



**Moving Public Transportation
Into the Future**

Common Compliance Findings in Today's Transit Environment

April 21, 2022

Presented by:

Robbie Sarles

RLS & Associates, Inc.

www.rlsandassoc.com

Session Overview

- ◆ **Discuss changes in compliance landscape**
- ◆ **Highlight key observations/deficiencies from FY 2021 cycle of reviews**
- ◆ **Provide suggestions/recommendations on how to avoid common deficiencies**

2 of 76



Challenges

- ◆ **The “New Normal” is not normal**
 - **Funding**
 - **Staff turnover/shortage**
 - **Supply chain issues**
 - **Ridership loss—value focus**
 - **Service revisioning**
 - **Different expectations**
 - **Funders**
 - **Passengers**

www.rlsandassoc.com



Oversight Process Changes

- ◆ **Different Process—In-Person, Virtual, Hybrid**
- ◆ **More Scrutiny**
- ◆ **Differing Emphasis Areas**
 - **Annual Contractor’s Manual Changes**
- ◆ **Enhanced Focus**
 - **Technical Assistance**
 - **Implementation**

www.rlsandassoc.com



Information Readily Available

- ◆ **Webinars**
- ◆ **Workshops**
- ◆ **Recordings**
- ◆ **Ability to ask questions/FAQ**
- ◆ **Silence does not mean acceptance or approval**
 - **Maintain documentation**

www.rlsandassoc.com



Focus on Compliance

- ◆ **Be proactive**
- ◆ **Empower single Compliance Manager**
- ◆ **Avoid repeat findings**
- ◆ **Fix what you can**
- ◆ **Write Standard Operating Procedures**
 - **Contractor's Manual**
- ◆ **Avoid quick fixes--institutionalize**
- ◆ **Document Everything**

www.rlsandassoc.com



FTA Oversight Programs

- ◆ Triennial/State Management Reviews
- ◆ Tribal Transit Technical Assistance
- ◆ Procurement System Review
- ◆ Financial Management Oversight
- ◆ Civil Rights
- ◆ State Oversight
- ◆ COVID-19 Financial Spot Reviews

www.rlsandassoc.com



FY21 FTA Oversight Program

- ◆ Reviews
 - 212 Triennial Reviews
 - 15 State Management Reviews; 7 Combined
- ◆ Findings
 - 1000
 - Average Number of Findings Per Review– 4.1
 - Decreased from 7.2 in 2019

www.rlsandassoc.com



Triennial Review Findings

| Topic Area | 2019 | 2021 |
|---|-------|-------|
| Legal | 0.1% | 2.1% |
| Financial Management & Capacity | 8.0% | 10.3% |
| Technical Capacity—Award Management, Program Management, Project Management | 5.0% | 9.5% |
| Transit Asset Management | 2.0% | 1.0% |
| Satisfactory Continuing Control | 5.0% | 4.9% |
| Maintenance | 5.0% | 4.7% |
| Procurement | 20.0% | 29.1% |

www.rlsandassoc.com



Triennial Review Findings

| Topic Area | 2019 | 2021 |
|---|-------|-------|
| Disadvantaged Business Enterprise | 17.0% | 13.1% |
| Title VI | 7.0% | 5.6% |
| Americans with Disabilities Act—General | 8.0% | 4.5% |
| Americans with Disabilities Act—Complementary Paratransit | 6.0% | 3.7% |
| Equal Employment Opportunity | 3.0% | 2.8% |
| School Bus | 0.0% | 0.0% |
| Charter | 0.4% | 0.4% |

www.rlsandassoc.com



Triennial Review Findings

| Topic Area | 2019 | 2021 |
|--|------|------|
| Drug Free Workplace Act | 1.0% | 2.0% |
| Drug and Alcohol Program | 4.0% | 4.3% |
| Section 5307 | 4.0% | 1.6% |
| Section 5311 | 0.1% | 0.2% |
| Section 5310 | 0.1% | 0.3% |
| Public Transportation Agency Safety Plan | -- | -- |
| Cybersecurity | -- | -- |

www.rlsandassoc.com



Top Findings Comparison

| Finding | FY19 | FY21 |
|---|------|------|
| Procurement-- Missing FTA Clauses | X | X |
| Procurement—Lacking Required Cost/Price Analysis | X | X |
| Procurement—Lacking Independent Cost Estimates | X | X |
| Procurement—Responsibility Determination Deficiencies | | X |
| Procurement--Incomplete Written Documentation of Procurement History | | X |
| Financial Management--Missing, Insufficient or Out-of-date Financial Operating Procedures | X | X |
| Financial Management--ECHO Documentation Deficiencies | | X |

www.rlsandassoc.com



Top Findings Comparison

| Finding | FY19 | FY21 |
|---|------|------|
| Technical Capacity—Incorrect FFR Reporting | X | X |
| Maintenance—Late Vehicle/Vessel Preventive Maintenance | | X |
| Disadvantaged Business Enterprise—Uniform Reports Contain Inaccuracies or Missing Required Elements | X | X |
| Disadvantaged Business Enterprise—Unreported Transit Vehicle Purchases | X | |
| Title VI—Language Assistance Plan Implementation Deficiencies | X | X |
| Americans with Disabilities Act—Insufficient ADA Complaint Process | X | |
| Americans with Disabilities Act—Reasonable Modification Deficiencies | X | |

1. Legal

◆ Total findings - 21

- **Overwhelmingly, the major deficiency in Legal was failure to include a notice in lower tier agreement of \$25,000 or more that the entity was obligated to inform you of procurement issues that may involve the federal government**
- **Other issues**
 - **Failure to obtain Form LLL or submit quarterly updates on lobbying**

1. Legal

- ◆ Issue No. 1 moved in the FY 2022 manual to Procurement section
- ◆ Ensure that all third-party contracts in excess of \$100,000 include lobbying certificate and, if necessary, quarterly updates

15 of 76

2. Financial Management & Capacity

- ◆ Total findings - 103
 - Missing, insufficient, or out-of-date financial procedures
 - Deficient ECHO documentation
 - Ineligible operating expense calculation
 - Failure to disburse advance drawdowns in three days

16 of 76

2. Financial Management & Capacity

- ◆ Ensure that fiscal policies reflect 2 CFR § 200
- ◆ Ensure only authorized parties perform ECHO drawdowns
- ◆ Follow the procedures outlined in Appendix C-3 of 5307 Circular
 - Sample Operating Expense Worksheet
 - Small UZAs
 - Other entities using CARES Act funds for operations
- ◆ Disburse funds in 3 days

17 of 76

3. Technical Capacity – Award Management

- ◆ Total findings - 64
 - Incorrect FFR reporting
 - Untimely closeout of older grants
 - MPRs incomplete or lack all required information
 - Late MPRs/FFRs
 - MPRs/FFRs do not agree

18 of 76

3. Technical Capacity – Award Management

- ◆ Ensure the Financial Status section of the FFR is completed accurately reflects “Previous” and “This Period” expenditures
- ◆ Initiate award closeout with subrecipients no later than 90 or 120 days after the end of the period of performance or when the award’s scope of work is completed
- ◆ Submit MPRs/FFRs on-time

19 of 76

3. Technical Capacity – Award Management

- ◆ **Best practice**
 - Draw operating assistance from oldest funds first
 - The reviewer will be looking for:
 - Grants older than 3 years
 - Grants with no disbursement activity within the last 12 months
 - Reviews MPRs/FFRs before uploading to TrAMS to ensure financial data matches

20 of 76

4. Technical Capacity – Program Management

- ◆ **Total findings - 25**
 - **FFATA reporting deficiencies**
 - **SMP/PMP missing or out-of-date**
 - **States**
 - **Designated/direct recipients with subrecipients**
 - **Written agreements lack required clauses or certifications**
 - **Inadequate oversight of subrecipients**

21 of 76

4. Technical Capacity – Program Management

- ◆ **FFATA Reporting**
 - **Pre 11/12/2020**
 - **Ensure all subawards over \$25,000 are reported to FSRA by the end of the month following the month of subaward**
 - **Example – subaward made June 11, 2020, report due by July 31, 2020**
 - **Post 11/12/2020**
 - **Reporting threshold raised to \$30,000**

22 of 76

4. Technical Capacity – Program Management

- ◆ **SMP/POP**
 - Ensure the document, if required, contains the necessary elements stipulated in the FTA Circulars
 - Ensure plan is up-to-date
- ◆ **Required clauses**
 - Ensure third party agreements contain Master Agreement clauses
- ◆ **Develop written protocols for subrecipient oversight and document oversight actions**

23 of 76

5. Technical Capacity – Project Management

- ◆ **Total findings - 6**
 - Inadequate oversight of contractors
 - Schedule delays/cost overruns due to lack of adequate contract oversight
 - Lack of force account plan

24 of 76

5. Technical Capacity – Project Management

- ◆ **Develop written protocols for contractor oversight and document oversight actions**
- ◆ **Ensure you have written contract administration procedures and qualified staff to conduct project management**
 - If lacking in-house expertise, hire third parties
- ◆ **Force account labor plans – over \$10 million requires FTA prior approval**
 - \$1 million - \$10 million: prepare and keep on file

25 of 76

6. Transit Asset Management

- ◆ **Total findings – 10**
 - Performance targets not set annually
 - TAM plan missing required elements

26 of 76

6. Transit Asset Management

- ◆ **Set performance targets for equipment, rolling stock, infrastructure, and facilities**
- ◆ **Ensure system or group plan contains required four elements**
 - Inventory
 - Condition assessment
 - Decision support tools
 - Project-based prioritization of investments
- ◆ **Designate and document accountable executive**

27 of 76

7. Satisfactory Continuing Control

- ◆ **Total findings – 49**
 - Inadequate equipment records
 - No evidence of required biennial physical inspection and reconciliation
 - Inadequate procedures for identifying and insuring facilities in special flood zones
 - Non-permitted use of disposition proceeds
 - Failure to notify FTA of equipment removed from service

28 of 76

7. Satisfactory Continuing Control

- ◆ **Ensure equipment records conform to 2 CFR § 200.313(d)(1)**
- ◆ **Document conduct of inspections and results**
- ◆ **Identify all federally funded real property in special flood zones**
 - Check FEMA maps that identify zones
 - Carry the required flood insurance

29 of 76

7. Satisfactory Continuing Control

- ◆ **Establish accounting records that document disposition proceeds were used for transit purposes in accordance with FTA guidance**
- ◆ **Establish written procedures that include notification to FTA when equipment is removed from revenue service**
 - Removal prior to end of useful life requires FTA approval

30 of 76

8. Maintenance

- ◆ **Total findings – 47**
 - Late vehicle maintenance
 - Late facility maintenance
 - Inadequate oversight of subrecipient/contractor maintenance activities

31 of 76

8. Maintenance

- ◆ **Written maintenance plans for equipment and facilities**
 - Goals/objectives
 - Fleet composition
 - Events and intervals, by type of vehicle
- ◆ **Monitor to ensure 80% of PM events occur on-time**

32 of 76

8. Maintenance

- ◆ **Incorporate procedures for maintaining lifts and other accessibility equipment**
- ◆ **Establish system for tracking warranty issues**
- ◆ **Establish procedures to conduct oversight of subrecipient, contractor, or lessee maintenance of federally-funded equipment**

33 of 76

9. Procurement

- ◆ **Total findings – 291**
 - **Missing FTA clauses**
 - **Failure to make vendor responsibility determinations**
 - **Lacking independent cost estimate**
 - **Lacking cost or price analyses**
 - **Pre-award and post-delivery certifications lacking**

34 of 76

9. Procurement

- ◆ **Vendor responsibility**
 - Document and record SAM.gov checks if over \$25,000
 - Sign certificate
 - Include clause in contract
 - Analysis: Vendor integrity, compliance with public policy, record of past performance, financial and technical resources

9. Procurement

- ◆ **Independent cost estimates (ICE)**
 - Foundation of cost/price analysis
 - Prepare *before* receipt of bids/proposals
 - Must be prepared by someone without a financial interest in the procurement (e.g., not a vendor)
- ◆ **Pre-Award/Post-Delivery (Rolling Stock)**
 - You must obtain required certifications
 - This includes purchases from CalACT Purchasing Cooperative

9. Procurement

- ◆ **Understand situations where cost and price analysis are required**
 - **All procurements over the Simplified Acquisition Threshold (\$250,000)**
 - **Cost Analysis—When lacks competition (e.g., sole source, single bid)**
 - **Price Analysis—When Adequate competition**
 - **Changes orders representing cardinal changes in the scope of work**

37 of 76

9. Procurement

- ◆ **Best practice**
 - **Use a matrix or Procurement Pro when preparing solicitation documents and contracts to ensure all required clauses are included to avoid unnecessary constraint on competition**

38 of 76

10. Disadvantaged Business Enterprise

- ◆ **Total findings – 131**
 - **Semi-annual reports contain inaccurate or missing information**
 - **DBE goal analysis not properly prepared**
 - **Unreported transit vehicle purchases**
 - **Late DBE reports**
 - **Insufficient oversight to ensure DBEs are performing specified work**

39 of 76

10. Disadvantaged Business Enterprise

- ◆ **Follow FTA guidance on goal development**
- ◆ **Report vehicle purchases on Survey Monkey**

- ◆ **Submit reports on time**
- ◆ **Develop appropriate contract administration procedures that include monitoring contractor use of DBEs**
 - **Prompt Payment**
 - **Commercially Useful Function**

40 of 76

11. Title VI

- ◆ **Total findings – 56**
 - **Language Assistance Plan (LAP) deficiencies**
 - **Title VI program not submitted**
 - **Subrecipient Title VI programs not submitted or evaluated by the recipient**
 - **FTA requested changes to the Title VI program in the concur letter but changes not made**

41 of 76

11. Title VI

- ◆ **Discuss strategies that have enhanced public participation by LEP populations**
- ◆ **Submit plan for approval every three years**
- ◆ **Requirement to prepare plan applies to subrecipients**
 - **Ensure all subrecipients have prepared plans**
 - **Review subrecipient program for compliance**
 - **Ensure all subrecipients report complaints and lawsuits**

42 of 76

A faint map of a city street grid is visible in the background of the slide.

11. Title VI

◆ Best Practice

- In developing the LAP, discuss what you *have done*, not what you *plan to do*
- Make all requested concur letter changes before your next Triennial or State Management Review

43 of 76

A faint map of a city street grid is visible in the background of the slide.

12. ADA - General

◆ Total findings – 45

- Insufficient ADA complaint process
- Insufficient oversight of subrecipients
- Insufficient ADA complaint record retention
- Insufficient monitoring of operations and/or contracted services
- Alternative formats not provided

44 of 76

12. ADA - General

- ◆ **Follow guidance in FTA Circular 4210.1 on a compliant complaint process**
 - If combined with the Title VI complaint process, make sure you comply with FTA guidance
- ◆ **Complaint retention policy**
 - One year – detailed information on the complaint
 - Five years – only summary data required

45 of 76

12. ADA - General

- ◆ **Monitoring subrecipients/contractors**
 - **Established protocols**
 - Fixed route requirements
 - » Example: Stop announcements, use of lifts, alternative means of identification, removal from service
 - Demand response
 - » Example: Equivalent service
- ◆ **Best Practice**
 - Use reports, periodic meetings, site visits, and on-board assessments to monitor service by mode

46 of 76

12. ADA - General

- ◆ **Note that documents readily available in written format and distributed to the public must be made available in usable, alternative formats upon request**
 - **Document the process how individuals can request alternative formats**

47 of 76

13. ADA – Complementary Paratransit

- ◆ **Total findings – 19**
 - **Insufficient oversight of contracted ADA complementary paratransit**
 - **Unreasonable no-show suspension policies**
 - **Lack of origin-to-destination service**
 - **Capacity constraints or limits on complementary paratransit services**

48 of 76

13. ADA – Complementary Paratransit

◆ Suspension policies

- Do not use absolute no-shows, incorporate frequency of use
- Count only if no-show was fault of the rider
- Do not impose charges for no-shows
- Notification in writing prior to suspension
- Permit due process (e.g., opportunity to appeal)
- Do not impose suspension periods longer than 30 days

49 of 76

13. ADA – Complementary Paratransit

◆ Origin-to-destination service

- Must be provided for the anticipated few passengers who require higher levels of passenger assistance

◆ No capacity constraints

- Trip denials
- Excessively long trips
- Access to reservations
- Wait lists

50 of 76

13. ADA – Complementary Paratransit

- ◆ **Best practice**
 - **Oversight**
 - **Use reports, periodic meetings, site visits, and rider surveys, and/or complaint logs to monitor complementary paratransit service**

51 of 76

14. Equal Employment Opportunity

- ◆ **Total findings – 28**
 - **Employment practices analyses deficiencies**
 - **EEO reporting or monitoring deficiencies**
 - **Insufficient oversight of subrecipients or contractors**

52 of 76

14. Equal Employment Opportunity

◆ Best practice

- **Employment practices (full EEO program)**
 - **Ensure utilization analysis is complete, with goals, objectives, and timetables or other affirmative action necessary to correct underutilization**
- **Reporting or monitoring (full & abbreviated EEO program)**
 - **Failure to implement and/or document assessment of results since last program submission, methods to monitor utilization, practices, goals, meetings**

53 of 76

14. Equal Employment Opportunity

◆ Oversight

- **If applicable, obtain copies of EEO programs from subrecipient and/or contractors**
- **Verify compliance with EEO statutes and regulations**
 - **Documented procedures to verify compliance**

54 of 76

A faint map of a city street grid is visible in the background of the slide.

15. School Bus

- ◆ **Total findings – 0**
 - **There were no findings in this area during the last review cycle**

55 of 76

A faint map of a city street grid is visible in the background of the slide.

16. Charter Bus

- ◆ **Total findings – 4**
 - **Charter service provide that did not meet an exemption or exception to the regulation**
 - **Insufficient oversight of subrecipients**

56 of 76

16. Charter Bus

- ◆ **Monitor service data of subrecipients to ensure**
 - **The entity does not use FTA-funded equipment for services that do not meet an exemption or exception**
 - **The entity reports the trip as required under 49 CFR § 604**

57 of 76

17. Drug-Free Workplace Act

- ◆ **Total findings – 20**
 - **DFWA policy lacking requirement elements**
 - **No on-going drug free awareness program**
 - **DFWA policy not distributed or enforced**

58 of 76

17. Drug-Free Workplace Act

- ◆ **Policy must address**
 - Prohibition on the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in the workplace
 - Adherence to policy is condition of employment
 - Convictions of a drug statute violation that occurred in the workplace must be reported in writing (< 5 days)

59 of 76

17. Drug-Free Workplace Act

- ◆ **On-going program must:**
 - Inform employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs
- ◆ **Distribution**
 - Create documentation of receipt/ acknowledgement of the policy

60 of 76

18. Drug & Alcohol Program

- ◆ **Total findings – 43**
 - Training not provided or insufficient
 - Insufficient oversight of subrecipients and contractors
 - Missing qualifications of service agents
 - Supervisory training not provided or insufficient

61 of 76

18. Drug & Alcohol Program

- ◆ **Training must meet time requirement**
 - Safety-sensitive employees 60 minutes
 - Supervisors 120 minutes.
- ◆ **Subrecipient/contract oversight**
 - Ensure policy has been developed
 - Ensure governing body has approved policy
 - Review training documentation
 - Monitor that all required testing is performed
 - MIS reports submitted
 - Service agent credentials are documented

62 of 76

19. Section 5307

- ◆ **Total findings – 16**
 - **TIP documents missing explicit POP statement**
 - **No current agreement**
 - **MPO public participation plan fails to describe required elements**
 - **No written policy for public comments**

63 of 76

19. Section 5307

- ◆ **FTA looks for written agreement between the recipient, MPO, and state DOT on mutual responsibilities in the planning process**
 - **Ensure the agreement defines responsibilities**
 - **Information sharing among parties to the agreement**
 - **Annual listing of obligated projects**
 - **Use of the MPO's public participation process to meet Section 5308 public involvement requirements**

64 of 76

19. Section 5307

- ◆ **Ensure the recipient has a written policy that describes the public comment process**
- ◆ **The recipient is responsible for defining a major service reduction that addresses fixed route and/or demand response service**
 - **Uses a standard, such as**
 - **Elimination of a route**
 - **Reduction of “X” percent of service hours or miles**

65 of 76

20. Section 5310

- ◆ **Total findings – 3**
 - **Section 5310 lease agreements not in writing**
 - **Insufficient monitoring of subrecipients**

66 of 76

20. Section 5310

- ◆ **Ensure there is a written agreement when Section 5310-funded vehicles are leased**
 - Include all required clauses
- ◆ **Ensure subrecipients/contractors/lessees**
 - Adhere to use terms (e.g., used for E&D transportation)
 - Incorporate applicable Master Agreement terms and conditions

67 of 76

21. Section 5311

- ◆ **Total findings – 1**
 - **States only**
 - No outreach and consultative process with intercity bus (ICB) providers

68 of 76

21. Section 5311

- ◆ **ICB consultation**
 - Identify all ICB providers in the state
 - Consult with identified ICBs and the industry officials
 - Provide opportunity for submission of proposals
 - Document consultation process and relate results to assertion that needs are met if a Governor's certification is being submitted

69 of 76

22. Public Transportation Agency Safety Plan (PTASP)

- ◆ **New for the FY 2022 oversight cycle**
- ◆ **No previous findings**
- ◆ **Oversight**
 - Does the recipient have an ASP?
 - Accountable Executive designated a Chief Safety Officer (CSO) or Safety Management System (SMS) Executive
 - ASP has required elements
 - Retention of PTASP documents for three years
 - Monitoring of subrecipients

70 of 76

22. Public Transportation Agency Safety Plan (PTASP)

- ◆ **States**
 - Ensure covered entities are identified
 - Documents any opt-outs

71 of 76

23. Cybersecurity

- ◆ **New for the FY 2022 oversight cycle**
- ◆ **Rail systems only**
- ◆ **For FY 2022, FTA using a “soft launch” of these requirements**
 - **No deficiencies established**
 - **Only areas of concern to be reported to FTA**

72 of 76



COVID-19 Financial Spot Reviews

- ◆ **FY21 Spot Reviews**
 - **ECHO Sampling**
 - **Review Focus**
 - **Operating Assistance Calculation**
 - **Eligibility of Cost**
 - **Technical Assistance to Remedy Issues**

www.rlsandassoc.com



Issues Identified

- ◆ **Ineligible Expenses**
- ◆ **ECHO Procedures**
- ◆ **Financial Management Systems**

www.rlsandassoc.com

A faint map of a city street grid is visible in the background of the slide. The map shows various streets and blocks in a light tan color.

Section 12

QUESTIONS & ANSWERS

A faint map of a city street grid is visible in the background of the slide. The map shows various streets and blocks in a light tan color.

Presenter

**Robbie Sarles, President
RLS & Associates, Inc.**

**3131 S. Dixie Highway, Suite 545
Dayton, OH 45439
(937) 268-5007**

rsarles@rlsandassoc.com

76 of 76