

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.

Assistance Listing # 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

1. 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).

Nonfederal 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 nonfederal 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 DOL, 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 nonfederal 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

ASSISTANCE LISTING 20.106 AIRPORT IMPROVEMENT PROGRAM

Note: In accordance with 2 CFR section 200.519, when the auditor is using the risk-based approach for determining major programs, the auditor should consider that the Department of Health and Human Services (HHS) has identified the Medical Assistance Program (Medicaid) as a program of higher risk.

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, US 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 [AIP Handbook – Office of Airports \(faa.gov\)](http://www.faa.gov/airports/resources/aip_handbook)) and FAA Advisory Circulars in the 150/5100 series (available at http://www.faa.gov/airports/resources/advisory_circulars/). The FAA also maintains an Airports *Federal Register* Notices page available at [Federal Register Notices \(FRNs\) for Airport Programs \(faa.gov\)](http://www.faa.gov/airports/resources/frns/).

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. 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.

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 US 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 nonfederal 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

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

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 that 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 ([Federal Register Notices \(FRNs\) for Airport Programs \(faa.gov\)](https://www.faa.gov/airports/airports-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 ensure 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).

Note: In accordance with 2 CFR section 200.519, when the auditor is using the risk-based approach for determining major programs, the auditor should consider that the Department of Health and Human Services (HHS) has identified the Medical Assistance Program (Medicaid) as a program of higher risk.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.205 HIGHWAY PLANNING AND CONSTRUCTION (Federal-Aid Highway Program)

ASSISTANCE LISTING 20.219 RECREATIONAL TRAILS PROGRAM

ASSISTANCE LISTING 20.224 FEDERAL LANDS ACCESS PROGRAM

ASSISTANCE LISTING 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, 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 federal 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., FLTTP, 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 fiscal year (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. No. 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 FAST Act (Pub. L. No. 114-94) (23 USC 204). The program makes funds available for transportation projects on federal lands access transportation facilities located on or adjacent to, or that provide access to 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 federal 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

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	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 (40 USC 14501).
4. FLTTP funds may be used for work on projects that provide access to or within federal or tribal lands (23 USC 201 through 202 and 25 CFR Part 170).

F. Equipment and Real Property Management

1. The state and LPA subrecipients shall charge at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with federal highway funds. The state or LPA 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). Tribal governments are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR Part 200.

2. 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)).
3. 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).

I. Procurement and Suspension and Debarment

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 three 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 nonfederal share.

M. Subrecipient Monitoring

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

N. Special Tests and Provisions

1. 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, 637.207, and 637.209).

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.

2. 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.

3. 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.

4. 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 federal highway program funding; (b) bridge projects located on the NHS with an estimated total cost of \$40 million or more that utilize federal 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.

5. 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 federal 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 federal 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)).

PS&E packages for projects using federal 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 federal 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 federal 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.

6. 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 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 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)(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 federal 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

ASSISTANCE LISTING 20.218 MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

ASSISTANCE LISTING 20.237 HIGH PRIORITY GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Federal Motor Carrier Safety Assistance (FMCSA) program, Motor Carrier Safety Assistance Program (MCSAP), and High Priority (HP) grant program share the same objectives to support a safe and efficient surface transportation system. They include:

- Making targeted investments to promote safe commercial motor vehicle (CMV) transportation, including the transportation of passengers and hazardous materials;
- Investing in activities likely to generate maximum reductions in the number and severity of CMV crashes and fatalities resulting from such crashes;
- Adopting and enforcing effective motor carrier, CMV, and driver safety regulations and practices consistent with federal requirements; and
- Assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

While MCSAP and HP grants share the same objectives, some eligible activities and costs differ. Chapters in the MCSAP Comprehensive Policy provide program-specific policy (including cost eligibility) and technical assistance when administering both MCSAP and HP grant programs. Within the HP grant program, the Fixing America's Surface Transportation (FAST) Act established the Innovative Technology Deployment (ITD) program which has goals and objectives that differ from traditional MCSAP activities. However, the ITD program was integrated into HP and MCSAP (for operations and maintenance) to support activities and information technology enhancement that complement and enhance CMV and motor carrier enforcement activities.

II. PROGRAM PROCEDURES

FMCSA developed an electronic commercial vehicle safety plan (CVSP) development tool (called eCVSP) available at [eCVSP Login \(dot.gov\)](https://www.fmcsa.dot.gov/eCVSP). The eCVSP software application allows a MCSAP lead agency to create an online CVSP and track the progress of CVSP development through to approval. Use of the eCVSP helps ensure that states satisfy the requirements in 49 CFR 350.213, expedites FMCSA's review of the document, facilitates the prompt returning of comments or requests for clarification, and allows the MCSAP lead agency to easily resubmit a revised document.

In accordance with 49 USC 31102(i) and grant/financial management requirements in 2 CFR Part 200, each CVSP receives a fair, equitable and objective review prior to award approval.

This review ensures that applicable statutory and regulatory requirements will be met and allowable CVSP projects and activities will succeed. The CVSP review process generally consists of a review in the following areas:

1. *Application Review.* The FMCSA reviews the CVSP and all supplemental attachments (e.g., forms and certifications) for completeness and to ensure that the MCSAP lead agency meets the basic eligibility requirements defined in the Notice of Funding Opportunity (NOFA).
2. *Programmatic Review.* The FMCSA review the CVSP to make sure that the information presented is reasonable and understandable and the activities proposed in the application are measurable, achievable, and consistent with program or legislative requirements.
3. *Financial Review.* The FMCSA evaluates the fiscal integrity and financial capability of a MCSAP lead agency, and reviews the CVSP details, including the budget and budget narrative, and any other documentation to examine costs for proposed project/program activities to determine if they appear reasonable, necessary, eligible and allowable for award. Note that approval of the CVSP is not a final approval of costs as defined in accordance with 2 CFR Part 200 Subpart E.
4. *Suitability Review.* In accordance with [2 CFR section 200.205](#) the suitability review is discussed in more detail in the MCSAP Comprehensive Policy. The FMCSA evaluates the CVSP against the performance-based information required in accordance with [49 CFR section 350.213](#).

Source of Governing Requirements

The MCSAP grant program is authorized by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, sections 5101(a) and 5101(c) (2015). The MCSAP is governed by 49 USC 31102 and 31104, and by 49 CFR section 350, as applicable.

The HP grant program is authorized by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, sections 5101(a) and 5101(c) (2015). HP grants are governed by 49 USC 31102(l) and 31104, and by 49 CFR section 350, as applicable.

Availability of Other Program Information

Additional information about the programs may be found on the FMCSA website at <https://www.fmcsa.dot.gov/mission/grants>. Program policy guidance for the MCSAP and HP programs may be found at <https://www.fmcsa.dot.gov/mission/grants/motor-carrier-safety-assistance-program-grant-comprehensive-policy>.

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	Y	N	Y	Y	N	N

A. Activities Allowed or Unallowed

The primary MCSAP activities eligible for reimbursement include the National Program Elements currently outlined in 49 CFR section 350.203:

1. Driver and Vehicle Inspections
2. Traffic Enforcement
3. Compliance Reviews, Carrier Interventions, Investigations, and New Entrant Safety Audits
4. Public Education and Awareness
5. Data Collection

In addition, 49 CFR section 350.227 lists other activities eligible for reimbursement under the MCSAP. In addition, the FAST Act added other CMV safety activities that are eligible under MCSAP. These include:

- a. Border enforcement safety activities (inspections, traffic enforcement, etc.)

- b. Performance and Registration Information Systems Management (PRISM)
- c. Innovative Technology Deployment (ITD) (operations and maintenance only)

The state must ensure that these activities, if financed through MCSAP funds, will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety.

These other activities also include:

- Sanitary food transportation inspections performed under 49 USC 5701.
- The following activities, when carried out in conjunction with an appropriate North American Standard (NAS) inspection of a CMV and inspection report.
- Enforcement of CMV size and weight limitations at locations, excluding fixed-weight facilities, such as near steep grades or mountainous terrains, where the weight of a CMV can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.
- Detection of and enforcement actions taken as a result of criminal activity, including trafficking of human beings, in a CMV or by any occupant, including the operator, of the CMV.

F. Equipment and Real Property Management

1. Equipment Management Requirements for Subrecipients of States

Notwithstanding 2 CFR section 200.313, subrecipients of states shall follow such policies and procedures allowed by the state with respect to the use, management and disposal of equipment acquired under a DOT award (2 CFR section 1201.313).

G. Matching, Level of Effort, Earmarking

1. Matching

The FAST Act sets minimum matching requirements for each grant program. Matching means the portion of project costs not paid by federal funds. For example, FMCSA grant programs require that FMCSA reimburse 85 percent of eligible project costs, while the recipient provides the remaining 15 percent share.

After award, recipients must document all expenditures relating to cost sharing or matching in the same manner as those for the federal grant funds. Every item must be verifiable (i.e., tracked and documented) and any claimed cost share expense can only be counted once. In addition, a cost sharing or matching requirement may not be met by costs borne by another federal grant except as

provided by federal statute. The FAST Act allows FMCSA to modify the federal share of a grant program from the standard 85/15 threshold (85 percent federal, 15 percent recipient share). FMCSA may opt to offer 100 percent federal financial assistance for a specific project(s) and/or priorities within a grant program. Other projects funded at 100 percent federal share may be announced in the NOFA as a National Priority and are at the discretion of FMCSA.

The value of third party in-kind contributions may be accepted as the match. The use of third party in-kind contributions should be identified in the grant/sub-grant agreement, or amendments thereto, and approved by FMCSA. The use of in-kind contributions may not be made retroactive prior to approval of the work program or an amendment thereto. Recipient (or subrecipients) should be aware that they are responsible for ensuring that the following additional criteria are met:

- The third party performing the work must agree to allow the value of the work to be used as the match;
- The cost of the third party work must not be borne by other federal funds or be used as a match for other federally funded grants/sub-grants;
- The work performed by the third party must be an eligible activity that benefits the federally funded work and must be identified in the work program;
- The third party costs (e.g., salaries, fringe benefits) must be allowable under 2 CFR section 200, Subpart E – Cost Principles;
- The third party work must be performed during the period to which the matching requirement applies; and
- The third party in-kind contributions must be verifiable from the records of the recipient or subrecipient and these records must show how the value placed on third party in kind contributions was derived.

2. Level of Effort

The MCSAP lead agency must maintain a certain level of expenditure, in addition to the required 15 percent matching share of a MCSAP grant. This financial requirement is known as maintenance of effort (MOE) or level of effort. The purpose of the MOE is to ensure that MCSAP lead agencies are committed to maintaining their own state funded CMV safety programs, notwithstanding federal funding.

A MCSAP lead agency must maintain within each federal fiscal year a level of effort that is at least equal to the average of what the MCSAP lead agency spent on MCSAP eligible activities in fiscal year (FY) 2004 and FY 2005.

Expenditures of other state agencies, local agencies, or sub-grantees (whether supported by MCSAP grant funds or not), other federal funds, and MCSAP lead agency matching funds are not to be included in the MOE calculation.

A change in the MCSAP lead agency does not negate the MOE requirement because the state funding for these efforts also transitioned to the new state lead agency. The concept of “successor in interest” applies. Thus, no state may have a zero MOE simply because the MCSAP lead agency is different in a current year than it was in FYs 2004 and 2005, and the successor agency must meet the MOE requirements established by the FY 2004 and FY 2005 baseline.

Because non-CMV and CMV traffic enforcement activities without an inspection were not authorized until the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted in late FY 2005, MCSAP lead agencies are not to include these expenditures in calculating the MOE baseline. MCSAP lead agencies may, however, include documented non-CMV traffic enforcement and other new efforts and initiatives they have implemented since FYs 2004 and 2005 to meet the annual MOE obligation.

The MCSAP lead agency must retain the documentation used to calculate the MOE average for audit purposes. In the absence of records, a reasonable estimate, based upon available information should be submitted to FMCSA for review and approval. MCSAP lead agencies must self-certify (per [49 CFR sections 350.211](#) and [350.213](#)) that the calculated MOE will be met each fiscal year and reflect their MOE in their CVSP. The state must annually submit its MOE substantiation document to FMCSA to support the actual expenditures during the fiscal year.

3. Earmarking

Not Applicable

H. Period of Performance

The notice of grant award (NGA) contains the grant agreement’s period of performance. The NGA period of performance means the time during which the grant recipient may incur obligations to carry out the work authorized under the grant agreement. The FMCSA may establish a shorter, but not longer, grant agreement period of performance than what the statutory availability of funds timeframe allows. All allowable periods of performance are located in 49 USC 31104(f), as amended by the FAST Act.

J. Program Income

Notwithstanding 2 CFR section 200.80, except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income also does not include taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them. Please see 2 CFR 200.307 (f) 2 CFR 200.77 (period of performance) and 2 CFR 200.407 (prior written approval).

L. Reporting

1. Financial Reporting

The FMCSA will not reimburse recipients from a grant for an amount that is more than the government share of costs incurred as of the date of the voucher. This signifies that recipients are limited in the percentage of costs per voucher, not per grant. For example, states are limited to 85 percent reimbursement under MCSAP. Because FMCSA's reimbursement requirement is incurred by the date of each voucher, the state must meet the matching share requirement, for example 15 percent per voucher.

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

2. Performance Reporting

The FMCSA requires recipients to provide performance progress and financial reports as a condition of the grant agreement. These reports help FMCSA monitor recipient progress towards the project objectives and provide an important measure of accountability for the recipient. The FMCSA has standardized the information required in the performance report; however, at a minimum, each performance report must contain the following information:

- a. An account of significant progress (findings, events, trends, etc.) made during the reporting period;
- b. A description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in this agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FMCSA, or a statement that no problems were encountered;

- c. An outline of work and activities planned for the next reporting period;
and
- d. Provide status update/resolution for all outstanding findings from
program reviews and/or audits.

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 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 (nonfederal) 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. Some exceptions to the minimum cost requirement 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 <https://www.transportation.gov/buildamerica/financing/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 US 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 US Code (Chapter 53 of Title 49 of the US 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 Projects¹⁰⁴.

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

ASSISTANCE LISTING 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 nonmotorized 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*

FYs 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)).

L. Reporting

1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable

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

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

2. Performance Reporting

Not Applicable

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. 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). The 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**ASSISTANCE LISTING 20.500 FEDERAL TRANSIT – CAPITAL INVESTMENT GRANTS (Fixed Guideway Capital Investment Grants)****ASSISTANCE LISTING 20.507 FEDERAL TRANSIT – FORMULA GRANTS (Urbanized Area Formula Program)****ASSISTANCE LISTING 20.525 STATE OF GOOD REPAIR GRANTS PROGRAM****ASSISTANCE LISTING 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 new fixed guideway or core capacity improvement projects. The Expedited Project Delivery (EPD) Pilot Program aims to expedite funding of new fixed guideway capital projects, small starts projects, or core capacity improvement projects and to encourage innovative partnerships and funding mechanisms.

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 replacement, maintenance, and rehabilitation projects for existing fixed guideway (including rail, bus rapid transit, and passenger ferries) and high intensity motorbus (buses operating in high-occupancy vehicle (HOV) lanes) systems to maintain public transportation systems in a state of good repair so that they operate safely, efficiently, reliably, and sustainably and offer balanced transportation choices that help to improve mobility, reduce congestion, and encourage economic development.

Buses & Bus Facilities Program (Section 5339)

The objective of the Buses and Bus Facilities 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 Buses and Bus Facilities program includes three tiers. The 5339(a) 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, US 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). The EPD Pilot Program is authorized by Section 3005(b) of the Fixing America's Surface Transportation Act (FAST Act; Pub. L. No. 114-94, December 4, 2015).

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 or annual 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 three 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/fy20-comprehensive-review-guide>. 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, as well as Section 20005(b) of MAP-21 and Section 3005(b) of FAST. 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)).

Additional flexibility for reimbursing operating expenses for all 5307 recipients has been extended in response to the COVID-19 public health emergency. FTA allowed all recipients of 5307 formula funds to use apportioned funds for operating expenses related to the emergency, beginning January 20, 2020, regardless of the size of the transit system or urbanized area. Additional detail and Frequently Asked Questions available at:

- [FTA Formula Funding Under Emergency Relief Program
https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19](https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19)
 - [CARES, CRRSAA & ER Funding Requirements
https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARESER](https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARESER)
- 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 (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 transit 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 Pilot Program for TOD Planning, only comprehensive planning associated with a new fixed guideway or core capacity improvement transit capital project as defined in federal public transportation law (49 USC 5309(a)) is allowable (Section 20005(b) of MAP-21).
 - k. Under the EPD Pilot Program, only new or extended fixed guideway capital projects, small start projects, or core capacity improvement projects are eligible for funding that use a public-private partnership and will be operated and maintained by employees of an existing public transportation provider (Section 3005(b) of the FAST Act).
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 fiscal year (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).

H. Period of Performance

OMB Uniform Guidance section 200.343(b) requires nonfederal entities to liquidate all obligations incurred under the federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the federal award unless the federal awarding agency or pass-through entity authorizes an extension.

FTA Circular 5010.1E describes Period of Performance as “the time during which the recipient or subrecipient may incur new obligations to carry out the scope of work authorized under the Grant or Cooperative Agreement. FTA, or the pass-through entity, must include the start and end dates of the period of performance in the Grant or Cooperative Agreement, regardless of whether pre-award authority has been exercised. The start date is the Federal Award Date of an Award (5010.1E(I)(5)(a)(111)).”

Typically, for traditional programs an award for preventative maintenance or operating activities is not meant to be an open, ongoing award. These awards should contain no more than three apportionment fiscal years of funding. The award may be amended multiple times to account for the three fiscal years of funding allocated to the recipient.

Any request may only be for the immediately preceding year and/or current year activities.

For CARES Act, CRRSAA, and formula (5307 and 5311) programs under Emergency Relief, all expenses must be incurred on or after January 20, 2020. Grants for operating assistance and preventive maintenance using CARES Act or CRRSAA funds may cover a period of time that corresponds to the expected spend-down rate of the funds, and the agency may establish the end of the period of performance of the grant accordingly.

I. Procurement and Suspension and Debarment

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)).

IV. OTHER INFORMATION

Note: In accordance with 2 CFR section 200.519, when the auditor is using the risk-based approach for determining major programs, the auditor should consider that the Department of Health and Human Services (HHS) has identified the Medical Assistance Program (Medicaid) as a program of higher risk.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 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 three 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 US 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)).

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.513 ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES

ASSISTANCE LISTING 20.516 JOB ACCESS AND REVERSE COMMUTE PROGRAM

ASSISTANCE LISTING 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 (Assistance Listing 20.513) and the New Freedom program (Assistance Listing 20.521) into the 5310 program.

Effective with the passage of MAP-21 (October 1, 2012), 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 5310 program. This pilot program for

innovative coordinated access and mobility provides funding for efforts that improve the coordination of transportation services with nonemergency 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 nonprofit 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 (Assistance Listing 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. Current FTA circulars can be found at <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)).
 - c. For awards on or after December 27, 2020, under the Coronavirus Response and Relief Supplemental Appropriations Act 2021 (CRRSAA) or FY 2021 and prior appropriations, funds must be used for operating expenses unless the recipient has certified that it has not furloughed any employees. Funds can be used for either operating or capital expenses if the recipient has certified that it has not furloughed any employees.
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 nontraditional 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 nonprofit 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)).

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 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), US 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 three 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.

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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

FY20/FY21 Special Circumstance: COVID-19 Response and Recovery

The following additional eligibilities were extended to unobligated funding in the Urbanized Area Formula (49 USC 5307) and Formula Grants for Rural Areas (49 USC 5311) programs for emergency expenses as authorized by 49 USC 5324.

- a. Administrative leave for transit agency employees who were idled due to the coronavirus pandemic.
- b. Operating costs for meal delivery and similar non-transit uses of federally assisted vehicles.

- c. All operating and capital expenses provided at up to 100 percent federal share, at the option of the recipient, for all recipients of eligible FTA formula funds, regardless of Urbanized Area or fleet size.

Additional detail and Frequently Asked Questions available at:

- [FTA Formula Funding Under Emergency Relief Program
https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19](https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19)
- [CARES, CRRSAA & ER Funding Requirements
Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 \(COVID-19\) | FTA \(dot.gov\)](#)

1. *Activities Allowed Under 5324*

- 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)).

2. *Activities Not Allowed*

- a. Heavy maintenance, defined as work that would usually be done by a public transit agency to repair damage normally expected from seasonal or occasional events; or those that can reasonably be accommodated by a transit system's routine maintenance, emergency, or contingency program, and does not rise to the level of serious damage.
- b. Project costs for which the recipient has received funding from another source, including but not limited to insurance proceeds and FTA and other federal grants.

- c. Except for FTA-approved resilience projects, projects that change the function of the original infrastructure.
- d. Reimbursement of lost revenue due to disruptions caused by an emergency or major disaster.
- e. Project costs associated with replacement or replenishment of damaged or lost material that is not the property of the affected applicant and not incorporated into a public transportation system, such as stockpiled materials or items awaiting installation.

DEPARTMENT OF TRANSPORTATION**ASSISTANCE LISTING 20.600 STATE AND COMMUNITY HIGHWAY SAFETY****ASSISTANCE LISTING 20.601 ALCOHOL IMPAIRED DRIVING
COUNTERMEASURES INCENTIVE GRANTS I****ASSISTANCE LISTING 20.602 OCCUPANT PROTECTION INCENTIVE GRANTS****ASSISTANCE LISTING 20.609 SAFETY BELT PERFORMANCE GRANTS****ASSISTANCE LISTING 20.610 STATE TRAFFIC SAFETY INFORMATION SYSTEM
IMPROVEMENTS GRANTS****ASSISTANCE LISTING 20.611 INCENTIVE GRANT PROGRAM TO PROHIBIT
RACIAL PROFILING****ASSISTANCE LISTING 20.612 INCENTIVE GRANT PROGRAM TO INCREASE
MOTORCYCLIST SAFETY****ASSISTANCE LISTING 20.613 CHILD SAFETY AND CHILD BOOSTER SEAT
INCENTIVE GRANTS****ASSISTANCE LISTING 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), (Pub. L. No. 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, Pub. L. No. 109-59 (Section 1906). The National Priority Safety programs, which is considered one program, was authorized by the Moving Ahead for Progress in the 21st Century (Map-21 Pub. L. No. 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 Assistance Listing 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. No. 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 (Assistance Listing 20.613), 71 FR 5727 (Assistance Listing 20.611), 71 FR 5729 (Assistance Listing 20.610), 71 FR 4196 (Assistance Listing 20.609), and 78 FR 4986 (Assistance Listings 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. *Activities 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 (Assistance Listing 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 (Assistance Listing 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 (Assistance Listing 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) (Assistance Listing 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) (Assistance Listing 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 (Assistance Listing 20.600) and the National Priority Safety programs (Assistance

Listing 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 (Assistance Listing 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 (Assistance Listing 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 US 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

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

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.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.816 MARITIME ADMINISTRATION MARINE HIGHWAY GRANT PROGRAM

I. PROGRAM OBJECTIVES

The objective of the Marine Highway Grant Program (MHP) is to develop public-private partnerships and create Marine Highway Projects (services) on Designated Marine Highways. By creating a new mode of transport, the MHP creates options for shippers. Moving freight from highways and railways reduce congestion, emissions, road maintenance, increases resiliency, and provides other public benefits.

II. PROGRAM PROCEDURES

In order to be part of the MHP, a Marine Highway Project must be located on a Marine Highway Route previously designated by the Secretary of Transportation.

The Program Office accepts MHP applications twice a year on January 31st and July 31st. A Marine Highway Projects Open Season announcement is published in the *Federal Register* and it provides the dates and application procedures (<https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3066/marine-highway-project-designation-open-season-general-information-announcement.pdf>).

The secretary designates MHPs and only designated MHPs are eligible for Marine Highway grants. Only the Project Applicant or a private entity approved by the Project (sponsor) is eligible to apply.

When funds are appropriated, a Notice of Funding Opportunity will be published for Marine Highway Grants. Applications for Marine Highway Grants must be submitted via grants.gov.

Source of Governing Requirements

This program is authorized by 46 USC Chapter 55601.

Availability of Other Program Information

Additional program information is provided in the Marine Highway Final Rule <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/intermodal-systems/marine-highways/3056/final-rule-federal-register.pdf>

A list of Designated Marine Highway Routes can be found at: <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3061/marine-highway-route-descriptions-8-14-2019.pdf>

A list of the current Marine Highway Projects eligible to apply for grants can be found at <https://maritime.dot.gov/sites/marad.dot.gov/files/docs/grants-finances/marine-highways/3071/marine-highway-project-description-pages-1-27-2020.pdf>.

The Marine Highway Module of the Port Planning & Investment Toolkit was created in cooperation with the American Association of Port Authorities (AAPA). The toolkit is intended to provide US ports with a common framework and examples of best practices when planning, evaluating and funding/financing freight transportation, facility and other port-related improvement projects. The Marine Highway Module is available at https://www.maritime.dot.gov/sites/marad.dot.gov/files/2020-10/PPIT%20Marine%20Highway%20Module%20Final%20200831_ADA_wappendices.pdf.

Program related questions may be directed to Timothy Pickering, Operations Development Manager, at 202-366-0704 (direct) or by e-mail at timothy.pickering@dot.gov.

Questions related to compliance requirements may be directed to Tracey Ford, Director, MARAD, Office of Federal Assistance Education & Engagement at 202-366-0321 (direct) or by e-mail at Tracey.Ford@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	N	N	N	Y	N	Y	N	Y	N	N

A. Activities Allowed or Unallowed

1. *Activities Allowed*

Marine Highway Grants can be made for the development and expansion of port and landside infrastructure and the development and expansion of documented vessels. (46 USC 55601(b) (1) and (3)).

2. *Activities Unallowed*

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

- (1) equipment, vessels or improvements for the movement of purely bulk products,
- (2) planning efforts related to marketing studies, and
- (2) costs incurred before the execution of the grant agreement unless such costs are approved in advance by the Maritime Administration.

B. Allowable Costs/Cost Principles

Costs charged to federal funds under the MHP program must comply with the cost principles administered pursuant to the “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” found at 2 CFR Part 200, as adopted by the Department at 2 CFR Part 1201. Additionally, all applicable federal laws and regulations will apply to projects that receive Marine Highway Grants and any other requirements or restrictions on the use of federal funding.

G. Matching

The nonfederal entity must provide at least 20 percent of project costs from nonfederal sources. The nonfederal entity is required to provide a letter or other documentation, the sources of these funds. Funding sources are to be verified to determine compliance by examining actual evidence that documents the nonfederal entity’s ability to finance their cost share (loan agreement, commitment from investors, cash on balance sheet, etc.).

I. Procurement

1. *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).

Nonfederal 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 nonfederal 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 US Department of Labor, Employment Standards Administration, maintains a Davis-Bacon and Related Acts webpage (<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 nonfederal 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.)

2. *Buy American Act Compliance Requirements*

Compliance Requirements Each applicant selected for AMH grant funding must comply with the Buy American Act, 41 USC 8301-8305 (“the Act”) and the Buy American requirements in the grant agreement. These requirements prohibit grantees from using foreign construction materials or procuring foreign equipment in projects that are funded by AMH grants. The prohibition applies to

items that were purchased for and used in the project, even if the source of the funds is not federal in nature (i.e., a purchase in support of the project made by the grantee using its own funds to satisfy the program's cost share requirements). There are certain exceptions to this requirement but, under the terms of the grant agreement, a grantee must generally first obtain DOT approval before applying the exception.

Audit Objectives Determine whether the nonfederal entity complied with the Buy American Act provisions when purchasing materials for the grant.

Suggested Audit Procedures

- a. Select a sample of the nonfederal entity's procurement solicitations and award documentation to determine if the nonfederal entity included the Buy American Act provisions into all contracts and subcontracts when procuring for project construction materials to ensure compliance.

L. Reporting

1. Financial Reporting

- a. SF-270, Request for Advance or Reimbursement – Applicable
- b. SF-425, Federal Financial Report – Applicable

2. Progress Reporting and Recertification

Applicable

3. Performance Reporting

Outcome Performance Reporting Requirements

Compliance Requirements Each applicant selected for AMH grant funding must collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project. Performance indicators include formal goals or targets for a period determined by DOT. They will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the AMH. Performance reporting continues for three years after project construction is completed. For each project selected for award, DOT, with input from the grant recipients, identifies the outcome performance measures to be collected. Those measures and the reporting requirements are formalized in the agreement obligating award funds for the project.

This reporting (referred to as Outcomes Measurement Reporting) is accomplished on a quarterly basis using a template agreed upon by the grantee and MARAD.

Audit Objectives Determine whether the nonfederal entity complied with the reporting requirement, whether the information reported to DOT agrees with related information retained by the nonfederal entity and whether the project met the agreed-upon goals or targets.

Suggested Audit Procedures

- a. Review all twelve of the outcomes reports submitted by the nonfederal entity to ensure that they complied fully with the reporting requirement.
- b. Select up to 25 percent of the outcomes reports and examine the nonfederal entity's internal records to ensure that the values reflected in the outcomes reports correspond with the nonfederal entity's internal records.
- c. Review the section of the grant agreement between the nonfederal entity and MARAD that discusses outcome performance measurement. Select up to two of the measures identified and based on information in the outcomes measurement report, determine whether the project attained the agreed-upon measures.

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.823 MARITIME ADMINISTRATION – PORT INFRASTRUCTURE DEVELOPMENT PROGRAM

I. PROGRAM OBJECTIVE

Port Infrastructure Development Program (PIDP) to make grants to improve port facilities at coastal seaports.

The PIDP was established under 46 USC 50302. The statute authorizes the Department of Transportation (“Department” or “DOT”) to establish a port infrastructure development program for the improvement of port facilities. To carry out a project under this program, the Department may provide financial assistance, including grants, to port authorities or commissions or their subdivisions and agents for port and intermodal infrastructure-related projects. The Department seeks projects that will: (1) advance technology-supported safety and design efficiency improvements; (2) bring facilities to a state of good repair and improve resiliency; (3) promote efficient trade in energy resources; (4) promote exports of manufacturing, agriculture, or other goods.

II. PROGRAM PROCEDURES

Grants are awarded to public agencies on approval of applications submitted to the Maritime Administration (MARAD). MARAD monitors the progress of those projects through on-site inspections, telephone contacts, correspondence, quarterly progress and financial status and reports.

MARAD is required to perform oversight reviews and evaluations based on guidance from the Department of Transportation Guide to Financial Assistance (Effective January 1, 2020) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR parts 200, 1201.

To be selected for a PIDP discretionary grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

Eligible Projects

For the purposes of these grants, a “coastal seaport” is a seaport capable of receiving deep-draft vessels (drafting greater or equal to 20 feet) from a foreign or domestic port. Eligible projects for PIDP grants shall be located either within the boundary of a coastal seaport, or outside the boundary of a coastal seaport and directly related to port operations or to an intermodal connection to a port. Eligible projects should improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port, as well as the unloading and loading of cargo at a coastal seaport including phytosanitary facilities. Examples of potential projects include but are not limited to highway or rail infrastructure that develops or extends intermodal connectivity, intermodal facilities, marine terminal equipment, wharf construction or redevelopment, vessel alternative fueling access and distribution, fuel efficient cargo handling

equipment, freight intelligent transportation systems, digital infrastructure systems, and berth dredging incidental to construction. This program will not fund vessel construction.

Source of Governing Requirements

The PIDP Program was established under 46 USC 50302.

Availability of Other Program Information

<https://www.maritime.dot.gov/ports/port-infrastructure-development-program>

Program related questions may be directed to Timothy Pickering, Operations Development Manager, at 202-366-0704 (direct) or by e-mail at timothy.pickering@dot.gov.

Questions related to compliance requirements may be directed to Tracey Ford, Director, MARAD, Office of Federal Assistance Education & Engagement at 202-366-0321 (direct) or by e-mail at Tracey.Ford@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.”

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	N	Y	N	Y	Y	N

A. Activities Allowed or Unallowed

1. *Activities Allowed*

The PIDP Program was established under [46 USC 50302](#). The statute authorizes the Department of Transportation (“Department” or “DOT”) to establish a port infrastructure development program for the improvement of port facilities. To carry out a project under this program, the Department may provide financial assistance, including grants, to port authorities or commissions or their subdivisions and agents for port and intermodal infrastructure-related projects.

2. *Activities Unallowed*

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

- (1) Equipment, vessels or improvements for the movement of purely bulk products,
- (2) Planning efforts related to marketing studies, and
- (3) Costs incurred before the execution of the grant agreement unless such costs are approved in advance by the Maritime Administration.

B. Allowable Costs/Cost Principles

Costs charged to federal funds under the PIDP program must comply with the cost principles administered pursuant to the “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards” found at 2 CFR Part 200, as adopted by the Department at 2 CFR Part 1201.

G. Matching

The nonfederal entity must provide at least 20 percent of project costs from nonfederal sources. The nonfederal entity is required to provide a letter or other documentation, the sources of these funds. Funding sources are to be verified to determine compliance by examining actual evidence that documents the nonfederal entity’s ability to finance their cost share (loan agreement, commitment from investors, cash on balance sheet, etc.).

I. Procurement

1. *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).

Nonfederal 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 nonfederal 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 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 nonfederal 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.)

2. *Engineering and Design Services Requirements*

Compliance Requirements The nonfederal entity (recipient) shall award each contract or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and

engineering services is negotiated under the Brooks Act, 40 USC 1101-1104, or an equivalent qualifications-based requirement prescribed for or by the Recipient and approved in writing by MARAD.

Nonfederal entities shall include in their contracts subject to the Brooks Act Requirements a provision that the contractors

Audit Objectives Determine whether the nonfederal entity complied with the Brooks Acts Requirements when procuring for engineering and design services.

Suggested Audit Procedures

Select a sample of the nonfederal entity's procurement solicitations and award documentation for contracts or subcontracts for engineering and design services to determine if the nonfederal entity complied with the Brooks Act's special qualification based selection process.

3. *Buy American Act Compliance Requirements*

Compliance Requirements Each applicant selected for PIDP grant funding must comply with the Buy American Act, 41 USC 8301–8305 (“the Act”) and the Buy American requirements in the grant agreement, which implement the Buy American Act. These requirements prohibit grantees from using foreign construction materials in projects that are funded by federal grants administered by MARAD. The prohibition applies to items that were purchased for and used in the project, even if the source of the funds is not federal in nature (i.e., a purchase in support of the project made by the grantee using its own funds that will count towards its matching cost share requirement). There are certain exceptions to this requirement but, under the terms of the grant agreement, a grantee must generally first obtain DOT approval before applying the exception.

Audit Objectives Determine whether the nonfederal entity complied with the Buy American Act provisions when purchasing materials for the grant.

Suggested Audit Procedures

- a. Select a sample of the nonfederal entity's procurement solicitations and award documentation to determine if the nonfederal entity included the Buy American Act provisions into all contracts and subcontracts when procuring for project construction materials.

L. Reporting

1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Applicable
- b. *SF-425, Federal Financial Report* – Applicable

2. Progress Reporting and Recertification

Applicable

3. Performance Reporting

Outcome Performance Reporting Requirements

Compliance Requirements Each applicant selected for PIDP grant funding must collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project. Performance indicators include formal goals or targets for a period determined by DOT. They will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the PIDP. Performance reporting continues for three years after project construction is completed. For each project selected for award, DOT, with input from the grant recipients, identifies the outcome performance measures to be collected. Those measures and the reporting requirements are formalized in the agreement obligating award funds for the project.

This reporting (referred to as Outcomes Measurement Reporting) is accomplished on a quarterly basis using a template agreed upon by the grantee and MARAD.

Audit Objectives Determine whether the nonfederal entity complied with the reporting requirement, whether the information reported to DOT agrees with related information retained by the nonfederal entity and whether the project met the agreed-upon goals or targets.

Suggested Audit Procedures

- a. Review all twelve of the outcomes reports submitted by the nonfederal entity to ensure that they complied fully with the reporting requirement.
- b. Select up to 25 percent of the outcomes reports and examine the nonfederal entity's internal records to ensure that the values reflected in the outcomes reports correspond with the nonfederal entity's internal records.
- c. Review the section of the grant agreement between the nonfederal entity and MARAD that discusses outcome performance measurement. Select up to two of the measures identified and based on information in the outcomes measurement report, determine whether the project attained the agreed-upon measures.

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

M. Subrecipient Monitoring

Pass-through Entity Responsibilities. If the nonfederal entity (recipient) makes a subaward under the program award, the nonfederal entity is required to comply with the requirements on pass-through entities under two. CFR parts 200 and 1201, including 2 CFR 200.330–200.332. The entity must monitor activities of all subrecipients activities and contractors; and retain all records relevant to the award as required under 2 CFR 200.333.