



Moving Public Transportation
Into the Future

Federal Compliance 101: CalACT 2022 Fall Conference

November 1, 2022

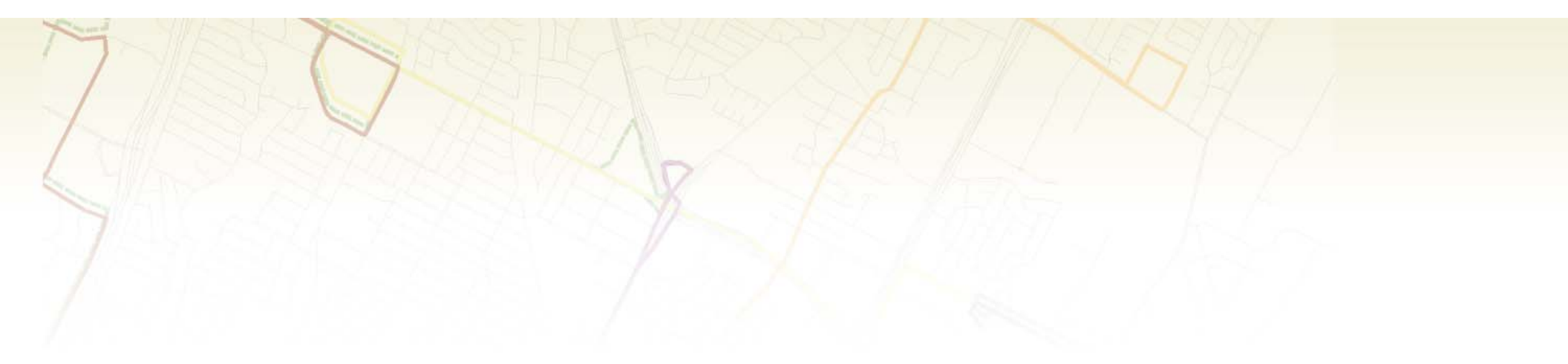
Presented by:

Rich Garrity

RLS & Associates, Inc.

Training Session Content

- ◆ Legal
- ◆ Financial Management
- ◆ Technical Capacity
- ◆ Transit Asset Management
- ◆ Satisfactory Continuing Control
- ◆ Maintenance
- ◆ Procurement
- ◆ Disadvantaged Business Enterprise (DBE)
- ◆ Title VI
- ◆ Equal Employment Opportunity
- ◆ ADA
- ◆ Charter/School Bus
- ◆ Drug and Alcohol



Module 1

WHAT'S NEW



Since Our Last Session

- ◆ New Laws and Regulations
 - National Defense Authorization Act (NDAA), Pub. L. 113-291, Never Contract with the Enemy
 - 2 CFR § 183
 - 2 CFR § 200.215
 - National Defense Authorization Act (NDAA), Pub. L. 115-232, Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment
 - Revisions to 2 CFR § 200

Since Our Last Session

- ◆ New Laws and Regulations
 - Coronavirus Aid, Relief, and Economic Security (CARES) Act
 - Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA)
 - American Rescue Plan Act (ARP)
 - Bipartisan Infrastructure Law (BIL), as enacted in the Infrastructure Investment and Jobs Act (IIJA)

Procurement Thresholds

- ◆ Revisions to 2 CFR § 200 Effective 2014
 - Set Government-Wide Standards
 - \$3,500 Micro-Purchase Threshold
 - \$150,000 Small Acquisition Threshold
- ◆ Congress Revised These Standards
 - Effective with OMB-18-18, June 20, 2018
 - \$10,000 Micro-Purchase Threshold
 - \$250,000 Small Acquisition Threshold



Procurement Thresholds

- ◆ Caution

- If Your Policy is Lower than Current Federal Thresholds, You Must Adhere to Your Policy

Permissive Authority on Micro-Purchase Threshold

- ◆ NFE Establishment of Higher Micro-Purchase Threshold
 - 2 CFR § 200.320(a)(iv) Provides an Option to Any Non-Federal Entity That Enables the Organization to Establish a Threshold Higher Than the Micro-Purchase Threshold Identified in the Federal Acquisition Regulation (FAR)
 - The Entity May Adopt A Threshold Of Up To \$50,000, But There Are Conditions

Permissive Authority on Micro-Purchase Threshold

◆ Conditions

- Annual Self-Certification
- Justification for the Higher Threshold Must be Made
- Entity Must be a “Low Risk” Auditee in Most Recent Single Audit
- Must Conduct Annual Risk Assessment Process
- If a Public Entity, Higher Threshold Must be Consistent with Prevailing State Laws



De Minimis Rate

- ◆ Changes to 2 CFR § 200 Now Allow Any Non-Federal Entity to Use the De Minimis Rate Even If the Entity Had Previously Negotiated an Indirect Cost Rate with the Federal Government



Audit Oversight

- ◆ Changes to 2 CFR § 200 Clarify that a Recipient is Only Response for Oversight of a Subrecipient's Audit Findings that Relate to the Funding Source Passed Through to the Subrecipient, Not All Audit Findings



Prohibitions

- ◆ Never Contract with the Enemy Act
 - 2 CFR § 183
 - Applies Only to Grants Performed Outside the U.S.
 - Some Burden to Check SAM.gov to Ensure Your Agency Does Not Do Business with an Entity That Has Been Debarred Due to Violations of this Act

Prohibitions

- ◆ Certain Telecommunications and Video Surveillance Services or Equipment
 - 2 CFR § 200.216
 - The NFE Cannot Procure, Obtain, Extend or Renew a Contract to Procure or Obtain
 - Equipment
 - Services
 - Systems
 - From
 - Huawei Technologies
 - ZTE Corporation



New Classifications

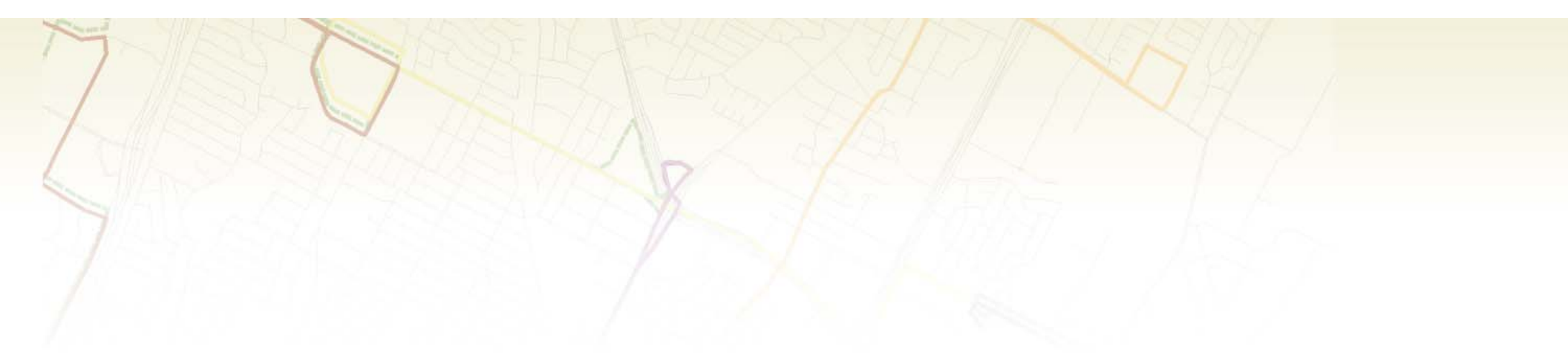
- ◆ Revisions to 2 CFR § 200.320 Defining Procurement Methods
 - Informal Procurement Methods
 - Micro-Purchases
 - Small Purchases
 - Formal Procurement Methods
 - Sealed Bids
 - Proposals
 - Noncompetitive Procurement

Small Quantity Conditions

- ◆ New Provisions Under 49 U.S.C. § 5339
 - Applicants Must Use “Innovative Procurement Tools”
 - If Under Five (5) Buses in a Stand-Alone Procurement, FTA Will Now Require Written Justification for Not Using an Authorized Procurement Tool
 - Examples
 - » Cooperative Procurements
 - » State Cooperative Purchasing Contracts
 - » Innovative Leasing Arrangements

Build America/Buy America

- ◆ BABA
 - New Requirements
 - No Guidance Yet
 - Relates to Domestic Preference for Construction Materials Applies Only to Procurements Funded by Federal Awards Obligated on or After November 10, 2022



Module 2

LEGAL





Basic Requirement

- ◆ The Recipient Must
 - Promptly Notify FTA of Legal Matters
 - Notify the U.S. Department of Transportation (US DOT) Office Of Inspector General (OIG) of any Instances Relating to False Claims Under the False Claims Act or Fraud
 - Comply With Restrictions on Lobbying Requirements



Top Deficiencies

- ◆ Missing, Insufficient, or Out-of-Date Financial Operating Procedures
- ◆ ECHO Documentation Deficient
- ◆ Financial Management Systems Deficiencies
- ◆ Ineligible Operating Expense Calculation
- ◆ Funds Not Disbursed Timely

Reference Documents

- ◆ FTA Master Agreement
- ◆ 49 CFR § 20.100
- ◆ 49 CFR § 20.110
- ◆ 2 CFR § 180.289(b)–(c)

Basic Obligations of Recipients

- ◆ Obligation to Notify FTA of Any Potential or Pending Legal Matters
- ◆ Ensure That All Third-Party Agreements Over \$100,000 Have the Necessary Lobbying Certifications
- ◆ New
 - Upload Form LLL Into TrAMS

Basic Obligations of Recipients

- ◆ The Recipient is Required to Include in Most Agreements a Provision that Requires the Third Party to Notify the Recipient of Any Legal Matter That May Affect the Federal Government
 - Inclusion in All Third-Party Agreements
 - All – Nonprocurement Agreements
 - \$25,000 for All Procurement Contracts



Module 3

FINANCIAL MANAGEMENT

A background map showing a street grid with several colored overlays: a red outline, a green outline, a yellow line, and an orange outline. The text 'Basic Requirement' is centered over the map in a large, bold, dark red font.

Basic Requirement

- ◆ The Recipient Must Have
 - Financial Policies and Procedures
 - Organizational Structure that Defines, Assigns, and Delegates Fiduciary Authority
 - Financial Management Systems to Manage, Match, and Charge Only Allowable Costs to the Award

A background map showing a street grid with several colored overlays: a red outline, a green outline, a yellow line, and an orange outline. The text 'Basic Requirement' is centered over the map in a large, bold, dark red font.

Basic Requirement

- ◆ The Recipient Must
 - Conduct Required Single Audits, as Required by 2 CFR Part 200
 - Provide Financial Oversight of Subrecipients



Top Deficiencies

- ◆ Missing, Insufficient, or Out-of-Date Financial Operating Procedures
- ◆ ECHO Documentation Deficient
- ◆ Financial Management Systems Deficiencies
- ◆ Ineligible Operating Expense Calculation
- ◆ Funds Not Disbursed Timely



Reference Documents

- ◆ 2 CFR part 200
- ◆ 2 CFR part 1201
- ◆ FTA Circular 5010.1E



Roles and Relationships

◆ Federal Grants Structure

○ Recipients

- Recipients Receive Funds Directly from the Federal Government
 - Urbanized Areas
 - State DOTs
 - Indian Tribal Governments



Roles and Relationships

◆ Federal Grants Structure

○ Subrecipients

- Receive Funds Through a Pass-Through Relationship with a Direct Recipient
- May Be Awarded Based on
 - Competition
 - Qualifications
 - Other



Roles and Relationships

- ◆ Contractors
 - Open Market Procurements
 - Generally to Provides Goods, Services, and Equipment to Carry Out a Federal Award



Roles and Relationships

- ◆ Recipients and Subrecipients are Responsible for Grant Compliance
- ◆ Contractors are Responsible for Complying with Contract Terms and Conditions
 - Contracting Agency Has Responsibility of Overseeing Compliance of Contractors

A faint, stylized map of a city grid is visible in the background of the top half of the slide. The map shows various streets and blocks in light colors, with some areas highlighted in yellow and orange.

OMB Role

- ◆ Office of Management and Budget (OMB)
 - Predominant Mission Is to Assist the President in Overseeing the Preparation of the Federal Budget and to Supervise Its Administration in Executive Branch Agencies

A faint, light-colored map of a city street grid is visible in the background. The title 'OMB Role' is centered in a large, bold, dark red font.

OMB Role

- ◆ OMB Has Management Role in Federal Grants
- ◆ Guidance in Three (3) Primary Areas
 - Cost Principles
 - Grant Management/Administrative Requirements
 - Audit



Basic Requirements

- ◆ Written Fiscal Procedures
 - Management of Federal Awards
 - Internal Controls
 - Allowability of Costs
- ◆ Requisite Organizational Structure
 - Clearly Define Roles and Responsibilities
 - Adequate Checks and Balances
- ◆ Ability to Report Grant Activity

Basic Requirements

- ◆ Accurate Claiming Indirect Costs
 - Indirect Cost Allocation Plans (ICAPs)
- ◆ Preparation of Single Audits
 - Entities That Expend More Than \$750,000 in a Single Fiscal Year from All Federal Sources
- ◆ Ability to Provide the Required Local Share

Allowability – Basic Standards

- ◆ Necessary and Reasonable/Allocable
- ◆ Conform to Any Limitations or Exclusions Set Forth in the Federal Cost Principles, Federal Laws, Terms and Conditions of the Federal Award
- ◆ Be Consistent With Policies and Procedures That Apply Uniformly to Both Federal Awards and Other Activities of the Non-Federal Entity

Allowability – Basic Standards

- ◆ Be Accorded Consistent Treatment
- ◆ Be Determined in Accordance With Generally Accepted Accounting Principles (GAAP)
- ◆ Not Be Included As a Cost or Used to Meet Cost Sharing or Matching Requirements of Any Other Federal Award
- ◆ Must be Adequately Documented

Written Procedures

- ◆ An FTA Requirement
- ◆ FTA Prescribes No Contents for Such Policies
 - Recommend That Organizations Follow 2 CFR § 200
 - National RTAP's Fundamental Financial Management for Rural Transit Providers Contains Some Recommendations on Policy Contents
- ◆ Required That the Entity Have Written Policies on the Allowability of Costs



Internal Controls

- ◆ Clearly Defined Organizational Structure
- ◆ Assignment of Duties to Ensure that Tasks Involving Grant Funds are Distributed to Ensure Sufficient Segregation of Duties
- ◆ Ensure that Proper Authorities are Implemented on the Disbursement of Funds



Allowability of Costs

- ◆ In Addition to the Seven Basic Principles, Costs Must Conform to Allowability Principles Set Forth in 2 CFR § 200
 - All FTA Grant Recipients/Subrecipients Must Have a Working Knowledge of These Principles



Operating Costs

- ◆ Concern that Relief Funding (CARES Act, etc.) Provided Operating Assistance to Entities Not Typically Allowed to Claim Operating Expenses Under 49 U.S.C. § 5307
 - Follow the Instructions in Appendix C to FTA Circular 9030.1E



Indirect Costs

- ◆ Allowable to the Extent the Indirect Costs Claimed are Consistent with the Organization's Indirect Cost Rate Proposal (ICRPs) and Approved Rates
- ◆ ODOT Has Written Guidance on the Preparation of ICRPs



Indirect Costs

- ◆ ICRPs Are Submitted to a Cognizant Agency for Indirect Costs
 - OMB Assigns Agency for Entity's that Receive More that Exceed Certain Thresholds
 - For Entities Below the Thresholds, Typically the Federal Agency that Consistently Provide the Most Funding Will Serve as the Cognizant Agency



Indirect Costs

- ◆ When a Subrecipient Receives Funding Only as a Subrecipient from a Pass-Through Agency, the Pass-Through Agency May Review, Negotiate, and Approve the Indirect Cost Rate Proposal
 - Caltrans = Pass-Through Entity
 - Your Program = Subrecipient



Indirect Costs

- ◆ Indirect Cost Rates are Typically Updated Annually Based on the Most Recent Audited Data
- ◆ Beginning in December 2014, a New Type of Indirect Cost Rate was Introduced, the *de minimis* Rate
 - This is an Automatic Ten Percent Indirect Cost Rate that Requires no ICRP Preparation or Approval



Indirect Costs

- ◆ Effective November 12, 2020, This Rate is Now Available to Most Non-Federal Entities
 - Previously Limited to Entities that Had Never Negotiated an Indirect Cost Rate with the Federal Government



Audit Period

- ◆ Audit Period
 - Typically, Performed on an Annual Basis
 - Some Minor Exceptions

Auditee Responsibilities

- ◆ Auditee Responsibilities
 - Preparation of Financial Statements
 - Schedule of Expenditures of Federal Awards (SEFA)
 - A Description of Significant Accounting Policies Used In Preparing The Schedule
 - A Summary Schedule of Prior Audit Findings
 - The Auditee Must Also Prepare a Corrective Action Plan for Current Year Audit Findings

Auditee Responsibilities

- ◆ Schedule of Expenditures of Federal Awards (SEFA)
 - List of Individual Federal Awards
 - Name/Cluster Name
 - Subrecipients
 - Name of Pass-Through Agency
 - Grant Identification Number
 - CFDA Number (Section 5311 – 20.509)
 - Total Amounts Provided
 - Significant Accounting Policies
 - Statement as to Whether Entity Used *de minimis* Indirect Rate

Auditee Responsibilities

- ◆ Optional Elements
 - Multiple Federal Award Years
 - Separate Listing of Amounts Expended, By Year
- ◆ Corrective Action Plan

Auditee Follow-Up

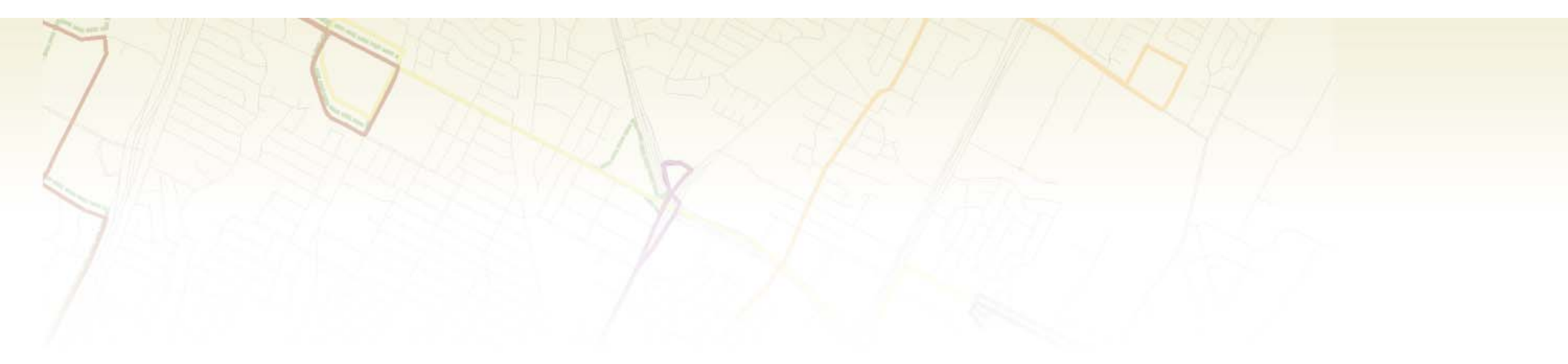
- ◆ Auditee Must Prepare a Summary Schedule of Prior Audit Findings
 - Include Audit Reference Number
 - Status
 - May Exclude
 - Those Findings Corrected
 - Those Findings No Longer Valid or Warranting Further Action
 - Reasons Must be Described
 - » Two Years Have Passed
 - » Federal Agency /Pass Through Entity Not Following Up
 - » Management Decision Was Not Issued

Corrective Action Plan

- ◆ Corrective Action Plan For Current Year Audit Findings
 - Must Address Each Finding
 - Name of Contact Person Responsible for Corrective Action
 - Action Planned
 - Anticipated Completion Date
 - Rebuttal
 - The Corrective Action Plan Must Include An Explanation and Specific Reasons Why the Entity Believes Corrective Action is Not Required

Report Submission

- ◆ Specific Timeframes for Completion
 - Report Must be Submitted to Federal Audit Clearinghouse (FAC) Within 30 Calendar Days After Receipt of Audit Report
 - or
 - Nine Months After End of Audit Period
- ◆ Must Be Available to the Public
 - Some Exceptions for Indian Tribal Organizations



Module 4

TECHNICAL CAPACITY



Coverage

- ◆ Subject Addresses Three Topics
 - Award Management
 - Program Management
 - Project Management



Basic Requirements

- ◆ Award Management
 - The Recipient Must Report Progress to FTA and Close Awards Timely
- ◆ Program Management
 - SMP/PMP
 - Subrecipient Agreements
 - Required Certifications
 - FFATA
 - Subrecipient Oversight



Basic Requirements

- ◆ Project Management
 - The Recipient Must Be Able to Implement the FTA-Funded Projects in Accordance With the Award Application, FTA Master Agreement, and Applicable Laws and Regulations Using Sound Management Practices

A faint, stylized map of a city grid is visible in the background, with various colored lines representing streets and boundaries. The map is centered and covers the entire width of the slide.

Top Deficiencies

- ◆ Award Management
 - Incorrect FFR Reporting
 - Inactive Award/Untimely Closeouts
 - MPRs Lack Required Information
 - Annual Status Reports Missing or Lacking Required Information
 - Late Reporting

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Top Deficiencies

- ◆ Program Management
 - FFATA Reporting Deficiencies
 - SMP/PMP Missing or Out-of-Date
 - Written Agreements Missing Required Elements
 - Lobbying Certifications Not Signed by Subrecipients
 - Inadequate Oversight of Subrecipients



Top Deficiencies

- ◆ Project Management
 - Inadequate Oversight of Transit Management Contractor(s)/Lessee(s)
 - Delay/Cost Overrun Due to Project Implementation
 - No Approval of Force Account Plan
 - New
 - Updated Definition of a Major Capital Project



Reference Documents

- ◆ 2 CFR part 200
- ◆ 2 CFR part 1201
- ◆ FTA Circular 5010.1E



Award Management

- ◆ Complete, Accurate, and Timely Reporting
 - MPRs/FFRs are the Primary Communication Between FTA and a Recipient
 - Similar Relationship Between Caltrans and Its Subrecipients

Program Management & Subrecipient Oversight

- ◆ Complete, Accurate, and Timely Reporting
 - MPRs/FFRs are the Primary Communication Between FTA and a Recipient
 - Similar Relationship Between Caltrans and Its Subrecipients

Program Management & Subrecipient Oversight

- ◆ Up-to-Date SMP/PMP
- ◆ Subrecipient Oversight Agreements
 - Missing Provisions
 - Lack of Lobbying Certifications
 - Failure to Document Debarment/Suspended Status
 - Lack of Oversight to Ensure Compliance



Project Management

- ◆ Ensuring Contractors Perform Per Specifications
 - Schedule
 - Budget



Module 5

TRANSIT ASSET MANAGEMENT (TAM)

A faint, light-colored map of a city street grid is visible in the background. The map shows various streets, some highlighted in different colors like red, green, and yellow, and some areas outlined in brown. The overall tone is light and semi-transparent.

Basic Requirement

- ◆ Recipients Must Comply With 49 CFR § 625 to Ensure Public Transportation Providers Develop and Implement Transit Asset Management (TAM) Plans

Top Deficiencies

- ◆ Performance Targets Not Set Annually
- ◆ TAM Plan Elements Missing
- ◆ TAM Plan Not Prepared/Participated In
- ◆ No Designation of Accountable Executive By Group Plan Participants
- ◆ Insufficient Oversight of Subrecipients For TAM Requirements

Top Deficiencies

- ◆ Performance Targets Not Set Annually
- ◆ TAM Plan Elements Missing
- ◆ TAM Plan Not Prepared/Participated In
- ◆ No Designation of Accountable Executive By Group Plan Participants
- ◆ Insufficient Oversight of Subrecipients For TAM Requirements



Reference Documents

- ◆ 49 CFR § 625
- ◆ [transit.dot.gov/TAM](https://www.transit.dot.gov/TAM)

A faint, light-colored map of a city street grid is visible in the background. The title 'TAM Plan' is centered in a large, bold, dark red font.

TAM Plan

- ◆ Actively Participate in the Group TAM Plan
- ◆ If Turnover in Personnel, Make Sure the Designation of the Accountable Executive is Revised
- ◆ Set Annual Performance Targets
- ◆ Monitor Subrecipients



Module 6

SATISFACTORY CONTINUING CONTROL



Basic Requirement

- ◆ The Recipient Must Ensure That FTA-Funded Property Will Remain Available to be Used for Its Originally Authorized Purpose Throughout Its Useful Life Until Disposition

A faint, light-colored map of a residential or commercial area is visible in the background, showing streets and property boundaries. The map is mostly white with some light brown and green lines.

Top Deficiencies

- ◆ Failure to Notify FTA of Equipment Removed From Service
- ◆ Non-Permitted Use of Equipment Disposal Proceeds



Key Reference Documents

- ◆ 2 CFR § 200.311
- ◆ FTA Circular 5010.1E, Chapter IV

Real Property Inventory & Reporting

- ◆ If FTA Participated in Whole or in Part in the Acquisition of Real Property, an Inventory of All Such Property Must be Maintained
- ◆ Reports are Submitted Annually
 - FTA May Extend Reporting for Assets with a Useful Life Greater Than 15 Years

Real Property Inventory & Reporting

◆ Inventory Data

- ❑ Property Location/Address
- ❑ Use and Condition
- ❑ Summary of Conditions on Title
- ❑ Description of Improvement, Expansions, and Retrofits
- ❑ Useful Life
- ❑ Date Placed In-Service
- ❑ Original Acquisition Cost
- ❑ Source of Funding
- ❑ Federal and Non-Federal Participation Ratios
- ❑ FAIN
- ❑ Appraised Value and Date
- ❑ Anticipated Disposition
- ❑ Sales Price (if Sold)



Incidental Use of Real Property

- ◆ Incidental Use is Defined as the Authorized Use of Real Property Acquired or Improved With FTA Funds
- ◆ FTA Encourages Recipients to Make Incidental Use Of FTA- Funded Real Property When It Can Raise Additional Revenues for the Transit System
- ◆ Incidental Use Cannot Interfere With the Primary Purpose of the Property

Disposition of Real Property

- ◆ If Property is No Longer Needed for Transit Purposes, Seek ODOT Guidance
- ◆ Options
 - Retain Title After Compensating ODOT the Federal Share of Original Acquisition Cost (and Any Improvements)
 - Sell the Property and Give Proceeds to ODOT
 - Amount Due Will Equal Federal Share in Original Acquisition * Sales Price
 - Transfer to Another Eligible Recipient/Subrecipient



Flood Insurance

- ◆ If Property is Located in an Area Designated as Having Special Flood Hazards, the Subrecipient Must Obtain Flood Insurance

Rolling Stock and Other Requirements

- ◆ Subrecipients Must Maintain Control Over All Federally-Funded Equipment
 - Control
 - Maintain Asset Inventories
 - Follow Equipment Management Requirements in 2 CFR § 200.313
 - Lease of Equipment is Permitted Provided Adequate Controls are Included in the Lease Agreement

Removal from Service

- ◆ After the End of Useful Life
 - If Disposition Proceeds are Less Than \$5,000, the Recipient May Retain 100% of Proceeds for Other Transit Capital and Operating Purposes
 - If Disposition Proceeds are Greater Than \$5,000 the BIL Has Changed the Rules!

Removal from Service

- ◆ The Recipient Must Return the Federal Share of Disposition Proceeds Over \$5,000
- ◆ Example:

Item	Amount
Sales Price	\$12,000
Federal Share Percent	80%
Amount Over \$5,000	\$7,000
Amount Due to FTA ($\$7,000 \times .8$)	\$5,600
Amount Retained by Recipient	\$6,400

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Removal from Service

- ◆ The Amount Due FTA Must be Returned Using pay.gov
 - The ECHO Manual Contains Guidance on How to Use this Site
 - Subrecipients
 - Consult the Primary Recipient for Instructions

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Removal from Service

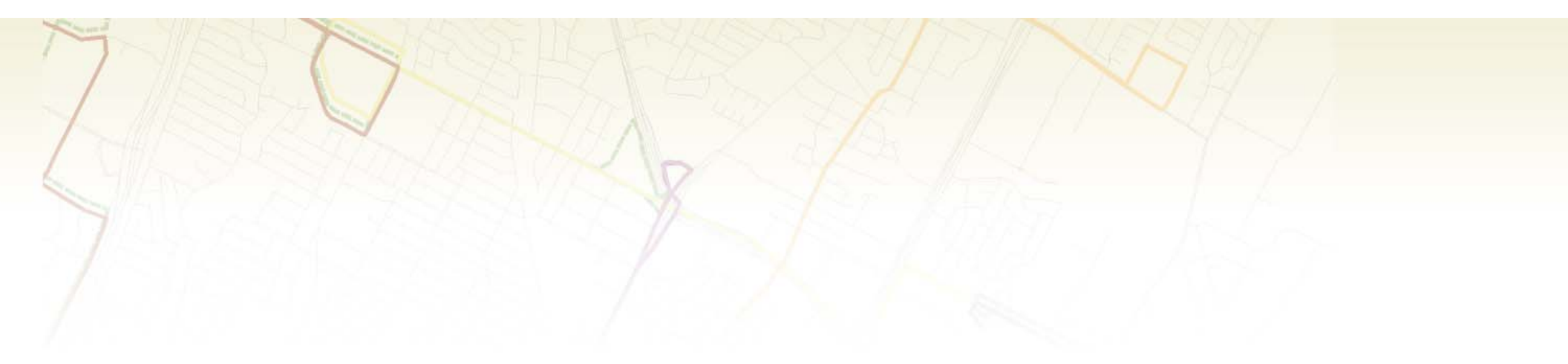
- ◆ Before the End of Useful Life
 - Prior FTA Approval is Required
 - Subrecipients Should Seek Guidance from Primary Recipient
 - Efforts Will Be Made to Transfer Equipment

A faint, light-colored map of a residential area with streets and property lines is visible in the background. The map is centered on the top half of the slide.

Removal from Service

◆ Casualty Loss

- Apply Insurance Proceeds to the Cost of Replacing the Property That is Damaged or Destroyed
- Return to FTA an Amount Equal to the Remaining Federal Interest in the Property That Is Lost, Damaged, or Destroyed
- Worksheets are Provided in FTA Circular 5010.1E, Chapter IV



Module 7

MAINTENANCE



Basic Requirements

- ◆ Recipients Must Keep Federally-funded Vehicles, Equipment, and Facilities in Good Operating Condition
- ◆ Recipients Must Keep Americans With Disabilities Act (ADA) Accessibility Features on All Vehicles, Equipment, and Facilities in Good Operating Order

Equipment - Maintenance

- ◆ Maintenance Requirements
 - Must Have Written Procedures to Keep the Property and Equipment In Good Condition
 - Applies to
 - Facilities
 - Rolling Stock
 - Other Assets

Equipment - Maintenance

- ◆ Maintenance Requirements
 - If a Subrecipient Owns Real Property, Must Have a Facilities Maintenance Plan
 - For Rolling Stock, Maintenance Procedures Should Include
 - OEM Recommendations for Each Type of Vehicle
 - Specification of Events and Intervals for Preventive Maintenance Actions
 - Procedures to Keep a Vehicle's Accessibility Features in Good Working Order
 - Warranty Procedures

Equipment - Maintenance

- ◆ Maintenance Requirements
 - Evaluation
 - Ten (10%) Percent Allowance on Intervals
 - On-Time Events Performed Within 10% of Interval
 - Classify Events as:
 - » On-Time
 - » Early
 - » Late
 - Eighty (80%) Percent of Events Should Not be Late

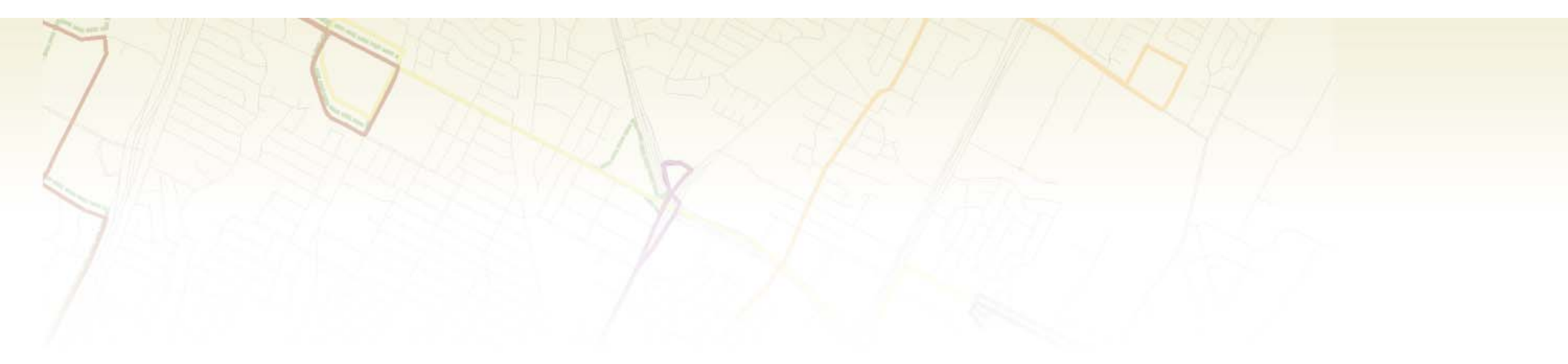
Maintenance of Accessibility Features

- ◆ Maintenance Requirements
 - ADA Regulations Stipulate that the Transit System Maintenance Program Must Address Wheelchair Lifts and Other Accessibility Features
 - Most Lift Manufacturers Now Publish a PM Schedule
 - Warranty Issues
 - If Covered by Warranty, FTA Expects the Subrecipient to Obtain Warranty Service



Maintenance of Accessibility Features

- ◆ Leasing Vehicles
 - The Transit System Must Ensure that All Leased Vehicles are Subject to Adequate Preventive Maintenance Procedures



Module 8

PROCUREMENT





Basic Requirements

- ◆ The Non-Federal Entity Must Use Its Own Documented Procurement Procedures Which Reflect Applicable State, Local, and Tribal Laws and Regulations, and Conform to Applicable Federal Law and the Standards Identified in 2 CFR Part 200

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Top Deficiencies

- ◆ Missing FTA Clauses
- ◆ Responsibility Determination Deficiencies
- ◆ Lacking Required Cost/Price Analysis
- ◆ Incomplete Written Documentation of Procurement History
- ◆ Lacking Independent Cost Estimate



Top Deficiencies

- ◆ Pre-award and/or Post-delivery Certifications Lacking
- ◆ Lobbying Certifications Not Included In Procurement Solicitations Or Signed By Bidders

Key Reference Documents

- ◆ FTA Circular 4289.1F, “Third Party Contracting Requirements”
- ◆ 2 CFR part 1201
- ◆ 2 CFR part 200
- ◆ FTA’s Best Practices Procurement & Lessons Learned Manual (BPP&LL)
- ◆ Procurement FAQs



Applicability

- ◆ States/Governmental Subrecipients
 - Must Meet Some Federal Requirements
 - Contract Term Limitations for Revenue Vehicle Purchases
 - Competition
 - Prohibitions Against Geographic Preferences
 - Brooks Act for A/E Services
 - Awards to Responsible Contractors

Applicability

- ◆ Nonprofit Subrecipients Must Comply with FTA Circular 4289.1F in its Entirety
- ◆ Joint Funded Projects
 - When a Grantee Uses Both FTA Funding and Funding from Another Federal Program, All Applicable FTA Provisions as Well as the Third Party Contracting Requirements of the Other Funding Source

A faint, light-colored map of a city grid is visible in the background, showing streets and some highlighted areas in red and orange.

Coverage

- ◆ Purchase, Lease, or Acquisition of Property, Supplies, Equipment, or Services Financed in Whole or in Part by an FTA Grant



Conflicts

- ◆ Conflicts Between Federal and State Procurement Regulations
 - Recipients and Subrecipients Will Use Their Own Procurement Procedures That Comply with Applicable State and Local Laws and Regulations
 - Must Also Comply with Applicable Federal Laws and Regulations
 - Conflicts – Must Notify ODOT/FTA



Basic Requirements

- ◆ Written Standards of Conduct
- ◆ Technical Capacity

Written Standards of Conduct

- ◆ Every Grantee Must Maintain Written Standards of Conduct
 - Applies to Officers, Employees, Agents, Board Members, or by Contractors or Subrecipients or Their Agents, Immediate Family Members
 - Personal Conflicts of Interest
 - Gifts
 - Violations



Technical Capacity

- ◆ General Requirement
 - Grantees Must Undertake Its Procurements Effectively and Efficiently in Compliance with Applicable Federal, State, and Local Requirements



Technical Capacity

- ◆ Written Procurement Procedures
 - Solicitations
 - Clear Descriptions
 - Nonrestrictive Specifications
 - Quality Requirements
 - Performance Specifications
 - Brand Name or Equal



Technical Capacity

- ◆ Written Procurement Procedures
 - Necessity
 - Lease vs. Purchase
 - Metric Usage
 - Environmental and Energy Efficiency Preferences



Technical Capacity

- ◆ Inclusion of All Third Party Contract Provisions in Lower Tier Contracts
- ◆ Caution Regarding Industry Contracts



Technical Capacity

- ◆ Written Procurement History
 - Method
 - Contract Type
 - Contractor Selection
 - Cost/Price Analysis
 - Documentation
- ◆ Access To Records



Technical Capacity

- ◆ Electronic Commerce
 - Permissible, With Stipulations

Rolling Stock Requirements

- ◆ Rolling Stock
 - Accessibility
 - Manufacturer DBE
 - Minimum Service Life
 - Spare Ratio Standards
 - Pre-Award/Post Delivery Reviews
 - Bus Testing



Prohibited Actions

- ◆ Improper Contract Expansions
 - Expanding Scope, Ordering Greater Quantities, or Negotiating Options Outside Those Needed by the Grantee/Subrecipient
 - Establishing Additional Quantities Primarily to Permit Assignment of Those Contract Rights to Another Entity



Prohibited Actions

◆ Cardinal Changes

- A Significant Change in Contract Work (Property or Services)
 - Major Deviation From the Original Purpose of the Work
 - Methods of Achievement of the Work Scope
 - Causes a Revision of Contract Work So Extensive, Significant, or Cumulative That, In Effect, The Contractor Is Required to Perform Very Different Work From That Described in the Original Contract



Prohibited Actions

- ◆ Cardinal Changes

- Cardinal Changes

- Sometimes Difficult to Determine
 - Not Measured by Specific Quantity, Percentage, or Number
 - Consultation with ODOT Highly Recommended

Open Market Procurements

◆ General Principles

○ Full and Open Competition

■ Actions Not Consistent with Full and Open Competition

- Excessive Qualifications
- Unnecessary Experience
- Improper Pre-Qualifications
- Retainer Contracts
- Excessive Bonding
- Brand Name Only Specifications
- Geographic Preferences
- Organizational Conflicts of Interest



Open Market Procurements

- ◆ Disclosure of Evaluation Factors
 - Regardless of Procurement Type, the Purchaser Has the Obligation to Disclose the Factors on Which the Purchase Decision Will be Made

Open Market Procurements

◆ Methods

- Informal Methods
 - Micro Purchases
 - Small Purchases
- Formal Methods
 - Sealed Bids
 - Competitive Proposals
- Non-Competitive

Special Procurement Issues

- ◆ Procurements With Less Than Full and Open Competition
 - Single Bid or Proposal
 - Grantee Receives Only One Response
 - Requires Grantee Action
 - Documentation of Market Conditions Beyond the Control of the Grantee
 - Review of Specifications (Restrictiveness)



Special Procurement Issues

- ◆ Procurements With Less Than Full and Open Competition
 - Unusual and Compelling Emergency

Cost and Price Analysis

- ◆ Federal Rules Require the Grantee to Perform a Cost or Price Analysis in Connection with Every Procurement Action Over the Simplified Acquisition Threshold
- ◆ Contract Modifications Also Trigger Cost and Price Analysis
- ◆ Any Procurement Where Competition Was Lacking

Cost and Price Analysis

◆ Cost Analysis

- Required When
 - When an Offeror Submits Cost Elements Such as Labor, Overhead, Materials, etc. of the Estimated Cost (Typical of Professional Consulting and A&E Contracts)
 - When Price Competition is Inadequate
 - When Only a Sole Source is Available
 - In the Event of a Change Order
- Not Necessary If Grantee Can Justify Price Reasonableness Based on a Catalog or Market Price of a Commercial Product Sold in Substantial Quantities to the General Public or Based on Prices Set By Law or Regulation

Cost and Price Analysis

◆ Cost Analysis Techniques

- Assess Cost Allowability
- Examine Approved Federal Overhead Rate
 - Contracts Less Than \$5 Million
 - Accept Rates
 - Contracts Over \$5 Million
 - Contractor Must Have Defense Contract Audit Agency, Another Federal cognizant Audit Agency, or an Accounting Firm Approved By the Federal Government to Perform Audits For the Federal Government, Must Verify The Contractor's Rates

Cost and Price Analysis

◆ Cost Analysis Techniques

- Profit – Negotiated on All Contracts Without Competition or All Contracts that Require a Cost Analysis
 - Complexity of the Contract
 - Risk Undertaken by the Contractor
 - Contractor's Investment
 - Amount of Subcontracting
 - Industry Rates

Cost and Price Analysis

◆ Price Analysis

- Acceptable When Competition Is Deemed Adequate
- Scalable – Minimal Effort Required for Micro or Small Purchases
- Based on Catalog Prices, Market Price Documentation, Recent Procurement Results



Protests and Disputes

- ◆ Super Circular Assign Responsibility to the Grantee for Resolving All Contractual and Administrative Issues Arising Out of Third Party Procurements
- ◆ Includes
 - Source Evaluation and Selection
 - Protests of Awards
 - Contract Disputes

Protests and Disputes

- ◆ Requirements for the Protester
 - A Party Must Qualify as an “Interested Party”
 - A Party That Is an Actual or Prospective Bidder or Offeror Whose Direct Economic Interest Would be Affected By the Award or Failure to Award the Third Party Contract at Issue
 - Subcontractors Do Not Qualify as an Interested Party
 - Party Must Exhaust Administrative Remedies (e.g., the Grantee’s Protest Process)



Module 9

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)



Basic Requirements

- ◆ Recipients Must Comply With 49 CFR § 26 To Ensure Nondiscrimination in the Award and Administration of US DOT-Assisted Contracts
- ◆ Recipients Also Must Create a Level Playing Field on Which DBEs Can Compete Fairly for US DOT-Assisted Contracts

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Top Deficiencies

- ◆ Revisions to DBE Goal Methodology Not Made
- ◆ Inadequate Implementation of Race-neutral Measures
- ◆ Insufficient Documentation of Monitoring DBE Compliance of Contractors and/or Subrecipients



Key Reference Documents

- ◆ 49 CFR § 26

Disadvantaged Business Enterprise

◆ Program Goals

- Ensure that Disadvantaged Business Enterprises are Afforded Maximum Opportunity to Compete for Contracts
- Inclusion of Required Language in All Solicitation Documents

Disadvantaged Business Enterprise

◆ Applicability

- If An Entity Has More Than \$250,000 in Contracting Opportunities (Using Federal Funds), Exclusive of Rolling Stock, Then the Recipient Must Prepare a DBE Program
- Subrecipients Must Follow the Direction of the Primary Recipient

Disadvantaged Business Enterprise

- ◆ Typically, if a Section 5311 Subrecipient Exceeds the DBE Threshold, the State DOT Typically Will Require
 - The Subrecipient Prepare Its Own DBE Program and Goal
 - Work with the Subrecipient on Establishing Contract Specific Goals
- ◆ DBEs are Certified by State DOTs
 - Only Certified DBEs Count



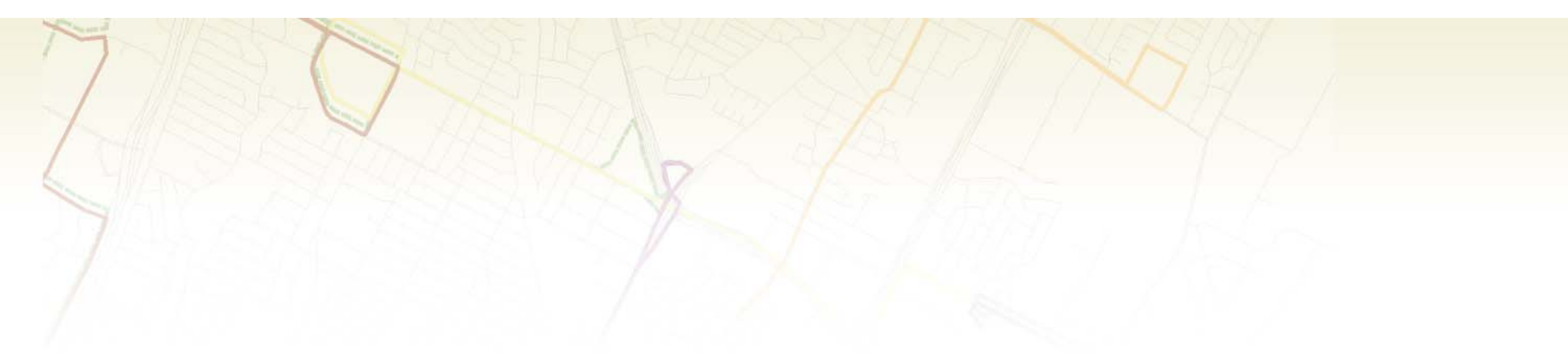
DBE Program

- ◆ Designation of a DBE Liaison Officer (DBELO)
- ◆ Establishment of Annual DBE Goals
- ◆ Semi-Annual Reporting of Contracting and DBE Activity
- ◆ Completion of Shortfall Analyses If the Entity Has Not Obtained Its DBE Goal
- ◆ Ensuring that All Offerors Made Good Faith Efforts in Meeting DBE Goals in Solicitations



DBE Program

- ◆ Ensure That for All Vehicle Procurements, a Proper TVM Certification Has Been Submitted
 - FTA Cannot Participate in the Procurement Without Such a Certificate
- ◆ Monitoring Contractors to Ensure DBEs Actually Do the Work



Module 10

TITLE VI





Basic Requirements

- ◆ The Recipient Must Ensure That No Person Shall, on the Grounds of Race, Color, or National Origin, be Excluded From Participating in, or be Denied the Benefits of, or be Subject to Discrimination Under Any Program or Activity Receiving Federal Financial Assistance Without Regard to Whether Specific Projects or Services Are Federally Funded



Basic Requirements

- ◆ Important to Note that Title VI Covers ALL Activities of the Recipient and Subrecipient, Not Just FTA-Funded Activities

A faint, light-colored map of a residential area is visible in the background, showing street layouts and property boundaries. The map is centered behind the title and list.

Top Deficiencies

- ◆ Title VI Complaint Process Not Implemented in Accordance With Title VI Program
- ◆ Title VI Public Participation Plan Not Implemented

Reference Documents

- ◆ FTA Circular 4702.1B
- ◆ 49 CFR § 1.51.
- ◆ 49 CFR § 21
- ◆ 28 CFR § 42.401 *et seq.*

- ◆ A Circular Update to 4702.1B is in Progress



Historical Perspective

- ◆ Basic Principle:

- No Person in the United States Shall, on the Ground of Race, Color, or National Origin, Be Excluded From Participation In, be Denied the Benefits of, or be Subjected to Discrimination Under Any Program or Activity Receiving Federal Financial Assistance



Federal Role

- ◆ All Federal Agencies Responsible Under the Civil Rights Act to Promulgate Rules Implementing the Act
- ◆ Governing Documents
 - 49 CFR § 21 – USDOT Civil Rights
 - FTA Circular 4702.1B – FTA's Transit Guidance



Federal Role

◆ Basic Requirement

- FTA Requires all Direct and Primary Recipients to Document Compliance by Submitting a Title VI Program to the Regional FTA Office Every Three Years
- Subrecipients Submit Title VI Programs to the Primary Recipient
- Caltrans is the Direct/Primary Recipient of FTA Funds



Subrecipient Role

- ◆ Basic Requirement

- Subrecipients Must Submit Title VI Programs to the Primary Recipient From Whom They Receive Funding
 - Subrecipients Assist the Primary Recipient In Its Compliance Efforts
 - Primary Recipient Determines Schedule



Subrecipient Role

- ◆ Subrecipients With Contractors
 - Contractors and Subcontractors are Responsible For Complying With the Title VI Program of the Entity With Whom They Are Contracting
 - Contractors Are Not Required to Prepare or Submit Title VI Programs
 - Subrecipients Are Responsible for Ensuring That Contractors Are Following the Title VI Program and Complying With Title VI

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Primary Recipients

- ◆ What About Agencies That Receive Grants Directly From FTA, Not Caltrans?
 - Primary Recipients Submit Their Title VI Programs Directly to FTA on a Schedule That is Prescribed by FTA
- ◆ Funding From Both FTA and Caltrans?
 - Send Program to Both



Title VI Goals

- ◆ Level and Quality of Public Transportation Service Is Provided In a Nondiscriminatory Manner
- ◆ Promote Full and Fair Participation In Public Transportation Decision-Making Without Regard to Race, Color, or National Origin
- ◆ Ensure Meaningful Access To Transit-Related Programs and Activities By Persons With Limited English Proficiency



Circular Overview

- ◆ Applicable Provisions to Most Subrecipients
 - First Three Chapters
- ◆ Demand Response Providers
 - First Three Chapters
 - Chapters I, II – Information
 - Chapter III – Basic Plan Contents for ALL Entities



Circular Overview

◆ Program Elements

- Title VI Notice to the Public
- Complaint Procedures
- Complaint Form
- Limited English Proficiency Plan & Public Involvement Plan
- List of Investigations, Lawsuits, and Complaints
- Information Regarding Siting of Fixed Facilities
- Table Depicting Racial Composition of Membership of Non-Elected Boards/Committees



Title VI Notice

◆ Prepare Notice

- Notice States that the Entity Complies With Title VI
- Basic Statement of Protections
- The Program Should Include a List of Locations Where Notice is Posted
 - Generic, i.e., Website, Buses, Service Guide, etc.



Title VI Notice

◆ Notice Content

- Statement That the Agency Operates Programs Without Regard to Race, Color, or National Origin
- Procedures the Public Should Follow to Request Additional Information on the Recipient's Title VI Obligations
- Procedures to File a Title VI Discrimination Complaint Against the Recipient



Title VI Notice

◆ Dissemination

○ Document Translation

- Notices Detailing a Recipient's Title VI Obligations and Complaint Procedures Must Be Translated Into Languages Other Than English

○ What Languages?

- Translate Consistent With LEP “Four Factor” Analysis Outcome and Your Language Assistance Plan (Discussed Later)



Complaint Procedures

- ◆ All Covered Entities Must Develop Procedures For Investigating and Tracking Title VI Complaints
- ◆ The Procedures For Filing a Complaint Must Be Made Available to the Public



Complaint Procedures

- ◆ Recipients Must Also Develop a Title VI Complaint Form
- ◆ The Form and the Procedure For Filing a Complaint Shall Be Available On The Recipient's Website

Complaint Procedures

- ◆ A Sample Complaint Form is Found in Appendix D of the Circular
- ◆ Again, as Title VI Applies to All Federal Programs, the Transit System May Already Have Developed This Process to Comply with Other Federal Guidance
 - Use of Such Processes is Encouraged



Tracking Complaints

- ◆ If Complaint Alleges Discrimination on the Basis of Race, Color, or National Origin, Transit System Must Track:
 - Active Investigations Conducted by Entities Other Than FTA
 - Lawsuits
 - Complaints Naming the Recipient



Tracking Complaints

◆ Data

- The Date That The Investigation, Lawsuit, or Complaint Was Filed
- A Summary of the Allegation(s)
- The Status of the Investigation, Lawsuit, or Complaint
- Actions Taken By The Recipient In Response to the Complaint or Final Findings Related to the Investigation, Lawsuit, or Complaint



Inclusive Public Participation

- ◆ Combines Title VI, the Executive Order on Limited English Proficiency (LEP), and DOT LEP Guidance
- ◆ Integration of These Elements Into Each Recipient's Established Public Participation Plan or Process

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Inclusive Public Participation

- ◆ The Title VI Program Must Explicitly Describe
 - Proactive Strategies
 - Procedures
 - Desired Outcomes
 - That Underpin The Recipient's Public Participation Activities)

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, yellow, and green.

Meaningful Access to LEP

- ◆ This Element of the Title VI Program Has Two Main Components
 - Four Factor Analysis
 - Language Assistance Program
- ◆ This May Be the Most Challenging Aspect of Title VI Program Development

Meaningful Access to LEP

◆ Four Factor Analysis

- The Number of LEP Persons in Service Area
- The Frequency With Which LEP Persons Come Into Contact With the Program
- Degree of Importance of the Program
- LEP Outreach
 - Resources
 - Costs



Language Assistance Plan

◆ Contents

- LEP Analysis
- Description of Language Assistance Services
- Notice of Availability of Language Assistance
- How the Recipient Monitors, Evaluates and Updates the Language Access Plan
- How the Recipient Trains Employees to Provide Timely Language Assistance to LEP Populations
 - Costs



Safe Harbor

- ◆ The Safe Harbor Provision Stipulates That, If a Recipient Provides Written Translation of Vital Documents For Each Eligible LEP Language Group That Constitutes Five Percent (5%) Or 1,000 Persons
 - ...The Transit System is In Compliance



Minority Participation

- ◆ Identification of Planning and Advisory Boards
 - Not Governing Board
 - Non-Elected Boards/Committees
- ◆ Preparation of a Table Depicting Racial Breakdown of Membership

Additional Requirements for Fixed Route Providers

- ◆ Systems in Small UZAs and < 50 Vehicles
 - Service Standards
 - Vehicle Load, by Fixed Mode, by Peak and Off-peak Periods
 - Vehicle Headway
 - On-Time Performance
 - Service Availability for Each Mode
 - Service Policies
 - Distribution of Transit Amenities, by Mode
 - Vehicle Assignment, by Mode



Module 11

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Basic Requirement

- ◆ The Recipient Must Ensure That No Person in the United States Shall on the Grounds of Race, Color, Religion, National Origin, Sex, Age or Disability be Excluded From Participating in, or Denied the Benefits of, or be Subject to Discrimination in Employment Under Any Project, Program or Activity Receiving Federal Financial Assistance Under the Federal Transit Laws

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Top Deficiencies

- ◆ Employment practices analyses deficiencies
- ◆ EEO reporting and/or monitoring system deficiencies
- ◆ Insufficient oversight of subrecipient/contractor EEO program



Reference Documents

- ◆ FTA Circular 4702.1A
- ◆ 49 CFR § 1.51

Equal Employment Opportunity

◆ Obligations

- Ensure Compliance with Law
- Communicating with the Public That the Entity Complies
 - Job Notices, etc.
- Communicating with Prospective Applicants for Employment
 - Standard Language on Job Applications
- Communicating with Existing Employees
 - Workplace Notice (Typically, “7 in 1” Poster)

Equal Employment Opportunity

- ◆ If the Transit Agency
 - Receives More than \$1 Million in FTA Assistance in Any One Year
 - AND
 - Has 50 or More Mass Transit Employees
 - OR
 - Receives More Than \$250,000 in Planning Assistance
 - An EEO Program Must be Prepared

A faint, stylized map of a city grid is visible in the background, with various colored lines representing streets and boundaries.

Equal Employment Opportunity

- ◆ If the Transit Agency
 - Has Between 50 and 99 Public Transit Employees, a Modified EEO Program is Required
 - Over 100 Public Transit Employees
 - A Full EEO Program is Required
- ◆ Plan Must be Submitted Every Four (4) Years

Equal Employment Opportunity

◆ Program Elements

Transit Systems 50 – 99 Employees	Transit System with 100 or More
Statement of Policy	Statement of Policy
Plans for Dissemination	Plans for Dissemination
Designation of Responsible Personnel	Designation of Responsible Personnel
Assessment of Employment Practices	Utilization Analysis
Plan for Monitoring Compliance	Goals and Timetables
	Assessment of Employment Practices
	Plan for Monitoring Compliance



Module 12

AMERICANS WITH DISABILITIES ACT

Basic Requirement

- ◆ The Recipient Must Ensure That No Person in the United States Shall on the Grounds of Race, Color, Religion, National Origin, Sex, Age or Disability be Excluded From Participating in, or Denied the Benefits of, or be Subject to Discrimination in Employment Under Any Project, Program or Activity Receiving Federal Financial Assistance Under the Federal Transit Laws

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Top Deficiencies

- ◆ ADA - General
 - Insufficient ADA Complaint Process
 - Insufficient Oversight of Subrecipients for ADA Requirements
 - Insufficient ADA Complaint Record Retention
 - Insufficient Monitoring of Operations for ADA Service Provisions



Top Deficiencies

- ◆ ADA - General
 - Insufficient Oversight of Contracted Service For ADA Requirements
 - Alternative Accessible Formats Not Provided
- ◆ ADA – Complementary Paratransit
 - Insufficient Oversight of Contracted ADA Complementary Paratransit
 - Unreasonable No-Show Suspension

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets, some highlighted in different colors like red, green, and yellow.

Top Deficiencies

- ◆ ADA – Complementary Paratransit
 - Origin-to-Destination Service Deficiency
 - Insufficient No-Show Suspension Procedures
 - Limits or Capacity Constraints on Complementary Paratransit Service

Reference Documents

- ◆ 49 CFR part 37
- ◆ 49 CFR part 38
- ◆ 49 CFR part 27
- ◆ FTA Circular 4710.1



Applicability

- ◆ Public and Private Entities that Provide Public Transportation
- ◆ Private Entities that Operate Demand Response or Fixed Route System
- ◆ Services Provided Under Contract or Other Arrangement
- ◆ University Transportation Systems
- ◆ Taxi Services
- ◆ Vanpools Operated by Public Entities

A faint, stylized map of a city grid is visible in the background, with various colored lines representing streets and boundaries. The title 'Applicability' is centered over this map.

Applicability

◆ Exclusions

- Elementary and Secondary School Transportation
- Transportation for Recreation, Not Primarily for Transport
- Transportation Exclusively for Own Employees
- Transportation Systems Operated by Private Clubs



ADA Overview

- ◆ The Americans With Disabilities Act (ADA) of 1990
 - Originally Signed Into Law on July 26, 1990
 - Five Titles, Modeled, in Part, After the Civil Rights Act of 1964
 - Substantial Impact on Public Transportation
 - Oversight Split between Multiple Federal Agencies: US DOJ, US DOT, EEOC, FCC

A faint, light-colored map of a city street grid is visible in the background. The map shows various streets, some highlighted in different colors like red, green, and yellow. The title 'Title II' is overlaid on the map in a large, bold, dark red font.

Title II

- ◆ Subtitle B - Applies To Transportation Services Provided By Public Entities
 - Implementing Agency is the USDOT
 - 49 CFR Parts 27, 37, and 38
 - Part 27 – Section 504 Rule
 - Part 37 – Key ADA Rule for Transit
 - Part 38 – Accessible Vehicle Rule



USDOT Regulations

- ◆ Nondiscrimination
- ◆ Applicability
- ◆ Accessible Facilities
- ◆ Acquisition of Vehicles
- ◆ Complementary Paratransit
- ◆ Provision of Service
- ◆ Intercity Service



Definition

◆ Disability

- A Physical or Mental Impairment That Substantially Limits One or More Major Life Activities of Such Individual
- A Record of Such an Impairment
- Being Regarded as Having Such an Impairment



Definition

- ◆ Physical or Mental Impairment
 - Any Physiological Disorder or Condition, Cosmetic Disfigurement, or Anatomical Loss Affecting One or More of the Following Body Systems:
 - Neurological, Musculoskeletal, Special Sense Organs, Respiratory Including Speech Organs, Cardiovascular, Reproductive, Digestive, Genito-Urinary, Hemic and Lymphatic, Skin, and Endocrine
 - Any Mental Or Psychological Disorder, Such as Mental Retardation, Organic Brain Syndrome, Emotional or Mental Illness, and Specific Learning Disabilities



Definition

- ◆ Physical or Mental Impairment
 - The Term Physical or Mental Impairment Includes, But Is Not Limited to, Such Contagious or Non-Contagious Diseases and Conditions as:
 - Orthopedic, Visual, Speech, and Hearing Impairments; Cerebral Palsy, Epilepsy, Muscular Dystrophy, Multiple Sclerosis, Cancer, Heart Disease, Diabetes, Mental Retardation, Emotional Illness, Specific Learning Disabilities, HIV Disease, Tuberculosis, Drug Addiction and Alcoholism



Definition

- ◆ Major Life Activities
 - Functions Such As Caring For One's Self, Performing Manual Tasks, Walking, Seeing, Hearing, Speaking, Breathing, Learning, and Work



Definition

- ◆ A Record of Such An Impairment
 - Has a Physical or Mental Impairment That Does Not Substantially Limit Major Life Activities, But Which Is Treated By a Public or Private Entity as Constituting Such a Limitation
 - Has A Physical or Mental Impairment That Substantially Limits a Major Life Activity Only as a Result of the Attitudes of Others Toward Such an Impairment
 - Is Treated By a Public or Private Entity as Having Such an Impairment



Definition

◆ Modes of Transit Service

○ Fixed Route Service

- System of Transporting Individuals...On Which a Vehicles Operating Along a Prescribed Route According to a Fixed Schedule"

○ Demand Response Service

- System of Transporting Individuals...Which is Not a Fixed Route System

A faint, light-colored map of a city street grid is visible in the background. The map shows various streets, some highlighted in different colors like red, yellow, and green, possibly indicating transit routes or zones. The overall tone is light and professional.

Definition

◆ Modes of Transit Service

○ Commuter Bus Service

■ Fixed Route Service Characterized by:

- Service Predominantly in One Direction
- Operation in Peak Periods
- Limited Stops
- Use of Multi-Ride Tickets as the Fare Media
- Routes of Extended Length

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Modes of Service

◆ Modes of Transit Service

○ Fixed Route Includes

- Non-Commuter Fixed Route
- Commuter Fixed Route
- Intercity Bus
- Route/Point Deviation When Deviations are Limited

○ Demand Response

- ADA Complementary Paratransit
- Route/Point Deviation Open to All
- Traditional DR (Subscription and Casual DR)

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Nondiscrimination

- ◆ Cannot Require an Individual to Use Designated Priority Seats
- ◆ Cannot Impose Special Charges on Individuals Who Use Wheelchairs
- ◆ Cannot Require That an Individual With Disabilities be Accompanied by an Attendant
- ◆ Cannot Refuse Service Due to Insurance Company Requirements

A faint, light-colored map of a residential area with streets and property lines is visible in the background. The title 'Nondiscrimination' is centered at the top in a large, bold, dark red font.

Nondiscrimination

- ◆ An Entity Shall Not Refuse to Provide Service to an Individual With Disabilities Solely Because the Individual's Disability Results in Appearance or Voluntary Behavior That May Offend, Annoy, or Inconvenience Employees of the Entity or Other Persons



Nondiscrimination

- ◆ DOT Rulemaking

- October 19, 2011

- Expanded Conditions When a Transit System May Exclude an Individual from Service
 - The Individual Constitutes a Direct Threat to Others

A faint, stylized map of a city street grid is visible in the background of the top half of the slide. The map uses various colors like red, green, and yellow to highlight different areas or routes.

Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
 - Refusing to Provide Service Because of a Person's Disability
 - Requiring Individuals With Disabilities to Use Seat Belts or Shoulder Harnesses When Other Riders on the Same Vehicle are Not Also Required to do the Same

A faint, light-colored map of a residential area with streets and property lines is visible in the background of the top half of the slide.

Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
 - Requiring Wheelchairs Users to Wear a Special Body Belt as a Condition of Using Lifts
 - Requiring Riders Who Board A Vehicle With a Service Animal to First Disclose the Nature of Their Disability to Receive Transportation



Nondiscrimination

- ◆ Examples of Common Discriminatory Practices
 - Requiring Adults to Accompany Children Under a Certain Age in Order to Use Complementary Paratransit Service Without Having the Same Age Requirement to Ride the Fixed Route System
 - Prohibiting an Individual With a Disability From Serving as a Personal Care Attendant (PCA) For Another Rider With a Disability

A faint, light-colored map of a city street grid is visible in the background of the top half of the slide. The map shows various street layouts and colored lines representing different types of roads or transit routes.

Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
 - It Is Not Discrimination For an Entity to Refuse to Provide Service to an Individual With Disabilities Because That Individual Engages In:
 - Violent Behavior
 - Seriously Disruptive Behavior
 - Illegal Conduct
 - Represents a Direct Threat to Health or Safety of Others

A faint, light-colored map of a city street grid is visible in the background of the top half of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
 - It Is Not Discrimination For an Entity to Refuse to Provide Service to an Individual With Disabilities Because That Individual Engages In:
 - Violent
 - Seriously Disruptive
 - Illegal Conduct
 - Conduct That Poses a Direct Threat to Others



Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
 - Seriously Disruptive, Illegal, Violent Behavior
 - Meant to be a High Standard
 - Appearance or Involuntary Behavior That Offends or Inconveniences Other Passengers Does Not Meet This Threshold
 - Most Common Scenario - Passengers with Hygiene Issues
 - FTA Notes That It Would Not be Appropriate to Deny Service
 - Condition Must Disrupt the Provision of Service
 - Appeal to Family, Friends, Case Workers, etc., to Assist in Remedy

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets, some highlighted in different colors like red, yellow, and green.

Nondiscrimination

- ◆ Service Denial Due to Rider Conduct
 - Determining a Direct Threat
 - Individual Assessment, Based on Reasonable Judgment
 - Determine Probability That Potential Injury Will Occur
 - Do Not Presume Certain Conduct Will Occur Based on a Specific Disability
- ◆ Best Practice
 - Provide Written Notice Before Imposing Denials

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and property boundaries.

Accessible Facilities

- ◆ New Facilities
 - Must be Accessible
- ◆ Alterations to Existing Facilities
 - Must Ensure Accessibility
- ◆ New Bus Stop Pads
 - Must Meet Accessibility Standards
 - If Property is Within the Control of the Transit System

Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
Public Entities			
Fixed Route Bus	New Non-Rail Vehicles	Purchase or Lease	Accessible
	Used Non-Rail Vehicles	Purchase or Lease	Accessible, unless unable to acquire accessible after a good faith effort
Demand Response Bus	New Non-Rail Vehicles	Purchase or Lease	Accessible unless service for individuals with disabilities is equivalent
	Used Non-Rail Vehicles	Purchase or Lease	Accessible unless service for individuals with disabilities is equivalent

Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
Private Entities Not Primarily Engaged			
Fixed Route Bus	New or Used Non-Rail Vehicles	Purchase or Lease >16 Passenger Capacity	Accessible
	New or Used Non-Rail Vehicles	Purchase or Lease <16 Passenger Capacity	Accessible, Unless Service For Individuals With Disabilities is Equivalent
Demand Response Bus	New Non-Rail Vehicles	Purchase or Lease >16 Passenger Capacity	Accessible Unless Service For Individuals With Disabilities is Equivalent
	Used Non-Rail Vehicles	Purchase or Lease <16 Passenger Capacity	No Requirement, but Must Provide Equivalent Service

Acquisition of Accessible Vehicles

Service Type	Vehicle Type	Acquisition	Requirement
Private Entities Primarily Engaged			
Fixed Route Bus	New or Used Vehicles	All Vehicles Except: <ul style="list-style-type: none"> • Automobile • Van, <8 Passenger Capacity 	Accessible
Demand Response Bus	New or Used Vehicles	All Vehicles Except: <ul style="list-style-type: none"> • Automobile • Van, <8 Passenger Capacity 	Accessible Unless Service For Individuals With Disabilities is Equivalent
Fixed Route or Demand Response Mode	New or Used Vehicles	Purchase or Lease <8 Passenger Capacity	Accessible Unless Service For Individuals With Disabilities is Equivalent



Reasonable Modifications

- ◆ Applies to
 - Policies
 - Practices
 - Procedures
- ◆ Applies When a Change in Policy, Practice, or Procedures Would Avoid Discrimination on the Basis of Disability (e.g., Refusal of Service)



Reasonable Modifications

- ◆ Individuals Making a Request
 - Where a Request for Modification Cannot Practicably be Made and Determined in Advance
 - Operating Personnel of the Entity Shall Make a Determination of Whether the Modification Should Be Provided at the Time of the Request
 - Operating Personnel May Consult With The Entity's Management Before Making a Determination to Grant or Deny the Request



Fixed Route Operations

- ◆ Inoperable Lift on Route with Headways Greater Than 30 Minutes
 - Obligation to Ensure Alternative Transportation



Fixed Route Operations

- ◆ Buses Are Full
 - If Buses are Full (e.g., Both Wheelchair Positions Are Occupied), This Provision Does Not Apply



Fixed Route Operations

◆ Deployment of Lifts

- Transit Agency Cannot Refuse to Permit a Passenger Who Uses a Lift to Disembark From a Vehicle at Any Designated Stop, Unless
 - The Lift Cannot Be Deployed
 - The Lift Will Be Damaged If It Is Deployed
 - Temporary Conditions at the Stop, Not Under the Control of the Entity, Preclude the Safe Use of The Stop By Passengers



Fixed Route Operations

◆ Priority Seating

- Designed for Elderly and Individuals with Disabilities
- No Requirement, However, to Force a Driver to Move Passengers Occupying These Seats
- The Transit Agency May Form Its Own Policy on Mandatory Moves

A faint, light-colored map of a city street grid is visible in the background of the top half of the slide. The map shows various streets and blocks in a light beige and yellow color scheme.

Fixed Route Operations

- ◆ Adequate Boarding and Disembarking Time
 - The Transit Agency Must Ensure That Adequate Time is Provided to Allow Individuals With Disabilities to Complete Boarding or Disembarking From the Vehicle



Fixed Route Operations

- ◆ Stop Announcements
 - Must Announce at:
 - Transfer Points with Other Fixed Routes
 - Major Intersections and Destinations
 - Sufficient Intervals Along a Route to Permit Individuals with Visual Impairments to be Able to Orient Themselves to Their Location
 - Manual or Automated Announcements
 - Not Necessary to Use a P.A. System If Vehicle is Small Enough and the Driver Can Be Heard

A faint, light-colored map of a city street grid is visible in the background of the top half of the slide. The map shows various streets and blocks, with some areas highlighted in light green and yellow.

Commuter Bus

- ◆ Case-By-Case Analysis Required To Determine If A Fixed Route Qualifies as a Commuter Route
- ◆ Commuter Services Do Not Require Complementary Paratransit



Commuter Bus

- ◆ Characteristics
 - Service Predominantly in One Direction
 - Limited Stops
 - Routes of Extended Length
- ◆ Commuter Services Can be Hybrid (e.g., Traditional Fixed Route for Some Portions and Commuter Service for Reminder)



Demand Response Operations

- ◆ Key Distinction
 - A Passenger Must Interact With the Transit System in Order to Use the Service
- ◆ ADA Service Requirement for Demand Response Services
 - Equivalent Service



Demand Response Operations

- ◆ Equivalent Service

- Seven (7) Criteria

- Response Time
 - Fares
 - Geographic Area of Service
 - Hours And Days of Service
 - Restrictions or Priorities Based on Trip Purpose
 - Availability of Information and Reservations Capability
 - Any Constraints n Capacity or Service Availability

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Demand Response Operations

- ◆ Equivalent Service
 - Unlike Complementary Paratransit, There Are No Service Standards Associated With These Criteria
 - Obligation is Only to Provide Equivalent Service – Good or Bad
- ◆ While Acquisition of Accessible Vehicles is Recommended, When Service is Equivalent, Non-Accessible Vehicles May Be Purchased
 - Certification Must Be Submitted to the ODOT



Demand Response Operations

- ◆ Equivalent Service
 - When a Demand Response Fleet is 100 Percent Accessible, FTA States the Equivalent Service Standard Applicable to Demand Response System Do Not Apply
 - Presumptive Equivalency

A faint, light-colored map of a city street grid is visible in the background, with some streets highlighted in yellow and orange.

Demand Response Operations

- ◆ Types of Demand Response Service
 - Dial-a-Ride Service
 - Taxi Subsidy Service
 - Vanpool Service
 - Route Deviation Service

A faint, stylized map of a city street grid is visible in the background of the top half of the slide. The map shows various colored lines representing streets and blocks.

Demand Response Operations

- ◆ Route Deviation

- Must Accept Deviation Requests From All Riders to be Considered Demand Response
- Must Advertise the Availability of Route Deviations in Schedules and Other Public Information



Demand Response Operations

◆ Route Deviation

○ Restrictive Practices

- No Excessive Fares for Deviations
- Limiting the Areas Where Deviations Can Occur
- Limiting Deviations to Specific Trip Purposes
- Capping the Number of Deviations an Individual Can Request
- Limiting Number of Deviations Per Run

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Demand Response Operations

- ◆ Monitoring for Equivalency
 - Recommended Procedures
 - Periodically Review Trip Denials
 - Calculate the Percentage of Trips Requested by Riders Who Require Accessible Vehicles That Were Denied
 - » $\frac{\text{Denied Trips Requested by Riders Who Need Accessible Vehicles}}{\text{Total Trips Requested by Riders Who Need Accessible Vehicles}}$
 - Compare This With The Percentage of Trips Requested By Riders Who Do Not Need Accessible Vehicles That Were Denied



Complementary Paratransit

- ◆ Meant as a Safety Net to Those Individuals With Disabilities Who Cannot Other Navigate or Use an Accessible Fixed Route Bus System
- ◆ All Public Entities Operating Fixed Route Service Must Provide Complementary Paratransit

Complementary Paratransit

◆ Origin-to-Destination Service

○ Definition

- Origin-to-Destination Service Means Providing Service From a Passenger's Origin to the Passenger's Destination
- Modes
 - Curb-to-Curb
 - Door-to-Door
 - » When An ADA Paratransit Operator Chooses Curb-to-Curb, it Must Provide Assistance to Those Passengers Who Need Assistance Beyond the Curb



Complementary Paratransit

◆ Service Criteria

- Hours and Days of Service
- Service Area
- Response Time (Trip Reservations)
- Fares
- Operating Without Regard to Trip Purpose
- Absence of Capacity Constraints



Complementary Paratransit

◆ Eligibility Process

- Transit Systems Subject to the Requirements to Provide Complementary Paratransit Must Also Institute an Eligibility Process
 - Three Categories
 - Category 1 – Unconditionally Eligible
 - Category 2 – Eligible Due to Lack of Accessible Vehicles, Stops or Stations
 - Category 3 – Conditional Eligibility



Complementary Paratransit

- ◆ PCAs, Companions, and Visitors
 - Eligible User Must be Permitted to Travel With a PCA
 - A PCA Typically Assists With One or More Daily Life Activities Such as Providing Personal Care, Performing Manual Tasks, or Providing Assistance With Mobility or Communication
 - Assistance May Not be Tied to the Transit Trip
 - PCAs Can Be Other Individual With a Disability

Complementary Paratransit

- ◆ PCAs, Companions, and Visitors
 - Riders Have the Right to be Accompanied By “At Least One” Companion
 - Transit Agencies Must Accommodate Additional Companions If Space Is Available, Meaning That They Do Not Displace Other Eligible Riders
 - Companions Can Be a Spouse, a Child, a Co-Worker, a Friend, or Anyone Else Traveling With Riders



Complementary Paratransit

- ◆ PCAs, Companions, and Visitors
 - Transit Agencies Must Provide Complementary Paratransit Service to Individuals With Disabilities Visiting Their Area
 - Visitors are Defined as Individuals Who Reside Outside An Agency's Jurisdiction
 - If a Visitor Has Eligibility from Another Jurisdiction, the Transit Agency Must Provide Service

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, yellow, and green.

Provision of Service

- ◆ Keeping Accessibility Equipment in Good Working Order
 - Lifts Should be Repaired Promptly
 - Must Take Alternative to Accommodate Individuals with Disabilities In Event of Equipment Failure
 - Requirement Extends Beyond Lifts
 - Any Equipment that Facilitates Use/Access of the Transit Service

A faint, light-colored map of a residential area with streets and property lines is visible in the background. The title 'Provision of Service' is overlaid on this map.

Provision of Service

- ◆ Keeping Accessibility Equipment in Good Working Order
 - Vehicles Must be Removed From Revenue Service Before Next Service Day
 - If No Spare Accessible Vehicle
 - Rural Areas – Up to Five Days in Service, Accommodation Must be Provided
 - Urban Areas – Up to Three Days in Service, Accommodation Must be Provided



Provision of Service

- ◆ Accommodating Passengers Using Wheelchairs
 - Must Transport All Passengers Using Wheelchairs Within Legitimate Safety Requirements
 - Definition:
 - A Mobility Aid Belonging to Any Class of Three- or More Wheeled Devices, Usable Indoors, Designed or Modified for and Used by Individuals with Mobility Impairments, Whether Operated Manually or Powered
 - Old Definition of “Common Wheelchair” Revised Several Years Ago

A faint, light-colored map of a city street grid is visible in the background of the slide. The title 'Provision of Service' is centered at the top in a large, bold, dark red font.

Provision of Service

- ◆ Legitimate Safety Requirements
 - Combined Weight of Chair and Passenger Does Not Exceed Lift Specifications
 - Inconsistent with Legitimate Safety Requirements
- ◆ Any Transit Agency Policy Requiring Wheelchairs to be
 - Equipped With Specific Features
 - Be in a Specific State of Repair
 - Is Not Permitted



Provision of Service

- ◆ Legitimate Safety Requirements
 - Legitimate Safety Requirements Do Not Apply to Securement
 - An Agency Cannot Impose A Limitation On The Transportation of Wheelchairs and Other Mobility Aids Based on the Inability of the Securement System to Secure the Device to the Satisfaction of the Transit Agency

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Provision of Service

- ◆ **Securement**

- Agencies May Not Deny Transportation to a Wheelchair User on The Ground That the Device Cannot be Secured or Restrained Satisfactorily by the Vehicle's Securement System

A faint, light-colored map of a city street grid is visible in the background of the top half of the slide. The map shows various streets, some highlighted in different colors like red, yellow, and green.

Provision of Service

- ◆ Accommodating Other Devices
 - Agencies Are Not Required to Permit Other Types of Assistive Devices to be Used In Ways That Depart From or Exceed Their Intended Uses
 - Agencies Are Not Required To Permit Riders Who Use Walkers With Built-in Seats To Ride In Securement Areas While Seated on Their Walkers
 - You Can Require These Individuals to Transfer to a Vehicle Seat



Provision of Service

- ◆ **Seatbelt and Shoulder Harness**
 - A Transit Agency is Not Permitted to Mandate That Individuals Using Wheelchairs Use Seat Belts and Shoulder Harnesses, Unless the Agency Mandates the Use of These Devices by All Passengers

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Provision of Service

- ◆ Transfer to Bus Seat
 - A Transit Agency May Request, But Cannot Require, a Wheelchair User to Transfer to a Regular Seat

- ◆ Standees on Lifts
 - A Transit Agency Must Permit Individuals With Disabilities Who Do Not Use Wheelchairs, Including Standees, to Use a Vehicle's Lift or Ramp to Enter the Vehicle

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Provision of Service

- ◆ Other Passenger Assistance
 - Boarding/Disembarkment
 - Fare Payment Assistance – Yes (But Not Required to Reach Into Purses, Pockets, etc.)
 - Personnel Care Attendants
 - While Only Noted in Sections on Complementary Paratransit, All Modes Should Permit PCAs to Ride for Free
 - Luggage and Packages – Not an ADA Requirements
 - Use Sound Local Policies

Provision of Service

◆ Service Animals

○ Difference in USDOT Regulation from USDOJ

■ Service Animals Are Animals That Are Individually Trained to Work or Perform Tasks

- Service Animals Are Not Pets
- May Ask If an Animal Is a Service Animal
- May Ask What Tasks the Animal Has Been Trained to Perform
- Cannot Require Special ID Cards or Harnesses For the Animal
- Cannot Ask About The Person's Disability
- Allergies and Fear of Animals Are Not Valid Reasons For Refusing Service
- Animal Must Be Under Control of Passenger

A faint, light-colored map of a residential or commercial area is visible in the background, showing streets and property lines. The map is mostly white with some light brown and green lines.

Provision of Service

- ◆ Portable Oxygen
 - Must Allow Travel With a Respirator or Personal Oxygen Supply, Consistent With Applicable USDOT Rules Regarding Transport of Hazardous Materials



Provision of Service

◆ Accessible Information

- All Materials Necessary for a Customer to Use the Service (e.g., Schedules, Route Brochures, User Guides) Must be Available in Alternative Format
- Information on How to Access Such Material Should be Clearly Printed on All Such Documents
- No Single Format Prescribed – Use a Format the Individual with Disabilities Can Use



Provision of Service

◆ Accessible Information

- Although USDOT Rules Do Not Specifically Mention Accessibility of Websites, FTA Urges Transit Systems to Refer to DOJ guidance, “Accessibility of State and Local Government Websites to People with Disabilities”

<https://www.ada.gov/websites2.htm>



Provision of Service

- ◆ Alternative Telecommunications
 - System Must Have Means of Providing Telecommunication Access to Persons with Speech and Hearing Disabilities
 - Providing Accessible Information Includes Offering Alternatives to Voice Telephone Communications, Such as Using (and Having Appropriate Personnel Trained to Use) the National “711” Relay Service



Provision of Service

- ◆ Training Personnel to Proficiency
 - Training To Proficiency Means That, Once Trained, Personnel Can Consistently and Reliably Operate Accessibility Features, Provide Appropriate Assistance to Individuals With Disabilities
 - Treat Riders in a Respectful and Courteous Way

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Provision of Service

◆ No-Shows/Suspensions

- Transit Agencies May Suspend Riders Who Establish a Pattern or Practice of Missing Scheduled Trips After Providing a Rider Due Process
- Only Actions Within the Control of the Individual May Count as Part of a Pattern or Practice
- Late Cancellations (<2 Hours) Can be Counted as No-Shows



Provision of Service

◆ No-Shows/Suspensions

- In Implementing a Suspension Policy, It is Recommended that the Frequency of Use be Taken Into Account
- Example
 - A Pattern or Practice Might Be Established if the User Had Three or More No-Shows in a Given Month That Exceeded 10 Percent of Scheduled Trips



Provision of Service

◆ No-Shows/Suspensions

○ Due Process

- Notify User in Writing of Suspension
- Provide Opportunity for Appeal
- Provide Opportunity to Present Evidence, be Represented by Counsel, etc.
- Appeal Should be Heard by a Party Other Than the Individual Who Evaluated/Granted Suspension



Provision of Service

◆ No-Shows/Suspensions

○ Duration of Suspension

- Suspensions Should be for a “Reasonable” Period
- Example
 - One Week on First Suspension
- Subsequent Suspensions Can be Progressively Longer (14, 21, and 30 Days)
- FTA Considers Suspensions Longer Than 30 Days Excessive
- You Cannot Permanently Revoke an Individual’s Civil Right



Module 13

CHARTER AND SCHOOL BUS REGULATIONS



Basic Requirements

◆ Charter

- Recipients are Prohibited From Using FTA-funded Equipment and Facilities to Provide Charter Service That Unfairly Competes With Private Charter Operators
- Recipient May Operate Charter Only When the Service Meets a Specified Exception Defined in the Rule

A faint, stylized map of a city street grid is visible in the background of the top half of the slide. The streets are represented by thin lines in various colors like red, yellow, and green.

Basic Requirements

◆ School Bus

- Recipients are Prohibited from Providing School Bus Service in Competition With Private School Bus Operators Unless the Service Qualifies and is Approved by the FTA Administrator Under an Allowable Exemption
- Federally-Funded Equipment or Facilities Cannot be Used to Provide Exclusive School Bus Service

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Top Deficiencies

- ◆ Charter

- Charter Service Not Operated Under Exemption or Exception
- Insufficient Oversight of Subrecipient Charter Service

- ◆ School Bus

- None



Reference Documents

- ◆ 49 CFR part 604
- ◆ 49 CFR part 605



Definition

- ◆ Transportation Provided By a Recipient To The Public for Events or Functions That Occur on An Irregular Basis or For a Limited Duration and:
 - A Premium Fare Is Charged That Is Greater Than The Usual or Customary Fixed Route Fare; or
 - The Service Is Paid For In Whole Or In Part By A Third Party

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Key Characteristics

- ◆ A Third Party Pays the Transit Provider a Negotiated Price For the Group
- ◆ Any Fares Charged To Individual Members of the Group Are Collected By a Third Party
- ◆ The Service Is Not Part of the Transit Provider's Regularly Scheduled Service, or Is Offered For a Limited Period Of Time
- ◆ A Third Party Determines the Origin and Destination and Trip Schedule

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Demand Response Exclusion

- ◆ Service Provided to Individuals in Demand Response Mode is Not Charter Service Under the New Regulation

Applicability

- ◆ Rule Applies to Recipients of FTA Financial Assistance
 - Also Applies to Subrecipients and Third Party Contractors That Utilize FTA Funded Equipment
 - Charter Certification Still Required
- ◆ If a Private Charter Operator Receives FTA Funding, Directly or Indirectly, Is Not Subject to the Rules on Its Non-FTA Funded Activities



Exemptions

- ◆ Exemptions
 - Transportation of Employees
 - Non-Federal Components of Private Charter Operators
 - Emergency Preparedness Planning and Operations
 - Transportation for Program Purposes
 - Emergency Declared By the President, a Governor, or a Mayor
 - Nonurbanized Area System Transportation of Employees

Exceptions

◆ Exceptions

- Government Officials for Official Governmental Business
- Qualified Human Service Organizations (QHSO)
- Leasing FTA Funded Equipment and Drivers
- No Registered Charter Provider Responds to Notice From a Recipient
- Agreement with Registered Charter Providers
- Petitions to the Administrator



Recordkeeping

- ◆ If Any Charter Service Was Provided in the Quarter, a Clear Statement Identifying Which Exception the System Relied Upon When It Provided the Charter Service Must be Submitted to FTA

Key Compliance Elements

- ◆ Read and Understand the Definition of “Program Purpose”
 - Engage Human Service Agency Directors to Ensure Trip Meets a Program Purpose
- ◆ Read and Understand the Definition of Charter
- ◆ Read and Understand Exemptions and Exemptions

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets, some highlighted in different colors like red, yellow, and green.

Key Compliance Elements

- ◆ Understand Your Reporting Responsibilities
 - Types of Trips that Must be Reported
 - Date Elements that Must be Recorded/Reported to ODOT/FTA
- ◆ Records Maintenance



School Bus

- ◆ FTA Recipients Prohibited from Performing Exclusive Transportation To/From School
- ◆ May Transport on Regularly Scheduled Public Transportation
- ◆ Tripper Service Expressly Permitted



Module 14

DRUG AND ALCOHOL TESTING PROGRAM

Basic Requirement

◆ DFWA

- Recipients are Required to
 - Maintain a Drug-Free Workplace for All Award-Related Employees
 - Report Any Convictions Occurring in the Workplace Timely
 - Maintain An Ongoing Drug-Free Awareness Program

Slide 268

SKO1

should consider including 5309, and 5339 as well.

Sean Oswald, 12/7/2020

A faint, light-colored map of a city street grid is visible in the background of the slide. The streets are represented by thin lines in various colors like red, yellow, and blue.

Basic Requirement

◆ DFWA

- Recipients are Required to
 - Maintain a Drug-Free Workplace for All Award-Related Employees
 - Report Any Convictions Occurring in the Workplace Timely
 - Maintain An Ongoing Drug-Free Awareness Program

A faint, stylized map of a city grid is visible in the background, with various colored lines representing streets and boundaries.

Top Deficiencies

◆ DFWA

- Drug-Free Workplace Policy Lacking Required Elements
- No Ongoing Drug-Free Awareness Program
- Drug-Free Workplace Act Policy Not Distributed/Enforced

◆ Drug and Alcohol Testing

A faint, stylized map of a city grid is visible in the background, with various colored lines representing streets and boundaries. The map is centered and covers the entire width of the slide.

Top Deficiencies

- ◆ Drug and Alcohol Testing
 - Employee Training Not Provided/Insufficient
 - Insufficient Oversight Over Drug & Alcohol Programs of Subrecipients, Contractors, Subcontractors, and/or Lessees
 - Missing Qualifications of Service Agents
 - Supervisor Training Not Provided/Insufficient
 - Deficiencies in Checking Previous Drug & Alcohol Testing Records
 - Drug And Alcohol Policy Missing Or Lacking required elements

A faint, light-colored map of a residential area with streets and property lines is visible in the background. The title 'Top Deficiencies' is centered in a large, bold, dark red font.

Top Deficiencies

- ◆ Drug and Alcohol Testing
 - Deficiencies in Checking Previous Drug & Alcohol Testing Records
 - Drug And Alcohol Policy Missing or Lacking Required Elements

Reference Documents

- ◆ 49 CFR § 655
- ◆ 49 CFR § 40

DFWA Policy

- ◆ Primary Recipients Must Have a Policy
 - Prohibits the Unlawful Manufacture, Distribution, Dispensing, Possession, or Use of a Controlled Substance in the Workplace
 - Requires That Employees Abide by the Terms of the Policy Statement as a Condition of Employment

DFWA Policy

- ◆ Primary Recipients Must Have a Policy
 - If Convicted of a Drug Statute Violation That Occurred in the Workplace, Employees are to Report It to the Employer in Writing No Later Than Five Calendar Days After Such a Conviction
- ◆ Employers Must Have an On-Going Education Program



Drug and Alcohol Testing

- ◆ Safety Sensitive Function
 - Operation of a Revenue Service Vehicle, Regardless of Whether the Vehicle is in Revenue Service
 - Operation of a Non-Revenue Vehicle When Required to be Operated by the Holder of a Commercial Driver's License
 - Controlling Movement or Dispatch of a Revenue Service Vehicle (Based on Employer Assessment Of Safety-sensitive Functions)

A faint, stylized map of a city street grid is visible in the background, with various colored lines representing roads and boundaries.

Safety Sensitive Function

◆ Safety Sensitive Function

- Employees Who Perform Any of The Following Safety-Sensitive Functions:
 - Maintaining (Including Repairs, Overhaul and Rebuilding) a Revenue Service Vehicle or Equipment Used in Revenue Service
 - Security Personnel That Carry Firearms
 - Volunteers Who Perform Safety-sensitive Functions If:
 - Required to Have CDL to Operate Vehicle
 - Receive Payment in Excess of Actual Expenses



Safety Sensitive Function

◆ Exemption

- Maintenance Contractors Performing Services:
 - For 5311 Recipients
 - For 5307 / 5309 Recipients Serving Population Less Than 200,000



D&A Policy

- ◆ Unlike Other FTA Regulations, the Requirement for a D&A Policy is Employer-Based
 - A Transit System's Subrecipients or Contractors, If The Entity Has Employees Who Perform a Safety Sensitive Function, Must Have Their Own Policy
- ◆ The D&A Policy Must Keep Up With Changing Regulatory Requirements
 - If Your Policy is pre-2018, Likely Out-of-Date

D&A Policy

◆ Elements

- Designated Contact Person
- Categories of Employees Covered
- FTA Provisions vs. Employer Provisions
- Prohibited Behaviors & Substance
- Testing Circumstances & Procedures
- Requirements for Testing
- Test Refusals
- Consequences (Positive, Negative, Non-negative)
- Zero Tolerance Or Second Chance?
- Negative Dilute?

◆ Governing Board Approval Required

Slide 280

SKO4

Probably need to mention that the D&A policy must be approved by the GOVERNING AUTHORITY of the agency. and redistributed to current employees when cahnges are made, and that all current employees need to be rquired to document their acknowledgment of policy changes when they occur.

Sean Oswald, 12/7/2020

Training

◆ All Covered Employees

- Sixty (60) Minutes on Effects and Consequences of Drug Use on Personal Health, Safety, and Workplace
- No Requirement for Alcohol
- Must Be Documented for Each Employee

◆ Resources

- National RTAP eLearning Module
- FTA's "YouTube" video
 - <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Tools/DrugAwarenessVideo/>

Training

◆ Supervisors

- Supervisors or Company Officials That Will Be Making Reasonable Suspicion Determinations
 - MINIMUM 60 Minutes on Physical, Behavioral, and Performance Indicators of Probable Drug Use
 - MINIMUM 60 Minutes on Physical, Behavioral, and Performance Indicators of Probable Alcohol Misuse
- This Represents Minimum Requirements
 - Quality Reasonable Suspicion Training Is Longer Than 2 Hours

Prohibited Substances

- ◆ Marijuana
- ◆ Cocaine
- ◆ Opioids
 - Codeine, Morphine, Heroin, Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone
- ◆ Phencyclidine (PCP)
- ◆ Amphetamines
 - Meth
 - Ecstasy
- ◆ Drug testing can be performed anytime employee is on duty



Alcohol

- ◆ Random/Reasonable Suspicion/Follow-Up Alcohol Testing Only Permitted:
 - Just Before, During, or Just After The Actual Performance of Safety-Sensitive Duties
- ◆ Four (4) Hours Prior To Safety Sensitive Duties
- ◆ While On Call To Perform Safety Sensitive Duties
- ◆ Within 8 Hours Following An Accident, or Until The Test Has Been Conducted

Testing Categories

- ◆ Pre-Employment
 - If Applicant Come from Another DOT employer, the Prospective Employer Must Request in Writing, D&A Information from Prior Employer for a 2-Year Period
- ◆ Reasonable Suspension
- ◆ Post-Accident
- ◆ Random
 - 50% Drugs
 - 10% Alcohol
 - Rate Still Applicable, Despite COVID-19
- ◆ Return-to-Duty and Follow-Up Testing

Slide 285

SKO8

This slide used to be after the "SUPERVISOR TRAINING SLIDE" so I deleted it from that location and moved it here

Sean Oswald, 12/7/2020

DAMIS Reporting

- ◆ Due March 15 Every Year To FTA
 - State DOT Likely Issues Earlier Deadline
- ◆ Accuracy is #1 Priority!!
 - Don't "Double Report" Employees Who Perform More Than One Safety-Sensitive Function
 - When Calculating "Total # of Employees" ... Use An Average Based On Your Random Selection Period
- ◆ This is an **EMPLOYER** Based Report
 - Never Include Contractors In Your Report

A faint, light-colored map of a city street grid is visible in the background of the slide. The map shows various streets and blocks, with some areas highlighted in different colors like red, green, and yellow.

Top D&A Compliance Findings

- ◆ D&A Policy Revisions
- ◆ Random Testing Spread
 - Must Be Unpredictable & Across All Days/Hours
- ◆ Insufficient D&A Compliance Oversight of Vendors and Subcontractors

A background map showing a street grid with several colored overlays: a red polygon on the left, a yellow line running diagonally, and an orange polygon on the right.

Presenters

Put Ray and Amy contact information on this page

Presenters

Rich Garrity, Senior Associate
RLS & Associates, Inc.

Corporate:

3131 S. Dixie Highway, Suite 545
Dayton, OH 45439
(937) 299-5007

Rich:

801 S. Shore Drive
Surf City, NC 28445
(910) 328-5770

rgarrity@rlsandassoc.com