

## **WAGE RATE REQUIREMENTS CROSS-CUTTING SECTION**

### **INTRODUCTION**

This section contains guidance for audit of the Wage Rate Requirements (also known as the Davis-Bacon Act) as they apply to programs of the Department of Transportation and other federal agencies, as specified below and referenced in III.N, “Special Tests and Provisions,” of the affected programs in Part 4 of the Supplement. The statutory source requirement (i.e., the “compliance requirement”) is stated in the individual programs, along with any program-specific limitations and a reference to this cross-cutting section. The general compliance requirement, audit objectives, and suggested audit procedures are specified in this cross-cutting section.

**CFDA #      Program Name**

### **DEPARTMENT OF TRANSPORTATION**

#### **Airport Improvement Program**

20.106      Airport Improvement Program

#### **TIFIA Program**

20.223      Transportation Infrastructure Finance and Innovation Act (TIFIA)  
Program

#### **High-Speed Intercity Passenger Rail**

20.319      High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital  
Assistance Grants

### **DEPARTMENT OF COMMERCE**

#### **Economic Development**

11.300      Investments for Public Works and Economic Development Facilities

11.307      Economic Adjustment Assistance

#### **Broadband Technology**

11.557      Broadband Technology Opportunities Program

### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

#### **Supportive Housing for the Elderly**

14.157      Supportive Housing for the Elderly (Section 202)

**Supportive Housing for Persons with Disabilities (Section 811)**

14.181 Supportive Housing for Persons with Disabilities (Section 811)

**CDBG – Entitlement Grants Cluster**

14.218 Community Development Block Grants/Entitlement Grants

14.225 Community Development Block Grants/Special Purpose Grants/Insular Areas

**State-Administered CDBG**

14.228 Community Development Block Grants/State’s Program and Non-Entitlement Grants in Hawaii

**Shelter Plus Care**

14.238 Shelter Plus Care

**Home Investment Partnerships Program**

14.239 Home Investment Partnerships Program

**NSP – Recovery Act**

14.256 Neighborhood Stabilization Program (Recovery Act Funded)

**CDBG Disaster Recovery Grants Pub. L. No. 113-2 Cluster**

14.269 Hurricane Sandy Community Development Block Grant Disaster Recovery Grants (CDBG-DR)

14.272 National Disaster Resilience Competition (CDBG-NDR)

**Public Housing**

14.850 Public and Indian Housing

**HOPE VI Cluster**

14.866 Demolition and Revitalization of Severely Distressed Public Housing (Hope VI)

14.889 Choice Neighborhoods Implementation Grants

**Indian Housing Block Grants**

14.867 Indian Housing Block Grants

**CFP**

14.872 Public Housing Capital Fund (CFP)

**Native Hawaiian Housing**

14.873 Native Hawaiian Housing Block Grants

**Moving to Work Demonstration Program**

14.881 Moving to Work Demonstration Program

**DEPARTMENT OF THE TREASURY****Gulf RESTORE**

21.015 Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (Gulf RESTORE)

**DEPARTMENT OF EDUCATION****Impact Aid**

84.041 Impact Aid (Title VIII of ESEA)

**GULF COAST ECOSYSTEM RESTORATION COUNCIL****RESTORE Act Comprehensive Plan Component**

87.051 Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component Program

**RESTORE Act Spill Impact Component**

87.052 Gulf Coast Ecosystem Restoration Council Oil Spill Impact Program

### III. COMPLIANCE REQUIREMENTS

#### N. Special Tests and Provisions

##### Wage Rate Requirements

**Compliance Requirements** All laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the Department of Labor (DOL) (40 USC 3141-3144, 3146, and 3147).

Non-federal entities shall include in their construction contracts subject to the Wage Rate Requirements (which still may be referenced as the Davis-Bacon Act) a provision that the contractor or subcontractor comply with those requirements and the DOL regulations (29 CFR part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (29 CFR sections 5.5 and 5.6; the A-102 Common Rule (section 36(i)(5)); OMB Circular A-110 (2 CFR part 215, Appendix A, Contract Provisions); **2 CFR part 176, subpart C**; and 2 CFR section 200.326).

This reporting is often done using Optional Form WH-347, which includes the required statement of compliance (*OMB No. 1235-0008*). The U.S. Department of Labor, Employment Standards Administration, maintains a Davis-Bacon and Related Acts web page (<https://www.dol.gov/agencies/whd/government-contracts/construction>). Optional Form WH-347 and instructions are available on this web page.

**Audit Objectives** Determine whether the non-federal entity notified contractors and subcontractors of the requirements to comply with the Wage Rate Requirements and obtained copies of certified payrolls.

##### Suggested Audit Procedures

Select a sample of construction contracts and subcontracts greater than \$2,000 that are covered by the Wage Rate Requirements and perform the following procedures:

- a. Verify that the required prevailing wage rate clauses were included in the contract or subcontract.
- b. For each week in which work was performed under the contract or subcontract, verify that the contractor or subcontractor submitted the required certified payrolls.

(**Note:** Auditors are not expected to determine whether prevailing wage rates were paid.)

## DEPARTMENT OF TRANSPORTATION

### CFDA 20.106 AIRPORT IMPROVEMENT PROGRAM

#### I. PROGRAM OBJECTIVES

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

#### II. PROGRAM PROCEDURES

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

#### Source of Governing Requirements

This program is authorized by 49 USC Chapter 471.

#### Availability of Other Program Information

Additional program information is provided in FAA Order 5100.38D, *Airport Improvement Program Handbook* (available at [http://www.faa.gov/airports/aip/aip\\_handbook](http://www.faa.gov/airports/aip/aip_handbook)) and FAA Advisory Circulars in the 150/5100 series (available at [http://www.faa.gov/airports/resources/advisory\\_circulars/](http://www.faa.gov/airports/resources/advisory_circulars/)). The FAA also maintains an Airports *Federal Register* Notices page available at [http://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](http://www.faa.gov/airports/resources/publications/federal_register_notices/).

Program related questions may be directed to Patricia Dickerson, FAA Airports Financial Assistance Division, at 202-267-9297 (direct) and 202-267-3831 (main) or by e-mail at [patricia.a.dickerson@faa.gov](mailto:patricia.a.dickerson@faa.gov). Questions related to the revenue diversion and other compliance requirements may be directed to Olu Okegbenro, FAA Airport Compliance Division at 202-267-3785 (direct) and 202-267-3446 (main) or by e-mail at [Olu.Okegbenro@faa.gov](mailto:Olu.Okegbenro@faa.gov).

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary**

matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	N	N	Y	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

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

2. *Activities Unallowed*

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

- (1) Passenger automobile parking facilities and portions of terminals that are revenue-producing or not directly related to the safe movement of passengers and baggage at the airports, and
- (2) Costs incurred before the execution of the grant agreement, unless such costs are for land, necessary costs in formulating a project, or costs covered by a letter of intent. However, an airport designated

by the FAA as a primary airport may use passenger entitlement funding made available under 49 USC 47114(c) for costs incurred (1) prior to the execution of the grant agreement; (2) in accordance with the airport layout plan approved by the FAA; and (3) according to all statutory and administrative requirements that would have applied had work on the project not commenced until after the grant agreement had been executed (49 USC 47110(b)(2)(C)).

- b. The following are examples of items for which FAA funds cannot be expended (FAA Order 5100.38D, *Airport Improvement Program Handbook*, and FAA Advisory Circulars in the 150/5100 series).
- (1) Emergency planning.
  - (2) Decorative landscaping, sculpture, or art works.
  - (3) Communication systems except those used for safety/security.
  - (4) Training facilities, except those included in an otherwise eligible project as an integral part of that project and that are of a relatively minor or incidental cost, i.e., less than 10 percent of the project cost. An example of an exception would be a training room included as part of a new Aircraft Rescue and Firefighting (ARFF) facility. Interactive training systems and “live fire” ARFF training facilities are eligible.
  - (5) Roads of whatever length, exclusively for the purpose of connecting public parking facilities to an access road.
  - (6) Roads serving solely industrial or non-aviation-related areas or facilities.
  - (7) Equipment that is used by air traffic controllers such as Airport surface detection systems (ASDE).
  - (8) Maintenance/service facilities except for those allowed to service required ARFF equipment.
  - (9) Office/administrative equipment, including data processing equipment, computers, recorders, etc.
  - (10) Projects for the determination of latitude, longitude, and elevation except as an incidental part of master planning.

3. *Exception*

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

**B. Allowable Costs/Cost Principles**

Costs charged to Federal funds under the AIP program must comply with the cost principles at 2 CFR part 200, subpart E, the AIP Handbook – Change 1 and any other requirements or restrictions on the use of Federal funding.

**F. Equipment and Real Property Management**

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

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

**1. Matching**

All match funding must be provided in compliance with the requirements of 2 CFR part 200.306. The grantee's share of project costs on an AIP grant (also known as cost share) is defined in 49 USC 47109 and set forth in the grant award. The non-Federal share varies by airport size and is generally 25 percent for large and medium hub airports and 10 percent for all other airports.

Acceptable match, whether cash or in-kind, must be allowable and eligible. In addition, match must be provided by the recipient; or provided as cash by a third party; or provided as in-kind by a third party; or any combination of cash and in-kind provided by the recipient and/or a third party.

**2. Level of Effort**

Not Applicable

**3. Earmarking**

Not Applicable

**L. Reporting**

**1. Financial Reporting**

a. *SF-270, Request for Advance or Reimbursement* – Applicable



- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs – Applicable*
- c. *SF-425, Federal Financial Report – Applicable*
- d. *FAA Form 5100-127, Operating and Financial Summary (OMB No. 2120-0569)*

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

- e. *FAA Form 5100-126, Financial Government Payment Report (OMB No. 2120-0569)*

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

## 2. Performance Reporting

Not Applicable

## 3. Special Reporting

Not Applicable

## N. Special Tests and Provisions

### 1. Wage Rate Requirements

**Compliance Requirements** The Wage Rate Requirements are applicable to construction work for airport development projects (49 USC 47112).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. Revenue Diversion

**Compliance Requirements** The basic requirement for use of airport revenues is that all revenues generated by a public airport must be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and are directly and substantially related to the actual air transportation of passengers or property. The limitation on the use of

revenue generated by the airport shall not apply if the governing statutes controlling the owner's or operator's financing, that was in effect before September 3, 1982, provided for the use of any revenue from the airport to support not only the airport but also the airport owner's or operator's general debt obligations or other facilities (49 USC 47107(b)). *Policies and Procedures Concerning the Generation and Use of Airport Revenue*, issued February 16, 1999 (64 FR 7695), contains definitions of airport revenue and unlawful revenue diversion; provides examples of airport revenue; and describes permitted and prohibited uses of airport revenue. The policy can be obtained from FAA's Airports *Federal Register* Notices page ([http://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](http://www.faa.gov/airports/resources/publications/federal_register_notices/)).

Penalties imposed for revenue diversion may be up to three times the amount of the revenues that are used in violation of the requirement (49 USC 46301(a)(3)).

**Audit Objectives** Determine whether the airport revenues were used for required or permitted purposes.

#### **Suggested Audit Procedures**

- a. Review the policy for using airport revenue.
- b. Perform tests of airport revenue generating activities (e.g., passenger facilities charges, leases, and telephone contracts) to ascertain that all airport-generated revenue is accounted for.
- c. Test expenditures of airport revenue to verify that airport revenue is used for permitted purposes.
- d. Perform tests of transactions to ascertain that payments from airport revenues to the sponsors, related parties, or other governmental entities are airport-related, properly documented, and are commensurate with the services or products received by the airport.
- e. Perform tests to assure that indirect costs charged to the airport from the sponsor's cost allocation plan were allocated in accordance with the FAA policy on cost allocation.

#### **IV. OTHER INFORMATION**

The Federal Aviation Reauthorization Act of 1996, Section 805 (49 USC 47107(l)) requires public agencies that are subject to the Single Audit Act Amendments of 1996 (Act) that have received Federal financial assistance for airports to include as part of their single audit a review and opinion of the public agency's funding activities with respect to their airport or local airport revenue system. In the February 16, 1999, *Federal Register* (64 FR 7675), the FAA issued a notice titled *Policy and Procedures Concerning the Use of Airport Revenue*. This notice provides that the opinion required by 49 USC 47107(l) is only required when the Airport Improvement Program is audited as major program under 2 CFR part 200, subpart F, and that the auditor reporting requirements of 2 CFR part 200, subpart F, satisfy the opinion requirement. However,

the notice provides that the AIP may be selected as a major program based upon either the risk-based approach prescribed in 2 CFR section 200.518, or the FAA designating the AIP as a major program under 2 CFR section 200.503(e).

## **DEPARTMENT OF TRANSPORTATION**

### **CFDA 20.205 HIGHWAY PLANNING AND CONSTRUCTION (Federal-Aid Highway Program)**

### **CFDA 20.219 RECREATIONAL TRAILS PROGRAM**

### **CFDA 20.224 FEDERAL LANDS ACCESS PROGRAM**

### **CFDA 23.003 APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM**

#### **I. PROGRAM OBJECTIVES**

The objectives of the Highway Planning and Construction Cluster are to (1) assist states, tribal governments, and state land management agencies in the planning and development of an integrated, interconnected transportation system important to interstate commerce and travel by constructing, rehabilitating, and preserving the National Highway System (NHS), including Interstate highways, and other state-aid highways; (2) provide aid for the repair of state-aid highways following disasters; (3) foster safe highway design and improve bridge conditions; (4) to support community-level transportation infrastructure; and (5) to provide for other special purposes. This cluster also provides for the improvement of roads in the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, and on the Appalachian Development Highway System (ADHS). The objective of the ADHS program is to provide a highway system which, in conjunction with other federally aided highways, will open up areas with development potential within the Appalachian region where commerce and communication have been inhibited by lack of adequate access.

#### **II. PROGRAM PROCEDURES**

Federal-aid highway funds are generally apportioned by statutory formulas to the states and generally restricted to use on state-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector roads). Exceptions to the use on state-aid highways include (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement projects, bicycle and pedestrian projects, transportation alternatives, and recreational trails projects, which may be located along any road or off road; and (4) projects funded under the Federal Lands and Tribal Transportation Program (FLTTP). Some limited categories of funds may be granted directly to other state agencies, tribal governments, other state agencies, or Local Public Agencies (LPAs), such as cities, counties, Metropolitan Planning Organizations (MPOs), and other political subdivisions. Funds may also be passed through such agencies, but the direct recipient retains overall stewardship responsibility.

While each category of funds has individual eligibility requirements, in general state-aid funds may be used for (1) surveying; (2) engineering studies and design; (3) environmental studies; (4) right-of-way acquisition and relocation assistance; (5) capital improvements classified as new construction or reconstruction; (6) improvements for functional, geometric, or safety reasons; (7)

4R projects (restoration, rehabilitation, resurfacing, and reconstruction); (8) preservation; (9) planning; research, development, and technology transfer; (10) intelligent transportation systems projects; (11) roadside beautification; (12) vegetation management; (13) wetland and natural habitat mitigation; (14) traffic management and control improvements; (15) improvements necessary to accommodate other transportation modes; (16) development and establishment of transportation management systems; (17) billboard removal; (18) fringe and corridor parking; (19) car pool and van pool projects; (20) historic preservation and rehabilitation of historic transportation facilities; (21) scenic and historic highway improvements; (22) inspection and evaluation of bridges, tunnels, and other highway assets; (23) asset management; (24) construction of ferry boats, ferry terminal facilities, and approaches to such facilities; (25) highway safety improvement projects; (26) bicycle and pedestrian projects; (27) transportation alternatives; (28) recreational trails; and (29) workforce development, training, and education. These funds generally cannot be used for routine highway operational activities, such as police patrols, mowing, snow plowing, or maintenance, unless it is preventative maintenance.

Also, certain authorizations (e.g., FLTP, National Highway Performance Program (NHPP), Surface Transportation Block Grant (STBG) Program, or Congestion Mitigation and Air Quality (CMAQ) Improvement Program) may be used for improvements to transit. CMAQ funds are for transportation projects and programs in air quality, nonattainment and maintenance areas for ozone, carbon monoxide, and particulate matter, which reduce transportation related emissions, though provision is made for states without air quality issues. ADHS projects are subject to the same standards, specifications, policies, and procedures as other state-aid highway projects. Eligibility criteria for the programs differ, so program guidance should be consulted.

Projects in urban areas of 50,000 or more population must be based on a transportation planning process, carried out by the MPOs in cooperation with the state and transit operators, and be included in the metropolitan long-range plan and the Transportation Improvement Program for the area. Projects in nonmetropolitan areas of a state must be consistent with the state's transportation plan. All federal-aid projects must also be included in the approved Statewide Transportation Improvement Program (STIP) developed as part of the required statewide transportation planning process. The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) must approve the STIP jointly.

Prior to FY 2013, the ADHS was a cost-to-complete program (i.e., funding was provided over time to complete the approved initial construction/upgrading of the system) authorized by Section 201 of the Appalachian Regional Development Act of 1965. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) did not provide dedicated funding for the ADHS, but did make ADHS activities eligible under the NHPP and STBG programs. The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) provided states through FY 2050 the authority to select a state share of up to 100 percent for the cost of constructing highways and access roads on the ADHS. The Appalachian Regional Commission (ARC) has programmatic oversight responsibilities, which include approval of the location of the corridors and of state-generated estimates of the cost to complete the ADHS. The FHWA has project-level oversight responsibilities for the ADHS program. If the location, scope, and character of proposed ADHS projects are in agreement with the latest approved cost-to-complete estimate and all state requirements have been satisfied, FHWA authorizes the work with the

ADHS, STBG, and/or NHPP funds. FHWA provides oversight for the design and construction of the ADHS (23 USC 106(g)(5)(B)).

The Federal Lands Access Program (FLAP) was established under the MAP-21 and continued under the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94) (23 USC 204). The program makes funds available for projects that provide access to, are adjacent to, or are located within federal lands. Priority is given to projects accessing high-use federal recreation sites or federal economic generators, as identified by the Secretaries of the appropriate state land management agencies.

### Source of Governing Requirements

The primary sources of program requirements are 23 USC (Highways). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation). The ADHS program requirements are found in 40 USC (Public Building, Property, And Works).

### Availability of Other Program Information

FHWA program laws, regulations, and other general information can be found at <http://www.fhwa.dot.gov/> and <https://www.fhwa.dot.gov/fastact/>

## III. COMPLIANCE REQUIREMENTS

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A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	Y	N	Y	Y

**A. Activities Allowed or Unallowed**

1. Federal funds can be used only to reimburse costs that are (a) incurred subsequent to the date of authorization to proceed, except for certain property acquisition costs permitted under 23 USC 108, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note); (b) in accordance with the conditions contained in the project agreement and the plans, specifications, and estimates (PS&E); (c) allocable to a specific project; and (d) claimed for reimbursement subsequent to the date of the project agreement (23 CFR sections 1.9, 630.106, 630.205, and 635.112). The authorization to proceed date is the same as the authorization date of the project agreement except for instances when the project needs to advance before the project agreement can be completed.
2. Federal funds can be used for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or state courts only if approved by FHWA for state-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (State DOT) legal counsel and approved in advance by FHWA (23 CFR section 140.505).
3. ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC.
4. FLTTP funds may be used for work on projects that provide access to or within federal or tribal lands (23 USC 201 through 204).

**F. Equipment and Real Property Management**

The state and LPA sub recipients shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with state assistance from the Highway Trust Fund (other than the Mass Transit Account). The state shall use such income for projects eligible under 23 USC. Exceptions may be granted to allow use for

social, environmental, or economic purposes (23 USC 156). Tribes are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR 200.

## **I. Procurement and Suspension and Debarment**

See also Part 4, 20.000 DOT Cross-Cutting Section.

1. In general, State DOTs and LPAs must award construction contracts on the basis of the lowest responsive bid submitted by a bidder meeting the contracting agency's criteria for responsibility. Competitive bidding is required unless the contracting agency is able to demonstrate to FHWA that some other method is more cost effective or that an emergency exists (23 USC 112 (b)(1); 23 CFR sections 635.104 and 635.114), or if exempt by other law, such as for the Recreational Trails Program (23 USC 133(i)), or through the use of [qualified youth service or conservation corps \(MAP-21 Section 1524\)](#). Contracting agencies also may procure construction services through competitive proposals by using design-build contracts (23 USC 112(b)(3); 23 CFR part 636) or construction manager/general contractor contracts (23 USC 112(b)(4)).
2. For construction contracts, bidding documents must be advertised for at least 3 weeks, unless a shorter period is justified in the project files. Recipients may not negotiate with the potential contractors during the time between bid opening and contract award (such negotiations would be noted in the contract files). Awards must be made to the lowest responsible bidder. If the award was made to a bidder other than the low bidder, then the project files must contain justification (23 CFR sections 635.112(b), 635.113, and 635.114).

## **J. Program Income**

State and local governments may only use the state share of net income from the sale, use, or lease of real property previously acquired with state funds if the income is used for projects eligible under 23 USC (23 USC 156). The amount of state funds and the total projects costs are recorded in the project agreement to determine the proportional

## **M. Subrecipient Monitoring**

State DOTs are required to determine whether subrecipients have sufficient accounting controls to properly manage such state-aid funds (23 USC 106(g)(4)(A)).

## **N. Special Tests and Provisions**

### **1. Use of Other State or Local Government Agencies**

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



**Audit Objectives** Determine whether other public land acquisition organizations or private consultants are carrying out the state's authorities under 23 CFR section 710.201(b) in accordance with their agreements with the state.

### **Suggested Audit Procedures**

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

## **2. Replacement of Publicly Owned Real Property**

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

**Audit Objectives** Determine whether the functional replacement of real property was accomplished within FHWA requirements.

### **Suggested Audit Procedures**

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

## **3. Quality Assurance Program**

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

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

#### **Suggested Audit Procedures**

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

#### **4. Contractor Recoveries**

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

**Audit Objectives** Determine whether the proper credit was made to the state share of a project when recoveries of funds are made.

#### **Suggested Audit Procedures**

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

#### **5. Project Approvals**

**Compliance Requirements** FHWA project approval/authorization to proceed is required before costs are incurred for all phases or projects, except for certain property acquisition costs permitted under 23 USC 108, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note). Based on the Stewardship and Oversight agreement between the State DOT and the FHWA Division office, projects may be authorized under the authority in 23 USC 106(c), which allows the State DOT to assume responsibilities for designs, plans, specifications, estimates, contract awards, and inspection of progress. When FHWA authorizes a construction project or phase in a project agreement, the State DOT may incur costs (i.e.,

advertise for bids or use force account work) (23 CFR sections 630.205(c), 635.112(a), 635.204, and 635.309).

**Audit Objectives** Determine whether project activities are started with required state approvals.

### **Suggested Audit Procedures**

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

## **6. Value Engineering**

**Compliance Requirements** State DOTs are required to establish a value engineering (VE) program and ensure that a VE analysis is performed on all applicable projects. The program should include procedures to approve or reject recommendations and for monitoring to ensure that resulting, approved recommendations are incorporated into the plans, specifications, and estimate. Applicable projects are (a) projects located on the NHS with an estimated total project cost of \$50 million or more that utilize state-aid highway program funding; (b) bridge projects located on the NHS with an estimated total cost of \$40 million or more that utilize state-aid highway program funding; and (c) any other projects that the FHWA determines to be appropriate. Projects utilizing the design-build method of construction do not require a VE analysis (23 USC 106(e)(5)). Critical elements of VE programs include identification of a state VE coordinator; establishment of a VE policy, and documented VE procedures, including requirements to identify applicable projects, verify required VE analyses are completed on State DOT and subrecipient projects; and monitor, assess, and report on the performance of the VE program (23 USC 106(e); 23 CFR part 627).

**Audit Objectives** Determine whether established VE programs include VE policies and procedures, documented analyses conducted for applicable projects, evaluations of VE recommendations, and incorporation of approved recommendations into the plans, specifications, and estimate for the project.

### **Suggested Audit Procedures**

- a. Verify that the State DOT established a VE program in accordance with state requirements.
- b. Review a sample of applicable projects to ensure that a VE analysis was conducted, recommendations were evaluated, and approved recommendations were incorporated into the design of the project, and that the results of the analysis and recommendations implemented were documented in accordance with the established VE program's policies and procedures.

## 7. Utilities

**Compliance Requirements** State DOTs are required to develop policies and procedures pertaining to the use, accommodation and/or relocation of public and private utility facilities on highway rights-of way using state-aid highway funds. State DOTs are required to develop, maintain, and obtain FHWA approval of their Utility Accommodation Policy (UAP) (23 CFR section 645.215). Expenses incurred for relocating utility facilities necessitated by highway construction projects using state-aid highway program funds are eligible for reimbursement from FHWA provided these costs were incurred in a manner consistent with state laws or FHWA regulations, whichever is more restrictive (23 CFR section 645.103(d)).

Plans, Specifications and Estimate (PS&E) packages for projects using state-aid highway program funds must have a utility agreement or statement verifying the appropriate coordination with all utilities on the project occurred prior to FHWA construction authorization. Each agreement or statement should specify that the utility use and occupancy of the right-of-way or any required utility work will be completed prior to the highway construction, or there were conditions specified allowing for the utility work to be coordinated with and completed in coordination with the highway construction schedule (23 CFR section 635.309(b)).

Utility agreements, permits, and supporting documentation define the conditions and provisions for accomplishing and reimbursing utility companies for utility relocation work that was required due to a state-aid highway program funded project. The agreements and supporting documentation, and the state requirements they reference, require that:

- a. There must be itemized cost estimates for the proposed utility work (23 CFR section 645.113(c));
- b. The utility agreement was approved prior to the utility incurring any costs or conducting any work that would be eligible for reimbursement (23 CFR section 645.113(g)(3));
- c. Reimbursement of utility costs will occur after the work is completed (23 CFR section 645.107(a));
- d. The utility incurred the costs and billings submitted verifying the work was completed in accordance with the utility agreement (23 CFR section 645.113(a-f) and 23 CFR section 645.117); and
- e. Billed costs were eligible for reimbursement (23 CFR section 645.117).

**Audit Objectives** Determine whether the agreements, supporting documentation, and reimbursement for the adjustment and/or relocation of utility facilities on state-aid highway projects were accomplished in a manner which complies with state laws and FHWA regulations.

### **Suggested Audit Procedures**

- a. Verify that the State DOT has a current UAP approved by FHWA.
- b. Review a sample of PS&E packages on projects using state-aid highway program funds to verify that there is a utility agreement or statement confirming that the appropriate coordination with all utilities on the project has occurred prior to FHWA construction authorization.
- c. Review a sample of utility agreements and supporting documentation to verify required supporting material was prepared and that costs reimbursed met the requirements of the agreements.

### **8. Administration of Engineering and Design-Related Service Contracts**

**Compliance Requirements** In general, State DOTs and LPAs must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services from consultants and sub-consultants for projects using state-aid highway funds (23 USC 112(b)(2); 23 CFR part 172). Requirements applicable to engineering and design-related services contracts include:

- a. Contracting agencies (State DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding State DOT or prepare and maintain their own written policies and procedures approved by the State DOT (23 CFR section 172.5(b)).
- b. Contracting agencies (State DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for 1-year applicable accounting periods, if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR part 31) by submitting a “Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11(c)(3)).
- c. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design related services must be approved by FHWA before the consultant is hired, unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

**Audit Objectives** Determine if consultants performing engineering and design-related services for projects using state-aid highway funding were procured using FHWA-approved qualifications-based selection procedures.

**Suggested Audit Procedures**

- a. Verify that the State DOT, or recipient LPA, has written policies and procedures (usually in the form of a Consultant Manual) for procurement of engineering and design services and that those procedures have been approved by FHWA. For subrecipient LPAs, verify that they are using written policies and procedures prescribed by the awarding State DOT or that the subrecipients' written policies and procedures have been approved by the State DOT.
- b. Verify that contracting agencies are accepting the appropriate indirect cost rates.
- c. Verify that consultants and sub-consultants have submitted to the contracting agency a "Certificate of Final Indirect Costs."
- d. Verify that contracts for consultants acting in a management support role have been approved by FHWA or are covered by an FHWA-approved alternate procedure.

## DEPARTMENT OF TRANSPORTATION

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

#### I. PROGRAM OBJECTIVES

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

#### II. PROGRAM PROCEDURES

Public entities, or private entities with public sponsorship, seeking to finance the design and construction, or reconstruction, of eligible surface transportation projects may apply for TIFIA assistance. The program targets large projects, generally in excess of \$50 million. There are some exceptions to the minimum cost requirement, which are (1) transit-oriented development, local, and rural projects, which have minimum project costs of at least \$10 million; and (2) intelligent transportation systems, with minimum project costs of at least \$15 million. The program offers three types of financial assistance featuring maturities up to 35 years after substantial completion of the project: secured loans, loan guarantees, and standby lines of credit. Projects must have a dedicated revenue source and be consistent with state and local transportation plans.

#### Source of Governing Requirements

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

#### Availability of Other Program Information

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

#### III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject**

to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.”**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	N	N	N	N	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

Highway, transit, passenger rail, certain freight facilities, certain port projects, rural infrastructure projects, transit-oriented development projects, and SIB rural projects funds may receive credit assistance through the TIFIA Program.

- Eligible highway facilities include interstates, state highways, bridges, toll roads, international bridges or tunnels, and any other type of facility eligible for grant assistance under Title 23, the highways title of the U.S. Code (23 USC). This also includes a category specifically permitted under the TIFIA statute (i.e., a project for an international bridge or tunnel for which an international entity authorized under federal or state law is responsible).
- Eligible transit projects include the design and construction of stations, track, and other transit-related infrastructure, purchase of transit vehicles, and any other type of project that is eligible for grant assistance under the transit title of the U.S. Code (Chapter 53 of Title 49 of the U.S. Code), including the installation of positive train control systems. Additionally, intercity bus vehicles and facilities are eligible to receive TIFIA credit assistance.
- Rail projects involving the design and construction of intercity passenger rail facilities or the procurement of intercity passenger rail vehicles are eligible for TIFIA credit assistance.



- Public freight rail facilities, private facilities providing public benefit for highway users by way of direct freight interchange between highway and rail carriers, intermodal freight transfer facilities, projects that provide access to such facilities, and service improvements (including capital investments for intelligent transportation systems) at such facilities, are also eligible for TIFIA credit assistance. In addition, a logical series of such projects with the common objective of improving the flow of goods can be combined.
- Projects located within the boundary of a port terminal are also eligible to receive TIFIA credit assistance, so long as the project is limited to only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.
- Eligible projects also include related transportation improvement projects grouped together in order to reach the minimum cost threshold for eligibility, so long as the individual components are eligible and the related projects are secured by a common pledge.
- Rural Project Assistance: The TIFIA statute provides two different forms of assistance to rural infrastructure projects. The FAST Act expanded TIFIA eligibility to include capitalization of rural projects funds within SIBs, and it continued the DOT's ability to offer reduced interest rates to Rural Projects<sup>104</sup>.

## **B. Costs Allowed or Unallowed**

### *1. Costs Allowed*

TIFIA credit assistance is available to cover only eligible project costs. A calculation of total eligible project costs is important to determine whether the project meets the eligibility test for minimum project size and whether the credit request does not exceed applicable thresholds of reasonably anticipated eligible project costs as required by statute.

The TIFIA statute, codified at 23 USC sections 601-610, defines eligible project costs as those expenses associated with the following:

- a. Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;
- b. Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment. While the acquisition of real property is an eligible cost under TIFIA, such property must be physically or functionally related to the transportation project. For transit projects, the land must be reasonably necessary for the project, including joint

development projects and property must be physically or functionally related to the project (49 USC 5302(a)(1)(G); 49 CFR section 80.3).

- c. Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs.
- d. For a transit project, costs must also meet the definition of a transit capital project found at 49 USC 5302(a)(1) (23 USC 601 (a)).

## 2. *Costs Unallowed*

Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.

Also, TIFIA administrative charges, such as application fees, transaction fees, loan servicing fees, credit monitoring fees, and the charges associated with obtaining the required preliminary rating opinion letter, will not be considered among the eligible project costs. In all cases, eligible project costs should be calculated and presented on a cash basis (that is, as year-of-expenditure dollars) with the year of planned expenditure clearly identified.

## H. **Period of Performance**

The maximum maturity of all TIFIA credit instruments is 35 years after a project's substantial completion.

## N. **Special Tests and Provisions**

### 1. **Wage Rate Requirements**

**Compliance Requirements** The provisions of the Wage Rate Requirements apply to projects receiving TIFIA assistance (49 USC 5333(a)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

### 2. **Administration of Engineering and Design-Related Service Contracts**

**Compliance Requirements** In general, state DOTs and LPAs must use qualifications-based selection procedures (Brooks Act) when acting as contracting agencies to procure engineering and design-related services from consultants and sub-consultants for projects using federal-aid highway funds (23 USC 112(b)(2); 23 CFR part 172). Requirements applicable to engineering and design-related services contracts include:

- a. Contracting agencies (state DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding state DOT or prepare

and maintain their own written policies and procedures approved by the state DOT (23 CFR section 172.5(c)).

- b. Contracting agencies (state DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for one-year applicable accounting periods if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR part 31) by submitting a “Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11).
- c. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design related services must be approved by FHWA before the consultant is hired unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

**Audit Objectives** Determine if consultants performing engineering and design-related services for projects using federal-aid highway funding were procured using FHWA-approved, qualifications-based selection procedures.

#### **Suggested Audit Procedures**

- a. Verify that the state DOT has written policies and procedures (usually in the form of a Consultant Manual) for procurement of engineering and design services and that those procedures have been approved by FHWA. For subrecipients (LPAs), verify that they are using written policies and procedures prescribed by the awarding state DOT or that the subrecipients’ written policies and procedures have been approved by the state DOT.
- b. Verify that contracting agencies are accepting the appropriate indirect cost rates.
- c. Verify that consultants and sub-consultants have submitted to the contracting agency a “Certificate of Final Indirect Costs.”
- d. Verify that contracts for consultants acting in a management support role have been approved by FHWA or are covered by an FHWA-approved alternate procedure.

#### **IV. OTHER INFORMATION**

See the Safe Harbor Status discussion in Part 1 for additional information.

## DEPARTMENT OF TRANSPORTATION

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

#### I. PROGRAM OBJECTIVES

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

#### II. PROGRAM PROCEDURES

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

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

#### Source of Governing Requirements

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

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

2. Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC Chapter 244),
3. Congestion Grants program (49 USC 24105),
4. Fiscal Year 2009 Capital Assistance to States – Intercity Passenger Rail Service program (Pub. L. No. 111-8 (123 Stat. 934)), and
5. Fiscal Year 2008 Capital Assistance to States – Intercity Passenger Rail Service program (Pub. L. No. 110-161 (121 Stat. 2393)).

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

#### **Availability of Other Program Information**

Additional information about the HSIPR program is available on the Federal Railroad Administration (FRA) website at <http://www.fra.dot.gov/Page/P0140>. **Included on the FRA website are two documents mandated under ARRA: The High-Speed Rail Strategic Plan and interim program guidance. The strategic plan outlines the initial vision for the program; the interim guidance builds upon the strategic plan by detailing the application requirements and procedures for obtaining funding under the program.**

### **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.****

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	Y	Y	N	Y	Y	Y

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

ARRA (Tracks 1 and 2)

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

- (1) Acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service, including High-Speed Rail; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, inspecting, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to Intercity Passenger Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;
- (2) Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service; and
- (3) Projects to provide access to Intercity Passenger Rail service rolling stock for non-motorized transportation, including bicycles and recreational equipment, and to provide storage capacity in intercity passenger trains for such transportation, equipment, and other luggage, to ensure passenger safety (see Section 3.5.1 of the Program Notice (74 FR 29910)).

- b. Activities funded under Track 2 must be eligible under the High-Speed Rail Corridor Development program (49 USC 26106) or the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244), and include:
- (1) Activities 1 through 3 listed above under Track 1; and
  - (2) Acquiring, constructing, improving or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of High-Speed Rail service; expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way); payments for the capital portions of rail trackage rights agreements; highway-rail grade crossing improvements related to High-Speed Rail service; mitigating environmental impacts; communication and signalization improvements; and relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing (see Section 3.5.2 of the Program Notice (74 FR 29910)).

2. *Activities Allowed*

Fiscal Year 2009 and 2008 appropriations acts (tracks 3 and 4).

- a. Activities funded under Track 3 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No. 111-8 and Pub. L. No. 110-161, respectively), and include planning studies that—
- (1) Lead to the completion of a service development plan to support future applications for projects under Track 2;
  - (2) Identify and compare the costs, benefits, and impacts of a range of transportation alternatives, including High-Speed Rail and/or Intercity Passenger Rail, as a means of providing decision makers with the information necessary to implement appropriate transportation solutions;
  - (3) Support the preparation of environmental documents that are prerequisite to the fulfillment of “service” NEPA studies; and
  - (4) Consist of operational analyses and simulations, and projections of future service requirements, leading to systematic and rational priority lists of projects that could be eligible for funding under the Intercity Passenger Rail Service Corridor Capital Assistance program (49 USC chapter 244) or the Congestion Grants program

(49 USC 24105), and could ultimately contribute to service development plans (see Section 3.5.2 of the Program Notice (74 FR 29911)).

- b. Activities funded under Track 4 must be eligible under the provisions of the FY 2009 and FY 2008 Capital Assistance to States – Intercity Passenger Rail Service programs (Pub. L. No.111-8 and Pub. L. No.110-161, respectively), and include
- (1) Acquiring, constructing, or improving equipment, track and track structures, or a facility for use in or for the primary benefit of Intercity Passenger Rail service, including High-Speed Rail service;
  - (2) Expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way);
  - (3) Highway rail grade crossing improvements related to Intercity Passenger Rail service;
  - (4) Mitigating environmental impacts;
  - (5) Communication and signalization improvements; and
  - (6) Rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in Intercity Passenger Rail service (see Section 3.5.2 of the Program Notice (74 FR 29911)).

3. *Activities Unallowed*

In no case are federal funds awarded under the HSIPR program eligible to be used for rail operating expenses associated with the operation of intercity passenger rail service or for first-dollar liability costs for insurance related to the provision of intercity passenger rail service (49 USC 24404; June 23, 2009, *Federal Register* (74 FR 29916)).

**H. Period of Performance**

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

**I. Procurement and Suspension and Debarment**

See Part 4, 20.000 DOT Cross-Cutting Section.



**L. Reporting****1. Financial Reporting**

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

**2. Performance Reporting**

Not Applicable

**3. Special Reporting**

Not Applicable

**N. Special Tests and Provisions****Wage Rate Requirements**

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

FRA has concluded that the two Wage Rate Requirements can be reconciled in a manner that allows the HSIPR program to be implemented in a way that is both reasonable and consistent with current practices. For projects that use or propose to use rights-of-way owned by a railroad, the specific provisions of 49 USC 24405(c) apply and recipients are

required to comply with the standards of 49 USC 24312 (prevailing wages) in the same manner that Amtrak is required to comply with those standards for construction projects it might undertake. Wages specified in a collective bargaining agreement negotiated under the Railway Labor Act would be deemed to comply with Wage Rate Requirements for these projects. For projects that do not propose to use rights-of-way owned by a railroad, normal Wage Rate Requirements apply and there would be no specific exemption for wages arrived at through a collective bargaining agreement negotiated under the Railway Labor Act. Wage rates on these projects would have to meet the secretary of labor's prevailing wage standards as described above (see June 23, 2009, *Federal Register* (74 FR 29927)).

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section.

**DEPARTMENT OF TRANSPORTATION****CFDA 20.500 FEDERAL TRANSIT – CAPITAL INVESTMENT GRANTS (Fixed  
Guideway Capital Investment Grants)****CFDA 20.507 FEDERAL TRANSIT – FORMULA GRANTS (Urbanized Area Formula  
Program)****CFDA 20.525 STATE OF GOOD REPAIR GRANTS PROGRAM****CFDA 20.526 BUS AND BUS FACILITIES FORMULA & DISCRETIONARY  
PROGRAMS (Bus Program)****I. PROGRAM OBJECTIVES***Urbanized Area Formula Program (Section 5307)*

The objective of the Urbanized Area Formula Program (5307 program) is to assist in financing the planning, acquisition, construction, preventive maintenance, and improvement of facilities and equipment in public transportation services. Operating expenses are also eligible under the 5307 program in urbanized areas with populations of less than 200,000 and, under some limited exceptions, to some urbanized areas with population of 200,000 and above.

*Fixed Guideway Capital Investment Grants (Section 5309)*

The objective of the Fixed Guideway Capital Investment Grants program (5309 program) is to provide funds for construction of new or extended fixed guideway systems, corridor-based bus rapid transit systems, and core capacity improvement projects that increase capacity by at least 10 percent in existing fixed guideway corridors that are at capacity today or will be in five years. In addition, the Pilot Program for Transit-Oriented Development (TOD) Planning provides funding for corridor-level comprehensive planning activities conducted in conjunction with the development of Section 5309 Fixed Guideway Capital Investment Grant program projects.

*State of Good Repair Grants Program (Section 5337)*

The objective of the State of Good Repair Grants program (5337 program) is to provide financial assistance for maintaining, rehabilitating, and replacing transit assets for fixed guideway transit systems and high-intensity motor bus systems.

*Bus Program (Section 5339)*

The objective of the Bus program (5339 program) is to provide financial assistance to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities through both formula and competitive selection procedures. The Bus program includes three tiers. The 5339 formula tier provides funds based on population, ridership, and vehicle mileage. The 5339(b) portion of the bus program is dedicated to a discretionary competition for buses, bus facilities and bus related equipment. The 5339(c) portion of the bus program is dedicated to the

Low or No Emissions discretionary competitions for low or no emissions buses, bus facilities, and bus related equipment.

## II. PROGRAM PROCEDURES

Federal transit law under Chapter 53 of Title 49, U.S. Code authorizes the Urbanized Area Formula program (49 USC 5307, including the competitive Passenger Ferry program), the Capital Investment Grants program (49 USC 5309), the Grants for Buses and Bus Facilities program (49 USC 5339, including the Grants for Buses and Bus Facilities formula program (5339(a)), the competitive buses and bus facilities program (5339(b)), and the Low or No Emission Grants program (5339(c))), and the State of Good Repair Grants program (49 USC 5337). The pilot program for TOD Planning is authorized by Section 20005(b) of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141, July 6, 2012).

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

FTA is required to perform reviews and evaluations of 49 USC 5307 grant activities at least every 3 years. The most recent FTA Triennial Review Workshop Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/oversight-policy-areas/56711/fy18-comprehensive-review-guide.pdf>. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of program activities with (1) the approved program of projects, and (2) the planning process required under 49 USC 5303. Copies of these triennial reviews are available from the regional offices. Regional office addresses and telephone numbers are available on the FTA website listed below.

### Source of Governing Requirements

The programs in this cluster are authorized by 49 USC 5307, 5309, 5337, and 5339. Program regulations are at 49 CFR parts 601 through 665.

### Availability of Other Program Information

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

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than**

**Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	N	Y	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Generally, under all programs, unless otherwise specified below, capital activities, as defined in 49 USC 5302(3), are eligible activities, including preventive maintenance and certain expenses related to crime prevention and security (49 USC 5307(a), 5309(b), 5337(b), and 5339(a)).
- b. Under the 5307 program, for projects awarded before October 1, 2012, operating expenses related to the conduct of emergency response drills with public transportation agencies and local first-response agencies, and security training for public transportation employees are eligible capital expenses (49 USC 5302(a)(1)(J)).
- c. Under the 5307 program, operating assistance for all urbanized areas under 200,000 population, and certain larger urbanized areas under limited exceptions, and planning for all urbanized areas (49 USC 5307(a)(2)).
- d. Under the 5307 program, human resources and workforce development activities, including training, and training provided at the National Transit Institute or through a state-contracted training provider (see III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking,” below) (49 USC 5314 (b) and (c)).
- e. Under the 5337 program, the only capital projects authorized are projects that implement a transit asset management plan and projects that maintain,

rehabilitate, and replace assets for high intensity fixed guideway and motorbus systems in a state of good repair (49 USC 5337(b)).

- f. Under the 5339 program, the only capital projects authorized are bus, bus facilities, and bus-related equipment projects (49 USC 5339(a)).
- g. Under the 5339 program, workforce development (49 USC 5314(b)).
- h. Under the 5309 program, for projects awarded before October 1, 2012, the only capital projects authorized are those for
  - (1) bus and bus facilities;
  - (2) new fixed guideways, including Small Starts;
  - (3) fixed guideway modernization; or
  - (4) corridor improvements (49 USC 5309(b)(1) through (b)(4)).
- i. Under the 5309 program, for projects awarded on or after October 1, 2012, the only capital projects authorized are those for
  - (1) new or extended fixed guideway capital projects;
  - (2) corridor-based bus rapid transit projects; or
  - (3) core capacity improvement projects (49 USC 5309(b)).
- j. Under the 5309 program, for projects awarded under the pilot program for TOD Planning, only comprehensive planning associated with a Section 5309 project is allowable (Section 20005(b) of MAP-21).

## 2. *Activities Unallowed*

- a. Under the 5309 and 5337 programs, the following:
  - (1) Mobility management;
  - (2) Operating expenses; and
  - (3) Alternatives analysis, including planning, with funds appropriated after FY 2005 (49 USC 5309(b) and 5337).
- b. Under the 5307 program, operating assistance in areas over 200,000, unless under certain limited exceptions (49 USC 5307(a)(2)).
- c. Under the 5339 program, preventive maintenance, and rail-related activities (49 USC 5339).

**I. Procurement and Suspension and Debarment**

See Part 4, 20.000 DOT Cross-Cutting Section.

Recipients must use qualifications-based selection procedures (Brooks Act or an equivalent qualifications-based requirement of a state) when acting as contracting agencies to procure engineering and design-related services for construction of a transit project (49 USC 5325(b)(1)).

## DEPARTMENT OF TRANSPORTATION

### CFDA 20.509 FORMULA GRANTS FOR RURAL AREAS

#### I. PROGRAM OBJECTIVES

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

#### II. PROGRAM PROCEDURES

##### A. State Agencies

The Federal Transit Administration (FTA) annually publishes formula apportionments to the states in a *Federal Register* notice published within 10 days after the Department of Transportation (DOT) Appropriations Act is signed into law. The governor of each state designates a state agency to administer the program. The state is responsible for fair distribution of the funds in the state, including Indian reservations. The state may also provide transit service directly or through contracts with private operators. The state describes its procedures for administering the program in a state management plan. The state applies to FTA for approval of a program of projects, usually annually, and reports annually to FTA on financial status and revisions to the program of projects. The state agency may be the recipient on behalf of Indian tribes that are subrecipients, but federally recognized tribes may also elect to apply to FTA as a direct recipient. FTA monitors compliance with federal requirements through administrative “State Management Reviews,” generally every 3 years.

##### B. Appalachian Development Public Transportation Assistance Program

The Appalachian Development Public Transportation Assistance Program is a formula program under the Section 5311 program that provides additional funding to support public transportation in the Appalachian region. There are 13 eligible states that receive an allocation under this provision. Recipients may use these funds for any purpose that is eligible under Section 5311.

##### C. Tribal Transit Program

The Tribal Transit Program (TTP) under the 5311 program includes both formula and discretionary components. Federally recognized Indian tribes are eligible direct recipients and apply directly to FTA. Under the discretionary program, funds are made available annually on a competitive basis. Recipients of TTP funds may use these funds for any purpose that is eligible under Section 5311.



## D. Subrecipients

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

### Source of Governing Requirements

This program is authorized by 49 USC 5311. Program regulations are in 49 CFR parts 601 through 665. Note that certain exceptions or dollar thresholds in these rules may exclude many rural transit activities. In referring to the program, FTA uses the term "rural" to include both rural and small urban areas (all areas not included in the urbanized areas designated by the U.S. Bureau of the Census).

### Availability of Other Program Information

Information about the program may be found on the FTA website at <http://www.fta.dot.gov/>. Program Guidance and Application Instructions are contained in FTA Circulars, which may be found on the website.

## III. COMPLIANCE REQUIREMENTS

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, "Matrix of Compliance Requirements"), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a "Y" in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as "N," it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an "N." See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. *Activities Allowed*

- a. Local transportation service (transit service available to the public) in a rural area (49 USC 5311(d)).
- b. Support of intercity bus transportation (49 USC 5311(f)).
- c. Coordination of public transportation assisted under this section with transportation service assisted by other United States government sources is permitted and encouraged (49 USC 5311(b)).
- d. Planning, operating, and capital projects (49 USC 4911(b)(1)).
- e. Job access and reverse commute projects, and the acquisition of public transportation services, including service agreements with private providers of public transportation (49 USC 5311(b)(1)).
- f. RTAP funds may be used to provide training, technical assistance, research and related support services for providers of rural public transit and related services (49 USC 5311(b)(3)).

**F. Equipment and Real Property Management**

See Part 4, 20.000 DOT Cross-Cutting Section.

**I. Procurement and Suspension and Debarment**

See Part 4, 20.000 DOT Cross-Cutting Section.

## DEPARTMENT OF TRANSPORTATION

### CFDA 20.513 ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES

### CFDA 20.516 JOB ACCESS AND REVERSE COMMUTE PROGRAM

### CFDA 20.521 NEW FREEDOM PROGRAM

## I. PROGRAM OBJECTIVES

### Enhanced Mobility of Seniors and Individuals with Disabilities (5310 program)

The objective of the 5310 formula and discretionary program is to enhance mobility for seniors and persons with disabilities by providing funds for programs that serve the special needs of transit-dependent populations beyond traditional public transportation services and Americans with Disabilities Act (ADA) complementary paratransit services.

### Job Access and Reverse Commute (JARC) Program

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

### New Freedom Program

The New Freedom program aims to provide additional tools to overcome barriers facing Americans with disabilities seeking integration into the work force and full participation in society. Lack of adequate transportation is a primary barrier to work for individuals with disabilities. The New Freedom program seeks to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the ADA.

## II. PROGRAM PROCEDURES

The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) combined the Capital Assistance program for Elderly Persons and Persons with Disabilities (CFDA 20.513) and the New Freedom program (CFDA 20.521) into the 5310 program.

Effective with the passage of MAP-21, the JARC, and New Freedom programs were repealed and no additional grants were awarded. Section 3006(b) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. No. 114-94) (49 USC 5310 note) created a discretionary component to the previously formula-only Section 5310 program. This pilot program for innovative coordinated access and mobility provides funding for efforts that improve the

coordination of transportation services with non-emergency medical care for the transportation disadvantaged. Funding is intended for organizations that focus on coordinated transportation solutions.

FTA annually publishes formula apportionments in a *Federal Register* notice published within ten days after the Department of Transportation (DOT) Appropriations Act is signed into law. In the case of the 5310 program the governor of each state designates a state agency to administer the program. In addition, the governor of each state is required to designate a state agency to administer the program for urbanized areas with a population between 50,000 and 199,999 and nonurbanized areas. The governor must also designate a designated recipient to administer the program for urbanized areas with a population of 200,000 or more. In the case of the JARC and New Freedom programs, the governor (1) designated a state agency to administer the program in nonurbanized areas and in urbanized areas with populations between 50,000 and 199,999; and (2) in consultation with responsible local officials and public transportation providers, designated a recipient to administer the program for the large urbanized area(s). The state agencies and designated recipients (large urbanized areas) are responsible for fair distribution of the funds. State agencies or their designated recipients must describe their procedures for administering the program in a state management plan (SMP), or, for those JARC and New Freedom designated recipients serving large urbanized areas, a program management plan (PMP).

State agencies and designated recipients apply to FTA for approval of a program of projects, usually annually, and report annually to FTA on financial status and revisions to their program of projects. Federal transit law requires that projects selected for funding under the 5310, JARC, and New Freedom programs be included in a locally developed, coordinated public transit-human services transportation plan, and that the plan be developed through a process that includes seniors and individuals with disabilities, as well as representatives of public, private, and non-profit transportation and human services providers and members of the general public.

FTA monitors compliance with federal requirements through administrative “State Management Reviews,” in which a state agency is generally reviewed every three years. Designated recipients who also receive FTA financial assistance under the Urbanized Area Formula program (CFDA 20.507) are also subject to an FTA “Triennial Review.”

### **Subrecipients**

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

### **Source of Governing Requirements**

The 5310 formula program is authorized by 49 USC 5310, the pilot program for innovative coordinated access and mobility is authorized by Section 3006(b) of the FAST Act (49 USC

5310 note), the JARC program was authorized by 49 USC 5316, and the New Freedom program was authorized by 49 USC 5317. Program regulations are in 49 CFR parts 601 through 665.

**Availability of Other Program Information**

Additional information about the programs may be found on the FTA website at <https://www.transit.dot.gov/funding/grants/grant-programs>. Program guidance for the JARC, New Freedom, and 5310 programs are contained in FTA Circulars 9050.1, 9045.1, and 9070.1, respectively. The circulars can be found at the <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>.

**III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

**A. Activities Allowed or Unallowed**

1. Under the 5310 program:
  - a. For awards prior to October 1, 2012, funds are available only for capital expenses (and associated administrative, planning, and technical assistance) to support the provision of transportation services to meet the

special needs of elderly individuals and individuals with disabilities.  
Operating expenses are not allowed.

- b. For awards on or after October 1, 2012, funds are available for operating and capital expenses for transportation services that address the needs of seniors and individuals with disabilities (49 USC 5310(b)(1)).
2. Under the JARC program, funds may be used for capital, planning, and operating expenses (and associated administrative, planning, and technical assistance) that support access to jobs and reverse commute projects (49 USC 5316(b)).
3. “Access to jobs” projects are defined as projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including:
  - a. Transportation projects to finance planning, capital, and operating costs of providing access to jobs under Chapter 53 of 49 USC;
  - b. Promoting public transportation by low-income workers, including the use of public transportation by workers with non-traditional work schedules;
  - c. Promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and
  - d. Promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986, as amended (49 USC 5316(a)(1)).
4. “Reverse commute” projects are defined as public transportation projects designed to transport residents of urbanized areas and other-than-urbanized areas to suburban employment opportunities, including any projects to:
  - a. Subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other-than-urbanized areas to suburban workplaces;
  - b. Subsidize the purchase or lease by a non-profit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or
  - c. Otherwise facilitate the provision of public transportation services to suburban employment opportunities (49 USC 5316(a)(4)).
5. Under the New Freedom program, funds are available for capital and operating expenses (and associated administrative, planning, and technical assistance) that support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA

designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services (49 USC 5317(b)(1)).

**F. Equipment and Real Property Management**

See Part 4, 20.000 DOT Cross-Cutting Section.

**I. Procurement and Suspension and Debarment**

See Part 4, 20.000 DOT Cross-Cutting Section.

## DEPARTMENT OF TRANSPORTATION

### CFDA 20.527 PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM

#### I. PROGRAM OBJECTIVES

The objective of the Public Transportation Emergency Relief Program (49 USC 5324) is to assist public transit operators affected by a declared emergency or a major disaster in preparing for, responding to, recovering from, and reducing vulnerabilities to emergencies and major disasters.

#### II. PROGRAM PROCEDURES

The Public Transportation Emergency Relief Program provides operating assistance and capital funding to aid recipients and subrecipients in restoring public transportation service, and in repairing and reconstructing public transportation assets to a state of good repair, as expeditiously as possible following an emergency declared by a governor or major disaster declared by the president under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

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

FTA determines the terms and conditions applicable to recipients of Emergency Relief funds and publishes the applicable requirements in the *Federal Register* at the time of the allocation of funds. In general, recipients of Emergency Relief are required to comply with the program requirements of 49 USC 5307, including an evaluation of grant activities at least every 3 years by FTA. The most recent FTA Triennial Review Workshop Workbook provides guidance to FTA staff and recipients on the conduct of triennial reviews and is available at <https://www.transit.dot.gov/funding/grantee-resources/triennial-reviews/triennial-reviews>. These reviews are conducted with specific reference to compliance with statutory and administrative requirements and consistency of program activities with (1) the approved program of projects and (2) the planning process required under 49 USC 5303. Copies of these triennial reviews are available from the regional offices. Regional office addresses and telephone numbers are available on the FTA website listed below.

Grants for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects are made under 49 USC 5324. Grants to address an emergency also can be made using 49 USC 5307 or 49 USC 5311 funds.

#### Source of Governing Requirements

The Public Transportation Emergency Relief Program is authorized by 49 USC 5324. Program regulations are at 49 CFR part 602. Applicable program requirements associated with the federal transit programs are at 49 CFR parts 601 through 665.



## Availability of Other Program Information

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

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. **When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	N	Y	N	N	Y	N

#### A. Activities Allowed or Unallowed

##### 1. *Activities Allowed*

- a. Capital activities, as defined in 49 USC 5302(3), to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the secretary of transportation determines are in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency (49 USC 5324(b)).
- b. Eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency, relating to:

- (1) Evacuation services;
- (2) Rescue operations;
- (3) Temporary public transportation service; or
- (4) Reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency (49 USC 5324(a)(1)).

**F. Equipment and Real Property Management**

See Part 4, 20.000 DOT Cross-Cutting Section.

**I. Procurement and Suspension and Debarment**

See Part 4, 20.000 DOT Cross-Cutting Section.

**DEPARTMENT OF TRANSPORTATION****CFDA 20.600 STATE AND COMMUNITY HIGHWAY SAFETY****CFDA 20.601 ALCOHOL IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANTS I****CFDA 20.602 OCCUPANT PROTECTION INCENTIVE GRANTS****CFDA 20.609 SAFETY BELT PERFORMANCE GRANTS****CFDA 20.610 STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS****CFDA 20.611 INCENTIVE GRANT PROGRAM TO PROHIBIT RACIAL PROFILING****CFDA 20.612 INCENTIVE GRANT PROGRAM TO INCREASE MOTORCYCLIST SAFETY****CFDA 20.613 CHILD SAFETY AND CHILD BOOSTER SEAT INCENTIVE GRANTS****CFDA 20.616 NATIONAL PRIORITY SAFETY PROGRAMS****I. PROGRAM OBJECTIVES**

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

**II. PROGRAM PROCEDURES**

The Highway Safety Act of 1966 established a formula grant program for states to save lives and prevent injuries due to road traffic crashes. To qualify for Section 402 funding, states must submit by July 1 every year for NHTSA approval an annual Highway Safety Plan (HSP) that identifies highway safety problems; establishes performance targets; documents an evidence-based enforcement plan; and describes strategies and projects, supported by data, to reduce traffic crashes. The Fixing America's Surface Transportation (FAST Act), (P.L. 114-94) amended NHTSA's highway safety grant program (23 USC 402) and the National Priority Safety program grants (23 USC 405).

No changes were made to the contents of the HSPs. The FAST Act restored (with some changes) the racial profiling data collection grant authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59 (Section 1906). The National Priority Safety programs, which is considered one program, was authorized by the Moving Ahead for Progress in the 21<sup>st</sup> Century (Map-21 Pub. L. 112-141). The areas covered by the National Priority programs are: Occupant Protection, Impaired Driving, Ignition Interlock, State Traffic Safety Information System Improvements, Motorcyclist Safety, Distracted Driving and Graduated Drivers Licensing. The FAST Act added new grants including 24/7 Sobriety program grants, Nonmotorized Grants and Racial Profiling Data Collection Grants.

States may still be spending funds awarded under the following CFDA numbers: 20.601, 20.602, 20.609, 20.610, 20.611, 20.612 and 20.613.

### **Source of Governing Requirements**

Programs are authorized under 23 USC Chapter 4 (Highway Safety); Pub. L. No. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) as amended by Section 112001 of Pub. L. No. 112-141, the Surface Transportation Extension Act of 2012, Part II; MAP-21, and Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94. Implementing regulations are in 23 CFR Part 1300.

### **Availability of Other Program Information**

The National Highway Traffic Safety Administration maintains a website that provides program laws, regulations, and other general information (<http://www.nhtsa.dot.gov>). Program procedures for some programs have been published in the *Federal Register* at 71 FR 5110 (CFDA 20.613), 71 FR 5727 (CFDA 20.611), 71 FR 5729 (CFDA 20.610), 71 FR 4196 (CFDA 20.609), and 78 FR 4986 (CFDAs 20.600 and 20.616).

## **III. COMPLIANCE REQUIREMENTS**

**In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.**

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	Y	N	N	Y	Y	N

**A. Activities Allowed or Unallowed**

Funds must be expended as specified in the grantee’s highway safety plan.

1. *The following are allowed or allowed with specific conditions:*

a. Purchase of the following types of equipment is subject to compliance with any applicable standards and performance specifications and inclusion on the applicable Conforming Products List (CPL) established by NHTSA, the Research and Innovative Technology Administration (RITA), the American College of Surgeons, or by other nationally recognized standard-setting agencies or by state standards and performance specifications, as long as they are at least as stringent as applicable national standards and performance specifications:

- (1) Police traffic enforcement, speed-measuring devices, such as Radars, Lidars, and Across the Road devices. (A comprehensive list of such devices can be found online at <https://www.theiacp.org/resources/document/iacp-radarlidar-testing>.);
- (2) Alcohol testing devices and costs for re-certification of such devices;
- (3) Ambulances;
- (4) Helicopters. (Helicopters must be equipped for emergency medical services (EMS) missions and for police traffic safety functions related to law enforcement, with an absolute priority accorded to EMS duty needs for crash site victim removal);
- (5) Automated External Defibrillators (AED). (AEDs are to be used for training EMS personnel only.) AED’s cannot be used to equip ambulances (or police cars or offices); and

- (6) Fixed wing aircraft.
  - b. The purchase and installation of regulatory and warning signs and supports and field reference markers for roads off the federal-aid system.
  - c. Travel for out-of-state individuals benefiting the host state's highway safety program.
  - d. Training of personnel and the development of new training curricula, materials, and supplies, including portable skid platforms and driving simulators if they are used for a NHTSA-approved training program.
  - e. Consultant services, promotional activities, alcoholic beverages to support police "sting" operations (e.g., undercover police-directed operations to detect unlawful practices associated with underage drinking laws), and meetings and conferences. Costs for promotional items are only allowable when evidence is provided that items are directly related and integral to project objectives.
  - f. For State and Community Highway Safety (CFDA 20.600) funds, supplementing demonstration projects implemented under Section 403 (23 USC 402(g)(2)).
  - g. Cooperating with neighboring states for highway safety purposes that benefit all participating states (23 USC 402(c)).
  - h. Advertising space.
  - i. For Child Safety and Child Booster Seat Incentive Grants (CFDA 20.613), child safety seat purchases are limited to 50 percent of the annual award (Section 2011(d) of SAFETEA-LU).
2. *Activities Unallowed*
- a. Highway construction, maintenance or design, construction or reconstruction of permanent facilities, highway safety appurtenances, office furnishings and fixtures, and purchase of land (except as provided under III.A.1.j, above).
  - b. Truck scales, traffic signal preemption systems, automated traffic enforcement systems radars, and the impaired driving funds under National Priority Safety programs (CFDA 20.616) speed measuring devices.
  - c. Research costs, expenses to defray activities of federal agencies, alcoholic beverages for consumption purposes or techniques for determining driver impairment, entertainment costs, and commercial drivers' compliance requirements. Drug impaired activities, equipment and drug-impaired

training is not allowed with funds transferred to the state under 23 USC 154 or 164.

- e. No federal funds may be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., grassroots) lobbying activities, with one exception. This does not preclude a state official whose salary is supported with NHTSA funds to engage in direct contact with state or local legislative officials, in accordance with customary state practice, even if it urges legislative officials to favor or oppose the adoption of a specific pending legislative proposal (23 CFR part 1200, Appendix A) and (23 CFR part 1300, Appendix A).

## **B. Allowable Costs/Cost Principles**

Costs charged to federal funds under Sections 402, 405, and 1906 must comply with the cost principles in 2 CFR part 200.

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

### **1. Matching**

- a. States receiving State and Community Highway Safety grants (Section 402) are required to contribute at least 20 percent, or the applicable sliding scale rate, as stated in the grant award, of the total cost of the program. States are required to pay at least 50 percent, or the applicable sliding scale rate, as stated in the grant award, of the costs for planning and administration (Indian Nations and Territories are 100 percent federally funded) (23 USC 120(b) and 402(d); 23 CFR section 1200.13(a)), 23 CFR 1300.13(a). (CFDA 20.600)
- b. States receiving grants National Priority Safety programs are required to contribute at least 20 percent of the total cost of the program (Territories and Indian Nations are 100 percent federally funded) (23 USC 402(d); 23 CFR section 1200.20(f)), 23 CFR section 1300.20(f). (CFDA 20.616)
- c. Additional matching requirements may be specified in the grantee's highway safety plan to limit the maximum federal share of an ambulance, helicopter, AED, or aircraft to 25 percent.

### **2. Level of Effort**

#### **2.1 Level of Effort – *Maintenance of Effort***

For the State and Community Highway Safety program (CFDA 20.600) and the National Priority Safety programs (CFDA 20.616), as authorized by the FAST Act, a state must maintain its aggregate expenditures from all

other sources at or above the average level of such expenditures in fiscal years 2014 and 2015 for activities for Occupant Protection, State Traffic Safety Information System Improvements, and Impaired Driving Countermeasures (23 USC 405(a)(1)(H); 23 CFR sections 1200.21(d)(5), 1200.22(f), and 1200.23(d)(2)), 1300.21(d)(5), 1300.22(c), and 1300.23(d)(2).

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

Not Applicable

## **3. Earmarking**

- a. At least 40 percent of federal funds apportioned to a state under State and Community Highway Safety (CFDA 20.600) for any fiscal year shall be expended by or for the political subdivisions of the state in carrying out local highway safety programs (23 USC 402(b)(1)(C); 23 CFR part 1200, Appendix E) and 1300 Appendix C.
- b. The federal costs for planning and administration under State and Community Highway Safety (CFDA 20.600) shall not exceed 15 percent of the funds received by the state. Indian nations are exempt from this requirement (23 CFR section 1200.13(a)), and 23 CFR section 1300. In accordance with 23 USC 120(i), the federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent (23 CFR 1300.13(a)).

## **L. Reporting**

### **1. Financial Reporting**

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

### **2. Performance Reporting**

Not Applicable



**3. Special Reporting**

Not Applicable

**M. Subrecipient Monitoring**

NHTSA Regional Offices monitor the states' highway safety offices and the state offices monitor their subrecipients. The Regional Offices routinely conduct on-site monitoring and reviews that involve oversight of the highway safety office activities and their oversight of the subrecipients.