions were met. Review the supporting documentation for each acquisition (e.g., documentation of good faith efforts to obtain an accessible vehicle or documentation of equivalent service). Discuss how the grantee monitors equivalent service. If subrecipients have acquired non-accessible vehicles, review a sample of supporting documentation, including procurement documents, waivers, documentation of good faith efforts to acquire accessible vehicles, or certifications of equivalent service, as required.

DETERMINATION
The grantee is deficient if it acquired non-accessible vehicles and the conditions permitting the acquisition of a non-accessible vehicle have not been met. The grantee is deficient if remanufactured vehicles were not made readily accessible to people with disabilities and did not document the results of an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle. The grantee is deficient if contractors do not use accessible vehicles for fixed route service. The grantee is deficient if it acquired non-accessible vehicles for general public demand responsive service and did not file a certification of equivalent service. The grantee is deficient if it acquired non-accessible vehicles for general public demand responsive service does not monitor its service to ensure that equivalent service is provided. (***DEFICIENCY CODE 09****:* Vehicle accessibility standards deficiency)

The grantee is deficient if it does not ensure that subrecipients comply with the ADA requirements for acquisition of accessible vehicles, including the provision of equivalent service. If the grantee is a state, it is deficient if it did not obtain a certification of equivalent service from a Section 5307 or 5311 subrecipient acquiring a non-accessible vehicle for demand responsive service. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit documentation to the RCRO that the applicable conditions have been met which permit the acquisition of the non-accessible vehicle(s) along with procedures for ensuring that the applicable conditions are met before acquiring non-accessible vehicle(s) in the future.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that subrecipients acquire accessible vehicles and for ensuring that subrecipients meet the specific required conditions which permit the acquisition of non-accessible vehicles.

Direct the state to submit to the FTA RCRO a procedure for obtaining a certification of equivalent service from Section 5307 and 5311 subrecipients purchasing non-accessible vehicles for demand responsive service.

Part B: Facilities

8. *Since the last review, has the grantee or a subrecipient constructed any new transit facilities? Are the facilities accessible?*

9. *Since the last review, has the grantee 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, has the grantee provided 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?*

10. *When subrecipients construct or modify facilities, how does the grantee 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 provide 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.

Grantees must ensure that subrecipients comply with ADA requirements when constructing or altering a facility. If there are parties other than the grantee or subrecipients responsible for portions of the facility, the grantee must ensure that they also comply with the ADA requirements.

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. During the site visit, discuss with the grantee 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 grantee has undertaken alterations to an area that serves a primary function but has not made the path of travel accessible due to disproportionate cost, that is, that it exceeds 20% of the total alteration cost, examine supporting documentation, including the cost calculations. Discuss subrecipient oversight procedures.

DETERMINATION

The grantee is deficient if the new facilities do not comply with the standards referenced in 49 CFR 37.9. The grantee is deficient if alterations do not comply with the standards referenced in 49 CFR 37.9, and it does not have documentation supporting the reasons for not making alterations fully accessible. (***DEFICIENCY CODE 12**:* Facility accessibility standards deficiency)

The grantee is deficient if it has not ensured that subrecipients that construct or modify facilities comply with ADA requirements. (***DEFICIENCY CODE 22**:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO a schedule for making the necessary modifications to bring the facility into compliance and report quarterly on progress until full compliance is attained.

Direct the grantee to submit to the FTA RCRO documentation supporting the reasons for not making facility alterations fully accessible.

Direct the grantee to submit to the FTA RCRO procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

For noncompliant new construction or alterations, and paths of travel, the regional office and headquarters will determine corrective actions.

Part C: Service Provision

11. *What are the grantee's and subrecipients' procedures or policies governing the following ADA requirements:*

a. *Stop announcements on fixed route vehicles?*

b. *Means of route identification at stops served by multiple vehicles on multiple routes?*

c. *Service animals in vehicles and facilities?*

d. *Transporting devices meeting the definition of a "common wheelchair?"*

e. *Drivers providing assistance with the use of accessibility equipment on the vehicle including lifts, ramps and securement systems?*

f. *Use of wheelchair securements?*

g. *Provision of service when a mobility device cannot be secured?*

h. *Passengers using mobility aids transferring to a seat?*

i. *Use of lifts or ramps by standees?*

j. *Signage designating priority seating for elderly persons and persons with disabilities for vehicles used in fixed route service?*

k. *Requesting that persons sitting in priority seats vacate those seats when a person with a disability needs to use them?*

l. *Use of accessibility related equipment and features by personnel, such as automatic enunciators, stop request buttons, etc.?*

m. *Public information/communications available in accessible formats? In what formats is information regarding transportation services available?*

n. *Lift/ramp deployment at any stop?*

o. *Service to persons using respirators or portable oxygen?*

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

12. *How are the above requirements communicated to employees, contractors, subrecipients and lessees?*

13. *How does the grantee monitor adherence to these requirements or otherwise enforce their implementation?*

EXPLANATION

The Department of Transportation (DOT) ADA regulations (49 CFR 37.161-167) detail specific requirements for bus and rail service. (For ferry service requirements, please see question 33.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should demonstrate that these requirements are the common and effective practice. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and how the entity enforces their implementation.

a. Stop announcements are required for fixed route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request. The ADA supersedes any union agreement that prevents the entity from requiring operators to call stops.

b. 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.

c. 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. For questions involving service animals, please contact the ADA Team Leader in the FTA Office of Civil Rights.

d. Entities must transport “common wheelchairs.” A common wheelchair is 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. Entities are encouraged to make every effort to transport wheelchairs that do not meet the definition of a common wheelchair.

e. Where necessary and upon request, the entity’s personnel will assist individuals with disabilities in the use of securement systems, ramps and lifts. Personnel must leave their seats if it is necessary to provide the assistance.

f. 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.

g. Entities must transport passengers when the securement system cannot accommodate the rider’s “common wheelchair.” Entities may not establish requirements concerning wheelchair equipment or specifications, such as brakes or wheel locks.

h. Entities may recommend, but not require, passengers using a wheelchair to transfer to a seat.

i. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.

j. Vehicles used in fixed route service shall have signs designating priority seating for elderly persons and persons with disabilities.

k. 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.

l. The entity will ensure that vehicle operators and other personnel make use of accessibility related equipment and features.

m. Public information and communications must be made available in accessible formats.

n. 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).

o. Entities may not deny service to individuals using respirators or portable oxygen.

p. Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

The key to ensuring compliance with these policies is ensuring that all employees, contractors, subrecipients and lessees are aware of them. For employees, this might be done through initial and refresher training. It might even be beneficial for these policies to be communicated to riders, giving them an even knowledge base with the employees serving them.

Having policies is not sufficient; the grantee must monitor compliance with the policies. In addition to monitoring its own employees, the grantee is responsible for informing contractors, subrecipients and lessees of the ADA requirements and for monitoring compliance with the applicable required service provisions.

REFERENCE

49 CFR 37.161-167
49 CFR 38.27, 38.55 and 38.105
Disability Law Guidance on Use of Segways
FTA Bulletin on Common Wheelchairs and Public Transit
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

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

DETERMINATION

The grantee is deficient if any required procedures are not in effect. The grantee is deficient if there are policies or procedures that are contrary to the ADA requirements. The grantee is deficient if policies are not enforced or internal operations are not monitored. (***DEFICIENCY CODE 07****:* ADA service provisions deficiencies)

The grantee is deficient if it does not ensure that contractors, subrecipients and lessees follow these requirements. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit documentation to the FTA RCRO that required service provisions have been implemented and provide evidence of monitoring the implementation of these provisions.

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

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

Part D: Training

14. *Are personnel, contractors, subrecipients and lessees trained to proficiency so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service with respect, courtesy and sensitivity?*

EXPLANATION

The ADA requires that each fixed route or demand responsive service operator ensure that personnel are trained to proficiency, as appropriate, for their duties. This training is required so that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The DOT ADA regulations do not specify an acceptable course or frequency of training. The entity must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient at all times. The training must be appropriate to the duties of each employee and must address both technical requirements and human relations. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, subrecipients and lessees are “proficient,” and what, if any, consequences result if these standards are not met.

REFERENCE

49 CFR 37.173
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review training materials and handbooks along with bulletins and other material provided to personnel. Complaint records may indicate problem areas.

DETERMINATION
The grantee is deficient if it has not trained personnel to operate vehicles and equipment safely and/or has not provided sensitivity training on interacting with persons with disabilities. The grantee is deficient if it does not ensure that its personnel operate vehicles and equipment safely and properly assist individuals with disabilities. (***DEFICIENCY CODE 08****:* Training not adequate)

The grantee is deficient if it does not ensure that contractors, subrecipients or lessees have trained personnel to operate vehicles and equipment safely and/or provided sensitivity training on interacting with persons with disabilities. The grantee is deficient if it does not ensure that personnel operate vehicles and equipment safely and properly assist individuals with disabilities. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

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

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

Part E: Maintenance

15. *Are accessibility features maintained in operative condition? What system of regular and frequent maintenance checks of lifts and ramps has been established? Is this system sufficient to determine if lifts and ramps are operative?*

16. *What is the policy with regard to lift and ramp failures on in-service vehicles? Are operators required to report failures promptly? Is alternative service provided to persons stranded for more than 30 minutes due to failures? Are lifts and ramps repaired within the timeframes required by the DOT ADA regulation prior to returning the vehicle to service? Are sufficient accessible spares available to enable the grantee, contractors and subrecipients to meet the timeframes?*

17. *How does the grantee monitor its operations and the operations of contractors, subrecipients and lessees to ensure compliance with ADA maintenance requirements?*

EXPLANATION
Entities must maintain in operative condition vehicle accessibility features such as lifts, ramps, annunciators and securement devices. They 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 promptly. 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 TCR's ADA Team Leader in FTA's Headquarters Office.

The grantee must monitor its compliance with the ADA maintenance requirements. In addition to monitoring its own operations, the grantee is responsible for ensuring that subrecipients, contractors and lessees meet the requirements.

REFERENCE
49 CFR 37.161-163
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION
Review maintenance and operations policies. While in the maintenance facility, note if the grantee has and is following maintenance procedures for wheelchair lifts, ramps and other accessibility equipment. Review reports on lift availability, if available. Spot check maintenance records to determine how long lifts, ramps or other equipment may have been out of service.

Review monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if it does not have a program to maintain accessibility features in operative condition and has not established a system of regular and frequent maintenance checks of lifts and ramps. The grantee is deficient if records show that it either does not follow the system or does not maintain the accessibility equipment properly. The grantee is deficient if operators do not report lift or ramp failures immediately. The grantee is deficient if does not remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee is deficient if it does not provide alternative service when a lift or ramp fails on routes with headways greater than 30 minutes. (***DEFICIENCY CODE 17***: Violation of procedures to ensure maintenance of accessible features)

The grantee is deficient if it does not ensure that contractors, subrecipients and lessees comply with ADA maintenance requirements. (***DEFICIENCY CODE 22***: Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA RCRO a system of maintenance checks for lifts or ramps.

Direct the grantee to submit to the FTA RCRO procedures for reporting immediately a lift or ramp failure on a vehicle in service.

Direct the grantee to submit to the FTA RCRO procedures for removing and repairing buses with inoperable lifts and ramps within the required timeframes.

Direct the grantee to submit to the FTA RCRO procedures for providing alternative service on routes with headways greater than 30 minutes.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that subrecipients, contractors and lessees comply with these requirements.

Part F: Fixed Route Service

18. *If the grantee or a subrecipient provides fixed route service, does it also provide ADA complementary paratransit service?*

19. *Does the grantee or a subrecipient provide commuter bus or rail service? If yes, how did the grantee determine that the commuter bus service has the characteristics specified in the DOT ADA regulations?*

20. *Does the grantee or a subrecipient operate "university" service? Does the transit operator have a formal arrangement with the institution of higher education?*

EXPLANATION

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 grantee may provide funding directly to an institution of higher education for purposes of providing university transportation service.

The grantee must ensure that services described as commuter or university service provided by subrecipients have the characteristics specified in the DOT ADA regulations.

REFERENCE

49 CFR Part 37.25

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 schedules, timetables, system maps, the website and other public information. Review documentation of the determination that bus service has the characteristics of commuter service. Review documentation to ensure that university service is operated under formal arrangement with a public or private institution of higher education, or that the funding provided by the grantee is specifically intended to provide such service.

Review the subrecipient agreements, monitoring tools, other documentation, and, for states, the Section 5311 state management plan, for discussion of the grantee's oversight procedures.

DETERMINATION

The grantee is deficient if it operates fixed route service that is not commuter or university service and does not provide ADA complementary paratransit service. (***DEFICIENCY CODE 20**:* ADA complementary paratransit service not provided)

The grantee is deficient if it cannot explain or document that commuter bus service meets the ADA definition of commuter service. The grantee is deficient if it cannot document that university service is operated under formal arrangement with an institution of higher education, or that funding provided by the grantee was specifically intended for the operation of such service. (***DEFICIENCY CODE 19***: Incorrect service classification/insufficient documentation to support ADA definition)

The grantee 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 grantee 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 22**:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

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

Direct the grantee to submit to the FTA RCRO documentation to support its determination of commuter service.

Direct the grantee to submit to the RCRO documentation that it has a formal arrangement with the institution of higher education, or that funding was provided to the institution of higher education specifically for this purpose. Direct the grantee to submit to the RCRO subrecipient plans for implementing ADA complementary paratransit service and to report quarterly on the progress in meeting the plans.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that subrecipients that operate fixed route service provide ADA complementary paratransit service.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

Part G: Route Deviation Service

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

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

b. Is the service promoted as route deviation service?

22. *How does the grantee ensure that route deviation service provided by subrecipients has the characteristics of demand responsive service?*

EXPLANATION

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.

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

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 schedules, timetables, system maps, the website and other public information to ensure that the service is promoted as general public route deviation service. Discuss during the site visit.

DETERMINATION
The grantee is deficient if its route deviation service does not deviate for the general public. The grantee is deficient if it does not promote the service as route deviation service. (***DEFICIENCY CODE 19***: Incorrect service classification/insufficient documentation to support ADA definition)

The grantee is deficient if it does not ensure that subrecipients deviate for the general public, promote the service as route deviation service, or provide equivalent service to persons with disabilities. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

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

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

Part H: ADA Complementary Paratransit

23. *Does the ADA complementary paratransit eligibility process of the grantee and subrecipients consider eligible, and provide service to, ADA paratransit eligible individuals according to the requirements of Section 37.123 (e)?:*

a. *Are eligibility decisions based solely on a note from a physician? What percent of applicants are approved?*

b. *Are eligibility decisions made within 21 days of receipt of a complete application? How does the grantee know? If no, is presumptive eligibility granted?*

c. *Are persons who are denied eligibility or given conditional or temporary eligibility given a written notice with specific reasons for the decision and notice of their right to appeal? If conditional eligibility is granted, are conditions applied to individual trips?*

d. *Does the appeals process adhere to the DOT ADA regulations (opportunity to be heard, separation of functions, decision within 30 days, and written notification of decision with reason for it)?*

e. *If a decision is not made within 30 days of completing the appeals process, is transportation provided until and unless a decision to deny the appeal is issued?*

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.

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.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

REFERENCE

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

SOURCES OF INFORMATION

Review information provided to the public that describes the ADA complementary paratransit and the eligibility process. Discuss how applications are processed and how eligibility determinations are made. Spot check recent application files to ensure that the grantee or subrecipient processed them

within the 21-day required time frame. Discuss the appeals process and spot check files for recent appeals to ensure that the process meets the regulatory requirements. Collect and review sample eligibility (including denial and conditionally eligible) and appeal decision letters. Review monitoring procedures and documentation of monitoring activities. Use information from these questions concerning the ability to reserve next day trips as input for the questions asked in questions 25 through 29.

DETERMINATION

The grantee is deficient if it does not have an eligibility process for determining ADA complementary paratransit eligibility. The grantee is deficient if the application process relies solely on a note from a physician and applicants are granted eligibility based on a diagnosis alone. The grantee is deficient if it has not ensured that determinations are made within 21 days of receipt of a completed application and applicants are not treated as eligible and provided service starting on the 22nd day, until a decision is made to deny the application. The grantee is deficient if it does not provide a written reason for the determination that specifically relates the evidence to the eligibility criteria. (***DEFICIENCY CODE 02****:* Improper eligibility determination process)

The grantee is deficient if it does not notify applicants in writing of their right to appeal or if the appeals process does not include all required elements. The grantee is deficient if it does not provide paratransit service in instances when the appeals decision takes longer than 30 days after completing the appeals process. (***DEFICIENCY CODE 03****:* Appeals process not properly implemented)

The grantee is deficient if it does not ensure that the eligibility process of subrecipients meets the DOT ADA requirements. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

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

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

24. *Does the ADA complementary paratransit service provided by the grantee and subrecipients meet the following regulatory requirements:*

a. *Is service provided to an ADA eligible individual? A personal care attendant (PCA)? A companion? Additional companions on a space available basis?*

b. *Are PCAs charged a fare? Are companions charged a fare?*

c. *Are visitors who present documentation that they are eligible in the jurisdiction in which they reside, present documentation of eligibility or certify eligibility treated as eligible?*

d. *Is next day service provided? If yes, what percent of reservations are made for the next day?*

e. *Are requests for reservations accepted during normal business hours on all days prior to days of service (e.g., weekends, holidays) even if the administrative office is closed? How are reservations accepted when the administrative office is closed?*

f. *Are trips negotiated with the rider and scheduled within one hour of the requested trip time?*

g. *Are there any priorities based on trip purposes?*

h. *Is any subscription service provided? If so, what percent of trips? Is non-subscription capacity available?*

i. *Is the base mode of service door to door or curb to curb? If curb to curb is the base mode of service, is door to door service provided when necessary to achieve origin to destination service?*

j. *Is ADA complementary paratransit service available during the same hours and days as fixed route service?*

k. Is service provided within a ¾ mile radius of fixed routes and rail stations and within the core area? If service is provided beyond the ¾ mile radius and core areas, please describe.

l. Are fares no more than twice the non-discounted fixed route fare for a comparable fixed route trip?

EXPLANATION

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. 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.

d. Next day service is required. Advance reservations are permitted up to 14 days before a desired trip.

e. 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).

f. Trips must be scheduled within a maximum of one hour of the requested pickup time.

g. No restrictions or priorities may be placed on trip purpose.

h. Unless there is excess non-subscription capacity, subscription service may not absorb more than 50 percent of the number of trips available at a given time. If there are no capacity constraints within a given system, subscription service is free to absorb as much as the transit system chooses.

i. 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.

j. The days and hours of service for fixed route service and ADA complementary paratransit service must be the same.

k. 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.

l. 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.

REFERENCE

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

SOURCES OF INFORMATION

Review information provided to the public, including web sites, for a description of the ADA complementary paratransit service. Review internal operating policies that describe how trips are reserved and scheduled. Ensure that the service characteristics are consistent with the regulatory requirements. If the grantee or a subrecipient is experiencing capacity

constraints, identify if the population served, the level of service provided, or the service area exceeds the minimum requirements. Discuss the percentage of next day reservations. A very low percentage may indicate capacity constraints. Spot check service hours in regards to weekend service, very early or late service, and special or new services. Review monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if the ADA complementary paratransit service does not meet all ADA regulatory requirements. (***DEFICIENCY CODE 04****:* ADA complementary paratransit service deficiencies)

The grantee is deficient if it does not ensure that the ADA complementary paratransit service provided by subrecipients meets ADA requirements. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit documentation to the FTA RCRO that it has taken immediate steps to modify any operating policies and change services that do not meet the regulatory requirements.

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

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

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

27. *What is the denial rate (overall and for next day trips)? Are rides that are not provided in a one hour window tracked as denials? When one leg of a round trip cannot be reserved, how many denials are tracked when the rider declines the round trip?*

28. *Are restrictions placed on the number of trips? Are waiting lists used for non-subscription trips?*

29. *What is the on-time performance rate?*

30. *How does the grantee monitor its own and its subrecipients' ADA complementary paratransit service to ensure that there is no lack of access to phone reservations? Pattern or practice of trip denials? Untimely pick-ups? Missed trips? Excessively long trips? How are operational data confirmed for accuracy? Do the data indicate a potential "pattern or practice" of capacity constraints?*

EXPLANATION

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.

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

"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, grantees 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? Grantees 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.

Grantees should have a mechanism in place for monitoring its own and its subrecipients' 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.

REFERENCE
49 CFR 37.131(f)

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

DETERMINATION
The grantee is deficient if it relies on waiting lists or trip caps, or demonstrates phone access limitations or substantial, repeated numbers of untimely pick-ups, trip denials, missed trips, or excessively long trips. The grantee is deficient if it has no provisions to accommodate peaks in demand. The grantee is deficient if it limits the number of reservations allowed during a call. The grantee is deficient if it does not monitor its ADA complementary paratransit service capacity constraints. (***DEFICIENCY CODE 05***: Limits or capacity constraints on ADA complementary paratransit service)

The grantee is deficient if it is not tracking as a denial trips provided outside the one hour window, and is not tracking as two denials round trips that cannot be scheduled. (***DEFICIENCY CODE 06****:* Inadequate tracking of trip denials)

The grantee is deficient if it does not monitor subrecipient ADA complementary paratransit service capacity constraints. (***DEFICIENCY CODE 22****:* Insufficient oversight of ADA requirements)

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

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

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

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

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

31. *Is a no-show policy used by the grantee or a subrecipient? If yes:*

a. *What is the suspension policy for no-shows?*

b. *How does the grantee or subrecipient determine whether or not no-shows are under the rider's control?*

c. *Are no-shows caused by operator error counted against the rider?*

d. *What are the thresholds for a cancellation before it is considered a no-show?*

e. *Are only riders who have demonstrated a true pattern or practice of no-shows suspended?*

f. *Are financial penalties assessed for no-shows?*

g. *How are riders allowed to contest no-shows?*

h. *Is there an appeals process for suspensions?*

i. *Is the length of the suspension reasonable?*

EXPLANATION

Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by 49 CFR 37.125(h). However, such a policy must be narrowly tailored to a true pattern or practice. For example, three no-shows in 30 days would not be a pattern or practice for a daily rider. Ideally, such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. In most cases a provider should be able to absorb the capacity of a trip cancelled two hours before the scheduled pick-up.

Systems may not impose a financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In some cases, however, transit operators and riders facing suspension have mutually agreed to accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

As access to complementary paratransit service is a civil right, the policy should allow riders to contest no-shows and there must be an appeals process for suspensions.

REFERENCE

49 CFR 37.125(h)
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

Review the no-show policy. Discuss the policy during the site visit. Review monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if it suspends riders who do not demonstrate a true pattern or practice of no-shows. The grantee is deficient if it counts no-shows not under the rider's control or caused by operator error against the rider (consult with TCR as needed). The grantee is deficient if it counts cancellations that do not have the same effect on the system as a no-show. The grantee is deficient if it assesses financial penalties for no-shows (consult with TCR as needed). The grantee is deficient if it does not allow riders to contest no-shows or does not have an appeals process for suspensions. (***DEFICIENCY CODE 05***: Limits or capacity constraints on ADA complementary paratransit service)

The grantee is deficient if it does not monitor subrecipient no-show policies. (***DEFICIENCY CODE 22*** Insufficient oversight of ADA requirements)

SUGGESTED CORRECTIVE ACTION

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

- Direct the grantee to cease counting no-shows that are not under the rider's control against the rider
- Direct the grantee to count only those cancellations made less than two hours before the scheduled pick-up as a no-show
- Direct the grantee to revise its no-show policy to only suspend riders with a pattern or practice of no-shows
- Direct the grantee to cease assessing a financial penalty for no-shows
- Direct the grantee to allow riders to contest no-shows

- Direct the grantee to implement an appeals process for no-shows
- Direct the grantee to submit evidence of the implemented corrective actions to the RCRO
- Direct the grantee to submit to the RCRO procedures for monitoring the no-show policies of subrecipients

Part I: Rail Service

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

a. *For rail systems in operation prior to September 6, 1991, have all key stations for which the deadline has passed been completed? For those key stations with FTA approved time extensions, will all work be completed before the deadline expires? For key stations with outstanding findings from key station reviews, are quarterly progress reports being submitted to FTA?*

b. *Since the last review, have any new commuter rail stations been constructed or existing stations (other than key stations) been altered in any way? If yes, does the boarding platform coordinate with the level of the floor of the railcars? Have all other ADAAG requirements been met?*

c. *If level boarding is not provided at newly constructed or altered commuter rail stations (other than key stations), has the grantee documented for each station the specific factors that render level boarding structurally and/or operationally infeasible? What alternative means of boarding are provided for passengers with disabilities, including wheelchair users? Does this method of boarding comply with the applicable provisions of 49 CFR Parts 27, 37 and 38 and DOT level boarding guidance documents?*

d. *Does the system have at least one accessible car per train?*

e. *If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), does every train stop at every accessible station such that it aligns with this point? Is the train realigned to permit boarding other accessible cars if all wheelchair locations in the car aligning with the accessible boarding point are occupied?*

f. *Are dwell times sufficient to permit boarding and disembarking by persons with disabilities?*

EXPLANATION

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

All rail operators are required to ensure that new stations comply with ADAAG requirements for new construction, including new rail stations. This includes a requirement that the rail to platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. ADAAG provides for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level

boarding, and the grantee lists alternate methods of boarding that may be used. There is no exception for rapid rail. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the grantee may be in violation of the DOT ADA regulations. If a rail operator undertakes alterations to a station (other than key station requirements), those alterations must also be accessible per ADAAG.

Under the DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train should realign so as to permit boarding other accessible cars.

As noted in Appendix D to 49 CFR 37.93, a rail system using mini-high platforms or wayside lifts is not required, *in most circumstances*, to "double-stop" in order to give passengers a chance to board the second or subsequent car in a train at the mini-high platform or way-side lift. The *only exception* to this would be a situation in which all the wheelchair position spaces in the first car were occupied. *In this case*, the train would have to double-stop to allow a wheelchair user to board, rather than passing the person by when there was space available in other than the first car.

Entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

REFERENCE

49 CFR 27.7(b)(6)
49 CFR 37.9
49 CFR 37.47-37.61
49 CFR Part 37.93
49 CFR 37 Appendix D to §37.93
49 CFR Part 37.167
ADA Standards for Transportation Facilities
DOT Final Rule Adopting new Accessibility Standards –Effective November 29, 2006
DOT Disability Law Guidance on Level Boarding
49 CFR 18.37 and 18.40

SOURCES OF INFORMATION

At the desk review, determine if FTA has issued a time extension and whether or not it has expired. If so, check to see that the required reports have been submitted to FTA as required. System and/or station plans and associated documentation should indicate any factors relating to exceptions from full level boarding requirements on a station by station basis. Determine if the grantee or its subrecipient(s) altered or constructed new stations and, if level boarding is not provided, documented the specific factors for each station that render level boarding structurally and/or operationally infeasible. If time permits, during the site visit, verify that all trains have at least one accessible car by observing or riding the service.

DETERMINATION

The grantee is deficient if it has a time extension and is not submitting reports to FTA on time. (***DEFICIENCY CODE 13****:* Delinquent Key Station Quarterly Status Reports)

The grantee is deficient if FTA has not granted a time extension or the time extension has expired and the stations are not complete. The grantee is deficient if it (or a subrecipient) has constructed new stations that do not comply with ADAAG, or has not substantiated an exception from the level boarding/platform gap requirements on a station by station basis. The grantee is deficient if it has undertaken alterations to a station and has not complied with ADAAG. (***DEFICIENCY CODE 14****:* ADAAG boarding requirements deficiency)

The grantee is deficient if it (or a subrecipient) does not provide at least one accessible car per train. The grantee is deficient if each train does not align with an accessible boarding location where single-point, station-based access is provided. (An accessible car is not accessible if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark.) The grantee is deficient if, when all wheelchair locations are occupied aboard an accessible car aligning with a station-based single-point means of accessible boarding, it does not reposition the train to permit accessible boarding of other accessible cars. (***DEFICIENCY CODE 15****:* One-car-per-train rule deficiency)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit delinquent reports to the FTA RCRO.

Direct the grantee to submit to the FTA RCRO documentation supporting platform related exceptions.

The regional office and headquarters will determine corrective actions for missed key station deadlines, noncompliant new construction or alterations, and operational deficiencies.

Part J: Ferry Service

33. *If the grantee 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?*

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

EXPLANATION

Ferry service is covered by 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels," effective November 10, 2010. This Rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the DOT ADA regulations. Accessibility of landside facilities are addressed by Subpart D, and requirements for assistance and services to passengers with disabilities are contained in Subpart F.

a. Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

b. 49 CFR 39.21(b)(2) requires public operators of passenger vessels to make reasonable modifications in policies, practices or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that

making such modifications would fundamentally alter the nature of the service.

c. If a passenger vessel operator provides, contracts for or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.

d. The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.

e. Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance, and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.

f. Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers.

   Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information and equipment in locations that passengers with disabilities can readily access and use.

g. Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

h. Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS) must be available so that persons with hearing impairments are able to communicate readily with the CRO. The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or 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 grantee what modifications to policies were made to comply with Part 39. For modifications not made, discuss the basis for determining they would fundamentally alter the nature of the service. Discuss procedures for making safety briefings available in alternative formats.

DETERMINATION

The grantee is deficient if any required procedures are not in effect. The grantee is deficient if there are policies or procedures that are contrary to the ADA requirements. The grantee is deficient if policies are not enforced or internal operations are not monitored. (***DEFICIENCY CODE 21****:* Ferry service deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence that policies have been rescinded that: limit

the number of persons with disabilities on a vessel, require medical documentation, require advance notice, require passengers to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

Direct the grantee to submit to the FTA RCRO a plan for providing reasonable modifications to policies and practices for its ferry services.

Direct the grantee to submit to the FTA RCRO procedures for ensuring that transfer service is accessible to and usable by persons with disabilities.

Direct the grantee to submit to the FTA RCRO its procedures for enduring that assistance is provided as needed to passengers with disabilities in boarding and disembarking, moving between the terminal and the boarding point, and accessing key functional areas of the terminal.

Direct the grantee to submit to the FTA RCRO its procedures for providing briefings and safety-related materials in alternative formats.

Direct the grantee to submit to the FTA RCRO procedures for permitting individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids.

Direct the grantee to submit to the FTA RCRO documentation of the availability and responsibilities of its CROs, including the ability to override any other personnel.

Part K: Complaints/Lawsuits

34. *Does the grantee have a procedure for responding to and tracking complaints? Who handles the complaints?*

35. *Has the grantee or its subrecipients received any complaints of discrimination due to disability? What is the status of the complaints?*

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

EXPLANATION
These questions are for information only. 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. 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 the RCRO. During the site visit, discuss with the grantee.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

16. CHARTER BUS

BASIC REQUIREMENT

Grantees are prohibited from using Federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Grantees are allowed to operate community based charter services excepted under the regulations.

AREAS TO BE EXAMINED

1. ***Charter Service***
2. ***Reporting***
3. ***Use of Locally Owned Vehicles***
4. ***Training***
5. ***Oversight***
6. ***Advisory Opinions***
7. ***Cease and Desist Orders***
8. ***Complaints***

REFERENCE

1. 49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

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

QUESTIONS FOR THE REVIEW

1. *Does the grantee or its subrecipients, contractors, or lessees 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

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 does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.

5. Emergency Response: Grantees are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.

6. Recipients in Non-Urbanized Areas: Grantees in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions

The charter regulation **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.

   The grantee is required to record the following information after providing such service:
   a. The government organization's name, address, phone number, and email address
   b. The date and time of service
   c. The number of government officials and other passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

2. Qualified Human Service Organization (QHSO): A grantee is allowed to provide charter service to a QHSO for the purpose of serving persons:
   a. With mobility limitations related to advanced age
   b. With disabilities
   c. With low income

   If the QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the regulation, the QHSO is not required to register on the FTA's charter registration website. Otherwise, the QHSO is required to register. The grantee may provide service only if the QHSO is registered at least 60 days before the date of the first request for charter service.

   The grantee is required to record the following information after providing such service:
   a. The QHSO's name, address, phone number and email address
   b. The date and time of service
   c. The number of passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

3. Leasing of Equipment and Driver: A grantee is allowed to lease its FTA funded equipment and drivers to registered charter providers for charter service only if all of the following conditions exist:
   a. The private charter operator is registered on the FTA charter registration website
   b. The registered charter provider owns and operates buses or vans in a charter service business
   c. The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated or the number of accessible vehicles operated by the registered charter provider
   d. The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area

   The grantee is required to record the following information after leasing equipment and drivers:
   a. The registered charter provider's name, address, telephone number, and email address
   b. The number of vehicles leased, type of vehicles leased, and vehicle identification numbers

c. The documentation provided by the registered charter provider in support of the four conditions discussed above

4. No Response by Registered Charter Provider: A grantee is allowed to provide charter service, on its own initiative or at the request of a third party, if no charter provider registered on the FTA's website responds to the notice issued:
   a. Within 72 hours for charter service requested to be provided in less than 30 days, or
   b. Within 14 calendar days for charter service requested to be provided in 30 days or more.

   The grantee is not allowed to provide charter service under this exception if a registered charter provider indicates an interest in providing the charter service described in the notice and the registered charter provider has informed the grantee of its interest in providing the service. This is true even if the registered charter provider does not ultimately reach an agreement with the customer.

   If the grantee is interested in providing charter service under this exception, the grantee shall provide email notice to registered charter providers in the grantee's geographic service area by the close of business on the day the grantee received the request unless the request was received after 2:00 pm, in which case the notice shall be sent by the close of business the next business day. The email notice sent to the list of registered charter providers shall include:
   a. Customer name, address, phone number, and email address (if available)
   b. Requested date of service
   c. Approximate number of passengers
   d. Type of equipment requested (bus(es)) or van(s))
   e. Trip itinerary and approximate duration
   f. The intended fare to be charged for the service

   The grantee shall retain an electronic copy of the email notice and the list of registered charter providers that were sent email notice of the requested charter service for a period of at least three years from the date the email notice was sent. If the grantee receives an "undeliverable" notice in response to its email notice, the grantee shall send the notice via facsimile. The grantee shall maintain the record of the undeliverable email notice and the facsimile sent confirmation for three years.

   The grantee is required to record the following information after providing the service:
   a. The group's name, address, phone number, and email address
   b. The date and time of service
   c. The number of passengers
   d. The origin, destination, and trip length (miles and hours)
   e. The fee collected, if any
   f. The vehicle number for the vehicle used to provide the service

   If a registered charter provider indicates interest in providing charter service to a particular customer and fails to negotiate in good faith with the customer, and the grantee was willing to provide the service, then the grantee can file a complaint against the registered charter provider. A form for this is provided on the FTA website.

5. Agreement with All Registered Charter Providers: The grantee is allowed to provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the grantee's service area. The grantee is allowed to provide charter service up to 90 days without an agreement with a newly registered charter provider in the geographic service area subsequent to the initial agreement. Any parties to an agreement may cancel the agreement after providing a 90 day notice to the grantee.

6. Petition to the Administrator: The grantee may petition the Administrator for an exception to the charter service regulations to provide charter service directly to a customer for:
   a. Events of regional or national significance. The petition shall describe how registered charter providers were consulted and will be utilized and include a certification that the grantee has exhausted all the registered charter providers in its service area. The petition must be submitted at least 90 days before the first day of the event.
   b. Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population). The exception is only available if the registered charter providers have deadhead time that exceeds total trip time from initial pick-up to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service.
   c. Unique and time sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest. The petition shall describe why the event is unique and time sensitive and would be in the public's interest.

Petitions to the Administrator are posted at regulations.gov, which can be accessed through the FTA charter website, so they are not reported in quarterly reports. The grantee shall retain a copy of the Administrator's approval for a period of at least three years.

The table below summarizes the notification, record-keeping, quarterly reporting and other requirements applicable to each **exception**.

REFERENCES

49 CFR Parts 604.2 (b) – (g) and 604.3 (c); Appendix C (c) (18), (24), (26) and (36)
49 CFR Parts 604.6 – 604.11; Appendix A; Appendix C (a) (1), (3) and (6)
Petitions to the Administrator

SOURCES OF INFORMATION

Review the charter procedures, if written, to ensure that they comply with the charter regulation. If the grantee has not developed written procedures, ask it to provide information on how the exceptions are communicated and implemented within the organization. Check brochures and the website and the local telephone book to see if the grantee advertises charter service. Review documents submitted as part of the Financial area of the review to determine if charter revenue is noted as a source of funds. Review charter logs and reports submitted to FTA in TEAM-Web to provide information on types of charter services provided.

DETERMINATION

The grantee is deficient if it operates charter service that does not comply with the requirements of the exception.

SUGGESTED CORRECTIVE ACTION

If the grantee wishes to continue to provide charter service, direct it to submit to the FTA regional office procedures for ensuring that services are consistent with the exceptions allowed under the charter regulation.

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
1. Government Officials	No	Yes	Yes	None
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request
3. Leasing of Equipment and Driver	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered charter providers in the grantee's geographic service area
4. No Response by Registered Charter Provider	Yes	Yes	Yes	None
5. Agreement with All Charter Providers	No	No	No	Properly executed agreements with all registered charter providers in grantee's geographic service area

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
6. Petition to the Administrator	Yes	No	No	Grantee must demonstrate how it contacted registered charter providers and how the grantee will use the registered charter providers in providing service to the event. Grantee must also certify that it has exhausted available registered charter providers' vehicles in the area.

2. *Did the grantee report all charter services provided under the exceptions by itself, subrecipients, contractors, and lessees? 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)

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.

The grantee reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA grantees for Section 5307 formula funds.

When charter service is provided under one or more of the exceptions under this regulation, the grantee, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The grantee may maintain the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the grantee relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The grantee may exclude specific origin to destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

REFERENCE

49 CFR Part 604.12
FTA Charter Reports

SOURCES OF INFORMATION

Review charter logs and quarterly reports submitted to FTA in TEAM-Web to ensure that the grantee submitted information for all exceptions under which it provided charter service. The quarterly reports are due 30 days after the end of each calendar quarter. FTA Charter Reports are accessible through TEAM-Web. Review the procedure for obtaining the information from subrecipients, contractors, and lessees for reporting to FTA.

DETERMINATION
The grantee is deficient if it did not submit information for itself, subrecipients, contractors, or lessees for all applicable exceptions on time.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit missing quarterly reports in TEAM-Web and to submit to the FTA regional office procedures for submitting the required information for all applicable exceptions on time.

3. *Does the grantee, a subrecipient, a contractor, or a lessee provide charter service with locally owned vehicles? If yes, are the vehicles stored and maintained in a locally funded facility?*

EXPLANATION
The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained with only local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

REFERENCE
49 CFR Part 604 Appendix C (a)(8)

SOURCES OF INFORMATION
Review grantee records to ensure that the equipment is locally funded. Also review the bus fleet information provided and observed during the Satisfactory Continuing Control and Maintenance areas of the review. If the grantee operates charter service with equipment that is fully funded with local funds, ensure that the equipment is stored in a locally funded facility and is maintained with local funds.

DETERMINATION
The grantee is deficient if it operates charter service with locally funded equipment but stores or maintains it in an FTA funded facility and is unable to provide documentation to show that it has completely segregated that service.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a plan for ensuring that locally owned equipment used to provide charter service is not stored and/or maintained in an FTA funded facility and there is complete segregation of charter service operated with local equipment.

4. *How does the grantee ensure that its employees, subrecipients, contractors, and lessees have the necessary competency to effectively use the FTA charter registration website?*

5. *How does the grantee ensure that subrecipients, contractors, and lessees comply with the charter regulations?*

EXPLANATION
As part of its oversight responsibilities, the grantee shall ensure that its affected employees, subrecipients, contractors, and lessees have the necessary competency to effectively use the FTA charter registration website. The grantee shall ensure that any subrecipient, contractor or lessee providing charter service operates the service in accordance with the regulation.

REFERENCE
49 CFR Part 604.16
FTA Charter Service Quarterly Exceptions Reporting Form and Instructions

SOURCES OF INFORMATION
Review information provided by the grantee to assess if and how employees, subrecipients, contractors, and lessees were trained. Review oversight materials, such as reports, questionnaires, and site visit checklists. Review the subrecipient grant agreements, operating contracts, and leases to ensure that they contain the required charter bus clause. On site, discuss the oversight procedures. During subrecipient, contractor, and lessee site visits, look for indications that charter service is operated. Ask the subrecipient, contractor, or lessee if it operates charter service and, if so, under what exception. Ask if the subrecipient, contractor, or lessee reported the information to the grantee for reporting to FTA.

DETERMINATION
The grantee is deficient if it made no efforts to ensure competency in use of the FTA Charter Registration Website.

The grantee is deficient if it does not ensure that subrecipients, contractors, and lessees operate charter service in accordance with the regulation.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that employees, subrecipients, contractors, and lessees have been trained to effectively use the FTA Charter Registration Website.

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the charter regulations.

6. *Did the grantee on behalf of itself or a subrecipient, contractor, or lessee request an advisory opinion from the Office of Chief Counsel? If yes, what was the outcome? Was the advisory opinion followed?*

EXPLANATION
A grantee may request an advisory opinion from the Office of Chief Counsel on a matter regarding specific factual events only. An advisory opinion represents the formal position of FTA on a matter and obligates the grantee to follow it until it is amended or revoked. A request for an advisory opinion from a subrecipient, contractor, or lessee should be submitted to the grantee for submission to FTA. If not, FTA will copy the grantee on the opinion.

REFERENCE
49 CFR Parts 604.18, 604.20

SOURCES OF INFORMATION
Review information provided by the grantee and FTA's charter registration website to find out if the grantee requested an advisory opinion from the Office of Chief Counsel. Ask the grantee to provide evidence to indicate that the advisory opinion was followed.

DETERMINATION
The grantee is deficient if it did not follow or ensure that the subrecipient, contractor, or lessee followed an advisory opinion.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a plan for ensuring that it or its subrecipients, contractors, or lessees follow advisory opinions from the Office of Chief Counsel.

7. *Did any registered charter provider request a cease and desist order against the grantee, subrecipient, contractor, or lessee? If yes, what was the outcome? Was the cease and desist order followed?*

EXPLANATION
Any interested party (a grantee or registered charter service provider) may request a cease and desist order as part of its request for an advisory opinion. Issuance of a cease and desist order against a grantee shall be considered as an aggravating factor in determining the remedy to impose against the grantee in future findings of noncompliance if the grantee provides the service described in the cease and desist order issued by the Office of Chief Counsel.

REFERENCE
49 CFR Parts 604.22 and 604.23

SOURCES OF INFORMATION
Review information provided by the grantee and FTA's charter registration website to find out if any registered charter provider requested a cease and desist order(s) against the grantee, a subrecipient, contractor, or lessee from the Office of Chief Counsel. Ask the grantee to provide evidence to indicate that the cease and desist order(s) was followed.

DETERMINATION
The grantee is deficient if it did not follow or did not ensure that a subrecipient, contractor, or lessee followed the cease and desist order(s).

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a plan for ensuring that it or its subrecipient, contractor, or lessee will follow cease and desist order(s) from the Office of Chief Counsel.

8. *Did any registered charter provider, or its duly authorized representative, file a complaint with the Office of the Chief Counsel against the grantee alleging noncompliance with the charter regulation? If yes, did the grantee file an answer within 30 days of the date of the FTA notification?*

EXPLANATION
A registered charter provider or its duly authorized representative may file a Notice of Charter Service Complaint with the Office of the Chief Counsel. Unless the complaint is dismissed, FTA shall notify the grantee within 30 days after receiving the complaint that the complaint has been docketed. The grantee shall have 30 days from the date of the FTA notification to file an answer. The complainant may file a reply within 20 days. The grantee may subsequently file a reply within 20 days of the date of service of the respondent's answer. There are no requirements for the grantee in the complaint process for a subrecipient.

REFERENCE
49 CFR Part 604.27

SOURCES OF INFORMATION
Review information provided by the grantee and FTA's charter registration website to find out if any registered charter provider or its duly authorized representative filed a complaint against the grantee with the Office of Chief Counsel. Review the information provided by the grantee to ensure that the

grantee filed an answer within 30 days from the date of service of the FTA notification to file an answer.

DETERMINATION

The grantee is deficient if it did not file an answer or filed an answer after 30 days.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to file answers to the pending FTA notification(s) and to submit to the FTA regional office procedures for submitting the answers to FTA notifications on time in the future.

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															
8															
9															
10															
11															
12															
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18															
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20															

17. SCHOOL BUS

BASIC REQUIREMENT

Grantees are prohibited from providing exclusive school bus service unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service. School tripper service that operates and looks like all other regular service is allowed.

AREAS TO BE EXAMINED

1. ***School Bus Service***
2. ***Tripper Service***
3. ***Oversight***

REFERENCES

1. 49 CFR Part 605, "School Bus Operations"
2. "Final Policy Statement on FTA's School Bus Operations Regulations," 73 Fed. Reg. 53384, September 16, 2008.

USEFUL WEBLINKS

School bus home page

Questions and answers

School bus decisions

QUESTIONS FOR THE REVIEW

1. *Does the grantee or its subrecipients operate exclusive school bus service? If yes, does the service qualify for one of the statutory exemptions? Has the grantee received approval from the FTA Administrator? Does the service operate only with non-FTA funded equipment and facilities?*

EXPLANATION
There are three statutory exemptions under which an FTA grantee may operate exclusive school bus service:

- The grantee operates a school system in the area and operates a separate and exclusive school bus service for that school system
- Existing private school bus operators are unable to provide adequate, safe transportation
- 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.

REFERENCE
49 CFR Part 605

SOURCES OF INFORMATION
If the grantee or a subrecipient operates exclusive school bus service, discuss the exemption under which the service is operated. Review the documentation of the public process and the Administrator's approval of the exclusive school bus service. Identify the equipment and facilities used in the provision of exclusive school bus service and determine whether Federal funds were used.

DETERMINATION
The grantee is deficient if it or a subrecipient operates exclusive school bus service that is not approved by the Administrator.

The grantee is deficient if it or a subrecipient uses FTA funded equipment or facilities in exclusive school bus service, whether or not the service qualifies for a statutory exemption.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to immediately cease providing exclusive school bus service that violates the statute, i.e., has not been approved by the Administrator or uses FTA funded equipment or facilities.

2. *Does the grantee or a subrecipient provide school "tripper service"? If yes, is the service open and promoted to the general public?*

EXPLANATION
Grantees are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as regularly scheduled mass transportation service that is open to the public and is designed or modified to accommodate the needs of school students and personnel. Tripper Service allows a grantee to (1) utilize various fare collections or subsidy systems," (2) modify the frequency of service, and (3) make de minimus route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools.

Buses used in tripper service must:

- be open 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

"Final Policy Statement on FTA's School Bus Operations Regulations, 73 Fed. Reg. 53384, September 16, 2008.

SOURCES OF INFORMATION

If the grantee operates school tripper service, examine route maps, brochures, timetables, and the website for inclusion of the service. Discuss school tripper service with the grantee. Verify that the service meets all of the required criteria for being open and promoted to the general public. Look at the buses used for this service when inspecting maintenance facilities. If the grantee reports that it does not operate school tripper service, ask how students are transported to school. Does the school district provide bus service? If not, and students ride transit buses, the grantee may be providing tripper service, but may not be identifying it as such. In such cases, ensure that the school tripper requirements are met.

DETERMINATION

The grantee is deficient if it or a subrecipient operates school tripper service that does not meet the criteria for being open and promoted to the general public.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to discontinue directly operated school tripper service not meeting the requirements or modify the service to comply with FTA requirements. Direct the grantee to submit documentation of compliance to the FTA regional office, including revised timetables, route maps, brochures, and website information.

3. *How does the grantee ensure that subrecipients comply with school bus regulations?*

4. *Do any contractors or lessees provide exclusive school bus service? If yes, how does the grantee ensure that it is provided only with non-FTA funded equipment and facilities?*

EXPLANATION

The grantee must ensure that exclusive school bus service operated by subrecipients is done under one of the statutory exemptions and does not involve FTA funded equipment or facilities. The grantee must ensure that school tripper service operated by subrecipients operates and looks like all other regular service. The grantee must also ensure that any contractor or lessee that provides exclusive school bus service does so with locally owned vehicles that are not housed or maintained in an FTA funded facility.

REFERENCE

49 CFR Part 605

SOURCES OF INFORMATION

Review subrecipient agreements, contracts and lease agreements for the required school bus clause. Review oversight materials, such as reports, questionnaires, and site visit checklists. Ask the grantee to identify any subrecipients, contractors, and lessees operating exclusive school bus service. Ask the grantee to identify subrecipients that operate school tripper service. During subrecipient, contractors, and lessee site visits, look for indications that exclusive school bus or tripper service is operated. Ask the subrecipient, contractor, or lessee if it operates exclusive school bus service or tripper service. If exclusive school or tripper service is provided, ensure that it complies with the regulation.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients, contractors, or lessees comply with the regulations.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the school bus regulations.

18. NATIONAL TRANSIT DATABASE

BASIC REQUIREMENT

Grantees that receive Section 5307 and 5311 grant funds must collect, record and report financial and non-financial data in accordance with the Uniform System of Accounts (USOA) and the National Transit Database (NTD) Reporting Manual as required by 49 USC 5335(a).

AREAS TO BE EXAMINED

1. ***Collection, Recording and Reporting of Data***

2. ***Unlinked Passenger Trip and Passenger Mile Data Collection***

3. ***Safety and Security Data Reporting***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Laws

2. 49 CFR Part 630, "Uniform System of Accounts and Records Reporting System"

3. National Transit Database Reporting Manual (www.ntdprogram.gov)

4. Federal Register: October 5, 2010 (Volume 75, No. 192, pp. 61553-61556) "FTA National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security Reporting Manual"

5. FTA Circular 2710.1A, "Sampling Procedures for Obtaining Fixed-Route Bus Operating Data Required Under the Section 15 Reporting System"

6. FTA Circular 2710.2A, "Sampling Procedures for Obtaining Demand-Responsive Bus System Operating Data Required Under the Section 15 Reporting System"

QUESTIONS FOR THE REVIEW

1. *Did the grantee submit its NTD report for each of the past three years?*

EXPLANATION

All grantees that receive Section 5307 and 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 5307 and 5311 programs. Section 5307 grantees are also required to file monthly reports on transit ridership and operations and safety and security incidents. The requirement to report continues as long as the grantee benefits from the grant funds, i.e., for the minimum useful life of the FTA-funded fixed asset, or indefinitely in the case of facilities.

FTA's FY2011 NTD Reporting Manual includes revisions to reporting requirements. A Section 5307 grantee that operates no more than thirty vehicles in peak service at any time during the year across all modes may request a "small systems waiver," which reduces, but does not eliminate, NTD reporting requirements. This waiver does not apply to fixed guideway service. In certain circumstances, the grantee may request, and FTA can grant, a waiver from either some or all of the NTD reporting requirements. All reporting waivers must be requested and approved by FTA for every reporting year. FTA does not grant permanent or multi-year waivers from reporting.

REFERENCE

49 USC 5335 (a)
49 CFR Part 630
NTD Reporting Manual
Federal Register: October 5, 2010 (Volume 75, No. 192, pp. 61553-61556) "FTA National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security 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. Ask the grantee to provide copies of waivers.

DETERMINATION

The grantee is deficient if it does not have a waiver and has not filed reports.

SUGGESTED CORRECTIVE ACTION

Direct the grantee 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. The 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 has been extended to November 30, 2011, for the 2011 report year.

If applicable, direct the grantee to apply for a waiver annually.

2. *Has the grantee provided a complete report to NTD of all transit operations?*

EXPLANATION

Grantees must report on all of their own directly operated service, contracted transit operations, and transit capital investments, even those not supported with FTA funds, except for ineligible activities such as charter, school bus, sightseeing and intercity transportation.

A basic principle of NTD reports is that the reported financial information should reflect the full cost of providing the reported service information. Thus, a grantee should include service provided by contractors on its own NTD report, as purchased transportation service will have the fully-allocated cost of the service paid by the grantee. Subrecipients should report separately to the NTD and should not be included in the grantee's NTD report as they will have other sources of funds for the transit service, in addition to the 5307 funds or 5307-funded assets received from the grantee. Section 5307 grantees are required to list subrecipients in the B-70 Subrecipient Identification Form. (See related question 4.) If a grantee contracts with another public entity, the service should be reported by the party that physically operates the service or is the responsible contracting party for the operations contract.

Recipients of Section 5307 that also receive 5311 funds from a state should report all activities, including rural operations, in the direct report to NTD

and should not be included in the Rural NTD Report made by its state, unless a reporting waiver from the Urban NTD was received.

States report data for Section 5311 subrecipients in the rural module.

If a subrecipient receives both 5311 and 5307 funds and does not report directly to NTD because it has received a full reporting waiver, the state reports the subrecipient's whole operations in its rural report on an RU-20 Form. If a subrecipient receives both 5311 and 5307 funds and reports directly to the Urban NTD (either as full reporter or under a Small Systems Waiver), the state does not include the subrecipient in its report but instead lists the subrecipient in the RU-23 Urban Recipient report (renamed for 2011).

If an Indian tribe receives Section 5311 funds from the state and FTA and does not report directly to NTD, the state includes the data for the tribe in its report. If an Indian tribe receives Section 5311 funds from the state and FTA and reports directly to NTD, the state does not include the tribe in its report but lists the tribe in the RU-22 Rural Recipient report.

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

SOURCES OF INFORMATION
Compare the grantee's financial statements to the NTD F-40 expenses report to identify differences in operating expenses. Review the NTD B-30 report for the list of contractors. Review the B-70, RU-22 and 23 reports for lists of subrecipients. Discuss with the grantee.

DETERMINATION
The grantee is deficient if it does not report on its complete operations, as determined by a significant unexplained discrepancy between its NTD F-40 report and its published financial statements. If the grantee is a state, it is deficient if it does not include in its Rural NTD report a Section 5311 subrecipient that received a full reporting waiver from Urban NTD. If the grantee is a state, it is deficient if it does not list subrecipients that report directly to NTD in its RU-22 or 23 forms.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to contact the NTD program offices to begin providing a complete NTD report, and, if a Section 5307 grantee, to work out an arrangement to ensure time-series continuity in the data reported to the Monthly Module. Direct the grantee to report to the FTA regional office on the specifics of the arrangement when settled.

3. *Has the grantee correctly reported operating expenses for ADA complementary paratransit?*

EXPLANATION
Grantees must report operating expenses for demand response transportation and the total operating expenses for ADA complementary paratransit. The expenses associated with ADA complementary paratransit service should not include expenses for service to persons not eligible for ADA complementary paratransit service (e.g., demand response service for elderly persons) or for service provided to ADA eligible individuals beyond that required by the ADA (e.g., service beyond the required service area, same-day service). The total expenses for ADA complementary paratransit may be estimated.

REFERENCE
NTD Reporting Manual

SOURCES OF INFORMATION
If the grantee provides demand response service to persons not eligible for ADA complementary paratransit service or beyond that required by the ADA, review total modal expenses and the ADA related operating expenses reported on NTD F-30 Operating Expenses and NTD F-40 Operating Expenses Summary forms to ensure that ADA complementary paratransit service expenses are less than demand response service expenses.

DETERMINATION
The grantee is deficient if it reports general public demand response operating expenses as ADA related expenses.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to work with the NTD program office to develop procedures for correctly reporting ADA expense information in future report years. Direct the grantee to report to the FTA regional office on the specifics of the arrangement when settled and to provide the FTA regional office with a copy of the next F-30 Operating Expenses report for demand response transportation after it is submitted to NTD.

4. *Does the grantee have any Section 5307 subrecipients? If yes, list the name and NTD ID of the subrecipients, which should be reported on the B-70 Subrecipient Identification Form. Do the subrecipients report required data using their own NTD ID?*

EXPLANATION
49 U.S.C. 5335 requires recipients or beneficiaries of Section 5307 funds to report to NTD. Section 5307 grantees are responsible for ensuring that any subrecipients (beneficiaries) of their Section 5307 grants report to NTD. Subrecipients include contractors and lessees who are not reimbursed for the full cost of the service by the grantee. A Section 5307 grantee does not need to ensure that subrecipients of other programs, such as Section 5316 or 5317, report to NTD but may have these subrecipients report voluntarily. The grantee may ensure that each subrecipient has its own NTD ID, or it may request a consolidated NTD ID for multiple subrecipients.

REFERENCE
NTD Reporting Manual

SOURCES OF INFORMATION
Obtain from the grantee a list of Section 5307 subrecipients, contractors and lessees that report directly to the NTD. Compare the list of subrecipients to the subrecipients listed in the B-70 Form. Discuss during the site visit.

DETERMINATION
The grantee is deficient if subrecipients do not have a waiver and have not submitted complete NTD reports.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to work with the subrecipient(s), and the NTD program office to submit the required reports. The grantee may set up members of its own staff as NTD points of contact for subrecipients in order to retain oversight of NTD reporting. Submit to the FTA regional office a copy of the completed NTD report for the subrecipient(s).

5. *What is the system for collecting unlinked passenger trip and passenger mile information? If the grantee uses automatic passenger counters (APCs), does it have an agreement with NTD? Does it validate the counts throughout the year?*

EXPLANATION
Unless the grantee has a waiver, it must report unlinked passenger trip and passenger mile data to NTD. Unlinked passenger trip data is usually reported as a 100 percent count. If the grantee uses registering fareboxes, tickets (as in commuter rail), or scheduling software (as in demand response), then it is required to use this information to report a 100 percent count.

A grantee has three options for reporting passenger mile data:

- A 100 percent count of passenger mile data. This method should be used whenever it is available.
- A sample of average passenger trip lengths multiplied by the 100 percent count of unlinked passenger trips.
- A sample of passenger miles.

A sample, if used, may be conducted according to:

- The NTD Sampling Manual (new for 2011)
- FTA circulars 2710.1a or 2710.2a
- An alternative sampling plan designed by a qualified statistician

If a 100 percent count of passenger miles is used, the grantee should have documented procedures for any incidental adjustments made to the data for occasional “missed trips” or other minor errors in the records.

If the grantee uses sampling, the grantee should have documented procedures for ensuring that the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated.

An APC is usually a pressure-sensor or a laser-beam in the doorway of a transit vehicle that counts transit passengers. If the grantee uses APCs for any of the three methods, it must have an agreement with NTD and should have a documented system to validate the data throughout the year in accordance with the procedures in the agreement. If APCs are used for sampling data, the grantee should have written procedures for ensuring that APCs are used on all routes and service runs, from all days of the year, to ensure a random sample.

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

SOURCES OF INFORMATION
Ask the grantee for records used to report passenger mile information to NTD for the most recent report year for each of the modes it operated. Review the most-recent NTD D-10 Form to identify what method of unlinked passenger trip and passenger mile reporting was certified by the grantee for each mode.

If the grantee did not select a 100 percent count of unlinked passenger trips on Form D-10, verify that the grantee does not have registering fareboxes or some other source of information (e.g. ticket counts or scheduling software) to report a 100 percent count of unlinked passenger trips. Grantees are not permitted to sample for unlinked passenger trips if an accepted source of a 100 percent count is available.

If a 100 percent count of passenger miles is used, ensure that the records reflect 100 percent of the transit service and documented procedures exist for any incidental adjustments made to the data for occasional missed trips or other minor errors in the records.

If the grantee uses sampling, request data from the most recent sampling year (small systems are only required to sample once every three years). Ensure that the grantee has documented procedures in place to ensure that the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated. Ask to see the random numbers table or other tools used to produce the random sample.

If the grantee uses APCs to collect data for either a 100 percent count or for sampling, ensure that the grantee has a written confirmation from FTA and a documented system in place to ensure that the data are periodically validated throughout the year. If APCs are used for sampling data, ensure that the grantee has documented procedures for ensuring that the APCs are used on all routes and service runs, from all days of the year, to ensure a random sample.

DETERMINATION

The grantee is deficient if it samples for unlinked passenger trips, but an approved source of a 100 percent count of passenger trips (e.g. registering fareboxes) is available. The grantee is deficient if it uses a 100 percent count of passenger miles and does not have documented procedures for making incidental adjustments for missed trips or other minor errors in records. The grantee is deficient if it does not have documented procedures for ensuring the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated. The grantee is deficient if it does not have a random numbers table or other tools available to demonstrate its use of a random sample. The grantee is deficient if it uses APCs without an agreement with NTD, does not validate the data in accordance with the agreement, or does not have documented procedures for ensuring that the APCs are used on all routes and service runs, from all days of the year, to ensure a random sample.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the NTD program office to implement a 100 percent count of passenger trips.

Direct the grantee to work with the NTD program office to develop procedures for making incidental adjustments for missed trips or other minor errors in records.

Direct the grantee to work with the NTD program office to develop procedures for ensuring the sample is randomly selected from all routes and service runs, from all days of the year, for each mode operated.

Direct the grantee to obtain NTD program office approval for a methodology for selecting random samples.

Direct the grantee to enter into an agreement with the NTD program office concerning the use of APCs for collecting passenger mile information.

Direct the grantee to work with the NTD program office to develop procedures for validating APC passenger mile data in accordance with the agreement.

Direct the grantee to work with the NTD program office to develop procedures for ensuring that APCs are used on all routes and service runs, from all days of the year, to ensure a random sample.

Direct the grantee to copy the regional office on all correspondence.

6. *Has the grantee submitted transit safety and security data in NTD for the past year timely?*

EXPLANATION

All Section 5307 grantees, unless granted a small systems waiver, are required to provide information by mode and type of service in the Safety and Security Module of NTD. Commuter rail operators only report security incidents, as they report safety incidents to the Federal Railroad Administration (FRA).

NTD requires reporting of each major safety and security incident using the Reportable Incident Report form (S&S-40) within thirty days of the incident. A major incident is defined as an event involving a transit vehicle or transit-controlled property, involving one or more of the following:

- A fatality
- Injuries requiring immediate medical attention away from the scene (A rape is always considered to be such an injury, even if treatment is refused.)
- Property damage equal to or exceeding $25,000
- An evacuation due to life safety reasons
- A main-line derailment

NTD requires monthly summary reports of non-major incident safety data using the Safety and Security Monthly Summary Report form (S&S-50). As of

October 5, 2010, NTD suspended the reporting of personal security data on the S&S-50. Non-major safety incidents include any incident not reported as a major incident and meeting one or more of the following criteria:

- Injuries requiring immediate medical attention away from the scene resulting from incidents involving only one person (e.g., a slip, fall or electric shock)
- A fire requiring suppression, but not meeting the major incident threshold

REFERENCE

49 CFR 630

Federal Register: October 5, 2010 (Volume 75, No. 192, pp. 61553-61556) "FTA National Transit Database: Amendments to the Urbanized Area Annual Reporting Manual and to the Safety and Security Reporting Manual"

TSA/FTA Action Item No. 11

SOURCES OF INFORMATION

Ask the grantee to provide a summary of its major incidents for the past year. Verify that this information is reported to NTD as required. Examine three months of non-major incident (safety) data and ensure that the grantee is reporting information as required.

DETERMINATION

The grantee is deficient if it has neither submitted major incident data for the past year nor submitted information for the current year.

The grantee is deficient if it has not submitted non-major incident data.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to contact the NTD program office to begin providing safety and security data and to copy the regional office on all correspondence.

19. SAFETY AND SECURITY

BASIC REQUIREMENT

Under the safety authority provisions of the Federal transit laws, the Secretary has the authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury, especially to patrons of the transit service.

As recipients of Section 5307 funds, grantees must annually certify that they are spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

FTA and the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) have developed a list of 17 Security and Emergency Management Action Items for Transit Agencies. The action items aim to elevate security readiness throughout the public transportation industry by establishing baseline measures that transit agencies should employ.

The goal of FTA's Safety and Security Program is to achieve the highest practical level of safety and security in all modes of transit. To this end, FTA continuously promotes the awareness of safety and security throughout the transit community by establishing programs to collect and disseminate information on safety/security concepts and practices. In addition, FTA develops guidelines that transit systems can apply in the design of their procedures and by which to compare local actions. Many of the questions in this review area are designed to determine what efforts grantees have made to develop and implement safety, security, and emergency management plans. While there may not be specific requirements associated with all of the questions, grantees are encouraged to implement the plans, procedures, and programs referenced in these questions. For this reason, findings in this area will most often result in advisory comments rather than deficiencies.

AREAS TO BE EXAMINED

1. ***Safety***

2. ***Security and Emergency Management***

REFERENCES

1. 49 USC Chapter 53, Federal Transit Act, Section 5307(d)(1), Security Expenditures

2. 49 CFR Part 630, "Uniform System of Accounts and Records and Reporting"

3. 49 CFR Part 659, "Rail Fixed Guideway Systems, State Safety Oversight"

USEFUL WEBLINKS

FTA Bus Safety Website

FTA Rail Safety Website

Manual for the Development of Bus Transit System Safety Program Plans

FTA Dear Colleague Letter June 26, 2009

FTA Dear Colleague Letter September 22, 2009

FTA Dear Colleague Letter July 14, 2009

FTA Transit Security Website

TSA BASE

TSA/FTA Action Item

Transit Watch

The Public Transportation System Security and Emergency Preparedness Planning Guide

National Incident Management System

National Response Framework

QUESTIONS FOR THE REVIEW

Part A. Safety

1. *Does the grantee have a written policy on safety? Is it signed by the CEO?*

2. *Does the grantee have a written system safety program plan (SSPP) for its transit services? Does the SSPP address management of the safety function?*

3. *How is the safety function managed? Are there staff safety personnel? If so, are responsibilities and authorities clear? To whom do they report?*

EXPLANATION
FTA is concerned about the safety of both transit passengers and workers. FTA can conduct safety investigations when conditions of any facility, equipment, or manner of operation appear to create a serious hazard of death or injury. These questions are intended to provide an overall understanding of how safety is incorporated into the organization, what kind of emphasis is placed on safety, how the safety program is managed, and how various responsibilities are communicated to personnel at all levels.

Recognizing that safety is an integral part of transit operations, grantees are encouraged to have a written safety policy and safety plan. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level. Endorsement by the CEO conveys this importance. At a minimum, a grantee's safety plan should address compliance with applicable legal requirements. Striving for continual improvement to achieve a high level of safety performance should be a program goal. Guidance on the development of a written bus transit system safety program plan is available in an APTA publication entitled, *Manual for the Development of Bus Transit System Safety Program Plans* (1998). Note that the grantee may have a safety plan developed from another source, which responds to specific state or local requirements.

REFERENCE
Manual for the Development of Bus Transit System Safety Program Plans

SOURCES OF INFORMATION
Examine the written safety policy or system safety program plan during the site visit. Discuss with the grantee the reporting relationships in regard to safety to ensure that the safety function is managed adequately.

DETERMINATION
If the grantee does not have a safety policy or safety plan, an advisory comment is made.

If the safety plan does not address the management of the safety function, if staff responsibilities are not clearly delineated, or the CEO has not signed it, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to prepare a written safety policy or system safety program plan.

Advise the grantee to revise the plan to adequately address management of the safety function.

4. *What are the investigation procedures for major incidents? What circumstances and conditions determine which incidents will be investigated? Who does the investigation? To whom do reports go? What follow-up action is taken and by whom?*

5. *What key safety issues have been identified and how are they being addressed? Is there an established joint labor/management safety committee that meets on a regular basis, with minutes of the meetings?*

6. *Is there a process for hazard identification and resolution? Are employees encouraged to report potential hazards? When corrective action is needed, how is it initiated and followed up?*

EXPLANATION
Safety issues include more than vehicle and passenger accidents and workplace injuries. As such,

the grantee's safety-related responsibilities may be numerous. They may include, for example:

- investigating major incidents
- identifying workplace hazards
- proper handling of hazardous materials
- emergency preparedness

An organization's safety culture is a reflection of the perceptions and values that all employees share regarding safety. This concept has a direct, measureable relationship to organizational performance and efficiency. However, promoting and maintaining a vibrant transit safety culture depends in part on employees believing that they are free to report hazards without punishment, or reprisals from management, as well as an expectation that those hazards will be resolved in a reasonable time frame.

Reviewers should ensure that the grantee has established procedures to investigate, identify, and address safety issues. The process should be both reactive in terms of investigating incidents and proactive in terms of identifying and responding to key safety issues and potential hazardous conditions.

REFERENCE
None

SOURCES OF INFORMATION
The minutes from safety committee and/or accident/incident review committee meetings should be made available during the site visit. Request emergency management plans and procedures. Review safety statistics for the past three years for major incidents involving passengers, property damage, and work-related accidents. At the site visit or the desk review, examine newspaper articles or other publications describing accidents or safety incidents. This does not necessarily indicate poor safety practices; however, discuss the incidents at the site visit. Insurance companies also conduct assessments of their clients. Such reports are another source of information. Claims records and insurance costs identified in financial reports also provide information. Examine both costs and the actual number of incidents.

Procedures manuals and employee handbooks may contain information related to safety. Examine copies of these documents on site to determine if safety procedures are addressed for various functions (e.g., transportation, maintenance, procurement, and storage). Determine who is responsible for maintaining safety information, handbooks, procedures manuals, and materials safety data sheets (MSDS).

DETERMINATION
If incident and accident investigation procedures appear to be lacking, an advisory comment is made.

If key safety issues, hazard identification or resolution procedures are lacking, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to develop and implement adequate procedures for investigating incidents.

Advise the grantee to establish appropriate procedures for addressing key safety issues, workplace hazards, safe materials handling, etc.

7. *Do the grantee's policies address the use of cell phones and other personal electronic devices by safety critical personnel?*

EXPLANATION
In a Dear Colleague Letter dated June 26, 2009, FTA noted the role that texting and cell phone use by personnel has played in public transportation accidents. Through this letter, the Administrator urged transit operators to review policies, procedures, and enforcement mechanisms targeting the inappropriate use of cell phones and other personal electronic devices by safety critical personnel.

REFERENCE
FTA Dear Colleague Letter June 26, 2009

SOURCES OF INFORMATION
Ask the grantee to provide information on how and when a review of personnel policies was performed in light of this Dear Colleague Letter. Review policies, procedures, and enforcement mechanisms.

DETERMINATION
If there is no evidence that the agency has policies, procedures or enforcement mechanisms regarding the use of personal electronic devices, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to develop and promulgate a policy governing the use of personal electronic devices.

8. *Does management hold line personnel accountable for safety? Do line personnel job descriptions (senior level to first-line supervisors) include a provision for safety accountability? Are safety responsibilities clearly defined? Do performance evaluations include an appraisal of safety performance?*

9. *Is there safety training for employees performing safety sensitive functions? Who performs the training? How is it done? Do supervisors receive formal safety training?*

EXPLANATION
Grantees are encouraged to clearly define the safety responsibilities for all employees and establish a comprehensive safety training program. By providing training to the appropriate personnel, grantees can enhance safety performance in all areas (e.g., accidents, workplace hazards, and emergency preparedness). Training may consist of initial training to new hires as well as recurrent training to all employees. Additional training may be provided on a case-by-case basis, if employees have a high number of incidents in a particular area of concern.

REFERENCE
None

SOURCES OF INFORMATION
Ask the grantee to provide an overview of its training program for drivers, mechanics, supervisors, and other line personnel. Discuss job descriptions and requirements for safety sensitive positions and supervisory personnel. Review employee training records (line personnel and supervisors). During the site visit, ask the grantee to make available training manuals, safety handouts, safety postings and other materials.

DETERMINATION
If safety responsibilities have not been clearly defined for safety-sensitive and supervisory personnel, an advisory comment is made.

If safety-sensitive and supervisory personnel have not received adequate safety training, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to clearly define safety responsibilities.

Advise the grantee to develop an adequate safety training program.

10. *If the grantee operates rail service, and uses audio frequency track circuits in its train control system, has it implemented recommendations from the September 22, 2009, Dear Colleague Letter?*

EXPLANATION
The FTA Administrator's Dear Colleague Letter related the National Transportation Safety Board's (NTSB) recommendations pertaining to rail transit operators that use audio frequency track circuits in their train control systems. FTA immediately advised all the pertinent operators to examine track circuits that may be susceptible to parasitic oscillation and spurious signals capable of exploiting unintended signal paths and eliminate those adverse conditions. Failing to do so could affect the safe performance of train control systems. This work should be conducted in coordination with signal and train control equipment manufacturers.

FTA will provide further direction shortly regarding the need for the same universe of operators to develop a program to periodically determine that electronic components in their train control systems are performing within design tolerances.

REFERENCE
FTA Dear Colleague Letter September 22, 2009

SOURCES OF INFORMATION
Ask the grantee to provide information demonstrating that this examination has been done.

DETERMINATION
If recommendations from the Dear Colleague Letter have not been implemented, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to implement the recommendations from the Dear Colleague Letter of September 22, 2009.

11. *If the grantee operates rail service, and has train control systems capable of monitoring train movements, has it implemented recommendations from the July 14, 2009, Dear Colleague Letter?*

EXPLANATION
The FTA Administrator's Dear Colleague Letter related the NTSB's recommendations pertaining to rail transit operators that have train control systems capable of monitoring train movements. The letter advised these operators to determine whether their systems have adequate safety redundancy if losses in train detection occur. If a system is susceptible to single point failure, operators were urged to take corrective action immediately to add redundancy by evaluating track occupancy data on a real-time basis

to automatically generate alerts and speed restrictions to prevent train collisions.

REFERENCE
FTA Dear Colleague Letter July 14, 2009

SOURCES OF INFORMATION
Ask the grantee to provide information demonstrating that this examination has been done.

DETERMINATION
If recommendations from the Dear Colleague Letter have not been implemented, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to implement the recommendations from the Dear Colleague Letter of July 14, 2009.

Part B. Security and Emergency Management

12. *Does the grantee utilize one percent of its Section 5307 expenditures for transit security? If yes, how were the funds utilized over the last three years? If no, how do existing security measures meet agency needs?*

EXPLANATION
The grantee is required to certify that it is spending at least one percent of the Section 5307 funds it receives annually for transit security projects or that such expenditures are not necessary. This certification is part of the annual certifications and assurances.

For grantees that spend the one percent, examples of appropriate security expenditures include facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.), closed circuit television camera systems (at stations, platforms, bus stops, and on-board vehicles), security and emergency management planning, training and drills (SAFETEA-LU expanded the definition of security related capital projects to include planning, training, and drills, such that these expenditures are now eligible expenses for grantees in UZAs over 200,000 population to apply towards the one percent for security requirement), and any other project intended to increase the security and emergency management of an existing or planned transit system. Grantees should provide details on how these funds were spent during the review period.

There are three reasons that grantees may have for considering the one percent security expenditure to be unnecessary: (1) a recent threat and vulnerability assessment identified no deficiencies; (2) TSA/FTA Security and Emergency Management Action Items met or exceeded; or (3) other. For the "other" category, the typical reason is that a grantee spends sufficient local, other FTA, or DHS funds on security projects and, therefore, does not need to spend formula grant funds on security projects. Regardless of the reasons for deciding not to spend Section 5307 funds on transit-related security, grantees should provide information and documentation that supports their decision.

REFERENCE
49 USC 5302(a)(1) and 5307(d)(1)(J)

SOURCES OF INFORMATION
Review security expenditure information in TEAM-Web. During the site visit, ask these questions. If a grantee is spending at least one percent of its formula funds on security projects, ask the grantee to detail these expenditures for each year of the review period in the requested format, as well as provide documentation that supports these expenditures.

If the grantee has decided that it is not necessary to expend one percent of its Section 5307 funds, it should provide a written explanation and any information that supports the decision. Such information may include the recommendations/ findings from a threat and vulnerability assessment or a TSA/FTA Security and Emergency Management Action Items assessment, such as a TSA *Baseline Assessment and Security Enhancement* (BASE) review. If the grantee indicates that it spends local funds on security, it should provide expense detail and documentation to support the amounts of these expenditures.

DETERMINATION
The grantee is deficient if it decides that expenditures for security are necessary but falls short of the one percent requirement.

The grantee is deficient if it cannot provide adequate documentation of its Section 5307 security expenditures.

The grantee is deficient if it decides that expenditures for security are not necessary but cannot explain or provide adequate documentation to support its decision.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a plan for meeting the one percent expenditure requirement and report on implementation of this plan.

Direct the grantee to submit to the FTA regional office a plan for documenting the amount of formula funds spent on transit security.

Direct the grantee to submit to the FTA regional office an explanation and adequate documentation on why the expenditure is not necessary.

13. *Has the grantee received a TSA Baseline Assessment and Security Enhancement (BASE) review within the last 12 months and scored at least 80 percent? If yes, skip remaining questions.*

EXPLANATION
TSA conducts BASE reviews of the top 100 transit agencies. The BASE review was developed from the FTA/TSA Security and Emergency Management Recommended Action Items for Transit Agencies. As such, TSA BASE review results can be utilized for the purposes of the security portion of the FTA Triennial Review, thus obviating the need to repeat the same set of questions.

REFERENCE
TSA BASE Program

SOURCES OF INFORMATION
Ask this question of the grantee and examine the grantee's BASE review results as applicable.

DETERMINATION
Input into remaining questions.

SUGGESTED CORRECTIVE ACTION
None

14. *Does the grantee have written security and emergency management plans for all modes of operation?*

15. *Do the security and emergency management plans define roles and responsibilities for transit personnel?*

16. *Do the security and emergency management plans ensure that operations and maintenance supervisors, forepersons, and managers are held accountable for security issues under their control?*

EXPLANATION
FTA has specific requirements for a written system security plan for rail fixed guideway systems (RFGS). FTA encourages all transit systems, particularly those in areas with populations of 200,000 or more, to develop and implement a transit system security program plan and emergency management plan that covers passengers, employees, vehicles, and facilities, including the planning, design, and construction of new facilities. Guidance on the development and implementation of system security program plans is available in a report entitled, *The Public Transportation System Security and Emergency Preparedness Planning Guide* (DOT-VNTSC-FTA-03-01), dated January 2003.

Grantees should ensure that security and emergency management plans are endorsed by senior level management in order that they are communicated throughout the agency from the highest level. Plans should be reviewed annually and updated as circumstances warrant. Plans should integrate visibility, randomness, and unpredictability into security deployment activities in order to avoid exploitable patterns and to enhance deterrent effects. Plans should also address continuity of operations and business recovery in the event that normal operations need to be suspended or altered as the result of a catastrophic incident. In addition, plans and protocols should address specific threats from improvised explosive devices, weapons of mass destruction, and other high consequence risks identified in transit risk assessments. Grantees should also establish and maintain standard security and emergency operations procedures (SOPs/EOPs) for each mode operated, including procedures for operations control centers.

In situations where grantees are planning the construction or modification of systems and facilities, security design and crime prevention criteria through environmental design (CPTED) should be applied to ensure a secure environment for the riding public and employees.

The security and emergency management programs should be assigned to senior level managers. The names and titles of the primary and alternate security coordinator (including security directors and transit police chiefs) should be recorded and maintained on file. The telephone numbers, e-mail addresses, and other contact information for these individuals should be accurately maintained so that they are accessible at all times. Security coordinators also should report to senior level management. Security duties should be defined and properly delegated to front line employees.

The grantee should distribute the security and emergency management plans to appropriate personnel. Regular security coordination meetings

involving all personnel assigned security responsibilities should be held. Informational briefings with appropriate personnel also should be held whenever security protocols are substantially updated. In order to ensure continuity of the plans, the grantee should establish lines of delegated authority and/or succession of security responsibilities and inform the affected personnel.

The grantee should hold regular supervisor and foreperson security review and coordination briefings for operations and maintenance personnel. An internal security incident reporting system should be developed and maintained and a security review committee should be established in order to regularly review security incident reports, trends, and program audit findings, and recommend changes to plans and processes to senior level management.

REFERENCE

49 CFR 659.31
TSA/FTA Action Item No. 1
TSA/FTA Action Item No. 2
TSA/FTA Action Item No. 3
The Public Transportation System Security and Emergency Preparedness Planning Guide

SOURCES OF INFORMATION

During the site visit, review written security and emergency management plans. At the desk review or site visit, newspaper articles or other publications describing security incidents may be found. Such articles may highlight an incident. Though this does not necessarily indicate poor security practices, discuss the incident at the site visit.

The security and emergency management plans may not be stand-alone documents, but may be chapters or sections of a more comprehensive safety/security plan, such as a system safety program plan for a rail fixed guideway system. The plan should cover all modes operated, including contracted services.

DETERMINATION

If a grantee does not have a security plan for all modes, an advisory comment is made.

If a grantee has a security plan for each mode, but it does not include personnel roles and responsibilities, protocols to address specific threats, a continuity of operations, a business recovery plan, or other elements described in the explanation, an advisory comment is made.

If the plans do not have an endorsement from the top official, an advisory comment is made.

If responsibilities have not been clearly defined, an advisory comment is made.

If the grantee does not have an emergency management plan or if the plan does not cover all modes, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to prepare and implement a written security and emergency management plan for all modes.

Advise the grantee to update its plan to address items noted in the Explanation section above.

17. *Are the security and emergency management plans coordinated with local agencies?*

EXPLANATION

A grantee's security and emergency management plans should be an integrated system and be coordinated with local first responders. Coordination should include mutual aid agreements with these agencies and should address communications interoperability with first responders (e.g., police and fire departments) in the grantee's service area. Grantees also should coordinate with Federal and state entities associated with public transportation security such as the TSA's Surface Transportation Security Inspection Program (STSIP) area office, the FBI's Joint Terrorism Task Force, the State Homeland Security Office, and FTA regional office. Coordinated plans should be consistent with the National Incident Management System (NIMS) and the National Response Framework (NRF). NIMS provides a unified approach to incident management, including standard command and management structures and an emphasis on preparedness, mutual aid, and resource management. The NRF forms the basis of how the Federal government coordinates with state, local, and tribal governments and the private sector during incidents.

REFERENCE

TSA/FTA Action Item No. 4
National Incident Management System
National Response Framework

SOURCES OF INFORMATION

Ask the grantee to provide copies of security plans and procedures. Also, ask the grantee to provide copies of any inter-agency agreements that outline a coordinated emergency response. If no formal agreements exist, ask if the grantee has met with representatives of other agencies to discuss and/or plan emergency response coordination. Ask the grantee whether its plans are consistent with NIMS and the NRF.

DETERMINATION
If the grantee has not coordinated with other agencies, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to coordinate with other local, state, and Federal agencies. Advise the grantee to contact other agencies and begin developing coordinated emergency response procedures.

18. *Has the grantee established a security and emergency training program?*

EXPLANATION
The grantee should provide ongoing basic training to all employees in security orientation and awareness and emergency response. Ongoing training should be provided to employees that have direct security responsibilities such as operating, maintenance, law enforcement and fare inspection. Ongoing training should include advanced security and emergency response by job function and actions required at incremental Homeland Security Advisory System (HSAS) threat advisory levels. Security training programs should emphasize integration of visible deterrence, randomness, and unpredictability into security deployment activities to avoid exploitable patterns and heighten deterrent effect.

Advanced security training programs also should be established for transit managers, including but not limited to CEOs, general managers, operations managers, and security coordinators (includes security directors and transit police chiefs). The materials should be updated regularly to address high consequence risks that have been identified by the grantee's risk assessments. Training should reinforce roles and responsibilities and should ensure that employees are proficient in their duties at all times.

The grantee should establish a system that records personnel training in security and emergency response that, at a minimum, documents employees' initial training, and any recurrent training (e.g., periodic and/or refresher). Grantees should also establish and maintain a security notification process to inform personnel of significant updates to security and emergency management plans and procedures, as necessary.

REFERENCE
TSA/FTA Action Item No. 5

SOURCES OF INFORMATION
Procedure manuals, employee handbooks, and training materials may provide information on the grantee's efforts to train employees in security and emergency response. Ask the grantee if security training seminars or workshops have been conducted for all employees. Ask the grantee if records are kept concerning security and emergency training and, if so, review a sample to verify the grantee's recordkeeping system. Ask whether or not the grantee has a notification process to inform employees of significant updates to plans and procedures.

DETERMINATION
If training has not been provided to operating personnel, an advisory comment is made.

If training has not been provided to non-operating personnel, an advisory comment is made.

If the grantee does not maintain security training records, an advisory comment is made.

If the grantee does not have a process for providing employees with security and emergency plan updates, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to implement a security and emergency response training program for operating and/or non-operating personnel and maintain records of employee training.

Advise the grantee to establish and maintain a notification process to inform employees of updates to security and emergency plans and procedures.

19. *Has the grantee established a risk management process to assess and manage threats, vulnerabilities, and consequences? Did the process identify mitigation measures after the risk assessment had been completed?*

EXPLANATION
Grantees are encouraged to establish a risk management process that is based on a system-wide assessment of risks and obtain management approval of this process. As part of the process, grantees should ensure proper training of management and staff responsible for managing the risk assessments. Whenever a new asset/facility is added or modified, and when conditions warrant (e.g., changes in threats or intelligence), the risk assessment process should be updated. The risk assessment process should be used to prioritize security investments.

As with the overall security and emergency management plans, the risk assessment process should be coordinated with regional security partners, including Federal, state, and local governments as well as agencies with shared infrastructure (e.g., other transit agencies or rail systems). Coordination will

assist grantees to leverage resources and experience for conducting risk assessments.

REFERENCE
TSA/FTA Action Item No. 9

SOURCES OF INFORMATION
Ask the grantee if it has established a risk assessment process. Ask the grantee to provide documentation (e.g., risk assessments and mitigation measures) that demonstrates such a process has been established.

DETERMINATION
If the grantee has not established a risk management process, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to establish a risk management process and conduct risk assessments according to the established process.

20. *Are ID badges used for all visitors, employees, and contractors to control access to key critical facilities?*

21. *Has the grantee conducted a physical inspection of facilities to ensure that access is controlled and that facilities are secure?*

EXPLANATION
Grantees should identify security critical facilities and assets and ensure that access to these facilities is controlled. Grantees should develop written procedures to control access to security critical facilities and areas. The use of ID badges, while not required, is encouraged, for employees, visitors, and contractors that need entry to controlled areas. As with all policies and procedures, access control procedures should be updated as conditions warrant (e.g., new threats are identified).

Grantees should conduct, monitor, and document facility security inspections (e.g., perimeter/access control) on a regular basis. The frequency of such inspections should increase in response to elevation of the HSAS threat advisory level. In addition, grantees should develop and use protocols for vehicle (e.g., buses and rail cars) inspections as well as protocols for inspections of rights-of-way corresponding to HSAS threat advisory levels. In order to integrate unpredictability in the process, grantees should vary the manner in which inspections of facilities, vehicles, and rights-of-way are conducted to avoid setting discernible and exploitable patterns.

REFERENCE
TSA/FTA Action Item No. 12
TSA/FTA Action Item No. 13

SOURCES OF INFORMATION
Review the grantee's policies and procedures that pertain to granting access to security critical systems and facilities.

DETERMINATION
If the grantee does not have policies and procedures for granting and reviewing access to security critical systems and facilities, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to develop procedures for access control for security critical systems and facilities.

22. *Have background investigations been conducted on all new front-line operations and maintenance employees?*

23. *Have criteria for background investigations been established?*

EXPLANATION
Operating personnel have a responsibility for the safety of the public that they serve. As such, it is imperative that grantees take all available precautions in the hiring process to ensure the public's safety and security. Criminal background checks can be used to identify individuals that may pose a potential threat to the public safety and security. Although the focus of background checks is on new hires, grantees are encouraged to conduct checks for all operating employees, particularly those with access to safety and/or security critical systems (e.g., revenue vehicle operations and maintenance, signal rooms, and control centers). Grantees should establish specific criteria for background checks by employee type (e.g., operators, maintenance personnel, safety/security sensitive, and contractors). These criteria should be documented.

REFERENCE
TSA/FTA Action Item No. 14

SOURCES OF INFORMATION
Ask the grantee if criminal background checks are performed on applicants for operating positions. If available, examine recent job applications (blank) or descriptions of application requirements. An individual's criminal background information is strictly confidential. Under no circumstances should a reviewer request to see individual records. Answers to these questions should be discussed in general terms within the context of the grantee's hiring practices.

DETERMINATION
If criminal background checks are not conducted for new hires, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to implement a program to conduct criminal background checks on all applicants for operating positions and for existing operating employees moving into any safety/security sensitive operations/maintenance positions, consistent with existing terms of labor agreements.

Questions 24through 30are for grantees in a UZA of 200,000 or more

24. *Have protocols been established to respond to HSAS threat advisory levels?*

EXPLANATION
FTA recommends that all grantees have an updated security plan that addresses terrorism, as well as procedures to respond incrementally to HSAS threat advisory levels issued by DHS.

REFERENCE
TSA/FTA Action Item No. 6

SOURCES OF INFORMATION
Examine the grantee's security plan and/or procedures to ensure that there are protocols for responding to HSAS threat advisory levels.

DETERMINATION
If the grantee does not have protocols for responding to HSAS threat advisory levels, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to develop protocols to respond to HSAS threat advisory levels.

25. *Have public awareness materials been developed and distributed on a system-wide basis?*

EXPLANATION
The grantee should disseminate information to the riding public on identifying and reporting suspicious or illegal activity. Public service announcements, billboards, and brochures are effective mechanisms to provide security information to passengers. Grantees also should consider implementing FTA's Transit Watch program at their agency.

REFERENCE
TSA/FTA Action Item No. 7
Transit Watch

SOURCES OF INFORMATION
Ask the grantee to provide any information related to security that has been disseminated to passengers.

DETERMINATION
If security information has not been provided to passengers, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to provide the riding public information on recognizing and reporting suspicious or illegal activity.

26. *Are tabletop and functional drills conducted at least once every six months, and are full-scale exercises, coordinated with regional emergency response providers, performed at least annually?*

EXPLANATION
It is good practice for grantees to conduct tabletop exercises on a semi-annual basis and full scale exercises on an annual basis. Such drills and exercises should be coordinated with regional security partners, including Federal, state, and local governmental representatives and other affected entities (e.g., other transit agencies or rail systems) to integrate their representatives into exercise programs. Recommended exercise plans and procedures include threat scenarios involving improvised explosive devices, weapons of mass destruction, and other high consequence risks identified through the grantee's risk assessments. Following each exercise and drill, the grantee should conduct and/or participate in de-briefings to examine the results of the exercise and/or drill and develop after-action reports to address any updates to plans and procedures that might be warranted.

REFERENCE
TSA/FTA Action Item No. 8

SOURCES OF INFORMATION
Ask the grantee what drills and/or exercises have been conducted. Ask the grantee to provide a list of the drills and exercises showing the dates that they were conducted and the other agencies that participated. Review any after-action reports and determine if plans and/or procedures were updated accordingly.

DETERMINATION
If the grantee has not conducted emergency drills and/or exercises, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to conduct and/or participate in coordinated emergency tabletop exercises on a semi-annual basis and full scale emergency exercises on an annual basis. Advise the grantee to conduct or prepare de-briefings and/or after-action reports to address the results of the exercises and any updates to plans and procedures that might be warranted.

27. *Does the grantee participate in information sharing networks such as the FBI's Joint Terrorism Task Force (JTTF) or other regional anti-terrorism task force and/or the Public Transportation Intelligence Sharing and Analysis Center (PT-ISAC)?*

EXPLANATION
Grantees are encouraged to participate in intelligence sharing networks such as the FBI's JTTF (if they have their own law enforcement personnel) or PT-ISAC in order to facilitate coordination on regional security matters throughout the area and share intelligence with law enforcement and other agencies. PT-ISAC is a clearinghouse of security threats, vulnerabilities, and solutions for the public transit industry. Members report and receive information through the PT-ISAC to assist them and other members in preparing for and responding to threats. APTA is the coordinator for PT-ISAC. Other intelligence sharing networks include the DHS Homeland Security Information Network (HSIN) and the TSA's surface transportation security inspectors.

REFERENCE
TSA/FTA Action Item No. 10

SOURCES OF INFORMATION
Ask the grantee if it participates in an information sharing network such as JTTF, PT-ISAC, or other agency to share intelligence on potential threats.

DETERMINATION
If the grantee does not participate in an information sharing network, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to join JTTF, ST-ISAC, or other regional task force in order to share intelligence on potential threats.

28. *Is access to documents of security critical systems and facilities controlled?*

29. *Does the grantee have a process for handling of and access to sensitive security information (SSI)?*

EXPLANATION
Controlling access to documents of security critical systems safeguards the public, transit employees, and transit assets from potential sabotage and security risks. Grantees should ensure that an appropriate level of security is provided around the plans and designs of its operating and maintenance facilities and its infrastructure (e.g., tunnels, bridges, electrical substations, etc.). Also, measures to protect documentation for security detection systems should be tightly controlled. The grantee should develop document control procedures to ensure that such documents are identified and that a person or department is made responsible for administering the document control program.

REFERENCE
TSA/FTA Action Item No. 15
TSA/FTA Action Item No. 16

SOURCES OF INFORMATION
Ask the grantee if there are adequate document control procedures to safeguard SSI and documentation of security critical systems. Review policies and procedures.

DETERMINATION
If the grantee does not have procedures to control access to documentation of security critical systems and facilities and security sensitive documents, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION
Advise the grantee to develop procedures to control access to documentation for security critical systems and facilities and security sensitive documents.

30. *Has the grantee conducted periodic audits of security policies and procedures?*

EXPLANATION
It is important for grantees to audit security and emergency response procedures and to take all necessary steps to identify potential security and emergency events. In determining the likelihood of security and emergency scenarios, a grantee can take actions to reduce the chances of an event occurring or, at a minimum, lessen its effects. For

example, identifying fire hazards and implementing measures to address them can reduce or even eliminate the risk of fires from potential sources. Some events, such as natural disasters, are not preventable. However, with proper planning, the effects of these events can be mitigated.

REFERENCE

TSA/FTA Action Item No. 17

SOURCES OF INFORMATION

Ask the grantee what audits have been conducted. Review any reports or memoranda that contain security audit information. Review security committee meeting minutes, if available. Ask the grantee if procedures and plans have been updated to reflect findings from security audits.

DETERMINATION

If the grantee has not conducted an audit of its security policies and procedures, an advisory comment is made.

SUGGESTED CORRECTIVE ACTION

Advise the grantee to audit its security and emergency response plans and to update plans and procedures as necessary.

Exhibit 19-1
TRANSIT SECURITY EXPENDITURES

Security Funding	FTA Section 5307 Funds		
	FY 2009	FY 2010	FY 2011
Total amount of 5307 funds expended			
Amount of 5307 funds expended on security			
Percent of 5307 funds expended on security			
Infrastructure/Capital Improvement Security Projects:			
Lighting, fencing & perimeter control			
CCTV and surveillance technology			
Communications systems			
Security planning			
Drills & tabletop exercises			
Employee security training			
Other security-related infrastructure & capital improvements (please list)			
Operating/Personnel Expenditures (for agencies in areas with populations under 200,000):			
Contracted security force			
In-house security force			
Other security-related operating expenditures (please list)			

20. DRUG-FREE WORKPLACE

BASIC REQUIREMENT

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. ***Written Policy***

2. ***Ongoing, Drug-free Workplace Awareness Program***

3. ***Notification of a Drug Statute Violation***

REFERENCES

1. 49 CFR Part 32 "Governmentwide Requirements for a Drug-free Workplace (Grants)"

2. 41 USC Sections 701 et seq., Drug-Free Workplace Act (DFWA) of 1988

QUESTIONS FOR THE REVIEW

1. *Does the grantee have a written policy as prescribed in the Drug-Free Workplace Act (DFWA)? Has the grantee 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 grantee 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 grantee must notify employees that they must abide by the terms of the policy statement as a condition of employment. The grantee 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 grantee'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 grantee's drug-free workplace policy.

DETERMINATION

The grantee is deficient it if does not have a written policy.

The grantee is deficient if it has not provided written notification to its employees, has not notified all transit related employees, has not informed employees that adherence to the policy is a condition of employment, has not informed employees of the criminal drug statute violation time frames, or has other omissions in its policy.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a written policy that includes all required elements along with documentation that the amended policy has been distributed to all grant-related employees.

2. *Has the grantee established an ongoing drug-free awareness program? How has the grantee informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs?*

EXPLANATION

In addition to establishing and maintaining a drug-free workplace environment, the grantee must establish an ongoing drug-free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, grantees may rely on an employee assistance program to provide drug-free awareness information. This procedure is acceptable, provided the material includes a drug-free workplace message.

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 grantee 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 grantee is deficient if it has provided such information in the past but has not provided information on a consistent basis.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office evidence that it has implemented an ongoing drug-free awareness program and informed employees of the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs.

3. *Has any employee reported a criminal conviction for a drug statute violation that occurred in the workplace? If yes, was such notice timely? Did the grantee provide FTA timely notice of the conviction? What action was taken against personnel that reported such a conviction?*

EXPLANATION
When the grantee receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report the conviction to the FTA regional counsel. Grantees must provide the individual's position title and the grants in which the individual was involved. Further, the grantee must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

REFERENCE
49 CFR 32.225

SOURCES OF INFORMATION
At the desk review, examine files to determine if any report of a conviction has been made by an employee to the grantee and subsequently by the grantee to FTA. Follow up with the grantee during the site visit.

DETERMINATION
The grantee is deficient if it has not reported an applicable conviction or has not reported it within the appropriate time frames. The grantee is deficient if a conviction has occurred but it did not take appropriate personnel actions.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to report to the FTA regional office outstanding convictions and/or take appropriate personnel actions and to develop procedures to do so in the future within the required timeframes.

21. DRUG AND ALCOHOL PROGRAM

BASIC REQUIREMENT

Grantees receiving Section 5307, 5309 or 5311 funds must have a drug and alcohol testing program in place for all safety-sensitive employees.

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. ***Records Control***
8. ***MIS Reporting***
9. ***Monitoring Program Vendors (e.g., Collection Sites, MROs, and SAP)***

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"

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 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.

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit? Is an audit scheduled for the current Federal fiscal year?*

EXPLANATION
As part of its project oversight functions, FTA periodically conducts drug and alcohol audits of selected grantees. Even if an audit is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still asked. If an audit has been recently conducted, obtain a copy of the most recent report for input into the review.

REFERENCE
None

SOURCES OF INFORMATION
Contact the regional office to determine if a drug and alcohol program compliance audit is scheduled for the current Federal fiscal year or has been conducted during the past two Federal fiscal years.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee have a drug and alcohol testing program for safety-sensitive employees as defined by FTA? Do subrecipients, contractors, subcontractors and lessees with safety-sensitive employees have drug and alcohol testing programs?*

EXPLANATION
Grantees and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Volunteer drivers are not subject to testing unless the volunteers are required to hold a 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 <u>exception</u> 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 <u>are</u> subject to FTA's drug and alcohol testing regulations.
- carrying a firearm for security purposes

Grantees that operate a commuter railroad regulated by the Federal Railroad Administration (FRA) must follow FRA regulations for its railroad operations and follow FTA regulations for its non-railroad operations. Unless supervised by the local police department, employees carrying a firearm for security purposes are covered under FTA regulations, as they are not listed as covered employees by FRA 49 USC Sec 21101.

Grantees that operate a ferry system are considered to be in compliance with FTA regulations when they comply with the 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.

Grantees that have employees, subrecipients, contractors, subcontractors, or lessees that are subject to drug and alcohol testing as part of a Federal Motor Carrier Safety Administration (FMCSA) program must ensure that any individual who also provides services to the transit system is subject to FTA regulations while performing FTA-defined safety-sensitive functions. For example, a municipal transit system may have maintenance performed by a mechanic employed by the city government who repairs transit vehicles as well as other city-operated equipment. At times when this employee works on transit vehicles, he or she would be subject to FTA regulations.

Contractors performing safety-sensitive work, such as tire maintenance and overhaul or rebuild of vehicles, engines and parts or 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 grantee utilizes taxicab companies to provide transit services (e.g., paratransit), the applicability of drug and alcohol testing depends on the nature of the service. If a grantee has a contract with one or more taxicab companies and schedules and dispatches the trips, then the drug and alcohol testing regulations apply. However, FTA regulations do not apply if a transit patron (or broker) chooses the taxicab company, even if there is only one company available. The regulations do not apply to taxicab maintenance contractors, provided the primary purpose of the taxicab company is not public transit service.

Off-duty police officers under contract to the grantee or a contractor to a grantee are subject to FTA drug and alcohol testing. Police officers who, as part of their normal duties, patrol public transit facilities are not subject to FTA testing. When a grantee contracts the local police department but does not supervise the officers and the officers also respond to nontransit-related police calls, the officers are not subject to FTA's drug and alcohol rules.

The grantee can require subrecipients, contractors, subcontractors, and lessees to have their own program or can include them in its program.

REFERENCE

49 CFR 655.3 and 655.4
Body work interpretation letter
Police officer interpretation letter

SOURCES OF INFORMATION

Ask the grantee to provide evidence that all safety-sensitive employees (including subrecipients, contractors, subcontractors, and lessee employees) are covered by a drug and alcohol testing program. Request a list of all contractors and subcontractors in order to determine if the requirement applies.

DETERMINATION

The grantee is deficient if it has not adopted an FTA program.

The grantee is deficient if any of its subrecipients, contractors, subcontractors, or lessees has not adopted an FTA program.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit evidence to the FTA regional office that it has developed and implemented a drug and alcohol testing program for all covered employees.

Direct the grantee to submit evidence to the FTA regional office that its subrecipients, contractors, subcontractors, or lessees implemented a program.

3. *Do the grantee and its subrecipients, contractors, subcontractors, and lessees have a drug and alcohol policy as required by FTA drug and alcohol regulations? Do the policies contain the required elements?*

EXPLANATION

The grantee and its subrecipients, contractors, subcontractors, and lessees 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 grantee'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 grantee must not retest some employees and not others. The grantee may retest for some types of tests (e.g., pre-employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record.

Some grantees may have modeled their testing programs after FMCSA regulations (49 CFR Part 382). FMCSA regulations do not meet FTA requirements. For example, FMCSA only covers 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
49 CFR Part 382

SOURCES OF INFORMATION

Review the grantee's drug and alcohol policy and up to three policies of any subrecipients, contractors, subcontractors, or lessees with safety-sensitive employees. If the grantee is covered by FRA, ensure that employees who carry firearms for security purposes are covered by an FTA drug and alcohol testing policy. If the grantee is covered by USCG, ensure that the policy requires crew members to submit to random alcohol tests under FTA authority.

DETERMINATION

The grantee is deficient if its policy does not include all of the above provisions required by the regulations.

The grantee is deficient if the policies of subrecipients, contractors, subcontractors, or lessees that were reviewed do not include all of the required provisions required by the regulations or have not been updated to reflect updates and/or amendments to the regulations.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office an amended policy that has been adopted by the governing board or other "final authority", and re-communicated to all affected employees.

Direct the grantee to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee and procedures to ensure oversight of subrecipients, contractors, subcontractors and/or lessees.

4. *Do the grantee, subrecipients, contractors, subcontractors, and lessees conduct the required types of drug and alcohol testing?*

5. *Do the grantee, subrecipients, contractors, subcontractors and lessees 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 the grantee conducts pre-employment alcohol tests, the testing is conducted under FTA authority and the grantee must follow Part 40 testing procedures. 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 the grantee has 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 grantee is required to test for the following substances: 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 Part 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 grantee's drug and alcohol policy and the policies of up to three subrecipients, contractors, subcontractors, or lessees 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 grantee is deficient if it is not conducting the required tests or required substances are not being tested.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees are not conducting the required tests or substances are not being tested.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office an amended policy that has been adopted by the governing board or other "final authority", and re-communicate the policy to all affected employees.

Direct the grantee to implement the testing program immediately if any requirement is lacking.

Direct the grantee to submit to the FTA regional office the amended policy of the subrecipient, contractor, subcontractor, or lessee and procedures to ensure oversight of subrecipients, contractors, subcontractors and/or lessees.

6. *Are the minimum random testing rates of 25 percent for drugs and 10 percent for alcohol achieved?*

EXPLANATION
Random testing rates of safety sensitive employees for drugs and alcohol must be conducted at levels specified by FTA. The current minimum annual random testing rate for drugs is 25 percent of the number of safety sensitive employees. The minimum annual random testing rate for alcohol is 10 percent.

Grantees that have a separate random pool for FTA safety sensitive employees must be able to document that they are meeting the required random testing rates. Grantees that are part of a larger consortium random pool must be able to document that the consortium's random testing rates meet the FTA required rates.

REFERENCE
49 CFR 655.45

SOURCES OF INFORMATION
To determine the appropriate number of random tests for the most recent calendar year, perform the calculations in the review package. Note that most grantees and consortiums perform random selections four times a year.

DETERMINATION
The grantee is deficient if, as of the date of the site visit, the number of random tests is below 90 percent of the required number for the year.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a plan to bring the random testing rate to the required level.

7. *Do the grantee, subrecipients, contractors, subcontractors, and lessees 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, grantees, subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees are required to test all surviving covered employees operating the vehicle at the time of the accident and, using the best available information at the time of the decision, any other covered employee whose performance may have contributed to the accident.

Following a nonfatal accident involving a transit vehicle, grantees, subrecipients contractors, subcontractors, and lessees with safety-sensitive employees are required to test all covered employees operating the vehicle and any other covered employee whose performance may have contributed to the accident unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident. A decision not to test is made using the best information available at the time of the decision and must be documented in detail, including the decision-making process used to make the determination.

Post-accident testing for "accidents" that do not meet the definition of an accident under Part 655 must be done under the grantee's own authority. Non-DOT custody and control forms (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 the site visit, 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 grantee is deficient if a covered employee was not tested after an accident that required testing. The grantee is deficient if a covered employee was not tested following a nonfatal accident and the grantee cannot properly document its decision not to test. The grantee is deficient if it conducted a post-accident test under FTA's authority for an accident that does not meet the Part 655 definition of accident.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office a process for making proper post accident determinations, including procedures to document the decision-making process.

Direct the grantee to submit to the FTA regional office a process for ensuring that post accident testing for only accidents that meet the definition of an accident under Part 655 are done under FTA's authority.

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees make proper post accident testing decisions.

8. *Do the grantee, subrecipients, contractors, subcontractors, and lessees 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

Grantees, subrecipients, contractors, subcontractors, and lessees, after obtaining an employee's written consent, must request information on the DOT drug and alcohol testing history of any employee who is seeking to begin performance of safety-sensitive duties for the grantee for the first time (i.e., a new hire, or if an employee transfers into a safety-sensitive position). Grantees must request the following information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration
- Verified positive drug tests
- Refusals to be tested (including verified adulterated or substituted drug test results)
- Other violations of DOT agency drug and alcohol testing regulations
- The employee's successful completion of DOT return-to-duty requirements (including follow-up tests), if applicable

If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the grantee must obtain this information from the employee.

The grantee must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the grantee must obtain and review the information as soon as possible. After 30 days, the grantee must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.

If the employee refuses to provide written consent, the grantee must not permit the employee to perform safety-sensitive functions. If the grantee obtains information that the employee has violated a DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.

Grantees must also ask the employee whether he or she has tested positive or refused to test on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the grantee must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

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 grantee is deficient if it does not obtain an applicant's consent, the required information, or the information for the past two years.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees do not obtain an applicant's consent, the required information, or the information for the past two years.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a process for ensuring that the previous drug and alcohol testing records of first-time safety sensitive employees are reviewed.

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees review the previous drug and alcohol testing records of first-time safety-sensitive employees. The following is a link to the OST release of information form (suggested format):
http://www.dot.gov/ost/dapc/testingpubs/roi_1.pdf

9. *Are drug and alcohol testing program records maintained in a secure location with controlled access?*

EXPLANATION
The grantee, subrecipients, contractors, subcontractors, and lessees must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the grantee in a secure location with controlled access. If a consortium is used to administer the testing program, the consortium can maintain some or all of the records. It is necessary, under this circumstance, for the employer to maintain a duplicate set of records. As an example, program records should be maintained in locked file cabinets and a locked file room, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys.

REFERENCE
49 CFR 655.71

SOURCES OF INFORMATION
Ask the grantee to document how records are stored.

DETERMINATION
The grantee is deficient if it does not maintain drug and alcohol testing program records in a secure location with controlled access.

The grantee is deficient if subrecipients, contractors, subcontractors, or lessees do not maintain drug and alcohol testing program records in a secure location with controlled access.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office documentation that is has moved program records to a secure location with controlled access.

Direct the grantee to submit to the FTA regional office procedures for ensuring that subrecipients, contractors, subcontractors, and lessees store drug and alcohol program records in a secure location with controlled access.

10. *Has the grantee submitted annual calendar year Management Information System (MIS) reports for itself, subrecipients, contractors, subcontractors, and lessees summarizing drug and alcohol test results as requested by FTA? Were the reports submitted by March 15?*

EXPLANATION
The grantee must prepare, maintain, and submit to FTA annual MIS reports for itself and collect, maintain, and submit annual MIS reports for Section 5307, 5309, and 5311 subrecipients, contractors, subcontractors, and lessees with safety sensitive employees summarizing drug and alcohol program testing results. The reports cover the prior calendar year. For FTA funded ferry operations, grantees must submit the reports for random alcohol tests only. Grantees must retain copies of the reports for five years.

The standard MIS report forms, which are on the web, must be used "as-is;" they may not be combined or modified by a grantee and must be filled out completely. The MIS reports must be submitted to the FTA Office of Safety and Security or its designated agent by March 15 following the calendar year for which the reports were prepared. While paper reports are still accepted, FTA strongly encourages grantees to submit via the Internet at http://damis.dot.gov.

REFERENCE
49 CFR 655.72
MIS report forms

SOURCES OF INFORMATION
Review copies of MIS reports submitted since the last review. Discuss the grantee's process for obtaining MIS reports from subrecipients, contractors, subcontractors, and lessees with safety sensitive employees and ensuring the reports are forwarded to FTA by March 15. Review the MIS reports for the grantee and a sample of reports for subrecipients, contractors, subcontractors, and lessees.

DETERMINATION
The grantee is deficient if the MIS reports for the grantee, subrecipient, contractor, subcontractor, or lessee were not submitted.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to prepare or collect and submit all delinquent MIS forms. Direct the grantee to develop a procedure for timely reporting of MIS forms. Direct the grantee to submit the new procedure, documentation of its implementation, and copies of the MIS reports to the FTA regional office.

11. *How does the grantee monitor subrecipients, contractors, subcontractors, and lessees with safety sensitive employees to ensure that their drug and alcohol testing programs are administered in accordance with the regulations?*

12. *If the grantee contracts private carriers, how does it ensure that they comply with FTA drug and alcohol requirements?*

EXPLANATION

Grantees 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 grantees must oversee the programs. However, elements of an effective oversight program will ensure:

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
- Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing is conducted properly
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-DOT forms used)
- MROs, SAPs, and collection site personnel have the required credentials and training
- Collections are performed properly and the employer ensures that CCFs are reviewed and that collection site procedures provide for adequate security

If a grantee contracts a private carrier, the carrier's CDL holders, which are already covered by FMCSA drug and alcohol testing requirements (49 CFR Part 382), may be subject to FTA drug and alcohol requirements. CDL holders who spend more than half of their time in transit service must be covered by an FTA drug and alcohol testing program. Once determined, the employee will be subject to pre-employment and random testing under FTA authority. The assignment of regulatory authority for reasonable suspicion and post-accident testing depends on the function an employee is performing at the time of the incident/accident. Return-to-duty and follow-up tests are assigned to the modal administration that generated the initial positive test result. If subject to Part 655, the grantee must collect, retain, and submit MIS reports annually for the private carrier.

Private carrier employees that perform FTA safety-sensitive function and are not part of an FMCSA drug and alcohol program (those without CDLs), must be covered by an FTA drug and alcohol program.

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, contracts, leases, and monitoring documents (reports, questionnaires, site visit checklists) for a description and the details of the grantee's drug and alcohol oversight program. Discuss the program with the grantee. Review the files for the subrecipients, contractors, and lessees to be visited during the site visit.

DETERMINATION

The grantee is deficient if it does not oversee the drug and alcohol programs or if its oversight program is inadequate to ensure minimal compliance.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a drug and alcohol oversight program for its subrecipients, contractors, subcontractors and lessees.

13. *How does the grantee monitor vendors (e.g., consortia, third party administrators, collection sites, MROs) that support its program and the programs of subrecipients, contractors, subcontractors, and lessees to ensure compliance with program requirements?*

EXPLANATION

The grantee is responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the

grantee should have a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of its testing service vendors, including collection sites, MROs, and SAPs. Grantees need only ensure that testing laboratories are HHS certified. The following link is the current listing of HHS-certified laboratories:
http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/CertifiedLabs.html

The grantee should not assume that its vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a grantee must monitor its vendors. The grantee simply must show evidence that monitoring is being performed at some level. Examples of monitoring activities include maintaining on file copies of vendor qualifications, conducting periodic mock collections, investigating reports 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 grantee to ensure that program records are accurate and current and that they comply fully with FTA regulations, the grantee should review its copies of 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 Part 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.

DETERMINATION
The grantee is deficient if it does not have contracts with vendors and/or it cannot show that it is monitoring vendor operations.

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA regional office executed contract(s) with vendor(s) and/or monitoring procedures.

22. EQUAL EMPLOYMENT OPPORTUNITY

BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance under the Federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

AREAS TO BE EXAMINED

1. ***EEO Program***
2. ***Oversight of Subrecipients and Contractors***
3. ***EEO Complaints/Lawsuits***
4. ***Title I of ADA***

REFERENCES

1. 49 CFR 27, "Nondiscrimination On The Basis Of Disability In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance"
2. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients"
3. 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 EEO page

Disability.gov Workplace Accommodations

Instructions for uploading programs to TEAM-Web

QUESTIONS FOR THE REVIEW

1. *Has FTA conducted an EEO Compliance Review during the past two Federal fiscal years? If yes, when was the site visit? Is a review scheduled for the current Federal fiscal year?*

EXPLANATION
As part of its project oversight functions, FTA periodically conducts EEO reviews of selected grantees. Even if such a review is scheduled for the current Federal fiscal year or has been recently conducted, all questions in this section are still reviewed.

REFERENCE
Input to review

SOURCES OF INFORMATION
Prior to conducting the desk review, review OTrak to determine if an EEO review has occurred or has been scheduled and to analyze findings and corrective actions from completed EEO reviews. The regional civil rights officer (RCRO) will also have information on EEO review activities. Obtain a copy of the most recent report (draft or final) for input into the review. Reports may be available at the regional office or headquarters during the desk review, or on FTA's website.

DETERMINATION
None

SUGGESTED CORRECTIVE ACTION
None

2. *Does the grantee meet the threshold for submission of a formal EEO program?*

- *If yes, has the grantee's EEO program been approved by FTA? When does the approval expire? Has the program been uploaded to TEAM-Web? If the program approval has expired, please provide an explanation.*

- *If no, skip to Question 7.*

EXPLANATION
A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time, or part-time employees) and received in excess of $1 million in capital or operating assistance or in excess of $250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years.

FTA has established a policy that all civil rights programs must be uploaded 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
FTA C 4704.1, Ch. II, Section 2 and 5; Ch. III
Instructions for uploading programs to TEAM-Web

SOURCES OF INFORMATION
Review TEAM-Web and, if necessary, the RCRO's files for a copy of the most recently submitted program. Review TEAM-Web, RCRO correspondence, or RCRO tracking information for program approval and expiration date.

DETERMINATION
The grantee is deficient if it meets the threshold and has not submitted a program. The grantee is deficient if the current EEO program has expired and it has not submitted a program update or requested and received an extension for submitting a program update. (***DEFICIENCY CODE 02***: Program not submitted or expired) The grantee is deficient if it has not uploaded its program to TEAM-Web. (***DEFICIENCY CODE 09***: Program not uploaded to TEAM-Web)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO and/or upload to TEAM-Web the required EEO program or program update.

3. *Who is responsible for ensuring that EEO obligations are fulfilled? Is the position of the current EEO officer correctly identified in the most recent EEO program submission? To whom does this individual report for EEO matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

EXPLANATION

The importance of an EEO program is indicated by the individual named to manage the program and the authority he or she possesses. The EEO officer should be identified in the grantee's EEO program submission. The grantee's chief executive officer (CEO) should designate an EEO officer and adequate staff to administer the EEO program. The EEO officer should be an executive and must report directly to the CEO. The EEO officer should be identified by name in all internal and external communications regarding the grantee's EEO program, 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 the agency's EEO goals, conflicts of interest could arise if the EEO officer is located in the human resources or administrative office. For example, many of the employment practices assessed for goal attainment (see explanation section of Question 5) may be, in large part, the responsibility of the human resource department. Additionally, the EEO officer is responsible for processing employment discrimination complaints.

REFERENCE

FTA C 4704.1, Ch. II, Section1; Ch. III, Section 2.c

SOURCES OF INFORMATION

Review EEO program submissions for the name and reporting relationship of the EEO officer. Consult the RCRO for any indications of past problems with staffing. Confirm current staff assignments in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the EEO officer can confirm responsibilities and reporting relationships.

DETERMINATION

The grantee is deficient if the EEO officer does not have a clear reporting relationship to the CEO. The grantee is deficient if the position of the current EEO officer differs from that in the approved EEO program submission and this has not been communicated to the RCRO for review. The grantee is deficient if the EEO officer is not processing EEO complaints. (***DEFICIENCY CODE 01****:* Inadequate designation of EEO Officer)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of corrective actions taken to designate EEO responsibilities properly. The grantee may need to change reporting relationships or assignment of responsibilities.

4. *What are the grantee's current areas of underutilization based on its utilization analysis? Were short-term and long-range goals set to address this underutilization? Were EEO goals that the grantee set met during the past three years? Was an explanation given for goals that were not met?*

EXPLANATION

The purpose of the utilization analysis is to identify those job categories where underutilization and/or concentration of women or minorities exist in relation to their availability in the relevant labor market. It is also to establish the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any underutilization or concentration. Specific percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis.

Generally, long-range goals (to be obtained in four to five years) are usually stated as percentages. Qualitatively, short-term goals should be set and pursued in order to 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.

REFERENCE

FTA C 4704.1, Ch. III, Sections 2.d; and e

SOURCES OF INFORMATION
Review the grantee's EEO program update on file for information on the EEO goals and areas of underutilization. At the site visit, obtain a copy of the most recent workforce utilization analysis and other employment materials to show progress toward meeting EEO short-term and long-range goals. Discuss efforts to ensure nondiscrimination in employment practices (including outreach).

DETERMINATION
The grantee is deficient if it has not done a utilization analysis. The grantee is deficient if there is no justification for prior EEO goals that were not met. (***DEFICIENCY CODE 10****:* Utilization analysis/goal deficiencies)

SUGGESTED CORRECTIVE ACTION
Utilization Analysis: Direct the grantee to develop and submit to the FTA RCRO a more thorough utilization analysis.

Prior Goal Justification: Direct the grantee to provide justification where prior goals were not met.

5. *Has the grantee conducted a detailed narrative and statistical assessment of employment practices to identify those which operate as employment barriers?*

EXPLANATION
In conjunction with the utilization analysis and EEO goal establishment, grantees must conduct a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. For example, the narrative assessment of the employment practices may include the agency's current practices in recruitment, selection, promotion, termination, transfers, layoffs, disciplinary actions, compensation and benefits, training.

The analyses must contain statistical data to document the impact of employment practices. At a minimum, the analyses must contain the following:

- The number of individuals by race, 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 year; 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 grantee's EEO plan.

REFERENCE
FTA C 4704.1, Ch. III, Sections 2. f

SOURCES OF INFORMATION
Review the grantee's EEO program update on file for information on the assessment of employment practices. At the site visit, obtain a copy of the most recent narrative and statistical employment practices analyses conducted and other employment materials to support how this analysis is conducted. Additional employment materials could include items such as (but not limited to) job applications, recruitment efforts documentation, employment advertising, and training records. Discuss efforts to ensure nondiscrimination in employment practices and to positively impact areas of underutilization.

DETERMINATION
The grantee is deficient if there is no narrative description of their employment practices. A grantee is deficient if there is no statistical analysis of their employment practices. (***DEFICIENCY CODE 11****:* Employment practices analyses deficiencies)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to develop and submit to the FTA RCRO a detailed narrative and/or statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Direct the grantee to submit to the FTA RCRO a plan to routinely conduct this assessment in conjunction with evaluating short-term and long-range goals.

6. *Does the grantee have a monitoring and reporting system?*

EXPLANATION
An important part of any successful EEO program is an effective internal monitoring and reporting system. This system should:

- assess EEO accomplishments
- 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.

REFERENCE
FTA C 4704.1, Ch. III, Sections 2.d, e and g

SOURCES OF INFORMATION
Review the grantee's EEO program update on file for information on the EEO goals and areas of underutilization. At the site visit, obtain a copy of the information that is shared with management that documents the programs progress, i.e., the most recent workforce utilization analysis, the statistical employment practices analyses, a copy of the document that shows how EEO complaints are tracked, documents to show the EEO officer is meeting with management and how often these meetings occur.

DETERMINATION
The grantee is deficient if there is no documentation of what is being monitored and reported. (***DEFICIENCY CODE 12****:* Monitoring/reporting system deficiencies)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to develop and submit to the FTA RCRO a detailed monitoring and reporting system.

7. *Do any subrecipients or transit management/operations contractors meet the threshold for submission of a formal EEO program? If yes:*

- *Do the subrecipients or contractors have on file with the grantee an approved EEO plan?*
- *Does the grantee obtain program updates every three years? If no, provide an explanation.*

EXPLANATION
Subrecipients and contractors that receive capital or operating assistance in excess of $1 million or planning assistance in excess of $250,000 **and** employ 50 or more transit-related employees must submit to the grantee an EEO plan. Program updates are due every three years.

Note: In some circumstances, the RCRO may require grantees to submit the EEO program of a subrecipient or a contractor to FTA for review. If the grantee has a subrecipient or contractor that meets the employee threshold, seek additional guidance from the RCRO on the submittal of its program.

REFERENCE
49 CFR 18.37 and 18.40
FTA C 4704.1, Ch. II, Section 2

SOURCES OF INFORMATION
During the desk review, review information to determine whether any subrecipient or transit management/operations contractor receives capital or operating assistance in excess of $1 million or planning assistance in excess of $250,000 **and** has 50 or more transit-related employees. Assets, such as vehicles that have been purchased by the grantee for use by a subrecipient, should be counted towards the subrecipient's threshold. Ask if the subrecipients or contractors have approved EEO plans on file with FTA or if they are on file with the grantee. Additional information will be provided through grantee responses to the review package and the site visit.

DETERMINATION
The grantee is deficient if it (or FTA, if requested) does not have on file an approved EEO plan for subrecipients and contractors that meet threshold requirements. (***DEFICIENCY CODE 13****:* Failure to obtain EEO plans from subrecipients/contractors)

SUGGESTED CORRECTIVE ACTION
Direct the grantee to submit to the FTA RCRO documentation that it has reviewed and approved EEO plans from subrecipients and contractors that meet threshold requirements. Confer with the RCRO to determine if a plan should be submitted to FTA.

8. *Does the grantee's program ensure non-discrimination for ADA-eligible persons in terms of employment? Does the grantee have a policy and procedures for making reasonable accommodations for persons with disabilities? If requested, did the grantee make reasonable accommodations for persons with disabilities during the past three years, in accordance with Title I of the ADA? If yes, please describe.*

EXPLANATION
Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the

opportunity for participation in or the benefit of a program and limiting, for a qualified person with physical or mental disability, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, and office furniture.

REFERENCE

49 CFR 27.7
49 CFR 27.19

SOURCES OF INFORMATION

Review a copy of the grantee's reasonable accommodation policy. At the site visit, discuss the grantee's policy toward accommodating persons with disabilities. Ask the grantee to indicate if any persons with disabilities have requested reasonable accommodations since the last review. Ask the grantee to describe reasonable accommodations made for qualified employees.

DETERMINATION

The grantee is deficient if it has no process for making reasonable accommodations for persons with disabilities. (***DEFICIENCY CODE 06****:* Not complying with Title I of the ADA)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a process for making reasonable accommodations for persons with disabilities.

23. ITS ARCHITECTURE

BASIC REQUIREMENT

Intelligent Transportation Systems (ITS) projects funded by the Highway Trust Fund and the Mass Transit Account must conform to the National ITS Architecture, as well as to United States Department of Transportation (USDOT) adopted ITS Standards.

AREAS TO BE EXAMINED

1. ***Regional ITS Architecture Conformance***

2. ***Systems Engineering Analysis***

REFERENCES

1. TEA-21, PL 105-178, Section 5206(e)
2. 23 USC Section 502, Surface Transportation Research
3. Federal Register: January 8, 2001 (Volume 66, No. 5, pp. 1455-1459) "FTA National Architecture Policy on Transit Projects"

USEFUL WEBLINKS

Systems Engineering for Intelligent Transportation Systems

Systems Engineering Guidebook for ITS

Systems Engineering and ITS References

Systems Engineering Management Plan

QUESTIONS FOR THE REVIEW

1. *Is the grantee or a subrecipient attempting to deploy ITS technologies? If yes, are ITS projects and programs part of a locally approved Regional ITS Architecture?*

EXPLANATION

FTA grantees may deploy many types of ITS technologies and projects. An ITS project is defined in the ITS Architecture Policy Guidance as "any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture." Thus, if the project includes ITS components that implement any of the defined User Services, it is considered an "ITS project." There are currently 33 User Services, organized in eight User Service Bundles, represented within the National ITS Architecture. The User Services most likely to be proposed/implemented by an FTA grantee include:

- Travel and traffic management
  - Pre-trip travel information
  - En-route driver information
  - Route guidance
  - Ride matching and reservation
  - Traveler services information
  - Traffic control
  - Incident management
  - Travel demand management
  - Emissions testing and mitigation
  - Highway rail intersection
- Public transportation management
  - En-route transit information
  - Personalized public transit
  - Public travel security
- Electronic payment
  - Electronic payment services
- Emergency management
  - Emergency notification and personal security
  - Emergency vehicle management
  - Disaster response and evacuation
- Advanced vehicle safety systems
  - Longitudinal collision avoidance
  - Lateral collision avoidance
  - Intersection collision avoidance
  - Vision enhancement for crash avoidance
  - Safety readiness
  - Pre-crash restraint deployment
  - Automated vehicle operation
- Information management
  - Archived data function
- Maintenance and construction management
  - Maintenance and construction operations

Examples of systems that may be implemented as part of transit ITS projects are:

- Pre-trip traveler information systems through phone, 511 systems, kiosks, the web, and other electronic channels that help provide route and fare information or itinerary planning
- En-route transit information through 511 systems, variable message signs, enunciators, or personal devices that provide next vehicle and stop information, or route and itinerary planning
- Multi-modal traveler information systems that integrate transit information with highway, rail, and other options
- Personalized public transit for route deviation, flex route, and paratransit services
- Transit management systems and management centers using automatic vehicle location (AVL), computer aided dispatch, geographic information system (GIS), and surveillance of network conditions to improve the travel time and reliability of the transit system, and provide for transfer connection protection
- Transit signal priority to improve the travel time and reliability of the transit vehicles operating in mixed flow, or crossing major arterials at grade
- Carpool ride matching and reservation systems
- Electronic payment systems both at transit centers and stations and on vehicles that include both fare payment and the ability to pay for other services (parking or toll charges)
- Communications systems that provide the backbone for the vehicle and wayside communication to each other and to the transportation management center
- Automatic passenger counters for performance monitoring and service planning
- Vehicle and system monitoring that tracks system functions and provides warning of likely malfunction or maintenance needs
- Vehicle, stop or wayside surveillance to provide for passenger, driver and system safety and security. Silent alarms to notify authorities of an incident or emergency.

- Highway/rail intersection protection to improve the safety of rail transit operations and buses that travel through rail intersections
- Collision warning/avoidance, vision enhancement and driver assistance to ensure safe transit operations in increasingly congested conditions, or limited rights of way
- Data archiving and information management systems to store and analyze the real time system data and assist in service planning, system monitoring and other decisions

Inter-agency cooperation is the major objective of the Regional ITS Architecture. ITS projects include comprehensive management strategies that apply technologies in an integrated manner. The purpose of ITS integration is to facilitate institutional integration through sharing information and reducing redundant spending between jurisdictions. ITS integration includes both technical and inter-agency aspects of system development.

One example of institutional integration is sharing information between transit, arterial and freeway agencies to improve the speed and schedule reliability of buses on the transportation network. Another type of integration is when agencies use technologies that are compatible with each other, such as traffic signals and emergency vehicle preemption, to enable emergency vehicles to respond faster. ITS projects are those that contribute to the provision of one or more ITS user services as described above.

The Regional ITS Architecture is a tool that is used in transportation planning, programming, and project implementation for ITS. It is a framework for institutional agreement and technical integration for ITS projects and is the place to start when defining the basic scope of a project. The FTA grantee is not likely to be the lead agency for creating and updating the Regional ITS Architecture. The lead agency may be the metropolitan planning organization (MPO) or the state department of transportation. The grantee needs to be an active participant in the Regional ITS Architecture development and maintenance if the grantee is implementing ITS projects. For reasons discussed above, the grantee's ITS projects must be included in the locally approved Regional ITS Architecture.

REFERENCE

National ITS Architecture
PL 105-178 Section 5206(e)
Federal Register: January 8, 2001 (Volume 66, No. 5, pp. 1455-1459)

SOURCES OF INFORMATION

Ask the grantee to provide a description of the scope of ITS projects, an operational concept that identifies the roles and responsibilities of the participating agencies, the functional requirement of ITS projects and the interface agreements and information exchanges between ITS projects and other planned and existing systems and subsystems. Review work statements in requests for proposals, project design documents, system documentation delivered by a contractor, or the Regional ITS Architecture.

Ask the grantee to provide documentation, typically excerpts from the Regional ITS Architecture, showing that the major architecture elements for ITS projects are included in the locally approved Regional ITS Architecture.

DETERMINATION

The grantee is deficient if ITS projects are not included in the Regional ITS Architecture. The grantee is deficient if the final design of the ITS project is inconsistent with the regional architecture. (***DEFICIENCY CODE: 04****:* Projects not included in Regional ITS Architecture)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to establish and submit to the FTA regional office a plan to have its ITS projects included in the Regional ITS Architecture.

Direct the grantee to submit documentation to the FTA regional office that it has worked with the lead Regional ITS Architecture agency to incorporate any omitted elements in an update to the Regional ITS Architecture.

2. *Has the grantee or subrecipient established a process for the systems engineering analysis of ITS projects that addresses the seven prescribed steps? Has it applied the process? If the project scope has changed, has it reviewed the systems engineering analysis and, if necessary, updated it?*

EXPLANATION

FTA grantees are required to follow a systems engineering analysis in implementing an ITS project. Systems engineering reduces the risk of schedule and cost overruns and increases the likelihood that the implementation will meet the user's needs. If there are changes to the scope of the project, such changes must be reflected in the systems engineering analysis for it to be effective.

The systems engineering analysis process is intended to address the potential risk associated with an ITS project because ITS projects often are not fully successful. This is especially true of ITS projects that

include new technology, new software, new communications, or joint efforts with external partners.

FTA's ITS Architecture Policy prescribes the following seven steps for the systems engineering analysis:

1. Identify portions of the Regional ITS Architecture being implemented. Show where the elements of the ITS project is in the Regional ITS Architecture.
2. Identify participating agency's roles and responsibilities. Define for each participating agency.
3. Define requirements. What functions will the ITS system need to perform?
4. Analyze alternative system configurations and technology options to meet the requirements. What other options were examined?
5. Analyze financing and procurement. How will the ITS project be funded, procured and maintained?
6. Identify ITS standards and testing. Identify applicable ITS standards and testing procedures.
7. Identify procedures and resources necessary for operations and management. How will the ITS project be operated and maintained?

In addressing the risks associated with ITS projects, it is prudent for the implementing agency or agencies to determine whether the ITS project is low risk or high risk in nature. With low risk projects, a simplified system engineering process can be utilized or in some cases none at all. Risks for an ITS project can be determined by assessing the following eight characteristics:

1. Jurisdiction. Does the ITS project include a single or multiple jurisdictions?
2. Software, commercial-off-the-shelf (COTS). Does the project require software development or can rely entirely on existing and proven software?
3. Hardware. Does the project require development of hardware or does proven hardware exist?
4. Interfaces. Does the project require new interfaces or will it rely entirely on existing interfaces?
5. Requirements. Will the project's requirements be well defined and fully documented prior to procuring the system?
6. Procedures. Will the project's operating procedures be well documented prior to procuring the system?
7. Technologies. Does the project only use proven and stable technologies?
8. Staff experience. Does the staff implementing the project have prior experience with ITS procurement, implementation and operations?

When the scope of an ITS project changes, the grantee must update the systems engineering analysis to reflect all revisions.

REFERENCE

PL 105-178 Section 5206(e)
Federal Register: January 8, 2001 (Volume 66, No. 5, pp. 1455-1459)

SOURCES OF INFORMATION

Determine whether the ITS project is a high risk project by discussing the eight characteristics listed under the risk discussion above. If the project is high risk, ask the grantee to demonstrate that the system engineering analysis addressed the seven steps.

DETERMINATION

The grantee is deficient if it has not established a process for the systems engineering analysis of ITS projects and it has not applied the process to its ITS projects. (***DEFICIENCY CODE 02)***: No established process for systems engineering; analysis/process not applied.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA regional office a process for the systems engineering analysis of ITS projects.

24. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

BASIC REQUIREMENT

Grantees must have the legal, financial and technical capacity to carry out the proposed program of projects and meet the additional reporting requirements for ARRA funded grant activities.

Because ARRA grants are 100 percent Federally funded, heightened oversight has been implemented. Each of the following questions will be addressed during the course of the related review area.

AREAS TO BE EXAMINED

1. ***Technical***
2. ***Reporting***
3. ***Financial***
4. ***Satisfactory Continuing Control***
5. ***Procurement***
6. ***DBE***
7. ***EEO***

REFERENCES

1. FTA ARRA Website
2. FTA Master Agreement

USEFUL WEBLINKS

FTA ARRA Webpage

Recovery.gov

CORRECTIVE ACTIONS

To develop corrective actions for ARRA deficiencies, refer to the corrective actions for the related questions and discuss with the FTA regional office.

QUESTIONS FOR THE REVIEW

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

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 7 and 10 for detailed guidance.

DETERMINATION
The grantee is deficient if it does not have the resources or procedures to implement the ARRA project.

2. *Does the grantee have the necessary resources (this may include but not be limited to staff, financial, technical, etc.) to maintain its current program and implement the additional ARRA projects? If no, how does the grantee plan to acquire the resources?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 1 through 11.

DETERMINATION
The grantee is deficient if it does not have the resources to maintain its current FTA funded program and implement its ARRA funded program.

3. *Does the grantee have adequate resources and procedures to provide additional necessary oversight for subrecipient ARRA projects? If no, how does the grantee plan to acquire the resources?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical questions 10 and 11.

DETERMINATION
The grantee is deficient if it does not have the resources to provide adequate oversight of subrecipients' ARRA funded projects.

4. *Has the grantee amended or revised a non-ARRA grant to eliminate a project similar to one funded in an ARRA funded grant? If yes, please explain and document.*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
ARRA program funds cannot be used to replace funds already obligated in an existing FTA grant even if those funds have not been expended. ARRA funds can, however, be used to replace program funds identified in the statewide transportation improvement program (STIP) and transportation improvement program (TIP) but not yet awarded in a grant. For more information on this requirement, see ARRA Pre-Award FAQs question 21.

DETERMINATION
If the grantee amended or revised a non-ARRA grant to eliminate a project similar to an ARRA funded project, it is deficient.

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

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Prior to September 30, 2010, FTA allowed amendments to ARRA grants under the following circumstances:

- To add previously unobligated ARRA resources to a grant
- To allow up to 10 percent of ARRA funds to be used for operating assistance
- To allow the addition of a new scope that will be funded using cost savings from bids coming in under the previous estimate

FTA allows budget revisions to ARRA grants under the following circumstances:

- To implement any budget revision that does not require prior FTA approval per FTA C 5010.1D
- To add an activity line item that will be funded using cost savings from bids coming in under the previous estimates

Note: Where a budget revision or amendment is being added as a result of cost savings, documentation should be included in the TEAM-Web grant file. Additionally, in order for adherence to these procedures to be accurately reflected in the grant records, budget revisions and grant amendment activities should be separate actions. Grantees should not combine them in a single amendment.

DETERMINATION

The grantee is deficient if it did not follow the rules for amending or revising an ARRA grant.

6. *Has the grantee submitted its ARRA reports (1512, 1201(c)) on time? Are the reports complete?*

RELATED REVIEW AREA

3. Technical

EXPLANATION AND SOURCES OF INFORMATION

In addition to progress reports in TEAM-Web, there are two reporting requirements for ARRA grants.

Section 1512 of the Recovery Act requires reports on the use of funding by a grantee no later than the 10th day after the end of each calendar quarter (beginning the quarter ending September 30, 2009). The first grantee report was due on October 10, 2009, for recipients that were awarded an ARRA grant by September 30, 2009. Recovery Act recipients submit one Section 1512 report for each grant that it has been awarded by the end of the reporting period. Any grantee that was awarded one or more ARRA grants by December 31, 2009, is required to submit a report(s) in January 2010. Once a grantee has disbursed 100 percent of its Recovery Act funds, completed work on the project, and plans to not amend the grant from which funds have been disbursed, it can note in the next Section 1512 report that it submits that this is the grantee's final Section 1512 report for the grant in question.

The grantee is required to report on its activities and the activities of its subrecipients and vendors. (However, grantees can choose to require their subrecipients to report certain information directly). The White House Office of Management and Budget (OMB) has provided a detailed list of what information should be reported. For more information on this requirement, see ARRA Reports on the FTA website.

With the exception of jobs reporting, which is on a quarter-by-quarter basis, Section 1512 information should be reported on a cumulative basis from the enactment of the Recovery Act or from the use of pre-award authority after October 1, 2008.

Additional detailed information on this reporting requirement can be found at Recovery.gov. The OMB supplement provides additional information and detailed instructions.

Section 1201 requires grantees to report, in each periodic report, **cumulative** data on funds committed, funds expended and contracts that have been put out to bid, are awarded or underway, or have been completed as well as jobs created and/or retained and state sources of funding since the enactment date of ARRA (February 17, 2009). Any grantee with an ARRA grant obligated by July 31, 2009, was required to submit a section 1201(c) report by August 17, 2009. The next reporting deadline was February 17, 2010, for Recovery Act grants obligated by January 31, 2010. Subsequent reporting deadlines are February 17, 2011, and February 17, 2012.

DETERMINATION

The grantee is deficient if it has not submitted reports on time. The grantee is deficient if its submissions do not include all required information.

7. *Has the grantee submitted its progress reports for ARRA grants on time?*

RELATED REVIEW AREA

3. Technical

EXPLANATION AND SOURCES OF INFORMATION

Grantees are required to submit milestone progress reports for ARRA grants no later than 30 days after each quarter.

DETERMINATION
The grantee is deficient if progress reports for ARRA grants are late.

8. *Do the progress reports for ARRA grants contain the required information?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical question 3 for more detailed guidance.

DETERMINATION
The grantee is deficient if progress reports do not contain the required information.

9. *Has the grantee submitted its Federal Financial Reports (FFRs) for ARRA grants on time?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Grantees are required to submit FFRs for ARRA grants no later than 30 days after the end of each quarter.

DETERMINATION
The grantee is deficient if the FFRs for ARRA grants are late.

10. *Has the grantee correctly reported unliquidated obligations for ARRA grants?*

RELATED REVIEW AREA
3. Technical

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 3 Technical question 4 for more detailed guidance.

DETERMINATION
The grantee is deficient if it is not reporting unliquidated obligations for ARRA grants correctly.

11. *Does a review of ECHO documentation for ARRA grants verify adequate funds management procedures (i.e., adequate documentation, segregation of duties, no excess cash on hand)?*

RELATED REVIEW AREA
2. Financial

EXPLANATION AND SOURCES OF INFORMATION
The reviewer selects one ECHO transaction from each active ARRA grant. For those selections, the reviewer examines each underlying transaction, up to a maximum of five, to verify funds management procedures (i.e., adequate documentation, segregation of duties, and no excess cash on hand). Refer to Section 2 Financial questions 14 and 15 for more detailed guidance.

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

12. *Does the grantee or a subrecipient intend to charge or has it charged indirect costs to ARRA grants? If yes, was a cost allocation plan approved prior to incurring costs?*

RELATED REVIEW AREA
2. Financial

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 2 Financial question 11 for more detailed guidance.

DETERMINATION
The grantee is deficient if it or a subrecipient has charged indirect costs to an ARRA grant without an approved cost allocation plan.

13. *Did the grantee record ARRA funded property at the correct Federal share (100 percent) in its property records?*

RELATED REVIEW AREA
4. Satisfactory Continuing Control

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 4 Satisfactory Continuing Control question 7 for more detailed guidance.

DETERMINATION
The grantee is deficient if its records are missing some of the required information, or if some information is not current, for ARRA funded equipment.

14. *If the grantee used ARRA funds to buy buses, does the spare ratio exceed FTA's 20 percent guideline for fixed route bus fleets of 50 or more revenue vehicles used in urban service?*

RELATED REVIEW AREA
4. Satisfactory Continuing Control

EXPLANATION AND SOURCES OF INFORMATION
FTA will consider approving exceptions to a spare ratio requirement if the purchase of buses meets certain criteria, such as: the excess spare ratio would be temporary in nature, with it returning to within the 20 percent level within two-three years of delivery of the new vehicles, or the buses will "green" the fleet of the transit agency. Refer to ARRA Pre-Award FAQs question 10 and to Section 4 Satisfactory Continuing Control question 15 for more detailed guidance.

DETERMINATION
The grantee is deficient if its spare ratio exceeds 20 percent and it will not meet the conditions stated in the grant approval.

15. *Do the ARRA funded procurements require an independent cost estimate? If yes, how were the estimates developed and are they reasonable?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must develop an independent cost estimate before receiving bids or proposals. Refer to Section 6 Procurement question 17 for more detailed guidance.

DETERMINATION
The grantee is deficient if an independent cost estimate has not been developed and documented for ARRA funded procurements.

16. *Was a cost or price analysis done for each ARRA-funded procurement? How are the cost or price analyses documented?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must conduct a cost or price analysis in connection with every procurement action. Refer to Section 6 Procurement question 18 for more detailed guidance.

DETERMINATION
The grantee is deficient if a cost or price analysis was not performed for ARRA funded procurements.

17. *If an ARRA funded procurement was sole-sourced or a single bid received, was a cost analysis and a sole source justification performed? How are these documented?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Grantees must perform a cost analysis and a justification for sole source procurements. Refer to Section 6 Procurement question 22 for more detailed guidance.

DETERMINATION
The grantee is deficient if a justification and cost analysis has not been performed for an ARRA funded sole source or single bid procurement.

18. *Has the grantee conducted any piggyback purchases with ARRA funds? If yes, is the appropriate documentation on file?*

RELATED REVIEW AREA
6. Procurement

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 6 Procurement question 23 for more detailed guidance.

DETERMINATION
The grantee is deficient if it has conducted an inappropriate piggyback for ARRA funded procurements.

19. *Has the grantee considered ARRA funds in determining if it meets or exceeds the threshold for developing, submitting, or revising its DBE program? If yes, has it submitted a program for approval?*

RELATED REVIEW AREA
7. DBE

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 7 DBE question 2 for more detailed guidance.

DETERMINATION
The grantee is deficient if it now meets the threshold for submission of a DBE plan and has not submitted a program for approval.

20. *Has the grantee submitted ARRA-specific Uniform Reports of DBE Awards or Commitments and Payments quarterly?*

RELATED REVIEW AREA
6. Disadvantaged Business Enterprise

EXPLANATION AND SOURCES OF INFORMATION
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. 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 grantees that paper DBE reports would no longer be accepted and must be entered in TEAM-Web's DBE reporting module.

During the desk review, examine the DBE files and TEAM-Web for correspondence regarding report submittals. During the site visit, obtain any outstanding materials.

Refer to Section 7 DBE question 7 for additional guidance.

DETERMINATION
The grantee is deficient if it has not submitted the ARRA-specific DBE reports quarterly or the reports are not complete.

21. *Has the grantee considered ARRA funds in determining if it or a subrecipient meets or exceeds the threshold for developing, submitting or revising its EEO program?*

RELATED REVIEW AREA
22. EEO

EXPLANATION AND SOURCES OF INFORMATION
Refer to Section 22 EEO questions 2 and 7 for more detailed guidance.

DETERMINATION
The grantee is deficient if it meets the threshold and has not submitted a program to FTA. The grantee is deficient if a subrecipient now meets the threshold for submission of an EEO program and has not submitted a program for approval to it.