

APPLICABILITY

Recipients with FTA-funded real property

DETAILED EXPLANATION FOR REVIEWER

When real property is no longer needed for any transit purpose, the recipient must request and follow disposition instructions from FTA. Real property includes land, affixed land improvements, structures, and appurtenances. The instructions must provide for one of the following alternatives:

1. Retain title after compensating FTA
2. Sell the property and compensate FTA
3. Transfer title to the Federal awarding agency or to a third party designated/approved by the FTA

INDICATORS OF COMPLIANCE

- a. *Was prior approval obtained from FTA with the method of disposition for real property?*
- b. *If required, was FTA reimbursed for its share of disposition proceeds?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's real property disposal request for FTA's approval of the disposition method. Review FTA's approval to verify the approved disposition method, along with FTA's instructions on disposition proceeds. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Review records documenting how fair market value was arrived at for any real property not sold competitively. Obtain documentation of proceeds received and verify that it was used as approved by FTA. Confirm with FTA, receipt of funds, as applicable.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not obtain prior FTA approval for the method of disposition of FTA-funded real property.

DEFICIENCY CODE SCC6-1: Failure to obtain FTA approval for real property disposal

SUGGESTED CORRECTIVE ACTION: The recipient must submit information on the method of disposition of real property for which it did not obtain prior FTA approval along with procedures for obtaining FTA approval on the method of any future disposition of FTA-funded real property.

The recipient is deficient if it did not reimburse FTA for its share of disposition proceeds.

DEFICIENCY CODE SCC6-2: Failure to reimburse FTA after disposal of real property

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE

49 USC § 5334(h)

When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the

Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of [49 USC § 5334(h)].

2 CFR 200.311 Real property

(d) *Disposition.* When real property is no longer needed for the originally authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) Retain title after compensating the Federal agency. When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal agency. When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that result in the highest possible return.

(3) Transfer title to the Federal agency or to a third party designated/approved by the Federal agency. When a recipient or subrecipient transfers title to the property to a Federal agency or third party designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

FTA Circular 5010.1E, Ch. IV, Section 2. Real Property, (j) Real Estate Disposition, (2) Disposition

(b) Disposition Methods. "When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. The allowable disposition methods are as follows:

1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original Award multiplied by the best obtainable price, minus reasonable sales costs. If the property has never been used for the appropriate purposes of the Award, the recipient shall sell the property and pay FTA the greater of FTA's share of the fair market value or the entire amount of Federal assistance spent on that property.

2 Offset. Sell the property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA in accordance with 2 CFR § 200.311.

3 Sell and Use Proceeds for Other Capital Projects Under an Award. Sell the property and use the proceeds to reduce the gross cost of another FTA eligible capital transit project under an Award. See 49 U.S.C. § 5334(h)(4). The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the amount of those restricted funds as those proceeds are applied to one or more FTA approved capital projects under Awards. FTA must approve the application of the proceeds to a subsequent capital

Award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction. Examples of future FTA eligible capital transit projects include: the acquisition of buses, facilities, and equipment.

4 Sell and Keep Proceeds in an Open Award. If the Award is still open, the recipient may sell the excess property and apply the proceeds to the original cost of the total real property purchased for that Award. This may reduce the Federal share of the Award.

5 Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in the Federal Register to transfer property (land or equipment) to a public agency with no repayment to FTA. This is a competitive process, and there is no guarantee that a particular public agency will be awarded the excess property. See 49 U.S.C. § 5334(h)(1) – (h)(3).

6 Transfer to Another Award. Transfer the property to another FTA eligible Award. The Federal interest continues.

7 Retain Title with Buyout. Compensate FTA by computing the percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The recipient must document the basis for value determination; typically, this documentation is an appraisal or market survey. Alternatively, the recipient may pay FTA the straight-line depreciated value of improvements plus land value, if this is greater than FTA's share of the fair market value.

8 Sales Procedure. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.

SCC7. Does the recipient have flood insurance for any FTA-funded buildings located in areas that have been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?

BASIC REQUIREMENT

Recipients must have flood insurance under the National Flood Insurance Act of 1968 for federally-funded buildings located in areas that have been identified as having special flood hazards.

APPLICABILITY

All Recipients

DETAILED EXPLANATION FOR REVIEWER

Section 102 of the Flood Disaster Protection Act of 1973 (FDPA) prohibits the Federal government from providing funds for acquisition or construction of buildings located in a special flood hazard area (100-year flood zone) unless the owner of the property first has obtained flood insurance. Specifically, Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building unless the recipient has first acquired flood insurance under FDPA to cover the buildings constructed or repaired with Federal funds. The Federal Emergency Management Agency (FEMA) has defined "building" in its regulations implementing the National Flood Insurance Program (NFIP) as "a building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site." In addition, where structures are both above and below ground, the flood insurance requirement applies where at least 51 percent of the cash value of the structure, less land value, is above ground.

Section 401a of the FDPA of 1973 states flood insurance shall not be required on any state-owned property that is covered under a state policy of self-insurance satisfactory to the Director of the Federal Emergency Management Agency. The following states have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be

exempt from the requirement of flood insurance on state-owned structures and their contents because they have in effect adequate state plans of self-insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

Self-insurance may not be used to satisfy flood insurance requirements for non-state entities or states that have not been exempted from the requirements by the Federal Insurance Administrator.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have procedures for identifying which federally assisted buildings are located in a special flood hazard area and determining sufficient levels of insurance?*
- b. *Does the recipient have procedures for identifying and determining sufficient levels of insurance for federally assisted equipment located in non-federally assisted buildings that are located in a special flood hazard area?*
- c. *Does the recipient have any plans to or did it use Federal funds to construct buildings or purchase equipment for a building located in an area that has been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?*
- d. *Has the recipient complied with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C §4012a (a), with respect to any project involving construction, or an acquisition?*

INSTRUCTIONS FOR REVIEWER

All Recipients are required to have procedures to determine if federal assisted buildings are located in special flood hazard areas and procedures for determining sufficient levels of insurance and periodically re-evaluate to determine if federally assisted buildings have been moved into a special hazard area by FEMA. The recipient's procedures do not have to be written.

Obtain and review evidence from the recipient that it has procedures to determine which federally assisted buildings are located in a special flood hazard area and procedures for determining sufficient levels of insurance. If the recipient does not have written procedures, discuss the procedures with the recipient and document the process in the working papers under indicators of compliance a and b. Obtain and review evidence (i.e. FEMA Maps Reviewed, Reports prepared by the recipient, Internal Memos) that the recipient has followed the process established to identify and periodically re-evaluate if federally assisted buildings and assets are in a special flood hazard area.

If the recipient has federally assisted property: Obtain and review evidence of flood insurance to verify that the recipient purchased the required insurance for any property it or the region identified as needing such. Obtain information on the value of the property to determine that the coverage is in an amount at least equal to the Federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. If the property is covered under a group plan or a statewide insurance pool, review to verify what property of the recipient is specifically covered. If property is covered by a blanket flood insurance policy that does not identify specific buildings and building contents, obtain flood

insurance purchase methodology from the recipient that demonstrates that they have adequate coverage for all buildings and contents located in special flood hazard areas.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not have, or has inadequate, flood insurance for any FTA-funded facility in a special flood hazard area.

DEFICIENCY CODE SCC7-1: Insufficient flood insurance

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation of adequate flood insurance protection.

The recipient is deficient if it does not have adequate or has not implemented procedures for identifying which federally assisted buildings are located in a special flood hazard area and for determining sufficient levels of insurance.

DEFICIENCY CODE SCC7-2: Inadequate procedures for identifying federally assisted buildings in special flood hazard area and for determining sufficient levels of insurance.

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit procedures to identify federally-assisted buildings that are located in a special flood hazard area. In addition, the recipient must submit, a list of those federally-assisted buildings that are located in a special flood hazard area, along with documentation of adequate insurance protection.

GOVERNING DIRECTIVE

U.S.C. §4012a (a) Amount and term of coverage

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

FTA Circular 5010.1E, Ch IV, Section 4.p. Insurance

(1) **Flood Insurance.** The Recipient agrees to have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a (a), for any building located in a special flood hazard area (100-year flood zone), before receiving Federal assistance to acquire, construct, reconstruct, repair, or improve that building. Additionally, the building and its contents must be covered by flood insurance in an amount at least equal to the Federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. Current limits are \$500,000 per building and \$500,000 for the contents of each building.

FTA has defined building and contents coverage in its Emergency Relief rule, 49 CFR part 602, as follows:

- (a) **Building.** For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are

built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

- (b) Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment, and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973

- (1) State-owned property. Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

Flood Disaster Protection Act of 1973, Section 3(a)(4)

Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein...

49 CFR 75.14, – State exempt under this part

The following States have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

SCC8. Does the recipient maintain control over FTA-funded equipment?

BASIC REQUIREMENT

Recipients must maintain control over FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

APPLICABILITY

Recipients that operate or lease FTA-funded equipment

DETAILED EXPLANATION FOR REVIEWER

Equipment means an article of nonexpendable, tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$5,000. Equipment includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service.

State recipients may use, manage, and dispose of equipment acquired under an FTA award according to state law and procedures. States are free to adopt the procedures established in 2 CFR part 200 or use them as a guide in developing state procedures for equipment use, management, and disposition, but they are not required to do so. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA-funded equipment.

Non-state recipients are required to follow the equipment management requirements of 2 CFR 200.313 Equipment, including maintaining property records, conducting and reconciling a physical inventory, and developing an adequate property control system.

Equipment use for non-federally assisted programs or projects is permissible in some cases. Non-transit use of FTA assisted property is acceptable so long as it is incidental, does not interfere with transit use (transit has priority), all costs are accounted for, and income generated is retained by the recipient for transit use.

Recipients may lease FTA-funded assets to others for use in transit service. Prior FTA concurrence is required. If the lease is described in the award application, FTA approval of the award constitutes approval of the lease. When FTA-funded assets are leased to a private operator, the lease should contain certain provisions.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Biennial Inventory

A recipient should notify its FTA Regional Office of any delays in conducting a physical inventory of its federally funded assets due to local public health emergency conditions, including stay-at-home restrictions. If the physical inventory could not be carried out in compliance with local public health restrictions, the recipient should have documented the reason for the delay in its files. The recipient should have conducted the physical inventory once permissible under local public health restrictions and deemed safe to do so, and have notified the FTA Regional Office once it was completed.

INDICATORS OF COMPLIANCE

For state recipients, answer indicators (a), (e), (f) and (g). For all other recipients, answer indicators (b)-(g).

- a. *How does the state maintain control over FTA-funded equipment for services it operates or leases?*

- b. *Do non-state recipient equipment records provide the required information?*

Equipment Inventory Required Data Elements	Comment
Description	-
Identification number or serial number	-
Title holder	-
Federal Award Information Number (FAIN)	-
Acquisition date	-
Acquisition cost	-
Federal participation percentage	-
Location	-

Equipment Inventory Required Data Elements	Comment
Useful life	-
Use and condition	-
Disposition data, including date of disposal and sale price, or method used to determine fair market value	-

c. *When did the non-state recipient conduct physical inventories?*

i. *Were the inventories performed at least every two years?*

ii. *If not, did the recipient delay conducting its biennial physical inventory due to the COVID-19 public health emergency?*

1. *If yes, did the recipient notify FTA and document the reason for the delay in its files?*

2. *If yes, did the recipient notify FTA once its biennial physical inventory was completed?*

iii. *Was there a reconciliation of the results?*

d. *What procedures and systems does the non-state recipient have in place to prevent loss, damage, or theft of FTA-funded equipment?*

e. *Does the recipient have incidental use of any FTA-funded equipment? If yes,*

i. *Was FTA prior approval obtained?*

ii. *Does the incidental use interfere with public transit operations?*

iii. Are costs related to the incidental use fully accounted for?

iv. Are revenues used to support public transportation?

- f. Has the recipient received written approval from FTA for leases of FTA-funded assets to private operators? (Does not include transit operating contractors.)*
- g. Do the leases to private operators contain the required provisions? (Does not include transit operating contractors.)*

Required Lease Provisions	Comments
The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement.	-
The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement.	-
The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property.	-
The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.	-

INSTRUCTIONS FOR REVIEWER

For states: Review the state's procedures for maintaining control over FTA-funded equipment to understand how it manages, uses, and disposes of it. Potential procedures include: equipment inventories, physical inventories, insurance, disposition procedures, and security measures. Note data elements tracked in an equipment inventory, if maintained. Note frequency of physical inventories, if conducted. Review insurance or self-insurance on FTA-funded equipment to confirm that the Federal interest is protected. Review security procedures to ascertain how the state stores, tracks, and secures

the FTA-funded assets to deter against the loss and/or damage of such assets. Review procedures for equipment disposition to ensure that equipment is not disposed of before the end of useful life, the Federal interest is protected, and the maximum return is sought. Obtain and review equipment records to determine that the state is following its procedures in using, managing, and disposing of the FTA-funded assets.

For recipients that are not states: Obtain from the recipient equipment records that provide the required data elements. Review the records to verify that the required data elements listed in the table in indicator "b" are identified for each FTA-funded asset. It is acceptable if no single report shows all the required data as long as the recipient can demonstrate that the records are complete.

Obtain and review the recipient's inventory control procedures, if written, to determine how the recipient tracks inventory and reconciles to its equipment records. Onsite obtain and review the recipient's annual or biennial inventory to ensure the inventory was completed and the results were reconciled to the equipment records. In a tour of facilities, sample an item purchased prior to when the physical inventory was conducted to confirm that it is listed in the equipment records. Using each fiscal year's single audit obtained from the Federal Audit Clearinghouse (FAC) in the Financial Management and Capacity area, ascertain if there are any findings related to the recipient's compliance with the inventory control and if they were resolved.

Review the recipient's equipment management and security procedures to ascertain how the recipient stores, tracks, and secures the FTA-funded assets to deter against the loss and/or damage of such assets. Review insurance coverage to confirm that the Federal interest is protected. During the site visit, discuss any losses to FTA-funded equipment and how the losses were investigated or documented. Tour facilities to ascertain how the recipient has implemented its control procedures to secure the FTA-funded asset to prevent loss, damage, or theft.

Consult with the FTA regional office regarding any approvals for incidental use of FTA-funded equipment. Review single audits for evidence of revenue resulting from incidental use. During the site visit, confirm with the recipient any incidental uses of FTA-funded equipment. If incidental use occurs, confirm with the recipient how it ensures that the incidental use does not interfere with public transportation services, costs associated with incidental uses are fully accounted for, and that revenues are used for public transportation. Review a sample of three incidences of incidental use to determine the time and date of the uses and whether the uses potentially interfered with public transportation services. For those three incidents, review accounting records documenting that costs associated with incidental uses are fully accounted for and that revenues are used for public transportation.

For all recipients: Confer with the FTA regional office on whether it has approved any leases between the recipient and private operators. Obtain FTA approvals for the leases. Obtain a listing of private operators that lease federally-funded equipment. Compare the list of private operators who lease federally-funded equipment with the approvals obtained from the regional office. For any discrepancies between the FTA record of approval and the recipient's records, follow up with the recipient for documentation of approval. For any lease not approved by FTA, review to ensure that it includes the required provisions.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Inquire of the FTA regional office if the recipient notified it that it would not be able to meet the biennial inventory requirement. If such notification was made, request if the recipient also notified the FTA regional office once the biennial inventory was completed. If no information is available from FTA, and the recipient had not conducted the biennial inventory as required, discuss with the recipient if the delay was due to the COVID-19 public health emergency. If there was, confirm that the recipient notified the FTA regional office and documented the reason for the delay. If the recipient was able to eventually conduct the physical inventory, inquire if it notified the FTA regional office when it was completed.

POTENTIAL DEFICIENCY DETERMINATIONS

The **state recipient** is deficient if it does not have procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC8-1: No state procedures for FTA-funded equipment

SUGGESTED CORRECTIVE ACTION: The state must submit evidence that state procedures for maintaining control over FTA-funded equipment.

The **state recipient** is deficient if it does not follow its procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC8-2: State equipment procedures not followed

SUGGESTED CORRECTIVE ACTION: The state must submit evidence that it is implementing its procedures for maintaining control over FTA-funded equipment.

The **non-state recipient** is deficient if its FTA-funded equipment records are missing required data elements.

DEFICIENCY CODE SCC8-3: Inadequate equipment records

SUGGESTED CORRECTIVE ACTION: The recipient must submit updated equipment records which include all of the required information.

The **non-state recipient** is deficient if it does not inventory equipment biennially or reconcile the results.

DEFICIENCY CODE SCC8-4: No evidence of physical inventory or reconciliation

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that it has performed the physical inventory of FTA-funded equipment and has reconciled them to records, along with procedures for doing so.

The **non-state recipient** is deficient if it has not investigated and documented any loss, damage, or theft of FTA-funded equipment.

DEFICIENCY CODE SCC8-5: Inadequate property control system

SUGGESTED CORRECTIVE ACTION: The recipient must submit an adequate control system to prevent future loss, damage, or theft of FTA-funded equipment.

The recipient is deficient if it does not have FTA concurrence for leasing FTA-funded assets to private operators.

DEFICIENCY CODE SCC8-6: No FTA concurrence for leases

SUGGESTED CORRECTIVE ACTION: The recipient must obtain approval for leases of FTA-funded assets to private operators and submit procedures for obtaining FTA approval before leasing FTA-funded assets to private operators.

The recipient is deficient if the lease for FTA-funded assets to private operators does not include the required provisions.

DEFICIENCY CODE SCC8-7: Lease missing required provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit amended leases of FTA-funded assets to private operators that include the required terms and conditions, along with procedures for including the terms and conditions in future leases.

The recipient is deficient if has incidental use of FTA-funded equipment but did not receive prior FTA approval; the incidental use interferes with public transit operations; costs related to incidental use are not fully accounted for; or revenue are not used to support public transportation.

DEFICIENCY CODE SCC8-8: Incidental use of FTA-funded equipment deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must obtain permission from the FTA regional office for the incidental use of the FTA-funded equipment.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit procedures for ensuring that the incidental use of the FTA-funded equipment does not interfere with public transportation services.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit procedures for fully accounting for costs associated with the incidental use of FTA-funded equipment.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit procedures for using revenues gained from incidental use of FTA-funded equipment for public transportation.

GOVERNING DIRECTIVE

Section 5309(c)(1)(B)(ii).

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that... the applicant has, or will have... satisfactory continuing control over the use of the equipment or facilities.

Section 5307(d)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient... submits... certification for that fiscal year that the recipient... has or will have satisfactory continuing control over the use of equipment and facilities.

2 CFR 200.313 Equipment

(b) *General.* A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, cost of the property, the percentage of Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated.

FTA Circular 5010.1E, Ch. IV, Section 4e(3). Incidental Use

Incidental Use. Any incidental use of federally assisted property will not exceed that permitted under applicable federal laws, regulations, and directives. Incidental use requires prior FTA approval except when it involves coordinated public transit human services transportation. Consult your FTA regional or metropolitan office prior to incorporating incidental use activities in projects. See section 2 of this chapter, above, for further information related to incidental use for real property whose principles apply to equipment. Incidental use will be permitted if:

- a) The incidental use does not interfere with the recipient's project or public transportation operations;
- b) The recipient fully recaptures all costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;
- c) The recipient uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation; and
- d) Private entities pay all applicable excise taxes on fuel.

FTA Circular 5010.1E, Ch. IV, Section 4l(4) – (5). Leases

(4) The Recipient as Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA's written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA's Charter Service regulations, School Bus Operations regulations, and with requirements below:

(5) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:

1. The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement;
2. The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property; and
3. The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

Frequently Asked Questions (FAQ) from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19) AD20

A recipient should notify its FTA Regional Office of any delays in conducting a physical inventory of its federally funded assets due to local public health emergency conditions, including stay-at-home restrictions. If the physical inventory cannot be carried out in compliance with local public health restrictions, the recipient should document the reason for the delay in its files. The recipient should conduct the physical inventory once permissible under local public health restrictions and deemed safe to do so, and notify the FTA Regional Office upon completion.

SCC9. Was equipment withdrawn from use and disposed of in accordance with 49 U.S.C. 5334(h) and 2 CFR 200 and FTA requirements?

BASIC REQUIREMENT

Recipients must use and dispose of FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

APPLICABILITY

Recipients that disposed of FTA-funded equipment

DETAILED EXPLANATION FOR REVIEWER

All recipients: Recipients must request disposition instructions from FTA when equipment is no longer needed for the original project or program or for other activities currently or previously supported. FTA is also entitled to its share of the remaining Federal interest of equipment with a fair market value over \$5,000. The Federal interest is the greater of the FTA share of the straight-line depreciated value (based on years or miles for rolling stock) or the sale price.

Equipment with a unit market value of \$5,000 or less that has reached the end of its useful life requires no FTA reimbursement. Equipment that has reached the end of its useful life and for which the unit market value exceeds \$5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the net proceeds of the sale and may have specific requirements based on the timing of the sale as set forth in 49 USC § 5334(h)(4)(B). Disposition of equipment before the end of its useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C. 5010.1E Appendix E, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The recipient should have a mechanism to adjust the service life of any FTA-funded vehicle for significant time (i.e., six months) or mileage not spent in regular transit use. The recipient may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

The IIJA changed the provisions for transit asset disposition 49 USC § 5334(h)(4)(B). For rolling stock, equipment and aggregate supplies that have met their minimum useful life and were (1) purchased with federal assistance, (2) with a fair market value of more than \$5,000, and (3) sold after November 15, 2021, the recipient may retain a portion of the funds, \$5,000 plus the percentage of its local share in the original award. Any remaining federal share must be returned to FTA. The federal share of the sales proceeds cannot be retained for public transportation use. The remaining federal share must be returned to FTA using pay.gov.

NOTE: Section 49 USC § 5334(h) does not apply to insurance proceeds or state and non-state recipients addressed these transactions prior to the provisions taking effect. Therefore, state recipients continue to follow their own equipment management procedures for insurance proceeds and non-state recipients continue to adhere to the requirement of FTA Circular 5010.

The net income from asset sales, uses, or leases (including lease renewals) under 49 USC § 5334(h) shall be used by the recipient to reduce the gross project cost of other FTA funded capital projects. If the

recipient or a subrecipient receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the recipient must:

- Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
- Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

INDICATORS OF COMPLIANCE

- a. *Was FTA notified when equipment with remaining useful life was withdrawn from project use or applied to a different use?*
- b. *Did the recipient obtain prior FTA approval for disposition of equipment removed from service before the end of its useful life?*
- c. *Did the recipient dispose of rolling stock or equipment with a unit fair market value of more than \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, purchased using Federal financial assistance? If no, skip to Indicator d*
 - o *If yes, was FTA reimbursed for its share of proceeds via pay.gov?*
- d. *Did the recipient receive insurance proceeds?*
 - o *If yes, were the proceeds applied to the cost of replacing the damaged or destroyed project equipment or rolling stock?*
 - o *If the recipient did not apply proceeds to the cost of replacing the damaged or destroyed project equipment or rolling stock, was FTA reimbursed its interest in the asset?*

INSTRUCTIONS FOR REVIEWER

For all recipients: Confer with the regional office regarding requests for disposition of equipment, returned proceeds, and like-kind exchanges since the last Comprehensive Review. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Obtain verification of proceeds transferred back to FTA (i.e., pay.gov). Review records documenting how fair market value was arrived at for any equipment not sold competitively.