

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
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Highway Planning and Construction (Federal-Aid Highway Program)

20.205	Highway Planning and Construction (Federal-Aid Highway Program)
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TIFIA Program

20.223	Transportation Infrastructure Finance and Innovation Act (TIFIA) Program
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Federal Lands Access Program

20.224	Federal Lands Access Program
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High-Speed Intercity Passenger Rail

20.319	High-Speed Rail Corridors and Intercity Passenger Rail Service – Capital Assistance Grants
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America’s Marine Highway Grants

20.816	America’s Marine Highway Grants
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Port Infrastructure Development Program

20.823 Port Infrastructure Development Program

Appalachian Development Highway System

23.003 Appalachian Development Highway System

DEPARTMENT OF COMMERCE

Economic Development

11.300 Investments for Public Works and Economic Development
Facilities

11.307 Economic Adjustment Assistance

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

Public Housing Capital Fund

14.872 Public Housing Capital Fund

Native Hawaiian Housing

14.873 Native Hawaiian Housing Block Grants

Moving to Work Demonstration Program

14.881 Moving to Work Demonstration Program

14.888 Lead-Based Capital Fund Program and (RHHCF)

14.888 Lead-Based Paint Capital Fund and Residential Health Hazards Capital Fund

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

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 \(faa.gov\)](#)) 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 \(faa.gov\)](#).

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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/airport-revenue/policies-and-procedures)).

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).

DEPARTMENT OF TRANSPORTATION

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

I. PROGRAM OBJECTIVES

The purpose of the Federal-Aid Highway Program is to assist the states in providing for construction, preservation, and improvement of highways and bridges on eligible Federal-Aid routes, (including the National Highway System (NHS) - an integrated, interconnected transportation system important to interstate commerce and travel), and for other special purpose programs and projects. This program also provides for the construction and improvement of highways in the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands. The Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Law (BIL) is a once-in-a-generation investment in infrastructure that will help grow the economy, enhance U.S. competitiveness, create jobs, and build safe, resilient, and equitable transportation future. It was determined that dividing the Highway Planning and Construction Cluster into separate compliance supplements would be more beneficial for auditing purposes. The IIJA includes additional complex requirements that would affect the single audit since each program has unique requirements. BIL provides the basis for the Federal Highway Administration (FHWA) programs and activities through September 30, 2026. It makes an investment of \$350 billion in highway programs. This includes the largest dedicated bridge investment since the construction of the Interstate Highway System. New programs under the BIL focus on key infrastructure priorities including rehabilitating bridges in critical need of repair, reducing carbon emissions, increasing system resilience, removing barriers to connecting communities, and improving mobility and access to economic opportunity. BIL also continues to focus the program on safety and performance-based investment and on accelerating project delivery through expedited environmental review and elimination of duplicate processes.

II. PROGRAM PROCEDURES

Federal-aid highway funds are generally apportioned by statutory formulas to the states and generally restricted to use on Federal-aid highways (i.e., roads open to the public and not functionally classified as local or rural minor collector roads). Exceptions to the use on Federal-aid highways include (1) planning and research activities; (2) bridge and safety improvements, which may be on any public road; (3) highway safety improvement 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, MPOs, and other political subdivisions. Funds may also be passed through such agencies, but the direct recipient retains overall stewardship responsibility.

While each project approved by FHWA may have individual categories of allowable activities, in general this program's funds may be used for the following:

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; and
27. 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., 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.

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. FHWA and Federal Transit Administration (FTA) must approve the STIP jointly.

Prior to fiscal year (FY) 2013, the Appalachian Development Highway System (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)).

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/>, [Bipartisan Infrastructure Law](#), [Legislation, Regulations and Guidance - Resources](#) | [Federal Highway Administration \(dot.gov\)](#).

III. COMPLIANCE REQUIREMENTS

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Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y

A. Activities Allowed or Unallowed

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).

ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC (40 USC 14501).

F. Equipment and Real Property Management

For equipment, States will use State procedures in accordance with 2 CFR 200.313. Subrecipients shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award in accordance with 2 CFR 1201.313.

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.

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 in accordance with a written agreement (23 CFR section 710.201(g)).

Replacement of Publicly Owned Real Property

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).

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).

G. Matching, Level of Effort, Earmarking

1. Matching

- a. A recipient's matching share for a project may be credited by FHWA- approved toll revenues used to build or improve highways, bridges, and tunnels (23 USC 120(i)).
- b. Donations of funds, materials, and services by a person or local government may be credited towards a recipient's matching share. Donated materials and services must meet the eligibility requirements of the project (23 USC 323(c)) and 2 CFR 200.306.

The value of land provided by recipients or subrecipients for highway purposes is eligible for a credit towards the non-Federal share of project costs. The value of the donated land shall not include any increase or decrease in value of donated land caused by the project. The value of donated land shall be based on the fair market value of the land, established as of the earlier of (1) the date on which the donation becomes effective, or (2) the date on which equitable title to the land vests in the State. Real property acquired with State funds and required for federally-assisted projects may be credited toward the non-Federal share of project costs (23 USC 323(b); 23 CFR section 710.507).

- c. For Transportation Enhancement (TE) projects, funds from Federal agencies (except U.S. DOT) may be credited toward the non-Federal share of the cost of a project. The value of other non-cash contributions may be credited toward the non-Federal share. The non-Federal share may be calculated on a project, multiple-project, or program-wide basis. The total cost of an individual project may be funded with up to 100 percent Federal funds; however, for a fiscal year, the ratio of Federal funds to non-Federal funds for all TE funded projects must comply with the maximum Federal share provisions in 23 USC 120(b). FHWA guidance on these provisions is available at http://www.fhwa.dot.gov/environment/transportation_enhancements/gui

[dance/.](#)

- d. For projects funded under 23 USC or 49 USC Chapter 53, any Federal funds (except for funds available under 23 USC and 49 USC) may be used to pay the non-Federal share of any transportation project that is within, adjacent to, or provides access to Federal land (23 USC 120(j)).
- e. FLTTP funds may be used to pay the non-Federal share of projects which provide access to or within Federal or Indian lands which are funded under 23 USC or 49 USC Chapter 53 (23 USC 120(k)).
- f. Any cost in excess of 20 percent of the cost of the replacement or rehabilitation of a bridge not on a Federal-aid highway that is wholly funded with State and local funds may be used to meet the matching share requirement of projects funded under 23 USC 133 (23 USC 133(f)(3)).

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

Administration of Contracts for Construction

In general, recipients and subrecipients 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), 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)).

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).

Administration of Contracts for Engineering and Design-Related Services

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)).

N. Special Tests and Provisions

1. Wage Rate Requirements

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

2. 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 recipient or subrecipient are 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.

3. 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.

4. Value Engineering

Compliance Requirements Recipients 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 Recipients 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. Recipients 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)).

Plan, specification and estimate (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.

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 \(dot.gov\)](#). 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 are 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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 20.219 RECREATIONAL TRAILS PROGRAM

I. PROGRAM OBJECTIVES

The Recreational Trails Program (RTP) was formerly part of the Highway Planning and Construction Cluster. For the 2023 Compliance Supplement, it was determined that separating the Highway Planning and Construction Cluster into separate compliance supplements would be more beneficial for auditing purposes.

The [Infrastructure Investment and Jobs Act](#) (IIJA) (Public Law 117-58), also known as the Bipartisan Infrastructure Law (BIL) includes additional complex requirements that would affect the single audit since each program has unique requirements. This compliance supplement has been updated to provide more details specific to the RTP. It removes generalized Highway funding explanations and replaces it with specific RTP definitions and requirements. The RTP provides funds to the States to develop and maintain recreational trails and trail-related facilities for both nonmotorized and motorized recreational trail uses. Funds from this program may be used for: (1) maintenance and restoration of existing trails; (2) development and rehabilitation of trailside and trailhead facilities and trail linkages; (3) purchase and lease of trail construction and maintenance equipment; (4) construction of new trails (with restrictions for new trails on Federal lands); (5) acquisition of easements or property for trails or trail corridors; (6) assessment of trail conditions for accessibility and maintenance; (7) development and dissemination of publications and operation of educational programs to promote safety and environmental protection (as those objectives relate to one or more of the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), (limited to 5 percent of a State's funds); and (8) State administrative costs related to this program (limited to 7 percent of a State's funds). Funds may not be used for: property condemnation; constructing new trails for motorized use on National Forest or Bureau of Land Management lands unless the project is consistent with resource management plans; or facilitating motorized access on otherwise nonmotorized trails. The United States Department of Transportation (USDOT) encourages States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform construction and maintenance of recreational trails under this program.

The RTP is a Federal-aid assistance program to help the States provide and maintain recreational trails for both motorized and nonmotorized recreational trail use. The program provides funds for all kinds of recreational trail uses, such as pedestrian uses (hiking, running, wheelchair use), bicycling, in-line skating, equestrian use, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles. Each State develops its own procedures to solicit projects from project sponsors, and to select projects for funding, in response to recreational trail needs within the State.

Many trails provide both a recreational and transportation purpose. RTP funds may be used on any trail which provides recreation. Using RTP funds on a trail project does not make the trail ineligible for other Federal highway funds if the trail also provides a transportation purpose.

Any project eligible under the RTP is eligible under the Transportation Alternatives (TA) Set-Aside (23 U.S.C. 133(h)) and under the Surface Transportation Block Grant Program (23 U.S.C. 133(b)(7)). Recreational trails also may be eligible under other Federal surface transportation programs, see [Pedestrian and Bicycle Funding Opportunities](#).

II. PROGRAM PROCEDURES

Federal-aid highway funds are generally apportioned by statutory formulas to the States. For the RTP, funds are apportioned as a set-aside of the TA Set-Aside from the Surface Transportation Block Grant. The funds pass through the State Department of Transportation, but most States administer the RTP through a State natural resource, parks, or grant management agency, see https://www.fhwa.dot.gov/environment/recreational_trails/rtpstate.cfm for contacts.

The BIL continued the RTP as a set-aside under the Transportation Alternatives (TA) Set-Aside. 23 U.S.C. 133(h)(5). Unless the Governor of the State opts out 30 days in advance of an apportionment for any fiscal year, an amount equal to the State's FY 2009 RTP apportionment is set aside from the State's TA Set-Aside funds for recreational trails projects. (23 U.S.C. 133(h)(5) and (6)(A)). All RTP provisions and requirements continue under 23 U.S.C. 206. See [RTP Guidance and Information](#).

For the RTP set-aside, the Governor designates the State agency or agencies to administer the program (23 U.S.C. 206(c)(1)). This remains the same agency or agencies previously designated by the Governor (for most States, a State resource agency or grant agency, or the State Department of Transportation, unless the Governor designates a new agency (23 U.S.C. 206(c)(1)). If an agency other than the State DOT administers the RTP, then the State should have (or develop) a Stewardship and Oversight Plan between the State DOT and other State agency to outline the roles and responsibilities of each State agency. Under 23 U.S.C. 133(h)(5), if continuing the RTP:

- Each State shall obligate an amount of funds reserved under 23 U.S.C. 133(h) (the TA Set-Aside) equal to the amount of the funds apportioned to the State for FY 2009 under 23 U.S.C. 104(h)(2), as in effect on the day before enactment of MAP-21, for projects relating to recreational trails under 23 U.S.C. 206. (23 U.S.C. 133(h)(5)(A)). See [BIL Funding Tables](#).
- Each State shall return 1 percent of those funds to the Secretary for the administration of RTP. (23 U.S.C. 133(h)(5)(B)).
- Each State shall comply with the provisions of the administration of the RTP under 23 U.S.C. 206, including the use of apportioned funds. (23 U.S.C. 133(h)(5)(C)). Therefore, all RTP provisions and requirements remain unchanged, including the requirement for 40 percent diverse recreational trail use, 30 percent motorized recreation, and 30 percent nonmotorized recreation. (23 U.S.C. 206(d)(3)(A)). (Section 206(d)(3)(B) provides an exemption from this requirement for States with land areas under 3,500,000 acres: Connecticut, Delaware, the District of Columbia, and Rhode Island.)

For a State to be eligible to use funds set aside for the RTP, the State must establish a State recreational trail advisory committee that represents both motorized and nonmotorized

recreational trail users, which shall meet not less often than once per fiscal year. If a State does not meet this requirement, it is not eligible to use RTP set-aside funds (23 U.S.C. 206(c)(2)).

Source of Governing Requirements

The primary sources of program requirements are 23 U.S.C. (Highways). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation). Each State shall comply with the provisions of the administration of the RTP under 23 U.S.C. 206, including the use of apportioned funds. (23 U.S.C. 133(h)(5)(C)).

Availability of Other Program Information

Federal Highway Administration (FHWA) program laws, regulations, and other general information can be found at [Legislation, Regulations and Guidance - Resources | Federal Highway Administration \(dot.gov\)](#) and [Federal Highway Administration \(dot.gov\)](#).

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. 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y

A. Activities Allowed or Unallowed

Activities allowed are listed under Program Objectives. Activities not allowed are: (1) condemnation of any kind of interest in property; (2) construction of recreational trails for motorized use on National Forest System or Bureau of Land Management lands unless designated for uses other than wilderness and consistent with agency management plans; or (3) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred. 23 U.S.C. 206(g).

F. Equipment and Real Property Management

For equipment, States will use State procedures in accordance with 2 CFR 200.313(b). Subrecipients shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award in accordance with 2 CFR 1201.313.

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

- a. RTP Federal share and flexible match and donation provisions are authorized under 23 USC 206(f) and 206(h). Under 23 USC 206(j), funds made available for any recreational trail or related projects funded under 23 USC 104(b) are to be administered as if made available under section 206. Therefore, RTP projects funded from other STBG funds under 23 USC 133(b)(7) or 133(h) are also subject to the Federal share and flexible match and donation provisions available under 23 USC 206(f) and 206(h). See [RTP Federal Share and Matching Requirements](#) for more information.
- b. FEDERAL SHARE
 - i) IN GENERAL. Subject to the other provisions of this subsection, the Federal share of the cost of a project and the Federal share of the administrative costs of a State under this section shall be determined in accordance with section 23 USC 120(b).
 - ii) FEDERAL AGENCY PROJECT SPONSOR. Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal funds toward the cost of a project, except that—

- (1) the share attributable to the Secretary of Transportation may not exceed the amount determined in accordance with section 23 U.S.C. 120(b) for the cost of a project under this section; and
 - (2) the share attributable to the Secretary and the Federal agency sponsoring the project may not exceed 95 percent of the cost of a project under this section.
- iii) USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE, Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—
 - (1) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and
 - (2) expended on a project that is eligible for assistance under this section.
- iv) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS, notwithstanding any other provision of law, funds made available under this section may be used toward the non-Federal matching share for other Federal program funds that are—
 - (1) Expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and
 - (2) Expended on a project that is eligible for assistance under this section.
- v) PROGRAMMATIC NON-FEDERAL SHARE. A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed the Federal share as determined in accordance with section 120(b).
- c. The RTP authorizes donations of funds, materials, services, or new right-of-way that are made within 18 months prior to project authorization (23 USC 206(h)(1)).

2. Level of Effort

Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

3. Earmarking

- a. The RTP legislation requires that States use 40 percent of their funds apportioned in a fiscal year for diverse recreational trail use, 30 percent for motorized recreation, and 30 percent for nonmotorized recreation. The 40-30-30 requirement applies to the on-the-ground trail projects and to the educational projects, but does not apply to the State administrative costs. The 40-30-30 requirement only applies to Federal funds apportioned through the RTP, not to funds from other sources. The 40-30-30 requirement affects each State's annual **apportionment**. A State does not need to meet the 40-30-30 minimums in each fiscal year's **obligations**, if some funds remain unobligated. This provision exempts Connecticut, Delaware, the District of Columbia, and Rhode Island from the requirements that they use 30 percent of their funds for motorized use and 30 percent of their funds for nonmotorized use. It does not exempt these States from the 40 percent diverse trail use requirement or from the requirement for both motorized and nonmotorized representation on the State Recreational Trail Advisory Committees. 23 U.S.C. 206(d)(3).
- b. RTP Administrative Funds are limited to “costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year” (23 U.S.C. 206(d)(2)(H)). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. A State cannot carry over administrative funds from Year 1 because that would increase the administrative funds available in Year 2. RTP funds obligated for administrative costs but not expended within a fiscal year must be deobligated and used for other eligible uses under 23 U.S.C. 206(d)(2)(A) through (F). (23 U.S.C. 133(h)(5)(A)).
- c. RTP Educational Funds are limited to the “development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the uses of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year” (23 U.S.C. 206(d)(2)(G)). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. RTP funds obligated for educational costs but not expended within a fiscal year must be deobligated and used for other eligible uses under 23 U.S.C. 206(d)(2)(A) through (F).

I. Procurement and Suspension and Debarment

1. In general, for RTP projects within a highway right-of-way, States 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).

2. For RTP projects not within highway rights-of-way, States must use their State procedures under 2 CFR 200.317 (23 U.S.C. 133(i)), or through the use of [qualified youth service or conservation corps](#) ([MAP-21 Section 1524](#)).

N. Special Tests and Provisions

1. Wage Rate Requirements

Compliance Requirements

See Part 4, 20.001 Wage Rate Requirements Cross-Cutting Section. Note that, under 23 U.S.C. 133(i), recreational trail projects using funds apportioned under 23 U.S.C. 104(b) are to be administered **as if they were made available to carry out 23 U.S.C. 206.** (23 U.S.C. 206(j)). Therefore, prevailing rate of wage provisions under 23 U.S.C. 113 do not apply to recreational trails projects using funds apportioned under 23 U.S.C. 104(b).

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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 Bipartisan Infrastructure Law expanded TIFIA eligibility to include capitalization of rural projects funds within SIBs, and it continued the DOT's ability to offer reduced interest rates to Rural Projects.

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 20.224 FEDERAL LANDS ACCESS PROGRAM

I. PROGRAM OBJECTIVES

The Federal Lands Access Program (FLAP) was formerly part of the Highway Planning and Construction Cluster. For the 2023 Compliance Supplement, it was determined that separating the Highway Planning and Construction Cluster in to separate compliance supplements would be more beneficial for auditing purposes. The FLAP was established in 23 U.S.C. 204 under section 1119 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) and continued under the Fixing America's Surface Transportation Act (FAST) (Pub. L. 114-94) and the Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Legislation (BIL) (Pub. L. 117-58).. The IIJA includes additional complex requirements that would affect the single audit since each program has unique requirements. This compliance supplement has been updated to provide more details specific to the FLAP. It removes generalized Highway funding explanations and replaces it with specific FLAP definitions and requirements.

The goal of the FLAP is to improve Federal Lands Access Transportation Facilities (FLATFs) located on or adjacent to, or that provide access to Federal land. The FLAP supplements State and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on providing seamless access to Federal high-use recreation sites and Federal economic generators within federally owned lands, as identified by the Secretaries of the appropriate Federal Land Management Agencies (FLMAs). The FLAP is funded by contract authority from the Highway Trust Fund and subject to obligation limitation. Funds are allocated among the States using a statutory formula based on road mileage, number of bridges, land area, and visitation. Projects are selected by a Programming Decisions Committee (PDC) established in each State. The PDC is comprised of a representative of the Federal Highway Administration (FHWA); a representative of the State Department of Transportation; and a representative of any appropriate political subdivision of the State. The PDCs request project applications through calls for projects, the frequency of which is established by the PDCs. Through these calls for projects, the PDCs develop multi-year program of projects in consultation with each applicable Federal agency.

The FLAP is designed to provide flexibility for a wide range of transportation projects in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The FLAP complements the Federal Lands Transportation Program (FLTP) in 23 U.S.C. 203. It recognizes the importance of safe access to and within Federal lands. Receipt of Access Program funding by a State and local facility owners and operators does not affect the overall responsibility for construction, maintenance, and operations of the facilities. That responsibility continues to lie on the owner or operator of the facility. The Access Program is administered by the Office of Federal Lands Highway (FLH), FHWA.

II. PROGRAM PROCEDURES

Funds made available under the FLAP shall be used on FLATFs per 23 U.S.C. 101. A FLATF is defined as "a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands, for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government". Eligible activities are:

- A. Transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, context-sensitive solutions, construction, and reconstruction of FLATFs located on or adjacent to, or that provide access to, Federal lands; and—
 - i. adjacent vehicular parking areas, including interpretive panels in or adjacent to those areas;
 - ii. acquisition of necessary scenic easements and scenic or historic sites;
 - iii. provisions for pedestrians and bicycles;
 - iv. environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;
 - v. construction and reconstruction of roadside rest areas, including sanitary and water facilities;
 - vi. contextual wayfinding markers;
 - vii. landscaping;
 - viii. cooperative mitigation of visual blight, including screening or removal; and
 - ix. other appropriate public road facilities, as determined by the Secretary;
- B. Operation and maintenance of transit facilities; and
- C. Any transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to, or that provides access to, Federal land (23 U.S.C. 204(a)(1)(A), (B), and (C)).

Regarding (B) above, "operation and maintenance of transit facilities" includes the operation of all components of a transit system, including the acquisition of public transportation vehicles. This operation and maintenance eligibility applies solely to transit facilities.

The eligibility under (C) above includes transit capital projects eligible under chapter 53 of title 49, U.S.C., that are also eligible under title 23 and that are within or adjacent to, or that provide access to, Federal lands open to the public.

The IIJA has enacted provisions regarding the use of native plant materials and minimizing runoff and heat generation for projects receiving FLAP funds. When carrying out eligible FLAP activities, consideration shall be given to using locally adapted native plant materials and designs that minimize runoff and heat generation to the maximum extent practicable (23 U.S.C. 204(a)(6)).

Under 23 U.S.C. 201(c), FLAP projects are included in the FLH Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) as part of the required statewide transportation planning process.

Source of Governing Requirements

The primary sources of program requirements are 23 USC (Highways). Implementing regulations are found in 23 CFR (Highways) addressing a range of requirements. Each State shall comply with the provisions of the administration of the FLAP under 23 USC 201, 23 USC 204, and 23 USC 120 (where applicable) as codified under Public Law 112-141, Public Law 114-94, and Public Law 117-58.

Availability of Other Program Information

FHWA program laws, regulations, and other general information can be found at <http://www.fhwa.dot.gov/>, [Bipartisan Infrastructure Law](#), [Legislation, Regulations and Guidance - Resources | Federal Highway Administration \(dot.gov\)](#) and [Office of Federal Lands - Federal Lands Access 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y

A. Activities Allowed or Unallowed

Activities allowed under FLAP are listed under 23 U.S.C. 204(a)(1) and include:

1. Transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, context-sensitive solutions, construction, and reconstruction of FLATFs located on or adjacent to, or that provide access to, Federal lands; and—
 - i. adjacent vehicular parking areas, including interpretive panels in or adjacent to those areas;
 - ii. acquisition of necessary scenic easements and scenic or historic sites;
 - iii. provisions for pedestrians and bicycles;
 - iv. environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;
 - v. construction and reconstruction of roadside rest areas, including sanitary and water facilities;
 - vi. contextual wayfinding markers;
 - vii. landscaping;
 - viii. cooperative mitigation of visual blight, including screening or removal; and
 - ix. other appropriate public road facilities, as determined by the Secretary;
2. Operation and maintenance of transit facilities; and
3. Any transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to, or that provides access to, Federal land.

Administrative fees are not eligible activities under FLAP as direct costs. If the state has an approved indirect cost allocation plan (ICAP), they can bill allowable administrative costs as an indirect charge.

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

For equipment, States will use State procedures in accordance with 2 CFR 200.313. Subrecipients shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award in accordance with 2 CFR 1201.313.

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.

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)).

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).

G. Matching, Level of Effort, Earmarking

1. Matching

Under MAP-21 and the FAST Act, FLAP required that the Federal share payable shall be in accordance with 23 U.S.C. 120. However, this changed under IIJA where the FLAP Federal share shall be "up to 100 percent" (23 U.S.C. 201(b)(7)(B)). That is, Federal funds shall be used for up to 100 percent of the total eligible cost of a project carried out under the FLAP. Therefore, depending on how the FLAP project was programmed by the PDC, it may either fall under the original Federal share requirements or follow the revised Federal share under IIJA. The FLAP project agreement will show the programmed Federal share for the project.

If a project follows the IIJA Federal share requirements outlined in 23 U.S.C. 201(b)(7)(B) then the Federal share of the cost of a project carried out under the Federal lands access program shall be up to 100 percent.

If a project follows the Federal share requirements outline in 23 USC 120 then:

The sliding scale provision may apply for States with higher percentages of Federal lands. In accordance with 23 U.S.C.120(c)(1), a list of specific activities, predominantly safety activities, are identified that can be funded at 100 percent Federal share and therefore do not require a non-Federal match. (Please note that 23 U.S.C.120(c)(1) discusses a 10 percent limitation on those safety projects that apply to funds apportioned in accordance with 23 U.S.C.104, but this limitation does not apply under the FLAP.) The PDCs may elect to leverage this funding flexibility on certain safety projects described in 23 U.S.C. 120(c)(1). Funds authorized for the Tribal Transportation Program (TTP) and the FLTP may be used to pay the non-Federal share of any project funded under title 23 or chapter 53 of title 49, United States Code, that provides access to or within Federal land or tribal land. The decision to use FLTP or TTP funds as a match resides with the FLMAs or Tribes. However, FLAP funds may NOT be used as such a match. Other Federal funds not authorized under titles 23 or 49 may also be used to pay the non-Federal share of any transportation project funded under title 23 or chapter 53 of title 49 that is within, adjacent to, or provides access to Federal land. "Soft-matches" or "in-kind matches" (e.g., donations of funds, materials, services, right-of-way acquisition, utility relocation) may be permitted from the project sponsor. A tapered match may be appropriate, where FHWA is doing the preliminary engineering and contract administration. The match requirements and commitments should be documented in the project agreement.

2 Level of Effort

Not Applicable

3. Earmarking - Not Applicable

I. Procurement and Suspension and Debarment

1. In general, recipients and subrecipients 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). 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)). Under IIJA, additional innovative acquisition methods were made available under 23 U.S.C. 201 (f).
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).

N. Special Tests and Provisions

1. Wage Rate Requirements

Compliance Requirements: The Wage Rate Requirements are applicable to construction work on projects using FLAP funds.

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

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.315 NATIONAL RAILROAD PASSENGER CORPORATION GRANTS

I. PROGRAM OBJECTIVES

The Federal Railroad Administration (FRA) executes and oversees grant agreements with the National Railroad Passenger Corporation (Amtrak) to provide Amtrak with federal funds appropriated by Congress. In conjunction with operating revenues and funds from states, local governments, and other entities, Amtrak uses federal funds for a wide range of its operating and capital activities, including a portion of its operating expenses, capital maintenance of fleet and infrastructure, capital expansion and investment programs, and capital debt repayment.

II. PROGRAM PROCEDURES

A. Background

The FAST Act (Public Law 114-94, enacted December 4, 2015), and extensions thereof, authorized \$305 billion over fiscal years 2016 to 2021 for the Department of Transportation's (DOT) surface transportation programs, including highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology and statistics programs. The FAST Act authorization includes \$8.05 billion for grants to Amtrak, composed of \$2.596 billion for the Northeast Corridor (NEC) and \$5.454 billion for the National Network as well as other requirements related to Amtrak, passenger rail, and freight rail. Annual appropriations may vary from the amounts authorized in the FAST Act for the NEC and National Network.

The Infrastructure Investment and Jobs Act (Public Law 117-58, enacted November 15, 2021) authorized \$66 billion in advanced appropriation and \$36 billion in fully authorized funding over fiscal years 2022 to 2026 for the FRA's rail improvement programs. The IIJA authorization and appropriation includes \$22 billion advanced appropriation and \$19 billion fully authorized funding for grants to Amtrak.

The FRA *Amtrak Annual Grants Management and Oversight Manual, Version 5.0 (July 2020)* meets the requirements of Subtitle B (Amtrak Reforms) of the FAST Act and Subtitle B (Amtrak Reforms) of the IIJA.

The Notice of Grant Award (NGA) includes key grant information: the Statement of Work (SOW) and Terms and Conditions. The Terms and Conditions consist of provisions derived from enacted legislation, FRA policy, federal statutes, and government-wide regulations recipients of federal awards must follow. The conditions specify report formats and frequency of reporting, payment method, prior approval requirements and also include Amtrak specific provisions. Amtrak is responsible for reviewing and understanding the financial, administrative and legal requirements outlined in the document.

Given the size and complexity of Amtrak's program and its unique funding history, FRA and Amtrak engage in a collaborative process to ensure the conditions not only align with government-wide and DOT requirements but also enable Amtrak to achieve programmatic goals and objectives.

Source of Governing Requirements

[2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#), as supplemented by the terms and conditions of the annual grant agreements.

Fixing America's Surface Transportation (FAST) Act (Section 11101 of Division A, Title XI, Subtitle A, [Public Law 114-94](#);

Consolidated Appropriations Act, 2018, [Public Law No. 115-141](#);

Consolidated Appropriations Act, 2019, [Public Law No. 116-6](#);

Further Consolidated Appropriations Act, 2020, [Public Law 116-94](#);

Coronavirus Aid, Relief, and Economic Security (CARES) Act, [Public Law 116-136](#);

Consolidated Appropriations Act, 2021, [Public Law 116-260](#);

American Rescue Plan Act (ARPA) of 2021, [Public Law 117-2](#);

Consolidated Appropriations Act, 2022, [Public Law 117-103](#);

Infrastructure Investment and Jobs Act (IIJA), Sec. 22101 and Tit. VIII of Div. J, [Public Law 117-58](#);

Consolidated Appropriation Act, 2023, [Public Law 117-328](#)

Availability of Other Program Information

FRA's *Amtrak Annual Grants Management Manual, Version 7 (September 2022)*

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	Y	N	Y

A. Activities Allowed or Unallowed

Grants to Amtrak are authorized under Sections 11101(a) and (b) of the FAST Act to fund “activities associated with the Northeast Corridor” and “activities associated with the National Network.” Congress provides further direction on the use of funds in each appropriation act, often directing Amtrak to spend specific sums on certain activities (e.g., Americans with Disabilities Act compliance or the acquisition of rolling stock). These set-asides, however, do not affect the broad eligibility of the grant funds, only the amounts spent on these specified activities. FRA has generally interpreted “activities associated with” the Northeast Corridor and National Network to mean activities that support Amtrak’s provision of intercity passenger rail. In practice, activities allowed include operating and capital costs and debt service payments. Activities unallowed include costs unrelated to intercity passenger rail service, such as costs associated with Amtrak’s ancillary service line (e.g., commuter train contract services).

B. Allowable Costs/Cost Principles

Amtrak’s grant agreement requires it to “conform with Federal guidelines or regulations and Federal cost principles for Recipients that are for-profit organizations, as set forth in the Federal Acquisition Regulation, 48 CFR Subpart 31.2, ‘Contracts with Commercial Organizations,’ in lieu of 2 CFR Part 200, Subpart E.”

G. Matching, Level of Effort, Earmarking

1. Matching-Not Applicable.

2. Level of Effort-Not Applicable

2.1 Level of Effort – *Maintenance of Effort*

Not Applicable

2.2 Level of Effort – *Supplement Not Supplant*

Not Applicable

3. Earmarking

The Appropriations Acts that direct grants be made to Amtrak and the corresponding grant agreements often include directed spending requirements, including but not limited to:

- For FY20 and previous years, Amtrak must spend no less than \$50 million and in FY21 and subsequent years, Amtrak must spend no less than \$75 million from its NEC and NN annual grants to bring Amtrak served facilities and stations into compliance with the ADA – ADA compliance is qualitatively material to Amtrak.
- Use no less than \$109,805,000 of ARPA funds for states' PRIIA Section 212 capital payments – PRIIA 212 funds are quantitatively and qualitatively material.

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

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

Amtrak's grant agreements have some qualitatively material special provisions, including but not limited to:

1. Use and Reporting of Overtime for Agreement Employees

Compliance Requirements As required by the Appropriations Acts, Amtrak will not use any of the funds provided for overtime costs in excess of \$35,000 for any individual employee; provided, however, Amtrak's president may waive the \$35,000 limit when the president determines that the limit poses a risk to the safety and operational efficiency of the system. Amtrak must submit a copy of the summary of all overtime payments incurred for the calendar year and the three prior calendar years to the House and Senate Committees on Appropriations as required by the Act. Such summary must include the total number of employees that received waivers and the total overtime payments Amtrak paid to those employees receiving waivers for each month of calendar year and the three prior calendar years.

Audit Objectives Determine whether Amtrak is in compliance with the Appropriations Act in regard to overtime costs.

Suggested Audit Procedures

- a. If overtime payments were incurred, verify that Amtrak submitted a copy of the Overtime Cost Report of all overtime payments incurred for the calendar year and the three prior calendar years to the House and Senate Committees on Appropriations.
- b. Verify that waivers were obtained for employees receiving overtime in excess of \$35,000.

2. Preventing and Reporting on Employee Furloughs

Compliance Requirements ARPA requires Amtrak to recall and manage employees furloughed on or after October 1, 2020, as a result of efforts to prevent, prepare for, and respond to coronavirus. As required by Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant, Amtrak is required to submit the weekly total number and cumulative total number of coronavirus furloughed employees recalled, the number of coronavirus furloughed employees still furloughed, and the weekly total number and cumulative total number of employees furloughed for reasons not related to coronavirus. If at any point the total number of employees furloughed as a result of efforts to prevent, prepare for, and respond to coronavirus reaches zero, Amtrak may submit the report monthly instead of weekly.

Audit Objectives Determine whether Amtrak is in compliance with the reporting requirements of Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant.

Suggested Audit Procedures

- a. Select a sample of weekly furloughed employee reports to ensure Amtrak is accurately submitting reports, in compliance with the reporting requirements of Section 12.b of Attachment 1 of the FY21 National Network grant and Section 9.b of Attachment 1 of the FY21 Northeast Corridor grant.

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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 20.327 RAILROAD CROSSING ELIMINATION

I. PROGRAM OBJECTIVES

The purpose of the Railroad Crossing Elimination (RCE) Program is to fund highway-rail or pathway-rail grade crossing improvement projects that focus on improving the safety and mobility of people and goods. The RCE Program provides a federal funding opportunity to improve American rail infrastructure, to enhance rail safety, improve the health and safety of communities, eliminate highway-rail and pathway-rail grade crossings that are frequently blocked by trains, and reduce the impacts that freight movement and railroad operations may have on underserved communities. Discretionary grant awards, funded through the RCE Program, will support projects that improve safety, economic strength and global competitiveness, equity, and climate and sustainability, consistent with the U.S. Department of Transportation's (DOT) strategic goals.

II. PROGRAM PROCEDURES

The RCE Program will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, and to effectively coordinate with State, local, Tribal, and territorial government partners.

Federal Railroad Administration (FRA) will make awards for projects through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term "grant" is used throughout this document and is intended to reference funding awarded through a grant agreement or a cooperative agreement. Funds will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: <https://www.fra.dot.gov/eLib/Details/L19057>. The standard terms and conditions are subject to revision.

Source of Governing Requirements

Section 22305 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, November 15, 2021), codified at 49 U.S.C. 22909, authorizes the RCE Program. The RCE Program is funded through the advanced appropriation in Division J of IIJA.

The 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards applies to this program, as supplemented by the terms and conditions of the annual grant agreements.

Availability of Other Program Information

Additional information concerning this Program is available at <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/railroad-crossing-elimination-grant-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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	N	Y	N	Y	N	N	N	N

A. Activities Allowed or Unallowed

The following Highway-Rail or Pathway-Rail Grade Crossing Improvement Projects that focus on improving the safety and mobility of people and goods are eligible for funding under 49 U.S.C. 22909(d).

1. Grade separation or closure, including through the use of a bridge, embankment, tunnel, or combination thereof;

2. Track relocation;
3. The improvement or installation of protective devices, signals, signs, or other measures to improve safety, provided that such activities are related to a separation or relocation project described in paragraph (1) or (2);
4. Other means to improve the safety and mobility of people and goods at highway-rail grade crossings (including technological solutions);
5. A group of related projects described in paragraphs (1) through (4) that would collectively improve the mobility of people and goods; or
6. The planning, environmental review, and design of an eligible project described in paragraphs (1) through (5).

G. Matching, Level of Effort, Earmarking

1. Matching

The Federal share of total costs for RCE Program projects shall not exceed 80 percent. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, and environmental analyses. Additionally, in preparing estimates of total project costs, applicants may use FRA's cost estimate guidance, "Capital Cost Estimating: Guidance for Project Sponsors," which is available at: <https://www.fra.dot.gov/Page/P0926>.

The minimum 20 percent non-Federal share may be comprised of public sector funding (e.g., state, or local) or private sector funding. FRA will not consider any Federal financial assistance or any non-Federal funds already expended (or otherwise encumbered) prior to the award period of performance start date toward the matching requirement, unless compliant with 2 CFR part 200 (i.e., approved pre-agreement costs). In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306. In addition, applicants may count costs incurred for Preliminary Engineering associated with Highway-Rail Grade Crossing and Pathway-Rail Grade Crossing Improvement Projects as part of the total project costs. Such costs are eligible as non-Federal share or for reimbursement, even if they were incurred before project selection for award, consistent with 49 U.S.C. 22909(g). Such costs must have been incurred no earlier than November 15, 2021 and must be otherwise compliant with 2 CFR part 200 and the requirements of this RCE Program.

2. Level of Effort

Not Applicable

3. Earmarking

Not Applicable

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 BUSES AND BUS FACILITIES FORMULA, COMPETITIVE, AND LOW OR NO EMISSIONS PROGRAMS (Buses and Bus Facilities Program)****I. PROGRAM OBJECTIVES***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 ten years. In addition, the Pilot Program for Transit-Oriented Development (TOD) Planning provides funding for corridor-level comprehensive planning and site-specific 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.

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.

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. The 5337(f) Competitive Grants for Rail Vehicle

Replacement is a set-aside discretionary grant program to assist in funding the replacement of rail rolling stock.

Buses & Bus Facilities Program (Section 5339)

The Buses and Bus Facilities Program, contains three subprograms, the Buses and Bus Facilities Formula Program (5339(a)), the Buses and Bus Facilities Competitive Program (5339(b)), and the Low or No Emissions Grant Program (5339(c)). The objective of the Buses and Bus Facilities Formula program (5339 program) is to provide financial assistance to states and transit agencies through a statutory formula to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities. The Buses and Bus Facilities Competitive Grant Program provides funding to states and transit agencies through a competitive process to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities. The Low or No Emissions Grant Program provides funding to states and transit agencies through a competitive process for the purchase or lease of zero-emission and low-emission transit buses as well as acquisition, construction, and leasing of required supporting facilities.

II. PROGRAM PROCEDURES

Federal transit law under Chapter 53 of Title 49, US Code, authorizes the Urbanized Area Formula program (49 USC 5307), 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))), the State of Good Repair Grants program (49 USC 5337) and the Competitive Grants for Rail Vehicle Replacement Program (49 USC 5337(f); Bipartisan Infrastructure Law Pub. L. No. 117-58 §30016). 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. No. 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/fy22-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 and the Bipartisan Infrastructure Law Section 30016 (Public Law 117-58 also known as the Infrastructure Investment and Jobs Act) authorizes the Competitive Rail Vehicle Replacement Grant Program (49 U.S.C. 5337(f)). Program regulations are at 49 CFR parts 601 through 665.

Availability of Other Program Information

Additional information is available on the FTA website at [Grant Programs | FTA \(dot.gov\)](https://www.fta.dot.gov/grant-programs)

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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, operating assistance is eligible for all urbanized areas under 200,000 in population, and certain urbanized areas with a population greater than 200,000 in population under limited exceptions are eligible, as well as planning expenses are eligible 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>
 - CARES, CRRSAA & Emergency Relief Funding Requirements
<https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARES>
- c. 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)).
- d. Under the 5337 program, the only capital projects authorized are projects that develop and 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)).
- e. Under the 5339 program, the only capital projects authorized are bus, bus facilities, and bus-related equipment projects (49 USC 5339(a)).
- f. Under the 5339 program, workforce development (49 USC 5314(b)).
- g. 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)).
- h. 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)).
- i. Under the Pilot Program for TOD Planning, only corridor-level comprehensive planning and site-specific 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).
 - j. 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 (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)).

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.509 FORMULA GRANTS FOR RURAL AREAS AND TRIBAL TRANSIT PROGRAM

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 competitive components. Federally recognized Tribes are eligible direct recipients and apply directly to FTA. Under the competitive program, funds are made available annually on a competitive basis through a Notice of Funding Opportunity (NOFO). 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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:

- (1) FTA Formula Funding Under Emergency Relief Program
<https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19>
- (2) 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 20.532 PASSENGER FERRY GRANT PROGRAM, ELECTRIC OR LOW-EMITTING FERRY PILOT PROGRAM, AND FERRY SERVICE FOR RURAL COMMUNITIES PROGRAM

I. PROGRAM OBJECTIVES

This program is comprised of several subprograms as follows:

Passenger Ferry Grant Program (49 U.S.C. 5307(h))

The objective of the Passenger Ferry Grant Program is to assist in financing of capital projects for the purchase, construction, replacement, or rehabilitation of ferries, terminals, and related facilities and equipment.

The Electric and Low-Emitting Ferry Pilot Program (IIJA§71102)

The objective of the Electric and Low-Emitting Ferry Pilot Program is to assist in financing of capital projects for the purchase of electric or low-emitting ferry vessels that reduce emissions by using alternative fuels or on-board energy storage systems and related charging infrastructure to reduce emissions or produce zero onboard emissions under normal operation.

The Ferry Service for Rural Communities Program (IIJA§71103)

The objective of the Ferry Service for Rural Communities Program is to assist in financing of capital, operating and planning assistance to ensure basic essential ferry service is provided to rural areas.

II. PROGRAM PROCEDURES

Federal transit law under Chapter 53 of Title 49, US Code, authorizes the Passenger Ferry Grant program (49 USC 5307(h), the Electric or Low-Emitting Ferry Pilot Program (IIJA§71102) and the Ferry Service for Rural Communities (IIJA§71103).

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.

Source of Governing Requirements

The Passenger Ferry Grant Program is authorized by 49 U.S.C. Section 5307(h).

The Electric or Low-Emitting Ferry Pilot Program is authorized by Division J of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58).

The Ferry Service for Rural Communities is authorized by Division J of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58).

Availability of Other Program Information

Additional information is available on the FTA website at [Grant Programs | FTA \(dot.gov\)](https://www.fta.dot.gov/Grant-Programs)

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	Y	N	Y	N	Y	Y	N	N	Y	N

A. Activities Allowed or Unallowed

1. Activities Allowed

- a. Under the Passenger Ferry Program (5307(h)): Capital activities, as defined in 49 U.S.C. 5307(h) provides competitive funding for projects that support passenger ferry systems in urbanized areas, such as ferry vessels, terminals, and related infrastructure.
- b. Under the Electric or Low-Emitting Ferry Pilot Program (IIJA § 71102): Capital activities, as defined in Division J of the Bipartisan Infrastructure Law for the purchase of electric or low-emitting ferry vessels that reduce emissions by using alternative fuels or on-board energy storage systems and related charging infrastructure to reduce emissions or produce zero onboard emissions under normal operation.
- c. Under the Rural Ferry Program (IIJA§71103): Capital, operating, and planning activities, as defined in 49 U.S.C. 5311, for rural ferry service that operated a regular schedule anytime during the five-year period ending March 1, 2020.

2. Activities Unallowed

- a. Under the Passenger Ferry Grant and Electric or Low-Emitting Ferry Pilot Program: Any project under the Passenger Ferry or Low-Emitting Ferry programs that does not include the purchase, construction, replacement, or rehabilitation of ferries, terminals, related infrastructure, or related equipment is not eligible.

H. Period of Performance

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)).”

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)).

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.533 ALL STATIONS ACCESSIBILITY PROGRAM

I. PROGRAM OBJECTIVES

The objective of the All Stations Accessibility Program (ASAP) is to assist in financing capital and planning projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems for people with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities for passenger use that meet or exceed the new construction standards of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.).

II. PROGRAM PROCEDURES

Division J of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58) established the All Stations Accessibility Program (ASAP).

Grants are awarded to public agencies on approval of applications for specific 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.

Source of Governing Requirements

The All Stations Accessibility Program is authorized by Division J of the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58).

Availability of Other Program Information

Additional information is available on the FTA website at [Grant Programs | 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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. Capital activities, as defined in Division J of the Bipartisan Infrastructure Law to repair, improve, modify, retrofit, or relocate infrastructure of stations or facilities for passenger use. Eligible costs are limited to project costs associated with the accessibility improvements. Capital projects are limited to those that, upon completion, will meet or exceed the standards for new construction under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), as incorporated into Appendix A of 49 CFR part 37.
- b. Planning activities, as defined in Division J of the Bipartisan Infrastructure Law to develop or modify a plan for pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to stations or facilities for passenger use projects, or programs of projects in an eligible area.

2. Activities Unallowed

- a. Capital activities that are not associated with the accessibility improvement of a public transportation station or facility that was already constructed or where construction began prior to January 25, 1992, or for commuter rail stations already constructed or where construction began prior to October 7, 1991, that were not identified as key stations and remain not accessible to or usable by persons with disabilities, including wheelchair users.

Preventative maintenance or repair activities for elements of existing accessible stations or passenger facilities that are otherwise subject to the ongoing maintenance requirements under 49 CFR § 37.161(a) are not eligible.

- b. Operating assistance is not eligible.

- c. Bus-related activities are not eligible.
- d. All rolling stock and vehicle procurement activities are ineligible.

H. Period of Performance

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)).”

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)).

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.534 COMMUNITY PROJECT FUNDING CONGRESSIONALLY DIRECTED SPENDING

I. PROGRAM OBJECTIVES

Community Project Funding, also known as Congressionally Directed Spending, is made available to assist in financing Transit Infrastructure Grant projects for the purposes and amounts specified by Congress in accordance with Public Transportation Law (Chapter 53 of Title 49 of the United States Code).

II. PROGRAM PROCEDURES

Community Project Funding (CPF) is appropriated and allocated from the General Fund for Transit Infrastructure Grants on an annual basis and at the discretion of Congress. The total funding amounts are specified in the Consolidated Appropriations Act corresponding with each fiscal year, if applicable, and the list of projects are found in the accompanying Joint Explanatory Statement (JES).

Grants for Community Project Funding projects are awarded through Federal Transit Administration's (FTA's) Transit Award Management System, FTA's electronic grant award system, after consultation with FTA's Regional offices. FTA monitors the progress of 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 in accordance with 49 USC 5307(f)(2) at least every three years. 49 U.S.C. §5338 provides the statutory basis for FTA's oversight responsibilities and the funding available to undertake oversight activities. In addition, 49 U.S.C. §5338 authorizes FTA to provide technical assistance to correct deficiencies found during oversight reviews and to promote overall recipient compliance. The most recent FTA Triennial Review Workshop Workbook provides guidance to FTA staff and recipients on the conduct of 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.

Source of Governing Requirements

Community Projects are carried out in accordance with Public Transportation Law (Chapter 53 of Title 49 of the United States Code). The total funding amounts are specified in the Consolidated Appropriations Act corresponding with each fiscal year, if applicable, and the list of projects are found in the accompanying Joint Explanatory Statement (JES).

Availability of Other Program Information

Additional information is available on the FTA website at <https://www.transit.dot.gov/grant-programs/community-project-fundingcongressionally-directed-spending>.

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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. For the specified projects, activities that are eligible under FTA’s authorizing statutes in Federal law (Chapter 53 of Title 49, United States Code) are eligible for reimbursement.

2. *Activities Unallowed*

- a. Any activity ineligible under Chapter 53 of Title 49 of the United States Code, as well as any activity not included as part of the specified projects.

H. Period of Performance

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)).”

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)).

DEPARTMENT OF TRANSPORTATION**ASSISTANCE LISTING 20.600 STATE AND COMMUNITY HIGHWAY SAFETY****ASSISTANCE LISTING 20.611 INCENTIVE GRANT PROGRAM TO PROHIBIT
RACIAL PROFILING****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 crashes, 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.

Source of Governing Requirements

Programs are authorized under 23 USC Chapter 4 (Highway Safety), Pub. L. No. 109-59, Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, and the Bipartisan Infrastructure Law, Pub. L. No. 117-58. 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 have been published in the [Federal Register Vol. 83, No. 17](#) (Assistance Listings 20.600, 20.611, 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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and 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;
- c. Travel for out-of-state individuals benefiting the host state's highway safety program.
- 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.

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.
- 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.
- d. 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. The federal costs for planning and administration under State and Community Highway Safety (Assistance Listing 20.600) shall not exceed 5 percent of the funds received by the Indian nations (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 20.708 NATURAL GAS DISTRIBUTION INFRASTRUCTURE SAFETY AND MODERNIZATION GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Infrastructure Investment and Jobs Act (IIJA) provides funding for Pipeline And Hazardous Materials Safety Administration's (PHMSA) Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant Program. NGDISM grant program funds are available for municipalities or community-owned utilities (not including for-profit entities) to repair, rehabilitate, or replace natural gas distribution pipeline system or portions thereof, or to acquire equipment to reduce incidents and fatalities and avoid economic losses.

The program seeks to reduce the risk profile of the existing pipeline systems including pipe prone to leakage, the potential of pipeline project creating jobs, the potential for benefitting disadvantaged rural and urban communities, and to realize positive economic impact or growth.

II. PROGRAM PROCEDURES

On November 15, 2021 the President signed the Bipartisan Infrastructure Law which is the most significant investment in our nation's infrastructure in more than half a century. This includes the Pipeline and Hazardous Materials Safety Administrations (PHMSA) first ever Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant program. The legislation designated \$200 million a year in grant funding with a total of \$1 billion in grant funding over the next five years.

The grant funding is to be made available to a municipality or community owned utility (not including for-profit entities) to repair, rehabilitate, or replace its natural gas distribution pipeline systems or portions thereof or to acquire equipment to (1) reduce incidents and fatalities and (2) to avoid economic losses.

Source of Governing Requirements

The program was authorized by IIJA (Pub. L. 117-58), Statute 1443.

Availability of Other Program Information

PHMSA maintains a website with current program information: [Natural Gas Distribution Infrastructure Safety and Modernization Grants | PHMSA \(dot.gov\)](https://www.phmsa.dot.gov/natural-gas-distribution-infrastructure-safety-and-modernization-grants)

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	N	N	Y	N	Y	N	N

A. Activities Allowed or Unallowed

1. Activities Allowed

- a. PHMSA’s NGDISM grants will provide funding to municipality- or community-owned utilities (Not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline system or portions thereof, or to acquire equipment needed to (a) reduce incidents and fatalities and
- b. avoid economic losses. Activities allowed will be specified in the grant agreement. Examples of allowable projects: purchase of leak detection equipment, installation of new pipelines or repair and replace leak-prone pipelines.

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

3. Special Reporting

Not Applicable.

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L of the 2023 for audit guidance.

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.816 MARITIME ADMINISTRATION MARINE HIGHWAY GRANT PROGRAM

I. PROGRAM OBJECTIVES

The Secretary, in accordance with 46 U.S.C. 55601, established a marine highway transportation grant program to implement projects or components of designated Marine Highway Projects that provide a coordinated and capable alternative to landside transportation or that promote marine highway transportation. The primary goal of the Marine Highway Grant Program (MHP) is to expand the use of the nation's navigable waters to relieve landside congestion, reduce air emissions, and generate other public benefits by increasing the efficiency of the surface transportation system, and Marine Highway Grants will be awarded to further this purpose.

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

The Marine Highway Program Office (Program Office) follows a three-step approach when supporting investment opportunities for marine highway transportation services. The first step is designation of a Marine Highway Route by the Secretary. The Department accepts Marine Highway Route Designation requests at any time from Route Sponsors. Once a Route is designated, the second step is designation as a Marine Highway Project by the Secretary. Marine Highway Projects represent concepts for new services or expansions of existing marine highway services on designated Marine Highway Routes that use documented vessels and mitigate landside congestion or promote marine highway transportation. United States Maritime Administration (MARAD) announces by notice in the Federal Register open season periods to allow Project Applicants opportunities to submit Marine Highway Project Designation applications. A Project Applicant must receive a Project Designation to then become eligible for Marine Highway Grant funding for that Project, the third step referenced above. Marine Highway Grant funding is provided to successful public and private sector applicants as funds are appropriated by Congress.

The MHP is funded by annual appropriations and in FY 2023 additional funding is provided to fund grant awards under the Infrastructure Investment and Jobs Act. MHP will be implementing priorities set forth in Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, coordinate effectively with State, local, Tribal, and territorial governments, and support the Administration's Justice40 Initiative goal that 40% of the overall benefits from Federal investments in climate and clean energy flow to disadvantaged communities.

Source of Governing Requirements

This program is authorized by [46 USC Chapter 55601](#).

[Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* \(86 FR 64335\)](#)

[Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* \(86 FR 7619\)](#)

[Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* \(86 FR 7009\)](#)

[Executive Order 14025, *Worker Organizing and Empowerment* \(86 FR 22829\)](#)

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://cms.marad.dot.gov/grants-finances/marine-highways/route-designation-one-pagers>

A list of the current Marine Highway Projects eligible to apply for grants can be found at

<https://www.maritime.dot.gov/grants-finances/marine-highways/project-designation>

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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	Y	N	Y	N	Y	N	Y

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 MARAD.

B. Allowable Costs/Cost Principles

Costs charged to federal funds under the MHP 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.

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 Program* -Not Applicable.
- c. *SF-425, Federal Financial Report* – Applicable

2. Performance Reporting – Applicable

- a. **Title of Report:** Quarterly Project Progress Report and Recertification
PRA Number: OMB Control No. 2133-0541
Reporting Cycle: The Quarterly Project Progress Reports and Recertifications are to be signed and submitted on or before the 20th day of the first month of each calendar year quarter and until the end of the budget period, the Recipient shall submit to MARAD a Quarterly Project Progress Report and Recertification in the format and with the content described in exhibit section. If the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.
Authoritative Requirement: See Grant Agreement General Terms and Conditions Article 7 Progress and Financial Reporting and requirements of 2 CFR 200.329 (b).
Blank Copy of the Report: A link to the blank copy of the reporting template is not available. The auditor must request this information from MARAD or the non-federal entity.
Report Instructions: See Exhibit Section of the Grant Agreement. A link to the instructions is not available.
Report Corrections: Reports corrections are to be resubmitted timely to the MARAD contacts listed in the Grant Agreement. In addition, per 2 CFR 200.334 Retention of requirement for records, the non-federal entity is required to maintain all records. The auditor should request copies of the report including those reports resubmitted by the non-federal entity when reviewing this information.

Key Line Item(s)

- (1) Exhibit H, 6 (f) Project Cost- Information reported is consistent with financial records obtained in the non-federal entity's financial management system.

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**

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

DEPARTMENT OF TRANSPORTATION

ASSISTANCE LISTING 20.823 MARITIME ADMINISTRATION – PORT INFRASTRUCTURE DEVELOPMENT PROGRAM

I. PROGRAM OBJECTIVE

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

PIDP was established under 46 USC 50302 and amended under the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Pub. L. 117-81, December 27, 2021), and is now codified at 46 U.S.C. 54301. The statute authorizes the Department of Transportation (“Department” or “DOT”) to establish a port and intermodal improvement program to improve the safety, efficiency, or reliability of the movement of goods through ports and intermodal connections to ports. 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.

II. PROGRAM PROCEDURES

PIDP is implementing priorities of Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335). These priorities requires the program to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, coordinate effectively with State, local, Tribal, and territorial governments, and support the Administration’s Justice40 Initiative goal that 40% of the overall benefits from Federal investments in climate and clean energy flow to disadvantaged communities.

PIDP eligible projects must be located either within the boundary of a port, or outside the boundary of a port and directly related to port operations or to an intermodal connection to a port. These projects can be either capital and planning projects, or emission projects.

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.

Source of Governing Requirements

PIDP Program was established under
[46 USC 54301: Port infrastructure development program \(house.gov\)](#)

[Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act \(86 FR 64335\)](#)

[Executive Order 14008, Tackling the Climate Crisis at Home and Abroad \(86 FR 7619\)](#)

[Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government \(86 FR 7009\)](#)

[Executive Order 14025, Worker Organizing and Empowerment \(86 FR 22829\)](#)

Availability of Other Program Information

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

Program related questions may be directed to Robert Bouchard, Director, Office of Port Infrastructure Development, at 202-366-5076 (direct) or by e-mail at Robert.Bouchard@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	Y
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	N	N	N	Y	N	Y	Y	Y

A. Activities Allowed or Unallowed**1. *Activities Allowed***

- a. Capital projects used to improve the safety, efficiency, or reliability of: (1) the loading and unloading of goods at the port, such as for marine terminal equipment; (2) the movement of goods into, out of, around, or within a port, such as for highway or rail infrastructure, (3) intermodal facilities, freight intelligent transportation systems, and digital infrastructure systems; operational improvements, including projects to improve port resilience; or environmental and emissions mitigation measures, including projects for— port electrification or electrification master planning; harbor craft or equipment replacements or retrofits; development of port or terminal microgrids; provision of idling reduction infrastructure; purchase of cargo handling equipment and related infrastructure; worker training to support electrification technology; installation of port bunkering facilities from ocean-going vessels for fuels; electric vehicle charging or hydrogen refueling infrastructure for drayage and medium or heavy-duty trucks and locomotives that service the port and related grid upgrades; or other related port activities, including charging infrastructure, electric rubber-tired gantry cranes, and anti-idling technologies.
- b. Planning projects used for developmental phase activities (such as planning, feasibility analysis, revenue forecasting, environmental review, permitting, and preliminary engineering and design work), in addition to port planning activities such as development of master plans, electrification master planning, and planning to address a port's ability to withstand probable occurrence or recurrence of an emergency or major disaster; however, DOT seeks projects that propose to move into the construction phase within the grant's period of performance.
- c. Projects used for emission mitigation measures that provide for the use of shore power for vessels to which sections 46 USC 3507 and 46 USC 3508 apply, if such grants meet the other requirements set out in this notice.

2. *Activities Unallowed*

- a. In general, federal funds cannot be expended for:
 - (1) Construction, reconstruction, recondition, recording, or purchase of a vessel, unless the Secretary determines such vessel is necessary for a project that possess environmental and emission measures (See FY 2022 NOFO - Section C.3.a.(IV)) and is not already receiving assistance under 46 U.S.C. chapter 537. In addition, the program will not fund any project within a small shipyard (as defined in 46 U.S.C. 54101).

- (2) Improvements to Federally owned facilities are ineligible under the FY 2022 funding.
- (3) As required by Section 3501 of the NDAA, this program will not fund the purchase or installation of fully automated cargo handling equipment or the installation of terminal infrastructure that is designed for fully automated cargo handling equipment, if the Secretary determined such equipment would result in a net loss of good jobs or reduction in the quality of jobs within the port or port terminal.
- (4) Improvements for the movement of purely bulk products,
- (5) Planning efforts related to marketing studies,
- (6) Costs incurred before the execution of the grant agreement unless such costs are approved in advance.

B. Allowable Costs/Cost Principles

Costs charged to federal funds under PIDP 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.

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 Program* -Not Applicable.
- c. *SF-425, Federal Financial Report* – Applicable

2. Performance Reporting –

- a. **Title of Report:** Quarterly Project Progress Report and Recertifications
PRA Number: OMB Control No. 2133-0552
Reporting Cycle: The Quarterly Project Progress Reports and Recertifications are to be signed and submitted on or before the 20th day of the first month of each calendar year quarter and until the end of the budget period, the Recipient shall submit to MARAD a Quarterly Project Progress Report and Recertification in the format and with the content described in exhibit section. If

the date of this agreement is in the final month of a calendar year quarter, then the Recipient shall submit the first Quarterly Project Progress Report and Recertification in the second calendar year quarter that begins after the date of this agreement.

Authoritative Requirement: See Grant Agreement General Terms and Conditions Article 6 General Reporting and requirements of 2 CFR 200.329 (b).

Blank Copy of the Report: A link to the blank copy of the reporting template is not available. The auditor must request this information from MARAD or the non-federal entity.

Report Instructions See Exhibit Section of the Grant Agreement. No link can be provided.

Report Corrections: Reports corrections are to be resubmitted timely to the MARAD contacts listed in the Grant Agreement. In addition, per 2 CFR 200.334 Retention of requirement for records, the non-federal entity is required to maintain all records. The auditor should request copies of the report including those reports resubmitted by the non-federal entity when reviewing this information.

Key Line Item(s)

(1) Exhibit D, 2 (f) Project Cost- Information reported is consistent with financial records obtained in the non-federal entity's financial management system.

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.

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

DEPARTMENT OF TRANSPORTATION**ASSISTANCE LISTING 23.003 APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM****I. PROGRAM OBJECTIVES**

The purpose of the Federal-Aid Highway Program is to assist the states in providing for construction, preservation, and improvement of highways and bridges on eligible Federal-Aid routes, (including the National Highway System (NHS) - an integrated, interconnected transportation system important to interstate commerce and travel), and for other special purpose programs and projects. This program also provides for the construction and improvement of highways in the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands. The Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Law (BIL) is a once-in-a-generation investment in infrastructure that will help grow the economy, enhance U.S. competitiveness, create jobs, and build safe, resilient, and equitable transportation future. It was determined that dividing the Highway Planning and Construction Cluster into separate compliance supplements would be more beneficial for auditing purposes. The IIJA includes additional complex requirements that would affect the single audit since each program has unique requirements. BIL provides the basis for the Federal Highway Administration (FHWA) programs and activities through September 30, 2026. It makes an investment of \$350 billion in highway programs. This includes the largest dedicated bridge investment since the construction of the Interstate Highway System. New programs under the BIL focus on key infrastructure priorities including rehabilitating bridges in critical need of repair, reducing carbon emissions, increasing system resilience, removing barriers to connecting communities, and improving mobility and access to economic opportunity. BIL also continues to focus the program on safety and performance-based investment and on accelerating project delivery through expedited environmental review and elimination of duplicate processes.

II. PROGRAM PROCEDURES

Prior to fiscal year (FY) 2013, the Appalachian Development Highway System (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)).

Source of Governing Requirements

The primary sources of program requirements for highway construction projects are 23 USC (Highways). Implementing regulations are found in 23 CFR (Highways) and 49 CFR (Transportation). The ADHS program requirements are found in 40 U.S.C. 14322, 14523, 14524, and 14525.

Availability of Other Program Information

FHWA program laws, regulations, and other general information can be found at <http://www.fhwa.dot.gov/>, [Bipartisan Infrastructure Law](#), [Legislation, Regulations and Guidance - Resources](#) | Federal Highway Administration (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 and Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement and Suspension and Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	N	Y	Y	N	Y	N	N	Y	Y

A. Activities Allowed or Unallowed

ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC. The project will improve, on a continuing rather than a temporary basis, the opportunities for employment, the average level of income, or the economic and social

development of the area served by the project. A project must implement the Development Plan of the Appalachian State in which it is located, and it must have been identified by the state in its annual Strategy Statement (Sections 225 and 303). ARC grants that are administered for the Commission by a basic federal agency must also meet the applicable requirements of that agency.

F. Equipment and Real Property Management

For equipment, States will use State procedures in accordance with 2 CFR 200.313.

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 funds. Tribal governments are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR Part 200.

Replacement of Publicly Owned Real Property

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).

G. Matching, Level of Effort, Earmarking

1. Matching

- a. In general, the Commission expects a recipient of an ARC grant to contribute its own resources to a project to the extent it is able to do so and to seek additional non-ARC funding assistance in a diligent manner. The Appalachian Regional Development Act imposes matching requirements on ARC grants. In addition to these statutory match requirements, however, the individual Appalachian States set forth in their Annual Strategy Statements their own cost sharing and matching requirements, which may be more restrictive than the statutory limits in a particular instance.
- b. Generally, ARC grants are limited to 50% of project costs. For projects in ARC-designated distressed counties, this limit can be raised to 80%. For projects in ARC-designated at-risk counties, this limit can be raised to 70%. For projects located in ARC-designated competitive counties (those that are approaching national economic norms), funding is usually limited to 30% of project costs. ARC funding is usually not available for projects located in ARC-designated attainment counties (those that have attained or exceeded national economic norms).

- c. Local Development District (LDD) administrative grants may be funded at 50%, wherever the LDD is physically located, except that a state may request that the ARC participation be raised to as much as 75% for an LDD that includes a distressed county or counties within its service area and 70% for an LDD that includes an at-risk county or counties within its service area.
- d. The restrictions on projects in competitive and attainment counties may be waived by the Commission upon a showing of (1) the existence of a significant pocket of distress in the part of the county in which the project is carried out or (2) the existence of a significant potential benefit from the project in one or more areas of the region outside the designated economically strong county in which the project is carried out. Waiver requests are made by the State Alternate representing the potential grantee, and such requests must be approved by the Federal Co- Chairman and State Alternates.
- e. Special matching rules apply to projects that are carried out in more than one county. If there is a distressed county in a project and at least half the counties are distressed, the project may be funded at up to 80% of project costs. If at least half the counties are in some combination of distressed and at-risk, ARC assistance can be the higher of 70% of project costs or the average percentage applicable to the various counties in the project. If fewer than half the counties are distressed, ARC assistance can be the higher of 50% of project costs or the average percentage applicable to the various counties in the project. If there is no competitive county or attainment county in a project, and at least half the counties are at-risk, the project may be funded at up to 70% of project costs. All other projects shall be funded at the average percentage applicable to the various counties in the project; except that the portion of a project, which is attributable to an attainment county in a project not including a distressed county, shall be considered ineligible for ARC assistance and may not be considered for matching purposes.
- f. A limited amount of discretionary authority is made available to the Commission under Section 302 of the ARDA (40 U.S.C. 14321). Annually, the Commission allocates this authority to the Co-Chairmen's Committee and among the Appalachian States. The authority can be used to raise the statutory limits on ARC funding in projects implementing special regional initiatives approved by the Commission. It can also be used, with the approval of the Co-Chairmen's Committee, in instances of emergency economic distress. The discretionary authority, however, cannot be used to eliminate the funding restrictions on projects in competitive and attainment counties.
- g. Donations of funds, materials, and services by a person or local government may be credited towards a recipient's matching share.

Donated materials and services must meet the eligibility requirements of the project 2 CFR 200.306.

- h. The value of land provided by recipients or subrecipients for highway purposes is eligible for a credit towards the non-Federal share of project costs. The value of the donated land shall not include any increase or decrease in value of donated land caused by the project. The value of donated land shall be based on the fair market value of the land, established as of the earlier of (1) the date on which the donation becomes effective, or (2) the date on which equitable title to the land vests in the State.

2. Level of Effort – Not Applicable

3. Earmarking – Not Applicable

I. Procurement and Suspension and Debarment

Administration of Contracts for Construction

In general, recipients and subrecipients 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 that some other method is more cost effective or that an emergency exists.

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.

N. Special Tests and Provisions

1. Wage Rate Requirements

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

2. 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 recipient or subrecipient are 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.

3. 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.

4. Value Engineering

Compliance Requirements Recipients are required to establish a value engineering (VE) program and ensure that a VE analysis is performed on all applicable highway construction 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 Recipients 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. Recipients 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)).

Plan, specification and estimate (PS&E) packages for projects 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.