

DEPARTMENT OF TRANSPORTATION
TRANSIT CROSS-CUTTING SECTION

INTRODUCTION

This section contains compliance requirements that apply to more than one program of the Federal Transit Administration (FTA) in the Department of Transportation. The compliance requirements in this Cross-Cutting Section reference the applicable programs in Part 4, Agency Compliance Requirements. Similarly, the applicable programs in Part 4 reference this Cross-Cutting Section.

| CFDA # | Program Name |
|---------------|---------------------|
|---------------|---------------------|

Federal Transit Cluster

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|--------|---|
| 20.500 | Federal Transit — Capital Investment Grants |
| 20.507 | Federal Transit — Formula Grants (Urbanized Area Formula Program) |

Nonurbanized Area Formula Program

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| 20.509 | Formula Grants for Other Than Urbanized Areas |
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Transit Services Programs

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| 20.513 | Capital Assistance Program for Elderly Persons and Persons with Disabilities |
| 20.516 | Job Access – Reverse Commute |
| 20.521 | New Freedom Program |

I. PROGRAM OBJECTIVES

Federal transit programs were established to foster the development and revitalization of public transportation systems that (1) maximize the safe, secure, and efficient mobility of individuals; (2) minimize environmental impacts; and (3) minimize transportation-related fuel consumption and reliance on foreign oil.

II. PROGRAM PROCEDURES

Federal transit legislation has established a number of requirements that would apply to all programs funded with Federal transit funds. Certain exceptions or dollar thresholds in these rules may exclude many rural transit activities.

Source of Governing Requirements

The programs in this cluster are authorized by Chapter 53 of 49 USC. Program regulations are at 49 CFR.

Availability of Other Program Information

Information about these programs may be found on the FTA web site at <http://www.fta.dot.gov/>. Program guidance and application instructions can be found at the “Legislation, Regulations, and Guidance” section of the FTA web site.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

F. Equipment and Real Property Management

This section applies to all of the programs in the Supplement that are listed above.

Recipients, with FTA approval, are allowed to transfer, sell, or lease property, equipment, or supplies acquired with Federal transit funds that are no longer needed for transit purposes. FTA may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose (49 USC 5334 (h) (1) through (h)(3)). If a recipient sells the asset, the proceeds must be used to reduce the gross project costs of another federally funded capital transit project (49 USC 5334(h)(4)) or handled as stated in 49 CFR sections 18.31 or 18.32) (49 USC 5334(h)) and FTA Circular 5010.1).

I. Procurement and Suspension and Debarment

This section applies to all of the programs in the Supplement that are listed above.

1. *Buy America* – All steel, iron, and manufactured products used in the project must be produced in the U.S., as demonstrated by a Buy America certificate, but, in the case of rolling stock, the cost of components produced in the United States is more than 60 percent of the cost of all components of the rolling stock and final assembly of the vehicle takes place in the U.S. (49 CFR part 661).
 - a. The FTA Administrator may grant specific waivers following case-by-case determinations that: (1) applying the requirement would be inconsistent with the public interest; (2) the goods are not produced in the U.S. in a sufficient and reasonably available quantity and of satisfactory quality; or (3) the inclusion of the domestically produced material will increase the overall project cost by more than 25 percent (49 CFR sections 661.7(b) through (d)).
 - b. Appendix A to 49 CFR section 661.7 provides general waivers for the following items:
 - (1) Those articles, materials, and supplies listed in 48 CFR section 25.104;

- (2) Microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data; and
 - (3) All “small purchases” (under \$100,000) made by FTA recipients with capital, planning, or operating assistance.
 - c. Appendix A to 49 CFR section 661.11 provides a general Buy America waiver when foreign-sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.
 - d. A recipient that purchases rolling stock for transportation of passengers in revenue service must conduct, or cause to be conducted, a pre-award audit before entering into a formal contract for the purchase of rolling stock, and certify that a post-delivery audit is complete before title to the rolling stock is transferred to the recipient, or the rolling stock is put into revenue service, whichever occurs first. Pre-award and post-delivery audits verify the accuracy of the Buy America certification, purchaser’s requirements certification, and certification of compliance with or inapplicability of Federal motor vehicle safety standards in 49 CFR part 571 (49 CFR part 663).
 2. *Disadvantaged Business Enterprises (DBE)* – Recipients shall require that, as a condition to bid on a transit vehicle procurement in which FTA funds are involved, each transit vehicle manufacturer certify that it has complied with the requirements of 49 CFR section 26.49. Recipients may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles that a manufacturer must meet (49 CFR section 26.49(d)).
 3. *Procurement of Vehicles and Facilities* – In prohibiting discrimination in the provision of transportation services against persons with disabilities, the Americans with Disabilities Act of 1990 requires that vehicles purchased or leased after August 25, 1990, and new and altered facilities designed and constructed (as marked by the notice to proceed) after January 25, 1992, must comply with the applicable standards of accessibility in 49 CFR parts 37 and 38 (42 USC 12101-12213).

N. Special Tests and Provisions

1. Charter Service

This section applies to all of the programs in the Supplement that are listed above.

Compliance Requirement – As part of the annual certifications and assurances required by the FTA, a recipient must execute an agreement with FTA which provides that it, and each of its subrecipients and third-party contractors at any level who use FTA-funded

vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal transit laws only in compliance with 49 CFR part 604. Charter service means 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 characteristic of charter service: (a) a third party pays the transit provider 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 transit provider's regularly scheduled service or is offered for a limited period of time; or (d) a third party determines the origin and destination of the trip as well as scheduling. Charter service may also mean transportation is provided by a recipient 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. Charter service does not include demand response service to individuals. A recipient providing charter service under the exception provisions in 49 CFR section 604.12 shall post the records required under this subpart on the FTA charter registration website 30 days after the end of each calendar quarter (49 CFR part 604).

Audit Objective – Determine whether the use in charter service of any equipment and facilities acquired with FTA funds conformed to 49 CFR part 604.

Suggested Audit Procedures

- a. Ascertain if the recipient provides charter service with FTA-funded equipment by:
 - (1) Obtaining written representation from the recipient;
 - (2) Reviewing the revenue accounts for indications of charter revenue statements; and
 - (3) Reviewing the recipient's website and local business "Yellow Pages" for indications of charter-service operations.
- b. Review the recipient's policies and procedures for charter, rental, or lease of its transit equipment.
- c. Test transactions that meet the definition of charter service and ascertain if:
 - (1) The charter service regulation is applicable;
 - (2) FTA-assisted equipment or facilities (e.g., parking lots and maintenance garages) were used;
 - (3) Documentation evidences quarterly reporting of charter service provided under the exceptions in 49 CFR part 604; and
 - (4) Inventory records were adjusted to extend the useful life of FTA-subsidized transit equipment by the amount of charter service.

2. School Bus Operation

This section applies to all of the programs in the Supplement that are listed above.

Compliance Requirement – As part of the annual certifications and assurances required by FTA, a recipient must enter into an agreement with the FTA stating that the recipient will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators, unless it demonstrates to the FTA Administrator any one of the exceptions listed in 49 CFR section 605.11 applies and the Administrator concurs. Indicators of prohibited exclusive school bus service are:

- a. Bus schedules that only operate one way to schools in the morning and the other way from schools in the afternoon.
- b. Destination signs that say “school bus” “school special” or a school name.
- c. Buses that have flashing lights and swing arms like standard yellow school buses.
- d. Bus stop signs that say “school.”
- e. Bus stops that are located on school property away from general public thoroughfares.

However, all recipients can operate “tripper service,” which is defined as regularly scheduled public transportation service that is open to the public, and designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in “tripper service” are required to be clearly marked as open to the public and should not carry designations such as “school bus” or “school special.” All routes traveled by tripper buses must be within a grantee or operator’s regular route service as indicated in their published schedules (49 CFR part 605).

Audit Objective – Determine whether school bus service provided with FTA-funded equipment was approved by FTA or that FTA-assisted equipment and facilities used to accommodate students conformed to the definition of “tripper service.”

Suggested Audit Procedures

- a. Ascertain if the recipient operates any transit service exclusively for school children through:
 - (1) Reviews of bus schedules, published fares, and service contracts;
 - (2) Discussions with recipient officials; and
 - (3) Reviews of school district or individual school web sites for information on bus transportation of school students.

- b. Ascertain if FTA-funded equipment (e.g., buses or vans) or facilities (e.g., bus maintenance garages) were used to provide school bus service by reviewing inventory records, maintenance logs, parking sites, names on bus and van destination signs, school facilities, or by performing other appropriate procedures.
- c. If exclusive school bus service is identified, review documentation that the service was approved by FTA.

DEPARTMENT OF TRANSPORTATION

CFDA 20.106 AIRPORT IMPROVEMENT PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Airport Improvement Program is to assist sponsors, owners, or operators of public-use airports in the development of a nationwide system of airports adequate to meet the needs of civil aeronautics.

II. PROGRAM PROCEDURES

States, counties, municipalities, U.S. Territories and possessions, and other public agencies, including Indian tribes or Pueblos (sponsors) are eligible for airport development grants if the airport on which the development is required is listed in the National Plan of Integrated Airport Systems (NPIAS). Applications for grants must be submitted to the appropriate Federal Aviation Administration (FAA) Airports Office. Primary airport sponsors must notify FAA by January 31 or another date specified in the *Federal Register* of their intent to apply for funds to which they are entitled under Pub. L. No. 97-248 (49 USC Chapter 31). A reminder is published annually in the *Federal Register*. Other sponsors are encouraged to submit early in the fiscal year and to contact the appropriate FAA Airports Office for any local deadlines. Sponsors must formally accept grant offers no later than September 30 for grant funds appropriated for that fiscal year.

The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) provides for discretionary grant awards (ARRA, 123 Stat. 205) under this program. ARRA-funded grants must be separate from other AIP grants, although FAA may fund a discrete phase of an AIP project with ARRA funding.

Source of Governing Requirements

This program is authorized by 49 USC Chapter 471 **and ARRA (123 Stat. 205)**.

Availability of Other Program Information

Additional program information is provided in FAA Order 5100.38C, *Airport Improvement Program Handbook* (available on the Internet at http://www.faa.gov/airports/aip/aip_handbook) and FAA Advisory Circulars in the 150/5100 series (available on the Internet at http://www.faa.gov/airports/resources/advisory_circulars/). The FAA also maintains an Airports *Federal Register* Notice page available on the Internet at http://www.faa.gov/airports/resources/publications/federal_register_notices/.

Program related questions may be directed to Kendall Ball, FAA Airports Financial Assistance Division, at 202-267-7436 (direct) and 202-267-3831 (main) or by e-mail at Kendall.Ball@faa.dot.gov. Questions related to the revenue diversion and other compliance requirements may be directed to Lyle Fjermedal, FAA Airport Compliance Division at 202-267-5879 (direct) and 202-267-3446 (main) or by e-mail at Lyle.Fjermedal@faa.dot.gov.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Grants can be made for planning, constructing, improving, or repairing a public-use airport or portions thereof and for acquiring safety or security equipment. Eligible terminal building development is limited to non-revenue-producing public-use areas that are directly related to the movement of passengers and baggage in air carrier and commuter service terminal facilities within the boundaries of the airport. Eligible construction is limited to items of work and to the quantities listed in the grant description and/or special conditions (49 USC 47110).

2. *Activities Unallowed*

a. In general, Federal funds cannot be expended for:

- (1) Passenger automobile parking facilities, buildings to be used as hangars, and portions of terminals that are revenue-producing or not directly related to the safe movement of passengers and baggage at the airports, and
- (2) Costs incurred before the execution of the grant agreement, unless such costs are for land, necessary costs in formulating a project, or costs covered by a letter of intent. However, an airport designated by the FAA as a primary airport may use passenger entitlement funding made available under 49 CFR section 47114(c) for costs incurred: (1) prior to the execution of the grant agreement; (2) in accordance with the airport layout plan approved by the FAA; and (3) according to all statutory and administrative requirements that would have applied had work on the project not commenced until after the grant agreement had been executed (49 USC 47110(b)(2)(C)).

b. The following are examples of items for which FAA funds cannot be expended (FAA Order 5100.38C, *Airport Improvement Program Handbook*, and FAA Advisory Circulars in the 150/5100 series.)

- Fuel farms.
- Emergency planning.

- Decorative landscaping, sculpture, or art works.
- Communication systems except those used for safety/security.
- Training facilities, except those included in an otherwise eligible project as an integral part of that project and that are of a relatively minor or incidental cost, i.e., less than 10 percent of the project cost. An example of an exception would be a training room included as part of a new Aircraft Rescue and Firefighting (ARFF) facility. Interactive training systems and “live fire” ARFF training facilities are eligible.
- Roads of whatever length, exclusively for the purpose of connecting public parking facilities to an access road.
- Roads serving solely industrial or non-aviation-related areas or facilities.
- General aviation terminals.
- Equipment that is used by air traffic controllers such as Airport surface detection systems (ASDE).
- Maintenance/service facilities except for those allowed to service required ARFF equipment.
- Office/administrative equipment, including data processing equipment, computers, recorders, etc.
- Projects for the determination of latitude, longitude, and elevation except as an incidental part of master planning.

3. *Exception*

For a non-hub airport (one that accounts for less than 0.05 percent of total U.S. passenger boardings), the FAA may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, repair, and improvement of parking lots (49 USC 47110(d)(2)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work for airport development projects financed with grants under this program (49 USC 47112).

F. Equipment and Real Property Management

Under this program, FAA is authorized by 49 USC 47107(c), as amended, to allow recipients to reinvest the proceeds from the disposition of real property acquired with Federal awards for noise compatibility or airport development purposes.

G. Matching, Level of Effort, Earmarking**1. Matching**

The shares of allowable costs for a particular grant-supported project to be borne by FAA and by other parties are established in the grant agreement. **The Federal share of ARRA-funded projects is 100 percent (ARRA, 123 Stat. 205).**

2. Level of Effort – Not Applicable**3. Earmarking – Not Applicable****L. Reporting****1. Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Applicable
- c. SF-425, *Federal Financial Report* – Applicable
- d. FAA Form 5100-127, *Operating and Financial Summary (OMB No. 2120-0557)*

Sponsors of commercial service airports are required to submit this report, which captures revenues and expenditures at the airport, including revenue surplus.

- e. FAA Form 5100-126, *Financial Government Payment Report (OMB No. 2120-0557)*

This report captures amounts paid and services provided to other units of government. This reporting requirement technically applies to all sponsors of federally assisted airports who accepted grants with assurance no. 26(d)(I)(ii); however, FAA is currently requiring submission only from commercial service airports. Commercial service airports are the airports most likely to generate excess revenue that could be diverted to non-airport uses.

2. Performance Reporting – Not Applicable**3. Special Reporting – Not Applicable****4. Section 1512 ARRA Reporting – Applicable**

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds

N. Special Tests and Provisions

Revenue Diversion

Compliance Requirement – The basic requirement for use of airport revenues is that all revenues generated by a public airport must be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and are directly and substantially related to the actual air transportation of passengers or property. The limitation on the use of revenue generated by the airport shall not apply if the governing statutes controlling the owner's or operator's financing, that was in effect before September 3, 1982, provided for the use of any revenue from the airport to support not only the airport but also the airport owner's or operator's general debt obligations or other facilities (49 USC 47107(b)).

Policies and Procedures Concerning the Generation and Use of Airport Revenue, issued February 16, 1999 (64 FR 7695), contains definitions of airport revenue and unlawful revenue diversion; provides examples of airport revenue; and describes permitted and prohibited uses of airport revenue. The policy can be obtained from FAA's Airports *Federal Register* Notices Page on the Internet (http://www.faa.gov/airports/resources/publications/federal_register_notices/).

Penalties imposed for revenue diversion may be up to three times the amount of the revenues that are used in violation of the requirement (49 USC 4603(a)(5)).

Audit Objective – Determine whether the airport revenues were used for required or permitted purposes.

Suggested Audit Procedures

- a. Review the policy for using airport revenue.
- b. Perform tests of airport revenue generating activities (e.g., passenger facilities charges, leases, and telephone contracts) to ascertain that all airport-generated revenue is accounted for.
- c. Test expenditures of airport revenue to verify that airport revenue is used for permitted purposes.
- d. Perform tests of transactions to ascertain that payments from airport revenues to the sponsors, related parties, or other governmental entities are airport-related, properly documented, and are commensurate with the services or products received by the airport.

- e. Perform tests to assure that indirect costs charged to the airport from the sponsor's cost allocation plan were allocated in accordance with the FAA policy on cost allocation.

IV. OTHER INFORMATION

The Federal Aviation Reauthorization Act of 1996, Section 805 (49 USC 47107(m)) requires public agencies that are subject to the Single Audit Act Amendments of 1996 (Act) that have received Federal financial assistance for airports to include as part of their single audit a review and opinion of the public agency's funding activities with respect to their airport or local airport revenue system. In the February 16, 1999, *Federal Register* (64 FR 7675), the FAA issued a notice titled *Policy and Procedures Concerning the Use of Airport Revenue*. This notice provides that the opinion required by 49 USC 47107(m) is only required when the Airport Improvement Program (AIP) is audited as major program under Circular A-133 and that the auditor reporting requirements of Circular A-133 satisfy the opinion requirement. However, the notice provides that the AIP may be selected as a major program based upon either the risk-based approach prescribed in Circular A-133 §__.520 or the FAA designating the AIP as a major program under §__.215(c).

DEPARTMENT OF TRANSPORTATION

- CFDA 20.205** **HIGHWAY PLANNING AND CONSTRUCTION (Federal-Aid Highway Program)**
CFDA 20.219 **RECREATIONAL TRAILS PROGRAM**
CFDA 23.003 **APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM**

I. PROGRAM OBJECTIVES

The objectives of the Highway Planning and Construction Cluster are to: (1) assist States in the planning and development of an integrated, interconnected transportation system important to interstate commerce and travel by constructing and rehabilitating the National Highway System (NHS), including Interstate highways and most other public roads; (2) provide aid for the repair of Federal-aid highways following disasters; (3) foster safe highway design, and replace or rehabilitate structurally deficient or functionally obsolete bridges; (3) to support community-level transportation infrastructure; and (5) to provide for other special purposes. This cluster also provides for the improvement of roads in Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Alaskan Highway, and the Appalachian Development Highway System (ADHS). The objective of the ADHS program is to provide a highway system which, in conjunction with other federally aided highways, will open up areas with development potential within the Appalachian region where commerce and communication have been inhibited by lack of adequate access.

II. PROGRAM PROCEDURES

Federal-aid highway funds are generally apportioned by statutory formulas to the States and generally restricted to use on Federal-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector). Exceptions to the use on Federal-aid highways include: (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement program projects, bicycle and pedestrian projects, transportation enhancement activities, safe routes to school, and recreational trails projects, which may be located along any road or off road; and (4) the Federal Lands Highway Program. Some categories of funds may be granted directly to other Federal agencies, other State agencies, or Local Public Agencies (LPAs), such as cities, counties, tribal governments, Metropolitan Planning Organizations (MPOs), and other political subdivisions. States also may pass funds through to such agencies. Federal-aid funds may be used for: surveying; engineering; engineering studies; right-of-way acquisition and relocation assistance; capital improvements classified as new construction or reconstruction; improvements for functional, geometric, or safety reasons; 4R projects (restoration, rehabilitation, resurfacing, and reconstruction); planning; research, development, and technology transfer; intelligent transportation systems projects; roadside beautification; wetland and natural habitat mitigation; traffic management and control improvements; improvements necessary to accommodate other transportation modes; development and establishment of transportation management systems; billboard removal; construction of bicycle facilities and pedestrian facilities; fringe and corridor parking; car pool and van pool projects; and transportation enhancements, such as scenic and historic highway improvements. These funds generally cannot be used for routine highway operational activities, such as police patrols, mowing, snow plowing, or maintenance, unless it is

preventative maintenance. Also, certain authorizations (e.g., Surface Transportation Program (STP) or Congestion Mitigation and Air Quality (CMAQ) Improvement Program) may be used for improvements to transit; CMAQ funds are for projects and programs in air quality, nonattainment and maintenance areas for ozone, carbon monoxide, and small particulate matter, which reduce transportation related emissions. ADHS projects are subject to the same standards, specifications, policies, and procedures as other Federal-aid highway projects.

Eligibility criteria for the programs differ, so program guidance should be consulted. Projects in urban areas of 50,000 or more population must be based on a transportation planning process carried out by the MPOs in cooperation with the State and transit operators, and be included in metropolitan plans and programs. Projects in nonmetropolitan areas of a State must be consistent with the State's Transportation Plan. All projects must also be included in the approved Statewide transportation improvement program (STIP) developed as part of the required Statewide transportation planning process.

The ADHS is a cost-to-complete program (i.e., sufficient funding is to be provided over time to complete the approved initial construction/upgrading of the system) authorized by Section 201 of the Appalachian Regional Development Act of 1965. The Appalachian Regional Commission (ARC) has programmatic oversight responsibilities, which include approval of the location of the corridors and of State-generated estimates of the cost to complete the ADHS. The Federal Highway Administration (FHWA) has project-level oversight responsibilities for the ADHS program. If the location, scope, and character of proposed ADHS projects are in agreement with the latest approved cost-to-complete estimate and all Federal requirements have been satisfied, FHWA authorizes the work and disburses the ADHS funds. FHWA oversees the construction and accepts the ADHS projects upon satisfactory completion of the work.

Source of Governing Requirements

The primary sources of program requirements are 23 USC (Highways) and **Title XII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) (ARRA, 123 Stat. 203-208)**. Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation).

Availability of Other Program Information

The Federal Highway Administration maintains a web site that provides program laws, regulations, and other general information (<http://www.fhwa.dot.gov/>).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Federal funds can be used only to reimburse costs that are: (a) incurred subsequent to the date of authorization to proceed, except for certain property acquisition costs permitted under 23 USC 108; (b) in accordance with the conditions contained in the project agreement and the plans, specifications, and estimates (PS&E); (c) allocable to a specific project; and (d) claimed for reimbursement subsequent to the date of the project agreement (23 CFR sections 1.9, 630.106, and 630.205).
2. Federal funds can be used to reimburse for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or State courts only if approved by FHWA for Federal-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (DOT) legal counsel and approved in advance by FHWA (23 CFR section 140.505).
3. ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC.

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work on highway projects on Federal-aid highways or with ADHS funds. These requirements are not applicable to Federal-aid construction projects that are not located within the right-of-way of a Federal-aid highway. FHWA has provided guidance on the applicability of Davis-Bacon Act requirements on the Internet at: <http://www.fhwa.dot.gov/construction/contracts/080625.cfm> (23 USC 113 and 40 USC 14701).

F. Equipment and Real Property Management

The State shall charge, at a minimum, a fair market value for the sale, lease, or use of real property acquired with Federal assistance from the Highway Trust Fund (other than the Mass Transit Account) for the non-transportation purposes and shall use such income for projects eligible under 23 USC. Exceptions may be granted when the property is used for social, environmental or economic purposes (23 USC 156).

G. Matching, Level of Effort, Earmarking**1. Matching**

- a. The State is generally required to pay a portion of the project costs. Portions vary according to the type of funds authorized and the type of project and are stated in project agreements.

- b. A State's matching share for a project may be credited by certain toll revenues used to build or improve highways, bridges and tunnels (23 USC 120(j)).
- c. Donations of funds, materials, and services by a person or local government may be credited towards a State's matching share. Donated materials and services must meet the eligibility requirements of the project (23 USC 323(c)).
- d. The fair market value of land provided by State or local governments for highway purposes is eligible for matching share on a project. The fair market value of donated land shall not include any increase or decrease in value of donated land caused by the project. The fair market value of donated land shall be established as of the earlier of (1) the date on which the donation becomes effective or (2) the date on which equitable title to the land vests in the State (23 USC 323(b)).
- e. For transportation enhancement (TE) projects, funds from Federal agencies (except U.S. DOT) may be credited toward the non-Federal share of the cost of a project. The value of other non-cash contributions may be credited toward the non-Federal share. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis. The total cost of an individual project may be funded with up to 100 percent Federal funds; however, for a fiscal year, the ratio of Federal funds to non-Federal funds for all TE funded projects must comply with the maximum Federal share provisions in 23 USC 120(b). FHWA guidance on these provisions is available on the Internet at:
<http://www.fhwa.dot.gov/environment/te/1999guidance.htm#donations>
(23 USC 133(e)(5)(C)).
- f. Funds appropriated to any Federal land management agency may be used to pay the non-Federal share of any Federal-aid highway project funded under 23 USC 104 (23 USC 120(k)).
- g. Federal Lands Highway Program funds may be used to pay the non-Federal share of Federal-aid highway projects which provide access to or within Federal or Indian lands (23 USC 120(l)).
- h. For the Recreational Trails Program (RTP), funds from other Federal programs (including U.S. DOT) may be credited toward the non-Federal share of the cost of a project. RTP funds may be used to match other Federal programs. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis (23 USC 206(f)). FHWA guidance on these provisions is available on the Internet at:
<http://www.fhwa.dot.gov/environment/rectrails/news/dec2005/matchingfunds.htm>.

Any project sponsor (except for Federal agencies), whether a private individual or organization or a public agency, may donate funds, materials, services (including volunteer labor), or new right-of-way to be credited to the non-Federal share of an RTP project. Federal project sponsors may provide funds, materials, or services as part of the Federal share, but may not provide new right-of-way (23 USC 206(h)(1)).

- i. Any cost in excess of 20 percent of the cost of the replacement or rehabilitation of a bridge not on a Federal-aid highway that is wholly funded with State and local funds may be used to meet the matching share requirement of projects funded under 23 USC 144 (23 USC 144(n)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

In general, State DOTs and LPAs must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services for a construction project using Federal-aid highway funding (23 USC 112(b)(2); 23 CFR part 172). Requirements applicable to engineering and design-related services contracts using Federal-aid highway funding include:

1. Written procedures for each method of procurement used to procure engineering and design services. State DOT procedures must be approved by FHWA. Subrecipient (LPAs) procedures must be approved by the recipient, generally the State DOT. These procedures must provide for the following related to procurement of consultant services:
 - a. Preparing a scope of work, evaluation factors, and cost estimate;
 - b. Soliciting proposals;
 - c. Evaluating and ranking proposals and a documented basis for selection;
 - d. Negotiating the amount to be paid;
 - e. Monitoring the consultant's work and preparing a performance evaluation when the work is completed; and
 - f. Determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract (23 CFR section 172.9(a)).

2. Instead of performing its own audits of engineering and design contractors, contracting agencies (State DOTs and LPAs) are required to accept indirect cost rates that have been established by a cognizant Federal or State agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for 1-year applicable accounting periods, if such rates are not currently under dispute (23 USC 112(b) and 23 CFR section 172.7).
3. Contracts for a consultant to act in a management role for the contracting agency for services that are directly related to a construction project must be approved by FHWA before the consultant is hired (23 CFR section 172.9(d)).

J. Program Income

State and local governments may only use the Federal share of net income from the sale, use, or lease of real property previously acquired with Federal funds if the income is used for projects eligible under 23 USC (23 USC 156).

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable
- d. PR-20, *Voucher for Work Under Provisions of the Federal-Aid and Federal Highway Acts, as Amended (OMB No. 2125-0507)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

M. Subrecipient Monitoring

State DOTs are responsible for determining that subrecipients of Federal-aid highway funds have adequate project delivery systems for projects approved under 23 USC. They also are required to determine whether subrecipients have sufficient accounting controls to properly manage such Federal-aid funds (23 USC 106(g)(4)(A)).

N. Special Tests and Provisions

1. Use of Other State or Local Government Agencies

Compliance Requirement – A State may use other public land acquisition organizations or private consultants to carry out the State’s authorities under 23 CFR section 710.201(b) in accordance with a written agreement (23 CFR section 710.201(h)).

Audit Objective – Determine whether other public land acquisition organizations or private consultants are carrying out the State’s authorities under 23 CFR section 710.201(b) in accordance with their agreements with the State.

Suggested Audit Procedures

- a. Examine records and ascertain if other agencies were used for right-of-way activities on Federal-aid projects.
- b. Review a sample of right-of-way agreements with other agencies.
- c. Perform tests of selected right-of-way activities to other agencies to verify that they comply with the written agreement.

2. Replacement of Publicly Owned Real Property

Compliance Requirement – Federal funds may be used to reimburse the reasonable costs actually incurred for the functional replacement of publicly owned and publicly used real property provided that FHWA concurs that it is in the public interest. The cost of increases in capacity and other betterments are not eligible except: (1) if necessary to replace utilities; (2) to meet legal, regulatory, or similar requirements; or (3) to meet reasonable prevailing standards for the type of facility being replaced (23 CFR section 710.509).

Audit Objective – Determine whether the functional replacement of real property was accomplished within FHWA requirements.

Suggested Audit Procedures

- a. Ascertain if there were any functional replacements of publicly owned real property.
- b. Verify that FHWA concurred in the State’s determination that the functional replacement is in the public interest.
- c. Review a sample of transactions involving functional replacements and verify that the transactions were consistent with the FHWA requirements.

3. Project Extensions

Compliance Requirement – FHWA must approve extensions affecting project costs or the amount of liquidated damages, except those for projects administered by the State DOT under 23 USC 106(c) which allow the State DOT to assume the responsibilities for design, plans, specifications, estimates, contract awards and inspection of progress (23 USC 106(c); 23 CFR section 635.121).

Audit Objective – Determine whether proper FHWA approvals were obtained for contract extensions affecting project costs and the amount of liquidated damages assessed.

Suggested Audit Procedures

- a. Review the systems for monitoring and controlling contract time and review project files to determine if there were project extensions.
- b. Verify that FHWA approval was obtained for time extensions affecting project cost and, where applicable, the amount of liquidated damages assessed.

4. Quality Assurance Program

Compliance Requirement – A State DOT or LPA must have a quality assurance (QA) program, approved by FHWA, for construction projects on the National Highway System to ensure that materials and workmanship conform to approved plans and specifications. Verification sampling must be performed by qualified testing personnel employed by the State DOT, or by its designated agent, excluding the contractor (23 CFR sections 637.201, 637.205, and 637.207).

Audit Objective – Determine whether the State DOT or LPA is following a QA program approved by FHWA.

Suggested Audit Procedures

- a. Obtain an understanding of the recipient's QA program.
- b. Verify that the QA program has been approved by FHWA.
- c. Review documentation of test results on a sample basis to verify that proper tests are being taken in accordance with the QA program.
- d. Verify that verification sampling activities are performed by qualified testing personnel employed by the agency, or by its designated agent, excluding the contractor.

5. Contractor Recoveries

Compliance Requirement – When a State recovers funds from highway contractors for project overcharges due to bid-rigging, fraud, or anti-trust violations or otherwise recovers compensatory damages, the Federal-aid project involved shall be credited with the Federal share of such recoveries (Tennessee v. Dole 749 F.2d 331 (6th Cir. 1984); 57 Comp. Gen. 577 (1978); 47 Comp. Gen. 309 (1967)).

Audit Objective – Determine whether the proper credit was made to the Federal share of a project when recoveries of funds are made.

Suggested Audit Procedures

- a. Determine the extent to which the State has recovered overcharges and other compensatory damages on Federal-aid projects through appropriate interviews and a review of legal, claim, and cash receipt records.
- b. Review a sample of cash receipts and verify that appropriate credit is reflected in billings to the Federal Government.

6. Project Approvals

Compliance Requirement – FHWA project approval and authorization to proceed is required before costs are incurred for all construction projects other than those administered by the State DOT under 23 USC 106(c). Construction projects administered under standard procedures cannot be advertised nor force account work commenced until FHWA: (1) approves the plans, specifications, and estimates; and (2) authorizes the State DOT to advertise for bids or approves the force account work (23 CFR sections 630.205(c), 635.112(a), 635.204, and 635.309). Construction cannot begin until after FHWA concurs in the contract award (23 CFR section 635.114). This requirement does not apply to construction projects administered by the State DOT under 23 USC 106(c) which allow the State DOT to assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspection of progress (23 USC 106(c)).

Audit Objective – Determine whether project activities are started with required Federal approvals.

Suggested Audit Procedures

- a. Review a sample of projects and identify dates of the necessary approvals, authorizations, and concurrences.
- b. Identify dates that projects were advertised and contract or force account work was initiated and compare to FHWA's approval dates.

7. Value Engineering

Compliance Requirement – State DOTs are required to establish a value engineering (VE) program, and ensure that a VE analysis has been performed on all applicable projects. The program should include procedures to approve or reject recommendations and for monitoring to ensure that resulting, approved recommendations are incorporated into the plans, specifications, and estimate. Applicable projects are: (a) projects located on the NHS with an estimated total project cost of \$25 million or more that utilize Federal-aid highway program funding; (b) bridge projects with an estimated total cost of \$20 million or more that utilize Federal-aid highway program funding; and (c) any other projects that the Secretary determines to be appropriate (23 USC 106(e); 23 CFR part 627).

Audit Objective – Determine whether VE programs have been established, analyses conducted for applicable projects, VE recommendations are evaluated, and approved recommendations are incorporated into the plans, specifications, and estimate for the project.

Suggested Audit Procedures

- a. Verify that the State DOT has established a VE program in accordance with Federal requirements.
- b. Review a sample of applicable projects to ensure that a VE analysis was conducted, recommendations were evaluated, and approved recommendations were incorporated, as appropriate, in accordance with the established VE program.

DEPARTMENT OF TRANSPORTATION

CFDA 20.223 TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT (TIFIA) PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program is to finance surface transportation projects of national or regional significance by filling market gaps and leveraging substantial public (non-Federal) and private co-investment. TIFIA credit assistance is intended to facilitate the financing of projects that would otherwise have been significantly delayed because of funding limitations or difficulties in accessing the capital markets. Federal credit assistance is provided to eligible highway, transit, rail, and intermodal freight projects, including certain projects that provide access to ports.

II. PROGRAM PROCEDURES

Public entities, or private entities with public sponsorship, seeking to finance the design and construction, or reconstruction, of eligible surface transportation projects may apply for TIFIA assistance. The program targets large projects, generally in excess of \$50 million. The program offers three types of financial assistance featuring maturities up to 35 years after substantial completion of the project: secured loans, loan guarantees, and standby lines of credit. Projects must be consistent with State and local transportation plans.

Source of Governing Requirements

This program is authorized by 23 USC 601 through 609. In addition, 23 USC requirements apply for highway projects, Chapter 53 of 49 USC requirements apply for transit projects, and 49 USC 5333(a) requirements apply for rail projects.

Availability of Other Program Information

Information, including program guidance and application instructions, may be found on the TIFIA website at <http://www.fhwa.dot.gov/ipd/tifia>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed1. *Activities Allowed*

Eligible project activities are costs associated with the following:

- a. Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities.
- b. Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment. While the acquisition of real property is an eligible cost under TIFIA, such property must be physically or functionally related to the transportation project. For transit projects, the land must be reasonably necessary for the project, including joint development projects and property must be physically or functionally related to the project (49 USC 5302(a)(1)(G); 49 CFR section 80.3).
- c. Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction. Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.
- d. For a transit project, costs must also meet the definition of a transit capital project found at 49 USC 5302(a)(1) (23 USC 601 (a)).

2. *Activities Unallowed*

TIFIA administrative charges associated with the application process for TIFIA credit assistance, such as application fees, transaction fees, loan servicing fees, and credit monitoring fees are not eligible project costs (49 CFR section 80.5(b)).

D. Davis-Bacon Act

The provisions of the Davis-Bacon Act apply to projects receiving TIFIA assistance (49 USC 5333(a)).

F. Equipment and Real Property Management

1. For highway projects, recipients shall charge, at a minimum, a fair market value for the sale, lease, or use of real property acquired with Federal assistance from the Highway Trust Fund (other than the Mass Transit Account) for non-transportation purposes and shall use such income for projects eligible under 23 USC. Exceptions may be granted when the property is used for social, environmental or economic purposes (23 USC 156).

2. For transit projects, real property acquired must be used for a public transportation capital project as defined at 49 USC 5302(a)(1). A fair share of revenue must be obtained in exchange for any lease or use or joint development transfer of real property and all proceeds be used for a public transportation purpose (49 USC 5302(a)(1)(G)).

G. Matching, Level of Effort, Earmarking

1. **Matching** – Credit assistance under TIFIA may comprise no more than 33 percent of total eligible project costs. Eligible project costs are calculated and presented on a cash (year-of-expenditure) basis (49 CFR section 80.5(a)).
2. **Level of Effort** – Not Applicable
3. **Earmarking** – Not Applicable

I. Procurement and Suspension and Debarment

In general, recipients must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services for construction of a highway project (23 USC 112(b)(2); 23 CFR part 172) or a transit project (49 USC 5325(b)(1)).

For highway and transit projects, the requirements applicable to engineering and design-related services contracts include:

1. Instead of performing its own audits of engineering and design contractors, contracting agencies are required to accept indirect cost rates that have been established by a cognizant Federal or State agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for 1-year applicable accounting periods, if such rates are not currently under dispute (23 USC 112(b); 23 CFR section 172.7; 49 USC 5325(b)(2)(A) and (B)).

For highway projects, the requirements applicable to engineering and design-related services contracts include:

2. Written procedures for each method of procurement used to procure engineering and design services. Recipient procedures must be approved by the Federal Highway Administration (FHWA). Subrecipient procedures must be approved by the recipient, generally the State DOT. These procedures must provide for the following related to procurement of consultant services:
 - a. Preparing a scope of work, evaluation factors, and cost estimate;
 - b. Soliciting proposals;
 - c. Evaluating and ranking proposals and a documented basis for selection;

- d. Negotiating the amount to be paid;
 - e. Monitoring the consultant's work and preparing a performance evaluation when the work is completed; and
 - f. Determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract (23 CFR section 172.9(a)).
3. Contracts for a consultant to act in a management role for the contracting agency for services that are directly related to a construction project must be approved by FHWA before the consultant is hired (23 CFR section 172.9(d)).

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Not Applicable

DEPARTMENT OF TRANSPORTATION

CFDA 20.319 HIGH-SPEED RAIL CORRIDORS AND INTERCITY PASSENGER RAIL SERVICE – CAPITAL ASSISTANCE GRANTS

I. PROGRAM OBJECTIVES

The High-Speed Intercity Passenger Rail (HSIPR) Program is intended to develop and expand high-speed and intercity passenger rail service in the United States. The objectives of this program are twofold. In the long-term, the program aims to build an efficient, high-speed passenger rail network connecting major population centers that are 100 to 600 miles apart. In the near-term, the program will begin to lay the foundation for this high-speed passenger rail network by investing in intercity passenger rail infrastructure, equipment, and intermodal connections.

II. PROGRAM PROCEDURES

The HSIPR Program is funded both through annual appropriations **and the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5, 123 Stat. 208), under the title “Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service.”** Funding under the HSIPR Program is advanced along four funding tracks in order to both aid in the near-term economic recovery efforts intended under ARRA and to establish the path to realize a fully-developed national high-speed intercity passenger rail network. Track 1 – Projects will fund “ready-to-go” construction projects and the completion of project-level environmental and preliminary engineering documents necessary to prepare projects for construction. Track 2 – Programs will fund sets of inter-related projects that constitute the entirety or a distinct phase (or geographic section) of a long-range service development plan. Track 3 – Planning is aimed at helping establish a “pipeline” of future high-speed rail/intercity passenger rail projects and service development programs by advancing planning activities for applicants at an earlier stage of the development process. Track 4 – Fiscal Year (FY) 2009/FY 2008 Appropriations Projects provide an alternative for projects that would otherwise fit under Track 1.

Depending on the specific funding track applied for, States (including the District of Columbia), groups of States, interstate compacts, public agencies established by one or more States and having responsibility for providing high-speed rail service or intercity passenger rail service, and Amtrak are eligible for HSIPR Program grants. Applicants must provide documents that demonstrate the status of all agreements with relevant stakeholders involved in the particular construction investment, including interstate partners, host railroads, right-of-way owners, and the contract railroad operator providing service.

Source of Governing Requirements

The HSIPR Program consolidates the following recently authorized and closely related programs:

High-Speed Rail Corridor Development program (49 USC 26106),

Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC Chapter 244),

Congestion Grants program (49 USC 24105),

Fiscal Year 2009 Capital Assistance to States – Intercity Passenger Rail Service Program (Pub. L. No. 111-8 (123 Stat. 934)), and

Fiscal Year 2008 Capital Assistance to States – Intercity Passenger Rail Service Program (Pub. L. No. 110-161 (121 Stat. 2393)).

The funding appropriated under ARRA is for the programs authorized in 49 USC 26106, 49 USC Chapter 244, and 49 USC 24105, while the funding provided from the FY 2008 and FY 2009 appropriations acts is governed under provisions unique to those two pieces of legislation. The Notice of Funding Availability for High-Speed Intercity Passenger Rail (“HSIPR”) Program (Program Notice), June 23, 2009, *Federal Register*, 74 FR 29900, describes the interim program guidance applicable to the program.

Availability of Other Program Information

Additional information about the HSIPR Program is available on the Federal Railroad Administration (FRA) website at <http://www.fra.dot.gov/us/content/31>. **Included on the FRA website are two documents mandated under ARRA: The High-Speed Rail Strategic Plan and interim program guidance. The strategic plan outlines the initial vision for the program; the interim guidance builds upon the strategic plan by detailing the application requirements and procedures for obtaining funding under the program.**

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a federal program, the auditor should first look to Part 2, Matrix of Compliance requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Activities Allowed – ARRA (Tracks 1 and 2)

a. **Activities funded under Track 1 must be eligible under the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244) or the Congestion Grants program (49 USC 24105), and include:**

- (1) Acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service, including High-Speed Rail; expenses incidental to the acquisition or construction (including designing, engineering, location**

- surveying, mapping, inspecting, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to Intercity Passenger Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;
- (2) **Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service; and**
 - (3) **Projects to provide access to Intercity Passenger Rail service rolling stock for non-motorized transportation, including bicycles and recreational equipment, and to provide storage capacity in intercity passenger trains for such transportation, equipment, and other luggage, to ensure passenger safety (See Section 3.5.1 of the Program Notice (74 FR 29910)).**
- b. **Activities funded under Track 2 must be eligible under the High-Speed Rail Corridor Development program (49 USC 26106) or the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244), and include:**
- (1) **Activities 1 through 3 listed above under Track 1; and**
 - (2) **Acquiring, constructing, improving or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of High-Speed Rail service; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to High-Speed Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing (See Section 3.5.2 of the Program Notice (74 FR 29910)).**

2. *Activities Allowed* – Fiscal Year 2009 and 2008 appropriations acts (Tracks 3 and 4).
 - a. Activities funded under Track 3 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No. 111-8 and Pub. L. No. 110-161, respectively), and include planning studies that—
 - (1) Lead to the completion of a service development plan to support future applications for projects under Track 2;
 - (2) Identify and compare the costs, benefits, and impacts of a range of transportation alternatives, including High-Speed Rail and/or Intercity Passenger Rail, as a means of providing decision makers with the information necessary to implement appropriate transportation solutions;
 - (3) Support the preparation of environmental documents that are prerequisite to the fulfillment of “service” NEPA studies; and
 - (4) Consist of operational analyses and simulations, and projections of future service requirements, leading to systematic and rational priority lists of projects that could be eligible for funding under the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244) or the Congestion Grants program (49 USC 24105), and could ultimately contribute to service development plans (See Section 3.5.2 of the Program Notice (74 FR 29911)).
 - b. Activities funded under Track 4 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No.111-8 and Pub. L. No.110-161, respectively), and include
 - (1) Acquiring, constructing, or improving equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service including High-Speed Rail service;
 - (2) Expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way);
 - (3) Highway rail grade crossing improvements related to Intercity Passenger Rail service;
 - (4) Mitigating environmental impacts;
 - (5) Communication and signalization improvements; and

- (6) Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service (See Section 3.5.2 of the Program Notice (74 FR 29911)).
3. *Activities Unallowed* – In no case are Federal funds awarded under the HSIPR Program eligible to be used for rail operating expenses associated with the operation of intercity passenger rail service or for first-dollar liability costs for insurance related to the provision of intercity passenger rail service (49 USC 24404; June 23, 2009, *Federal Register* (74 FR 29916)).

D. Davis-Bacon Act

Two provisions related to the Davis-Bacon Act are included in the ARRA. The first requires that funded projects comply with the requirements of 40 USC 3141–3144, 3146 and 3147. The second provides that 49 USC 24405 shall also apply to the funded projects. The first provision mandates compliance with the Davis-Bacon Act generally. The second provision also mandates compliance the Davis-Bacon Act through 49 USC 24405(c), which provides that the Secretary of Transportation shall require as a condition of making any grant that uses rights-of-way owned by a railroad that the applicant agree to comply with the standards of 49 USC 24312 with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 USC 24308(a). 49 USC 24312 provides that Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under 49 USC 24308 will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under 40 USC 3141–3144, 3146 and 3147 and that wages in a collective bargaining agreement negotiated under the Railway Labor Act are deemed to comply with 40 USC 3141–3144, 3146 and 3147. 49 USC 24308 authorizes Amtrak to enter into agreements with rail carriers or regional transportation authorities to use facilities of and have services provided by the carrier or authority under terms on which the parties agree.

FRA has concluded that the two Davis-Bacon requirements can be reconciled in a manner that allows the HSIPR Program to be implemented in a way that is both reasonable and consistent with current practices. For projects that use or propose to use rights-of-way owned by a railroad, the specific provisions of 49 USC 24405(c) apply and recipients are required to comply with the standards of 49 USC 24312 (prevailing wages) in the same manner that Amtrak is required to comply with those standards for construction projects it might undertake. Wages specified in a collective bargaining agreement negotiated under the Railway Labor Act would be deemed to comply with Davis-Bacon Act requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Davis-Bacon Act requirements apply and there would be no specific exemption for wages arrived at through a collective bargaining agreement negotiated under the Railway Labor Act. Wage rates on these projects would have to meet the Secretary of Labor’s prevailing wage standards as described above (See June 23, 2009, *Federal Register* (74 FR 29927)).

G. Matching, Level of Effort, Earmarking

1. Matching

- a. The matching share of allowable costs for a particular grant is established in the grant agreement.
- b. For HSIPR projects funded under the authority of the High-Speed Rail Corridor Development program (49 USC 26106(f)), the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC 24402(g)(1)(B)), or the Congestion Grants program (49 USC 24105(c)), the Federal share for the cost of the project cannot exceed 80 percent.
- c. **For ARRA-funded projects, the Federal share for projects funded under 49 USC 26106, 49 USC chapter 244, and 49 USC 24105 shall be, at the option of the recipient, up to 100 percent (ARRA, 123 Stat 208).**
- d. For HSIPR projects funded from annual appropriations in the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs, the Federal share for the cost of the project cannot exceed 50 percent (Pub. L. No. 111-8, 123 Stat. 934 and Pub. L. No. 110-161, 121 Stat. 2393).

2. Level of Effort – Not Applicable

3. Earmarking

No more than 10 percent of funds made available under the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs may be used for planning activities that lead directly to the development of a passenger rail corridor investment plan (Pub. L. No. 111-8, 123 Stat. 934 and Pub. L. No. 110-161, 121 Stat. 2393).

H. Period of Availability of Federal Funds

Funding for grants under ARRA must be expended by September 30, 2017 (ARRA, 123 Stat. 208; June 23, 2009, *Federal Register* (74 FR 29916)).

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Applicable

2. **Performance Reporting** – Not Applicable
3. **Special Reporting** – Not Applicable
4. **Section 1512 ARRA Reporting** – Applicable
5. **Subaward Reporting under the Transparency Act** –Applicable to non-ARRA funds

DEPARTMENT OF TRANSPORTATION

CFDA 20.500 **FEDERAL TRANSIT – CAPITAL INVESTMENT GRANTS**
CFDA 20.507 **FEDERAL TRANSIT – FORMULA GRANTS (Urbanized Area Formula Program)**

I. PROGRAM OBJECTIVES

The objectives of Federal Transit – Capital Investment Grants (49 USC 5309) (5309 program) and Federal Transit – Urbanized Area Formula Grants (49 USC 5307) (5307 program) are to assist in financing the planning, acquisition, construction, preventive maintenance, and improvement of facilities and equipment in public transportation services. Operating expenses are also eligible under the 5307 program in urbanized areas with populations of less than 200,000 and, under some limited exceptions, to some urbanized areas with population of 200,000 and above.

II. PROGRAM PROCEDURES

Grants are awarded to public agencies on approval of applications for specific programs or projects submitted to the Federal Transit Administration (FTA). FTA monitors the progress of those projects through on-site inspections, telephone contacts, correspondence, and quarterly progress and financial status reports.

FTA is required to perform reviews and evaluations of 49 USC 5307 grant activities at least every 3 years. The most recent FTA Triennial Review Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at http://www.fta.dot.gov/funding/oversight/grants_financing_10924.html. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of actual program activities with (1) the approved program of projects and (2) the planning process required under 49 USC 5303. Copies of these triennial reviews are available from the regional offices. Regional office addresses and telephone numbers are available on the FTA web site listed below.

Source of Governing Requirements

The programs in this cluster are authorized by 49 USC 5307 and 5309 and the **American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5)(123 Stat. 209 to 211)**. Program regulations are at 49 CFR parts 601 through 665.

Availability of Other Program Information

Additional information is available on the FTA web site at <http://www.fta.dot.gov/>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

- a. Under the 5307 and 5309 programs, capital activities, as defined in 49 USC 5302 (a), are eligible, including preventive maintenance and certain expenses related to crime prevention and security (49 USC 5307(b) and 5309(b)).
 - (1) For projects authorized after August 10, 2005, the only capital projects authorized under 49 USC 5309 are:
 - (a) Bus and bus facilities;
 - (b) New fixed guideways, including Small Starts;
 - (c) Fixed guideway modernization; and
 - (d) Corridor improvements (49 USC 5309(b)(1) through (b)(4)).
 - (2) Under the 5307 program, operating expenses related to the conduct of emergency response drills with public transportation agencies and local first-response agencies and security training for public transportation employees are eligible capital expenses (49 USC 5302(a)(1)(J)).
- b. Under the 5307 program, mobility management, as defined in 49 USC 5302(a)(1)(L), and planning (49 USC 5307 (b)(1)).
- c. Under the 5307 and 5309 programs, preliminary engineering and final design, as defined in 49 USC 5302(a)(1)(A) (49 USC 5307(b) and 5309(b)).
- d. Under the 5307 program, operating assistance for all urbanized areas under 200,000 population, and certain larger urbanized areas under limited exceptions (49 USC 5307(b)).

2. *Activities Unallowed*
 - a. Under the 5309 program:
 - (1) Mobility management;
 - (2) Operating expenses; and
 - (3) Alternatives analysis, including planning, with funds appropriated after FY 2005 (49 USC 5309 (b)(1) and 5339).
 - b. Under the 5307 program, operating assistance in areas over 200,000, unless under certain limited exceptions (49 USC 5307(b)(2)(A)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work financed with a grant or loan under this program (49 USC 5333).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. Matching

The matching share of allowable costs for a particular grant is established in the grant agreement. Generally, the Federal share of capital costs cannot exceed 80 percent and the Federal share of operating expenses cannot exceed 50 percent. The Federal share cannot exceed 90 percent of the cost for vehicle-related equipment and facilities required to comply with the Clean Air Act or the Americans with Disabilities Act of 1990 (49 USC 5307(e), 5309(h) and 5323(i)).

2. Level of Effort – Not Applicable

3. Earmarking

- a. One percent of 5307 program funds apportioned to urbanized areas with a population of at least 200,000 shall be made available for transit enhancement activities (49 USC 5307(d)(K)(i)).
- b. One percent of 5307 program funds apportioned to urbanized areas with a population of at least 200,000 shall be expended for public transportation security projects. These projects may include increased lighting in, or adjacent to, a public transportation system (including bus stops, subway stations, parking lots, and garages); increased camera surveillance of an area in or adjacent to that system; providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent

to that system; and any other project intended to increase the security and safety of an existing or planned public transportation system. If the recipient certifies that the expenditure for security projects is not necessary, the one percent expenditure is not required (49 USC 5307 (d)(1)(J)(i)).

- c. Both of these requirements are at the urbanized area, not grant or grantee level (49 USC 5307).
- d. **For ARRA funds under the 5307 program, operating assistance is limited to 10 percent of area's apportionment (Section 1202 of Pub. L. No. 111-32, 123 Stat. 1908, June 24, 2009).**

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

Report of DBE Awards or Commitments and Payments (OMB No. 2105-0510) – Based on the level of FTA funding, exclusive of transit vehicle purchases, recipients are required to implement a DBE program. To monitor the progress of the DBE program, the recipient is required to submit semi-annual reports based on a recordkeeping system (49 CFR section 26.11 and Appendix B to part 26).

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

Also see Transit Cross-Cutting Section.

Environmental Review

Compliance Requirement – For construction projects, Federal transit law requires that no adverse environmental effect result from the project, or that no feasible and prudent alternative to the adverse effect of the project exist and that all reasonable steps be taken to minimize the adverse effect (49 USC 5324(b)). The National Environmental Policy Act (NEPA) and its implementing regulation (23 CFR part 771, which applies to both FTA and the Federal Highway Administration) require that the significant environmental effects of public transportation projects proposed for FTA assistance be documented, and that alternatives to avoid, minimize, and mitigate the adverse effects be considered (42 USC 4321 et seq.). A sponsor of an FTA-assisted project (i.e., the grant recipient) must comply with all design and mitigation commitments made in any environmental document prepared for the project (49 USC 139(c)(4)).

Accordingly, the measures to mitigate the adverse environmental and community impacts of a project, if any, are described in NEPA and related environmental documents. For projects requiring an Environmental Impact Statement (EIS), mitigation measures are summarized in a Record of Decision. For projects requiring an Environmental Assessment, mitigation measures are summarized in a Finding of No Significant Impact (FONSI). For categorically excluded projects, mitigation usually is not required, but if any mitigation measure is required, it will be documented in the FTA approval memorandum for the project. In all cases, these environmental documents should be referenced in the construction grant agreement with the recipient.

Audit Objective – Determine whether the measures to mitigate the adverse impacts on the community and the environment that were specified in the environmental documents referenced in the grant agreement for construction projects were implemented.

Suggested Audit Procedures

- a. Identify any FTA-assisted construction projects and review the grant agreement and environmental documents to identify mitigation measures specified.
- b. For a sample of mitigation measures, compare the status of implementation with the commitments made in the environmental documents or grant agreement.

DEPARTMENT OF TRANSPORTATION

CFDA 20.509 FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS (Nonurbanized Area Formula Program)

I. PROGRAM OBJECTIVES

The objectives of the Section 5311 formula program are to initiate, improve, or continue public transportation service in nonurbanized areas by providing financial assistance for operating and administrative expenses, and for the acquisition, construction, and improvement of facilities and equipment. In addition, Section 5311(f) specifically provides for the support of rural intercity bus service. The Rural Transit Assistance Program (RTAP), Section 5311(b)(3), provides additional funding to provide training, technical assistance, research and related support services to support rural transit service.

II. PROGRAM PROCEDURES

State Agencies

The Federal Transit Administration (FTA) annually publishes formula apportionments to the States in a Federal Register Notice published within ten days after the Department of Transportation (DOT) Appropriations Act is signed into law. The Governor of each State designates a State agency to administer the program. The State is responsible for fair distribution of the funds in the State, including Indian reservations. The State may also provide transit service directly or through contracts with private operators. The State describes its procedures for administering the program in a State management plan. The State applies to FTA for approval of a program of projects, usually annually, and reports annually to FTA on financial status and revisions to the program of projects. The State agency may be the recipient on behalf of Indian tribes that are subrecipients, but federally recognized tribes may also elect to apply to FTA as a direct recipient.

FTA monitors compliance with Federal requirements through administrative “State Management Reviews,” generally every three years.

Tribal Transit Program

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. No. 109-59) created a new Tribal Transit Program under the Nonurbanized Area Formula Program, and funded it as a takedown under the Section 5311 program. Under the Tribal Transit Program, federally recognized Indian tribes are eligible direct recipients. Based on an annual national competitive selection process conducted by FTA, FTA awards Tribal Transit grants directly to eligible Indian tribes. Recipients of Tribal Transit Program funds may use these funds for any purpose that is eligible under Section 5311. Only federally recognized tribes are eligible recipients under the Tribal Transit Program.

Subrecipients

The State selects subrecipients and monitors their compliance with Federal requirements. FTA does not directly monitor the subrecipients, but checks the State's procedures for monitoring subrecipients during the State Management Review. The State may impose program criteria in addition to those imposed by the FTA and may require additional reports from subrecipients. These State requirements are included in the State Management Plan.

Source of Governing Requirements

This program is authorized by 49 USC 5311 and the **American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5) (123 Stat. 209 to 211)**. Program regulations are in 49 CFR. Note that certain exceptions or dollar thresholds in these rules may exclude many rural transit activities.

Availability of Other Program Information

Information about the program may be found on the FTA web site at <http://www.fta.dot.gov/>. Program Guidance and Application Instructions are contained in FTA Circular 9040.1F which may be found on the web site. In referring to the program, FTA uses the term "rural" to include both rural and small urban areas (all areas not included in the urbanized areas designated by the U.S. Bureau of the Census).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. *Activities Allowed*

- a. The project must provide local transportation service (transit service available to the public) in an area other than an urbanized area (49 USC 5311(d)) or support intercity bus transportation (49 USC 5311(f)). Coordination of public transportation assisted under this section with transportation service assisted by other United States Government sources is permitted and encouraged (49 USC 5311(b)).
- b. RTAP funds may be used to provide training, technical assistance, research and other related support services for providers of rural public transit and related services (49 USC 5311(b)(3)).

2. *Activities Unallowed*

- a. Planning activities are unallowable with the exception of funds under the Tribal Transit Program or by States for local transportation services and intercity bus transportation (49 USC 5311(c)(1), (e), and (f)).
- b. **ARRA Tribal Transit Program funds may not be used for any activities other than for capital projects (ARRA, 123 Stat. 209).**

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act are applicable to construction work financed with a grant under this program (49 USC 5333).

E. Eligibility

1. **Eligibility for Individuals – Not Applicable**
2. **Eligibility for Group of Individuals or Area of Service Delivery – Not Applicable**
3. **Eligibility for Subrecipients**

Eligible subrecipients are State and local governments, Indian tribes, non-profit organizations, or operators of public transportation or intercity bus service (49 USC 5311(a)).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking

1. **Matching**

- a. Operating assistance requires a 50 percent match, half of which must be non-Federal. Capital and administration require a 20 percent non-Federal match. No match is required for State administration, RTAP, or the Tribal Transit Program. Revenues from providing public transportation (e.g., farebox revenue) may not be used for the match. Amounts received under a service agreement with a State or local social service agency or a private social service organization may be used to match operating assistance. Recipients may use funds from other Federal agencies (non-DOT) for the entire local match if the other agency makes the funds available to the recipient for the purposes of the project. The only DOT funds that States can use as local match for Section 5311 projects are from the Federal Lands Highway Program (49 USC 5311(g)).

- b. Higher Federal share rates (sliding-scale match rates) for capital costs are available to 14 States described in 23 USC 120(b). These sliding scale rates are based on the ratio of designated public lands area to the total area of these 14 States. For FTA capital grants, the Federal share increases from 80 percent in proportion to the share of public lands in the State. For FTA operating grants in these same States, the Federal share increases from 50 percent to 62.5 percent (5/8) of the rate for capital grants in those States (49 USC 5311(g)(1)(B)).
- c. The Federal share cannot exceed 90 percent for vehicle-related equipment and facilities required to comply with the Clean Air Act or the Americans with Disabilities Act of 1990 (49 USC 5323(i)).

2. Level of Effort – Not Applicable

3. Earmarking

- a. The State may expend no more than 15 percent of its annual Section 5311 apportionment for state administration, including planning and technical assistance (49 USC 5311(e)).
- b. A State must use at least 15 percent of the annual apportionment to support intercity bus service unless the Governor certifies, after consultation with affected intercity bus service providers, that the intercity bus needs of the State are adequately met (49 USC 5311(f)).
- c. **A State may use no more than 10 percent of its ARRA apportionment for operating assistance (Section 1202 of Pub. L. No. 111-32, 123 Stat. 1908, June 24, 2009).**

H. Period of Availability of Federal Funds

The funds are available to the State for the year of apportionment plus 2 years. Once the funds are obligated for an approved project, they remain available to the State until expended (49 USC 5311(c)).

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting

1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

c. SF-425, *Federal Financial Report* – Applicable

2. Performance Reporting – Not Applicable

3. Special Reporting

National Transit Database (NTD) (OMB No. 2132-0008) – Recipient are required to submit an annual report containing financial and operating information. The State agency administering the 5311 program is responsible for submitting the rural report on behalf of the State and its subrecipients. Tribes report to NTD directly on Tribal Transit Program grants they receive directly from FTA. The NTD web site is located at <http://www.ntdprogram.gov/>. Data to be reviewed is on the Rural General Public Service Transit form (RU-20).

Key line items: The following line items contain critical information:

a. Line 05 – Total Annual Operating Expenses

b. Line 08 – Local Operating Assistance

c. Line 13 – Annual Capital Costs

d. Lines 25a, 25b, 25c (Mode), Column g – Total Trips

4. Section 1512 ARRA Reporting – Applicable

5. Subaward Reporting under the Transparency Act – Applicable to non-ARRA funds only

N. Special Tests and Provisions

See Transit Cross-Cutting Section.

DEPARTMENT OF TRANSPORTATION

- CFDA 20.513 CAPITAL ASSISTANCE PROGRAM FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES**
CFDA 20.516 JOB ACCESS – REVERSE COMMUTE
CFDA 20.521 NEW FREEDOM PROGRAM

I. PROGRAM OBJECTIVES

Capital Assistance Program for Elderly Persons and Persons with Disabilities (5310 program)

The objective of the 5310 program is to improve mobility for elderly individuals and individuals with disabilities throughout the country. Toward this end, the Federal Transit Administration (FTA) provides financial assistance for transportation services planned, designed, and carried out to meet the special transportation needs of elderly individuals and individuals with disabilities in all areas—urbanized, small urban, and rural.

Job Access – Reverse Commute (JARC)

The objectives of the JARC program are to improve access to transportation services to employment and employment-related activities for welfare recipients and eligible low-income individuals and to transport residents of urbanized areas and nonurbanized areas to suburban employment opportunities. Under this program, FTA provides financial assistance for transportation services planned, designed, and carried out to meet the transportation needs of welfare recipients and eligible low-income individuals, and of reverse commuters regardless of income.

New Freedom

The New Freedom program aims to provide additional tools to overcome barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for individuals with disabilities. The 2000 Census showed that only 60 percent of people between the ages of 16 and 64 with disabilities are employed. The New Freedom program seeks to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990.

II. PROGRAM PROCEDURES

Under the JARC and New Freedom Programs, FTA annually publishes formula apportionments to the States and urbanized areas with populations of 200,000 or greater (i.e., large urbanized areas) in a *Federal Register* notice published within 10 days after the Department of Transportation (DOT) Appropriations Act is signed into law. In the case of the 5310 program, the Governor of each State designates a State agency to administer the program. In the case of the JARC and New Freedom programs, the Governor: (1) designates a State agency to administer the program in nonurbanized areas and in urbanized areas with populations between 50,000 and 199,999; and (2) in consultation with responsible local officials and public

transportation providers, designates a recipient to administer the program for the large urbanized area(s). The State agencies or designated recipients (recipients) are responsible for fair distribution of the funds. State agencies or designated recipients must describe their procedures for administering the program in a State management plan (SMP), or, for those JARC and New Freedom-designated recipients serving large urbanized areas, program management plan (PMP).

State agencies and designated recipients apply to FTA for approval of a program of projects, usually annually, and report annually to FTA on financial status and revisions to their program of projects. Federal transit law, as amended by Safe Accountable Flexible Efficient Transportation Equity Act, a Legacy for Users (SAFETEA-LU), requires that projects selected for funding under the 5310, JARC, and New Freedom programs be derived from a locally developed, coordinated public transit-human services transportation plan, and that the plan be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers and participation by members of the public.”

FTA monitors compliance with Federal requirements through administrative “State Management Reviews,” in which a State agency is generally reviewed every 3 years. Designated recipients who also receive FTA financial assistance under the Urbanized Area Formula Program (CFDA 20.509) are also subject to an FTA “Triennial Review.”

Subrecipients

State agencies and designated recipients select subrecipients and monitor their compliance with Federal requirements. FTA does not directly monitor the subrecipients, but checks the State agency and designated recipient’s procedures for monitoring during the State Management Review and Triennial Review. The State agency and designated recipient may impose program criteria in addition to those imposed by FTA and may require additional reports from subrecipients. These State and designated recipient’s requirements are included in the SMP or PMP.

Source of Governing Requirements

The programs in this cluster are authorized by SAFETEA-LU (Pub. L. No. 109-059, enacted on August 10, 2005). The 5310 program is authorized by 49 USC 5310, the JARC program is authorized by 49 USC 5316, and the New Freedom program is authorized by 49 USC 5317. Program regulations are in 49 CFR.

Availability of Other Program Information

Additional information about the programs may be found on the FTA web site at <http://www.fta.dot.gov/>. Program guidance and application instructions for the 5310, JARC, and New Freedom programs are contained in FTA Circulars 9070.1F, 9050.1, and 9045.1, respectively. These circulars can be found at the “Legislation, Regulations, and Guidance” section of the FTA web site.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

1. Under the 5310 program, funds are available for capital expenses (and associated administrative, planning, and technical assistance) to support the provision of transportation services to meet the special needs of elderly individuals and individuals with disabilities (49 USC 5310(a)).
2. Under the JARC program, funds may be used for capital, planning, and operating expenses (and associated administrative, planning, and technical assistance) that support access to jobs and reverse commute projects (49 USC 5316(b)).
3. “Access to jobs” projects are defined as projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including:
 - a. Transportation projects to finance planning, capital, and operating costs of providing access to jobs under Chapter 53 of 49 USC;
 - b. Promoting public transportation by low-income workers, including the use of public transportation by workers with non-traditional work schedules;
 - c. Promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and
 - d. Promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986 (49 USC 5316(a)(1)).
4. “Reverse commute” projects are defined as public transportation projects designed to transport residents of urbanized areas and other-than-urbanized areas to suburban employment opportunities, including any projects to:
 - a. Subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other-than-urbanized areas to suburban workplaces;
 - b. Subsidize the purchase or lease by a non-profit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

- c. Otherwise facilitate the provision of public transportation services to suburban employment opportunities (49 USC 5316(a)(4)).
5. Under the New Freedom program, funds are available for capital and operating expenses (and associated administrative, planning, and technical assistance) 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 services, including transportation to and from jobs and employment support services (49 USC 5317(b)(1)).

D. Davis-Bacon Act

The requirements of the Davis-Bacon Act apply to construction work financed by a grant under this program (49 USC 5333).

E. Eligibility

1. **Eligibility for Individuals** – Not Applicable
2. **Eligibility for Group of Individuals or Area of Service Delivery** – Not Applicable
3. **Eligibility for Subrecipients**
 - a. Eligible subrecipients for the 5310 program are:
 - (1) Private non-profit organizations;
 - (2) Governmental authorities that certify that no non-profit corporations or associations are readily available in an area to provide the service; and
 - (3) Governmental authorities approved by the State to coordinate services for elderly individuals and individuals with disabilities (49 USC 5310 (a)(2)).
 - b. Eligible subrecipients for the JARC and New Freedom programs are:
 - (1) Private non-profit organizations;
 - (2) State or local governmental authorities; and
 - (3) Operators of public transportation services, including private operators of public transportation services (49 USC 5316(a)(5) and 5317(a)(2)).

F. Equipment and Real Property Management

See Transit Cross-Cutting Section.

G. Matching, Level of Effort, Earmarking**1. Matching**

- a. For the 5310 program, the Federal share of project costs may not exceed 80 percent of the net cost of the activity (49 USC 5310(c)(1)(a)).
- b. For the JARC and New Freedom programs, the Federal share of capital and planning costs may not exceed 80 percent of the net cost of the activity. The Federal share of the operating costs may not exceed 50 percent of the net operating costs of the activity (49 USC 5316(h) and 5317(g)).
- c. For all three transit services programs, the 10 percent that is eligible to fund program administrative costs including administration, planning, and technical assistance may be funded at 100 percent Federal share (49 USC 5310(a)(4), 5316(b)(2), and 5317(b)(2)). (See III.G.3, “Earmarking,” below.)
- d. For all three transit services programs, the Federal share is 90 percent of the cost for vehicle-related equipment and facilities required to comply with the Clean Air Act (CAA) or the ADA (49 U.S.C. 5323(i)).

2. Level of Effort – Not Applicable**3. Earmarking**

For all three transit services programs, no more than 10 percent of a recipient’s (i.e., State agency or designated recipient) total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance (49 USC 5310(a)(4), 5316(b)(2), and 5317(b)(2)).

I. Procurement and Suspension and Debarment

See Transit Cross-Cutting Section.

L. Reporting**1. Financial Reporting**

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable

- c. SF-425, *Federal Financial Report* – Applicable
- 2. **Performance Reporting** – Not Applicable
- 3. **Special Reporting** – Not Applicable
- 4. **Section 1512 ARRA Reporting** – Not Applicable
- 5. **Subaward Reporting under the Transparency Act** – Applicable

N. **Special Tests and Provisions**

Also see Transit Cross-Cutting Section.

1. **Coordinated Planning**

Compliance Requirement – Recipients must certify that the projects selected for funding were derived from a locally developed coordinated public transit-human services transportation plan and the plan was developed through a process that included representatives of public, private, and non-profit transportation and human services provides and participation from the public. The recipient's SMP or PMP should contain information on the project selection process and on the local coordination plan (49 USC 5310(d)(2)(B), 5316(g)(3), and 5317(f)(3)).

Audit Objective – Determine whether subgrants awarded by the State or designated recipient were derived from a locally developed coordinated public transit-human services transportation plan and the plan was developed through a process that included representatives of public, private, and non-profit transportation and human services provides and participation from the public.

Suggested Audit Procedures

- a. Obtain and review the recipient's SMP or PMP.
- b. Ascertain if the SMP or PMP includes a section(s) on project selection criteria and method of distributing funds.
- c. Obtain and review the State or designated recipient's applications for funding submitted to FTA.
- d. Obtain and review the State or designated recipient's locally developed transportation-human services coordinated plan.
- e. Ascertain if the applications specify the coordinated plan from which each project listed is derived.

2. Competitive Selection Process.

Compliance Requirement – Designated recipients of JARC and New Freedom funds for large urbanized areas are required to conduct, in cooperation with the appropriate metropolitan planning organization, an area-wide solicitation for applications for grants to the recipient and subrecipient. State recipients of JARC and New Freedom funds are required to conduct a state-wide solicitation for applications for grants to the recipient and subrecipients (49 USC 5310(d), 5316(d), and 5317(d)).

Recipients of 5310, JARC, and New Freedom grants are required to certify that allocations to subrecipients were distributed on a fair and equitable basis (49 USC 5310(d)(2)(B), 5316(f)(2), and 5317(e)(2)). An equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process, although the results of such a process may not be a quantitatively equal allocation of funds among projects or communities. Documentation of the process for ensuring a fair and equitable competitive selection process should be in the SMP or PMP. These documents should describe the recipient's competitive process for selecting projects and distributing funds among various applicants, including the policy rationale and the methods used.

Procedures that might indicate a competitive selection process would be:

(1) announcements for funding made on an annual basis or not less than once every 3 years; (2) announcements include the program requirements, the process for receiving funds, the timeline for the competitive selection, and selection criteria; (3) public advertisement of the availability of funds and selection criteria in formats and forums appropriate to the potential recipients and subrecipients; and (4) publishing a list of selected projects following the competitive selection process.

Audit Objective – Determine whether the State or designated recipient awarded grants based on a competitive selection process and determine whether grants were distributed on a fair and equitable basis.

Suggested Audit Procedures

- a. Obtain and review the recipient's SMP or PMP.
- b. Ascertain if the SMP or PMP includes a section(s) on project selection criteria and method of distributing funds.
- c. Obtain and review the State or designated recipient's announcements for 5310, JARC, and New Freedom projects.
- d. Ascertain if announcements provide for a fair and equitable competitive selection process.
- e. Ascertain that announcements invite applications on an area-wide or state-wide basis, as appropriate.

DEPARTMENT OF TRANSPORTATION

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| CFDA 20.600 | STATE AND COMMUNITY HIGHWAY SAFETY |
| CFDA 20.601 | ALCOHOL IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS I |
| CFDA 20.602 | OCCUPANT PROTECTION INCENTIVE GRANTS |
| CFDA 20.609 | SAFETY BELT PERFORMANCE GRANTS |
| CFDA 20.610 | STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS |
| CFDA 20.611 | INCENTIVE GRANT PROGRAM TO PROHIBIT RACIAL PROFILING |
| CFDA 20.612 | INCENTIVE GRANT PROGRAM TO INCREASE MOTORCYCLIST SAFETY |
| CFDA 20.613 | CHILD SAFETY AND CHILD BOOSTER SEAT INCENTIVE GRANTS |

I. PROGRAM OBJECTIVES

The objective of the highway traffic safety grant programs is to provide a coordinated national highway safety program to reduce traffic accidents, deaths, injuries, and property damage.

II. PROGRAM PROCEDURES

Funds are provided to the States, following submission of their highway safety plans, in accordance with a predefined formula and incentive grants. All funding is administered as one combined program.

Source of Governing Requirements

This program is authorized under 23 USC Chapter 4 (Highway Safety) and Pub. L. No. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Implementing regulations are 23 CFR parts 1200, 1225, 1240, 1250, 1252, 1313, 1335, 1345, and 1350.

Availability of Other Program Information

The National Highway Traffic Safety Administration maintains a web site that provides program laws, regulations, and other general information (<http://www.nhtsa.dot.gov>). Program procedures for some programs have been published in the *Federal Register* at 71 FR 5110 (CFDA 20.613), 71 FR 5727 (CFDA 20.611), and 71 FR 5729 (CFDA 20.610).

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should first look to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

A. Activities Allowed or Unallowed

Funds must be expended as specified in the grantee's highway safety plan. Certain specific costs which will not be approved or that require prior approval have been identified in Highway Safety Grant Funding Policy for the National Highway Traffic Safety Administration (NHTSA)/Federal Highway Administration (FHWA) Field-Administered Grants and are listed below (23 CFR section 1200.20).

1. The following costs are allowable or allowable with specific conditions:
 - a. *Equipment* – Major equipment (tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit) purchases for new and replacement equipment must be pre-approved.
 - b. *Installation* – The purchase and installation of regulatory and warning signs and supports and field reference markers are allowable for roads off the Federal aid system.
 - c. *Travel* – Travel for out-of-state individuals benefiting the host State's highway safety program is allowable.
 - d. *Training* – The cost of training personnel and the development of new training curricula and materials are allowable. However, training costs for Federal employees, with the exception of Department of the Interior personnel assigned Section 402 responsibility, are unallowable.
 - e. *Program Administration* – The costs for consultant services, promotional activities, alcoholic beverages to support police "sting" operations, and meetings and conferences are allowable.
 - f. *Public Communications* – Advertising space.
 - g. *Child Safety Seats* – For *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613), child safety seat purchases are limited to 50 percent of the annual award (Section 2011(d) of SAFETEA-LU).

2. The following costs are unallowable:
 - a. *Facilities and Construction*: highway construction, maintenance or design, construction or reconstruction of permanent facilities, highway safety appurtenances, office furnishings and fixtures, and land (except for *Incentive Grant Program to Increase Motorcyclist Safety* (CFDA 20.612) funds, which may be used to purchase facilities, including the purchase of land) (Section 2010(e)(1)(B)(iv) of SAFETEA-LU)).
 - b. *Equipment*: truck scales, traffic signal preemption systems.
 - c. *Training*: an individual's salary, and training employees of Federal agencies, except as noted above.
 - d. *Program Administration*: research costs, expenses to defray activities of Federal agencies, and commercial drivers' compliance requirements.

G. Matching, Level of Effort, Earmarking

1. Matching

- a. *State and Community Highway Safety* (CFDA 20.600) – The State is required to contribute at least 20 percent, or the applicable sliding scale rate, as stated in the grant award, of the total cost of the program. The State is required to pay at least 50 percent of the costs for planning and administration (23 USC 120(b) and 402(d); 23 CFR section 1252.4).
- b. For *Alcohol Impaired Driving Countermeasures Incentive Grants I* (CFDA 20.601), and *Occupant Protection Incentive Grants* (CFDA 20.602), States are required to match Federal funds at 25 percent for the first and second years, 50 percent for the third and fourth years, and 75 percent for the fifth and sixth years (23 USC 405 and 410,; 23 CFR sections 1313.4(b) and 1345.4(a)).
- c. *Safety Belt Performance Grants* (CFDA 20.609) are 100 percent federally funded (23 USC 406(g)).
- d. *State Traffic Safety Information System Improvements Grants* (CFDA 20.610) and *Incentive Grant Program to Prohibit Racial Profiling* (CFDA 20.611) are 80 percent federally funded (Indian Nations and Territories are exempt from matching requirements and are 100 percent federally funded) (23 USC 408(e)(4); Section 1906(e)(2) of SAFETEA-LU).
- e. *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613) – States are required to match Federal funds at 25 percent the first, second, and third years, and 50 percent the fourth year (Section 2011(c) of SAFETEA-LU).

- f. Additional matching requirements may be specified in the grantee's highway safety plan to limit the maximum Federal share of an ambulance, helicopter, automated external defibrillators, or aircraft to 25 percent.

2. Level of Effort

2.1 Level of Effort – *Maintenance of Effort*

- a. For *Incentive Grant Program to Increase Motorcyclist Safety* (CFDA 20.612), a State must maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 CFR part 1350).
- b. For *Alcohol Impaired Driving Countermeasures Incentive Grants I* (CFDA 20.601), a State must maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 410(a)(2)).
- c. For *Occupant Protection Incentive Grants* (CFDA 20.602), a State must maintain its aggregate expenditures from all other sources for programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 405(a)(2)).
- d. For *State Traffic Safety Information System Improvements Grants* (CFDA 20.610), a State must maintain its aggregate expenditures from all other sources for highway safety data programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (23 USC 408(e)(3)).
- e. For *Child Safety and Child Booster Seat Incentive Grants* (CFDA 20.613), a State must maintain its aggregate expenditures from all other sources for child safety seat and child restraint programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (Section 2011(b) of SAFETEA-LU).

2.2 Level of Effort – *Supplement Not Supplant* – Not Applicable

3. Earmarking

- a. At least 40 percent of Federal funds apportioned to a State under *State and Community Highway Safety* (CFDA 20.600) for any fiscal year shall be expended by or for the political subdivisions of the State in carrying out local highway safety programs (23 USC 402(b)(1)(C); 23 CFR part 1250).

- b. The costs for planning and administration under *State and Community Highway Safety* (CFDA 20.600) and *Alcohol Impaired Driving Countermeasures Incentive Grants I* (CFDA 20.601) shall not exceed 10 percent of the funds received by the State (23 CFR section 1252.4).
- c. States receiving grants as High Fatality Rate States under *Alcohol Impaired Driving Countermeasures Incentive Grants I* (CFDA 20.601) must use at least one half of those grant monies toward High Visibility Enforcement Campaigns (23 USC 410(g)(2)).

L. Reporting

1. Financial Reporting

- a. SF-270, *Request for Advance or Reimbursement* – Not Applicable
- b. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. SF-425, *Federal Financial Report* – Not Applicable
- d. HS-217, *Highway Safety Plan Cost Summary (OMB No. 2127-0003)*
- e. *Federal-Aid Reimbursement Voucher (OMB No. 2127-0003)*

2. Performance Reporting – Not Applicable

3. Special Reporting – Not Applicable

4. Section 1512 ARRA Reporting – Not Applicable

5. Subaward Reporting under the Transparency Act – Applicable