

# 1. LEGAL

## PURPOSE OF THIS REVIEW AREA

The recipient must promptly notify the Federal Transit Administration (FTA) of legal matters and additionally notify the U.S. DOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

## QUESTIONS TO BE EXAMINED

1. Since the last Comprehensive Review, did the recipient promptly notify FTA of any legal matters that may affect the FTA?
2. Since the last Comprehensive Review, did the recipient promptly notify the FTA and U.S. DOT OIG of any instances relating to false claims under the False Claims Act or fraud?
3. Since the last Comprehensive Review, did the recipient and any subrecipients use only non-appropriated funds for any lobbying activities and did each file the required disclosure form?

## INFORMATION NEEDED FROM RECIPIENT

### Recipient Information Request

- List of litigations, breaches, defaults, disputes or instances where the Federal government was named as a party to litigation or a legal disagreement since the last review
- Listing of false claims received or criminal violation committed related to Federal assistance since the last review
- Details of lobbying activities conducted and/or awards received based on such activities

### Recipient Follow-up

- Office of Management and Budget (OMB) Standard Form LLL

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## L1. Since the last Comprehensive Review did the recipient promptly notify FTA of any legal matters that may affect the FTA?

### BASIC REQUIREMENT

A recipient must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

### APPLICABILITY

All recipients

### EXPLANATION

The recipient is required to promptly notify the FTA Chief Counsel or FTA Regional Counsel for the region in which the recipient is located of any current or prospective legal matters that may affect the Federal government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the Federal government as a party to litigation or a legal disagreement in any forum for any reason.

### INDICATORS OF COMPLIANCE

- a. *Were there any legal matters including major disputes, breaches, defaults, or litigation where the Federal government was named as a party or FTA-funded assets could be affected? If no, move to the next question.*

- b. *If yes, did the recipient notify FTA's Chief Counsel or its Regional Counsel?*

#### **DETERMINING COMPLIANCE**

Review information from the recipient and regional office, and information based on internet research of the recipient for documentation of legal matters including major disputes, breaches, defaults, or litigation where the Federal government was named as a party, or FTA-funded assets could be affected since the last Comprehensive Review.

#### **POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it did not notify FTA's Chief Counsel or Regional Counsel about a major dispute, breach, default, litigation, or any instances when the Federal government was named as a party to litigation or a legal disagreement.

DEFICIENCY CODE L1-1: Failure to notify FTA of pending litigation

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the regional office that it has submitted the applicable information to the FTA Chief Counsel or Regional Counsel along with a process to ensure timely notification in the future.

#### **GOVERNING DIRECTIVE**

FTA Master Agreement, Section 39

"If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of Federal laws, regulations, and requirements."

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## **L2. Since the last Comprehensive Review did the recipient promptly notify the FTA and U.S. DOT OIG of any instances relating to false claims under the False Claims Act or fraud?**

#### **BASIC REQUIREMENT**

A recipient must promptly notify the FTA and the U.S. DOT OIG of any instances relating to false claims under the False Claims Act or fraud.

#### **APPLICABILITY**

All recipients

#### **EXPLANATION**

Recipients must promptly notify the U.S. DOT Inspector General and the FTA Chief Counsel or regional counsel for the region in which the recipient is located if the recipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the recipient, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance.

#### **INDICATORS OF COMPLIANCE**

- a. *Since the last Comprehensive Review, did the recipient have evidence that one of its principals, officials, employees, agents, or third party participants submitted a false claim or committed a*

*criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal assistance? If no, move to the next question.*

- b. *If yes, did the recipient notify FTA's Chief Counsel or its Regional Counsel and the U.S. DOT OIG?*

#### **DETERMINING COMPLIANCE**

Review information from the recipient and regional office. Conduct an internet search of the recipient for documentation/evidence of false claims or criminal violations related to Federal assistance since the last Comprehensive Review.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it did not notify FTA's Chief Counsel or Regional Counsel and the U.S. DOT OIG about an applicable false claim, civil or criminal crime, fraud, conflict of interest, bribery, gratuity, or similar misconduct related to its Federal assistance.

DEFICIENCY CODE L2-1: False claim, civil or criminal crime not reported

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has submitted applicable information to the FTA Chief Counsel or Regional Counsel and the U.S. DOT OIG and a process to ensure timely notification in the future.

#### **GOVERNING DIRECTIVE**

*FTA Master Agreement, Section 39(3)*

"If the Recipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Recipient, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. §3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the region in which the Recipient is located."

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### **L3. Since the last Comprehensive Review, did the recipient and any subrecipients use only non-appropriated funds for any lobbying activities and did each file the required disclosure form?**

#### **BASIC REQUIREMENT**

Recipients and subrecipients are prohibited from using appropriated Federal funds to lobby for Federal funds. If the recipient or subrecipient uses local funds to lobby for transit purposes, recipients and subrecipients must file OMB Standard Form LLL quarterly.

#### **APPLICABILITY**

All recipients

#### **EXPLANATION**

The use of Federal funds for lobbying is prohibited. If lobbying services for transit purposes are procured with non-Federal funds, the recipient is required to submit the disclosure form, Office of Management and Budget (OMB) Standard Form LLL (Rev.7-97).

Activities that are required to be disclosed include the hiring of any third party (i.e., lobbyist) for the purpose of attempting to influence a covered Federal action. Disclosure is not required for activities performed by the recipient's own regularly employed officers and employees. Covered Federal action means any of the following Federal actions:

- Awarding of any Federal contract or subcontract exceeding \$100,000
- Making of any Federal grant or subgrant exceeding \$100,000
- Making of any Federal loan exceeding \$150,000
- Entering into any Federal cooperative agreement exceeding \$100,000
- Extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement exceeding \$100,000 or of a loan exceeding \$150,000

Updates to OMB Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a “covered Federal action”
- A change in the person(s) attempting to influence such action
- A change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

Any subrecipient, contractor, and subcontractor in receipt of an award or contract exceeding \$100,000 is subject to the same disclosure and updating requirements as the recipient. The recipient must obtain an OMB Standard Form LLL or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should be reported.

#### **INDICATORS OF COMPLIANCE**

- Did the recipient pay for lobbying activities since the last Comprehensive Review? If no, move to indicator c.*
- What types of funds were used to pay for lobbying activities? If local funds were used, were the proper disclosures made?*
- How does the recipient ensure that its subrecipients, contractors, and subcontractors comply with the lobbying requirements?*
- If any contractor or subcontractor confirms lobbying activities, did the recipient obtain the OMB Standard Form LLL and provide it to the FTA?*

#### **DETERMINING COMPLIANCE**

Confirm with the FTA’s Office of Chief Counsel if the recipient conducts lobbying activities and obtain copies of OMB Standard Form LLL to determine if disclosures were made quarterly when required. In preparing the ECHO sample, review payments made for professional services not clearly described in financial reports to determine if Federal funds may have been used for lobbying or if required disclosures were not submitted for local funds used in such activities.

Review award agreements in Transit Award Management System (TrAMS) to determine if the recipient issued any contracts and/or subrecipient agreements in excess of \$100,000 during the review period. If none, move to the next review section.

During the review of procurement files, determine whether or not a subrecipient, contractor or subcontractor was certified to conduct lobbying activities.

Review subrecipient grant applications to assess source of local match funds and whether Federal funds are used as Federal match.

On a select basis, and during a visit to the subrecipient, follow up on whether Federal funds were obtained through a paid lobbyist.

On-site, discuss with the recipient its process for obtaining information on lobbying activities conducted by subrecipients, contractors, or subcontractors.

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it used Federal funds to compensate any person to influence or attempt to influence a covered action to obtain Federal funds on their behalf.

DEFICIENCY CODE L3-1: Federal funds used for lobbying

SUGGESTED CORRECTIVE ACTION: The recipient must work with the FTA Regional Counsel to determine the appropriate corrective action steps to be taken.

The recipient is deficient if it used local funds to compensate any person to influence or attempt to influence a covered Federal action for transit purposes and did not file an initial OMB Standard Form LLL and/or a quarterly update for an event that should have been reported and submitted to the FTA.

DEFICIENCY CODE L3-2: Recipient did not submit OMB Standard Form LLL/quarterly update

SUGGESTED CORRECTIVE ACTION: The recipient must submit a process to the FTA regional office for reporting lobbying activities on OMB Standard Form LLL and any quarterly updates. The recipient must submit an initial OMB Standard Form LLL and/or a report for any quarter in which there was a material change to the FTA Regional Counsel.

The recipient is deficient if it did not obtain an initial OMB Standard Form LLL or a quarterly update from a subrecipient, contractor or subcontractor for an event that should have been reported and submitted to the FTA Regional Counsel for the periods in which any related lobbying activities were conducted.

DEFICIENCY CODE L3-3: Subrecipient, contractor, or subcontractor did not submit OMB Standard Form LLL/quarterly update.

SUGGESTED CORRECTIVE ACTION: The recipient must submit a process to the FTA regional office for obtaining the required lobbying information, including reporting lobbying activities on OMB Standard Form LLL and any quarterly updates, for its subrecipients, contractors, and subcontractors.

### **GOVERNING DIRECTIVES**

#### 49 CFR 20.100

“(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.”

“(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.”

49 CFR 20.110

“(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for: (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of: (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or, (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:(1) A subcontract exceeding \$100,000 at any tier under a Federal contract; (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant; (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.”

2 CFR 200.331 Requirement for pass-through entities

“All pass-through entities must: ... (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.”

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## **ISSUES/AREAS OF CONCERN FOR FTA AWARENESS**

1. Did background research or site visit observations reveal any potential legal issues or concerns not covered above?

## **REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. 49 CFR Part 20, "New Restrictions on Lobbying"
4. FTA Master Agreement