**Federal Awards Compliance Audit Guidance and Testing**

|  |  |
| --- | --- |
| **NAME OF CLIENT:** |  |
| **YEAR ENDED:** | 2020 |

|  |  |
| --- | --- |
| **FEDERAL AWARD NAME:** | Highway Planning and Construction Cluster |
| **CFDA#:** | 20.205 Highway Planning and Construction (Federal Aid Highway Program)  20.219 Recreational Trails Program  20.225 Federal Lands Access Program  20.003 Appalachian Development Highway System |

**This File has been broken into following sections:**

* Discussion on Agency Adoption of the UG and example citations
* Introduction- Materiality Sheet – See the table of contents
* Part I- General OMB Compliance Supplement Information,
* Part II- Pass Through Agency Program Specific Introductory Information,
* Part III- Applicable Compliance Requirement Guidance
  + OMB compliance requirements
  + Pass through agency/grant agreement compliance requirements
  + Audit Objectives and Control Testing Procedures
  + Suggested Audit Procedures- Compliance/Substantive Tests
  + Audit Implications Summary
* Program Testing Conclusion

# Important Information (please read)

**This FACCR has been tailored for local governments and Not-For–Profits. It does not include all required references and testing for Institutes of Higher Learning or State organizations.**

**If your program had COVID funding expenditures, please refer to the terms and conditions of the grant to determine if any additional requirements were imposed. If additional material requirements are identified, auditors will need to create procedures to test those requirements. If you have questions, AOS Auditors please open a Spiceworks ticket for assistance (IPAs email** [**FACCR@ohioauditor.gov**](mailto:FACCR@ohioauditor.gov)**).**

**Also see guidance in** [**Appendix VII**](OMB_Compliance_Supplement_APP_VII.pdf) **of the Compliance Supplement.**

**Note: During 2020, The Office of Management and Budget (OMB) revised sections of the Uniform Guidance (UG).  These revisions to the UG were effective for funds awarded on or after November 12, 2020 (except for the amendments to §§ 200.216 and 200.340, which were effective on August 13, 2020).  While we do not anticipate these changes will impact a significant number of programs for FY2020, auditors should be aware of the date of these changes and to obtain the applicable guidance for the funds expended. The** [**eCFR**](https://www.ecfr.gov/cgi-bin/ECFR?page=browse) **has been updated to reflect these revisions, but guidance prior to the date of the revision is still accessible through the eCFR by selecting a date prior to 11/12/20 using the “Browse/Search Previous” button.**

**NAVIGATION PANE**

**This file has been arranged to be navigable. Click on the view tab above and check the box that says “Navigation Pane” to bring up the headings. Click on the various sections within the navigation pane to go directly to that section.**

**TABLE OF CONTENTS**

**The Table of Contents starts on page 4. On the table of contents page, users can also click on listed sections to go directly to that section. Please note that as information is added into the unrestricted portions of the FACCRs, page numbering can change and won’t necessarily reflect the footer page numbers. The table of contents can be updated to reflect the proper footer page numbers by clicking on word “contents” directly above the line starting with Introduction, will bring up the icon “update table”. Clicking on the update table icon will allow users to update the page numbers to reflect current footer page numbers.**

# AGENCY ADOPTION OF THE UG AND EXAMPLE CITATIONS

Federal awarding agencies adopted or implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. The Federal awarding agency implementation gives regulatory effect to 2 CFR part 200 for that agency’s Federal awards and, thereby, establishes requirements with which the non-Federal entity must comply when incorporated in the terms and conditions of the federal award. The following code sections are where ED, HHS, USDA, DOT, EPA, DOL and HUD have adopted the Uniform Guidance in 2 CFR part 200. For the complete list of agencies adopting 2 CFR 200, as of the date of the OMB Compliance Supplement, see [**Appendix II**](OMB_Compliance_Supplement_APP_II.pdf)**.**

In implementing the UG, agencies were able to make certain changes to the part 200 by requesting needed exceptions. A few adopted the UG with no changes; however most agencies did make changes to the UG by either adding specific requirements or editing/modifying the existing language within certain sections of the UG. OMB does not maintain a complete listing of approved agency exception to the UG. Auditors should review the OMB Compliance Supplement and, as necessary, agency regulations adopting/implementing the OMB uniform guidance in 2 CFR part 200 to determine if there is any exception related to the compliance requirements that apply to the program (see link below)

**Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exception.**

*(Source: AOS CFAE)*

# Table of Contents

Table of Contents

[Important Information (please read) 1](#_Toc65593698)

[AGENCY ADOPTION OF THE UG AND EXAMPLE CITATIONS 3](#_Toc65593699)

[Table of Contents 4](#_Toc65593700)

[Introduction: Materiality by Compliance Requirement Matrix 7](#_Toc65593701)

[Part I – OMB Compliance Supplement Information 11](#_Toc65593702)

* [I. Program Objectives 11](#_Toc65593703)
* [II. Program Procedures 11](#_Toc65593704)
* [III. Source of Governing Requirements 12](#_Toc65593705)
* [IV. Other Information 12](#_Toc65593706)

[Part II – Pass through Agency and Grant Specific Information 13](#_Toc65593707)

* [Program Overview and Testing Considerations 16](#_Toc65593708)
* [Reporting 27](#_Toc65593709)

[PART III – APPLICABLE COMPLIANCE REQUIREMENTS 28](#_Toc65593710)

[A. ACTIVITIES ALLOWED OR UNALLOWED 28](#_Toc65593711)

* [OMB Compliance Requirements 28](#_Toc65593712)
* [Additional Program Specific Information 29](#_Toc65593713)
* [Audit Objectives and Control Testing 33](#_Toc65593714)
* [Suggested Audit Procedures – Compliance 34](#_Toc65593715)
* [Audit Implications Summary 35](#_Toc65593716)

[B. ALLOWABLE COSTS/COST PRINCIPLES 36](#_Toc65593717)

* [Applicability of Cost Principles 36](#_Toc65593718)
* [Additional Program Specific Information 38](#_Toc65593719)
* [Indirect Cost Rate 43](#_Toc65593720)
* [Cost Principles for States, Local Governments and Indian Tribes 45](#_Toc65593721)
* [Allowable Costs – State/Local Government-wide Central Service Costs 52](#_Toc65593722)
* [Allowable Costs – State Public Assistance Agency Costs 56](#_Toc65593723)
* [Cost Principles for Nonprofit Organizations 59](#_Toc65593724)
* [Audit Implications Summary 60](#_Toc65593725)

[F. EQUIPMENT AND REAL PROPERTY MANAGEMENT 61](#_Toc65593726)

* [OMB Compliance Requirements 61](#_Toc65593727)
* [Additional Program Specific Information 64](#_Toc65593728)
* [Audit Objectives and Control Testing 65](#_Toc65593729)
* [Suggested Audit Procedures – Compliance 66](#_Toc65593730)
* [Audit Implications Summary 67](#_Toc65593731)

[I. PROCUREMENT AND SUSPENSION AND DEBARMENT 68](#_Toc65593732)

* [OMB Compliance Requirements – Procurement 68](#_Toc65593733)
* [OMB Compliance Requirements – Suspension and Debarment 70](#_Toc65593734)
* [Additional Program Specific Information 72](#_Toc65593735)
* [Audit Objectives and Control Testing 73](#_Toc65593736)
* [Suggested Audit Procedures – Compliance 75](#_Toc65593737)
* [Audit Implications Summary 77](#_Toc65593738)

[J. PROGRAM INCOME 78](#_Toc65593739)

* [OMB Compliance Requirements 78](#_Toc65593740)
* [Additional Program Specific Information 80](#_Toc65593741)
* [Audit Objectives and Control Testing 81](#_Toc65593742)
* [Suggested Audit Procedures – Compliance 82](#_Toc65593743)
* [Audit Implications Summary 83](#_Toc65593744)

[M. SUBRECIPIENT MONITORING 84](#_Toc65593745)

* [OMB Compliance Requirements 84](#_Toc65593746)
* [Additional Program Specific Information 85](#_Toc65593747)
* [Audit Objectives and Control Testing 86](#_Toc65593748)
* [Suggested Audit Procedures – Compliance 87](#_Toc65593749)
* [Audit Implications Summary 88](#_Toc65593750)

[N. SPECIAL TESTS AND PROVISIONS - Replacement of Publicly Owned Real Property 89](#_Toc65593751)

* [OMB Compliance Requirements 89](#_Toc65593752)
* [Additional Program Specific Information 89](#_Toc65593753)
* [Audit Objectives and Control Testing 90](#_Toc65593754)
* [Suggested Audit Procedures 91](#_Toc65593755)
* [Audit Implications Summary 92](#_Toc65593756)

[N. SPECIAL TESTS AND PROVISIONS - Quality Assurance Program 93](#_Toc65593757)

* [OMB Compliance Requirements 93](#_Toc65593758)
* [Additional Program Specific Information 93](#_Toc65593759)
* [Audit Objectives and Control Testing 95](#_Toc65593760)
* [Suggested Audit Procedures 96](#_Toc65593761)
* [Audit Implications Summary 97](#_Toc65593762)

[N. SPECIAL TESTS AND PROVISIONS - Project Approvals 98](#_Toc65593763)

* [OMB Compliance Requirements 98](#_Toc65593764)
* [Additional Program Specific Information 98](#_Toc65593765)
* [Audit Objectives and Control Testing 100](#_Toc65593766)
* [Suggested Audit Procedures 101](#_Toc65593767)
* [Audit Implications Summary 102](#_Toc65593768)

[N. SPECIAL TESTS AND PROVISIONS - Administration of Engineering and Design-Related Service Contracts 103](#_Toc65593769)

* [OMB Compliance Requirements 103](#_Toc65593770)
* [Additional Program Specific Information 104](#_Toc65593771)
* [Audit Objectives and Control Testing 105](#_Toc65593772)
* [Suggested Audit Procedures 106](#_Toc65593773)
* [Audit Implications Summary 107](#_Toc65593774)

[Program Testing Conclusion 108](#_Toc65593775)

# Introduction: Materiality by Compliance Requirement Matrix

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Planning Federal Materiality by Compliance Requirement**  See Footnotes 1-6 below the matrix table for further explanation, in particular, review note 6 which discusses tailoring the matrix assessments. | | | | | | | | | | | |
|  |  |  | **(1)** | **(2)** | **(6)** | **(6)** | **(3)** | **(4)** | **(5)** | **(5)** | **(6)** |
| **Compliance Requirement** | | | **Applicable per Compl.**  **Suppl.** | **Direct & material to program / entity** | **Monetary or nonmonetary** | **If monetary, population subject to require.** | **Inherent risk (IR) assess.** | **Final control risk (CR) assess.** | **Detection risk of noncompl.** | **Overall audit risk of noncompl.** | **Federal materiality by compl. requirement** |
|
|
|
| *(Yes or No)* | *(Yes or No)* | *(M/N)* | *(Dollars)* | *(High/Low)* | *(High/Low)* | *(High/Low)* | *(High/Low)* | *typically 5% of population subject to requirement* |
| **A** |  | **Activities Allowed or Unallowed** | Yes |  | M |  |  |  |  |  | *5%* |
| **B** |  | **Allowable Costs/Cost Principles** | Yes |  | M |  |  |  |  |  | *5%* |
| **C** |  | **Cash Management** | No |  |  |  |  |  |  |  |  |
| **D** |  | ***RESERVED*** |  |  |  |  |  |  |  |  |  |
| **E** |  | **Eligibility** | No |  |  |  |  |  |  |  |  |
| **F** |  | **Equipment & Real Property Mgmt** | Yes |  | M |  |  |  |  |  | *5%* |
| **G** |  | **Matching, Level of Effort, Earmark** | No |  |  |  |  |  |  |  |  |
| **H** |  | **Period of Performance** | No |  |  |  |  |  |  |  |  |
| **I** |  | **Procurement & Sus. & Debarment** | Yes |  | N |  |  |  |  |  | *5%* |
| **J** |  | **Program Income** | Yes |  | M |  |  |  |  |  | *5%* |
| **K** |  | ***RESERVED*** |  |  |  |  |  |  |  |  |  |
| **L** |  | **Reporting** | No |  |  |  |  |  |  |  |  |
| **M** |  | **Subrecipient Monitoring** | Yes |  | N |  |  |  |  |  | *5%* |
| **N** |  | **Special Tests & Provisions – Use of Other State or Local Government Agencies** | Yes - **£** |  |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions – Replacement of Publicly Owned Real Property** | Yes |  | N |  |  |  |  |  | *5%* |
| **N** |  | **Special Tests & Provisions – Quality Assurance Program** | Yes |  | N |  |  |  |  |  | *5%* |
| **N** |  | **Special Tests & Provisions – Contractor Recoveries** | Yes - **£** |  |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions – Project Approvals** | Yes |  | N |  |  |  |  |  | *5%* |
| **N** |  | **Special Tests & Provisions – Value Engineering** | Yes - **£** |  |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions - Utilities** | Yes - **£** |  |  |  |  |  |  |  |  |
| **N** |  | **Special Tests & Provisions – Administration of Engineering and Design-Related Service Contracts** | Yes |  | N |  |  |  |  |  | *5%* |

**£: This is applicable per the OMB Compliance Supplement, however, we do not expect it to be applicable to LPAs – only at the State level.**

**NOTE: For all compliance requirements marked as applicable in Column (1) you MUST document in your working papers or this FACCR why a requirement is not direct and material to your program/entity as marked in Column (2). When making that determination all parts of that compliance requirement have to be considered. For example, Equipment and Real Property contains procedures regarding Acquisitions, Dispositions, and Inventory Management. The documentation on why the compliance requirement is not be applicable to the program/entity must cover all parts of that compliance requirement.**

**(1)** Taken form Part 2, Matrix of Compliance Requirements, of the [OMB Compliance Supplement](https://www.whitehouse.gov/wp-content/uploads/2020/08/2020-Compliance-Supplement_FINAL_08.06.20.pdf). When Part 2 of the Compliance Supplement indicates that a type of compliance requirement is not applicable, the remaining assessments for the compliance requirement are not applicable.

**(2)** If the Supplement notes a compliance requirement as being applicable to the program in column (1), it still may not apply at a particular entity either because that entity does not have activity subject to that type of compliance requirement, or the activity could not have a material effect on a major program. If the Compliance Supplement indicates that a type of compliance requirement is applicable and the auditor determines it also is direct and material to the program at the specific entity being audited, the auditor should answer this question “Yes,” and then complete the remainder of the line to document the various risk assessments, sample sizes, and references to testing. Alternatively, if the auditor determines that a particular type of compliance requirement that normally would be applicable to a program (as per part 2 of the Compliance Supplement) is not direct and material to the program at the specific entity being audited, the auditor should answer this question “No.” Along with that response, the auditor should document the basis for the determination (for example, "per the Compliance Supplement, eligibility requirements only apply at the state level").

**(3)** Refer to the AICPA Audit Guide, Government Auditing Standards and Single Audits, chapter 10, Compliance Auditing Applicable to Major Programs, for considerations relating to assessing inherent risk of noncompliance for each direct and material type of compliance requirement. The auditor is expected to document the inherent risk assessment for each direct and material compliance requirement.

**(4)** Refer to the AICPA Audit Guide, Government Auditing Standards and Single Audits, chapter 9, Consideration of Internal Control over Compliance for Major Programs, for considerations relating to assessing control risk of noncompliance for each direct and material types of compliance requirement. To determine the control risk assessment, the auditor is to document the five internal control components of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (that is, control environment, risk assessment, control activities, information and communication, and monitoring) for each direct and material type of compliance requirement. Keep in mind that the auditor is expected to perform procedures to obtain an understanding of internal control over compliance for federal programs that is sufficient to plan the audit to support a low assessed level of control risk. If internal control over compliance for a type of compliance requirement is likely to be ineffective in preventing or detecting noncompliance, then the auditor is not required to plan and perform tests of internal control over compliance. Rather, the auditor must assess control risk at maximum, determine whether additional compliance tests are required, and report a significant deficiency (or material weakness) as part of the audit findings. The control risk assessment is based upon the auditor's understanding of controls, which would be documented outside of this template. Auditors may use the practice aid, Controls Overview Document, to support their control assessment. The Controls Overview Document assists the auditor in documenting the elements of COSO, identifying key controls, testing of those controls, and concluding on control risk. The practice aid is available in either a checklist or narrative format.

**(5)** Audit risk of noncompliance is defined in AICPA, Professional Standards, vol. 1, AU-C 935, as the risk that the auditor expresses an inappropriate opinion on the entity's compliance when material noncompliance exists. Audit risk of noncompliance is a function of the risks of material noncompliance and detection risk of noncompliance.

**(6)** CFAE included the typical monetary vs. nonmonetary determinations for each compliance requirement in this program. However, auditors should tailor these assessments as appropriate based on the facts and circumstances of their entity’s operations. The AICPA Single Audit Guide 10.57 states the auditor's tests of compliance with compliance requirements may disclose instances of noncompliance. The Uniform Guidance refers to these instances of noncompliance, among other matters, as “audit findings.” Such findings may be of a monetary nature and involve questioned costs or may be nonmonetary and not result in questioned costs. AU-C 935.13 & .A7 require auditors to establish and document two materiality levels: (1) a materiality level for the program as a whole. The column above documents quantitative materiality at the COMPLIANCE REQUIREMENT LEVEL for each major program; and (2) a second materiality level for the each of the applicable 12 compliance requirement listed in Appendix XI to Part 200.

*Note:*

a. If the compliance requirement is of a monetary nature, and

b. The requirement applies to the ***total*** population of program expenditure,

Then the compliance materiality amount for the program also equals materiality for the requirement. For example, the population for allowable costs and cost principles will usually equal the total Federal expenditures for the major program as a whole. Conversely, the population for some monetary compliance requirements may be less than the total Federal expenditures. Auditors must carefully determine the population subject to the compliance requirement to properly assess Federal materiality. Auditors should also consider the qualitative aspects of materiality. For example, in some cases, noncompliance and internal control deficiencies that might otherwise be immaterial could be significant to the major program because they involve fraud, abuse, or illegal acts. Auditors should document PROGRAM LEVEL materiality in the Record of Single Audit Risk (RSAR).

*(Source: AOS CFAE)*

[***Performing Tests to Evaluate the Effectiveness of Controls throughout this FACCR***](Performing%20Tests%20to%20Evaluate%20the%20Effectiveness%20of%20Controls%20throughout%20this%20FACCR.pdf)

[***Improper Payments***](Improper%20Payments.pdf)

# Part I – OMB Compliance Supplement Information

### I. Program Objectives

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### II. Program Procedures

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

While each category of funds has individual eligibility requirements, in general state-aid funds may be used for (1) surveying; (2) engineering studies and design; (3) environmental studies; (4) right-of-way acquisition and relocation assistance; (5) capital improvements classified as new construction or reconstruction; (6) improvements for functional, geometric, or safety reasons; (7) 4R projects (restoration, rehabilitation, resurfacing, and reconstruction); (8) preservation; (9) planning; research, development, and technology transfer; (10) intelligent transportation systems projects; (11) roadside beautification; (12) vegetation management; (13) wetland and natural habitat mitigation; (14) traffic management and control improvements; (15) improvements necessary to accommodate other transportation modes; (16) development and establishment of transportation management systems; (17) billboard removal; (18) fringe and corridor parking; (19) car pool and van pool projects; (20) historic preservation and rehabilitation of historic transportation facilities; (21) scenic and historic highway improvements; (22) inspection and evaluation of bridges, tunnels, and other highway assets; (23) asset management; (24) construction of ferry boats, ferry terminal facilities, and approaches to such facilities; (25) highway safety improvement projects; (26) bicycle and pedestrian projects; (27) transportation alternatives; (28) recreational trails; and (29) workforce development, training, and education. These funds generally cannot be used for routine highway operational activities, such as police patrols, mowing, snow plowing, or maintenance, unless it is preventative maintenance.

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

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

Prior to FY 2013, the ADHS was a cost-to-complete program (i.e., funding was provided over time to complete the approved initial construction/upgrading of the system) authorized by Section 201 of the Appalachian Regional Development Act of 1965. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) did not provide dedicated funding for the ADHS, but did make ADHS activities eligible under the NHPP and STBG programs. The Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114-94) provided states through FY 2050 the authority to select a state share of up to 100 percent for the cost of constructing highways and access roads on the ADHS. The Appalachian Regional Commission (ARC) has programmatic oversight responsibilities, which include approval of the location of the corridors and of state-generated estimates of the cost to complete the ADHS. The FHWA has project-level oversight responsibilities for the ADHS program. If the location, scope, and character of proposed ADHS projects are in agreement with the latest approved cost-to-complete estimate and all state requirements have been satisfied, FHWA authorizes the work with the ADHS, STBG, and/or NHPP funds. FHWA provides oversight for the design and construction of the ADHS (23 USC 106(g)(5)(B)).

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### III. 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).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### IV. Other Information

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

# Part II – Pass through Agency and Grant Specific Information

In Ohio, the Ohio Department of Transportation (ODOT) administers the state’s award and makes subawards to local governments through Local Public Agency (LPA) and Metropolitan Planning Organization (MPO) contracts (agreements). The written agreements and scope of work document are the primary award documents, but other communications and approval documents also are relevant.

**NOTE:**  Some local governments may receive direct awards. This FACCR may be used for awards passed-through ODOT or directly received from FHWA.

ODOT also makes similar awards that do not involve Federal funds. For LPAs, agreements relating to Federal funds are normally titled “LPA Federal Local-Let Project Agreement” and agreements relating to non-Federal funds are normally titled “LPA Non-Federal Project Agreement”. In all cases, auditors should review award documents to determine whether Federal funds are involved.

**NOTE:** Additionally, some local governments agree to cooperate with ODOT concerning projects ODOT is administering. In some cases, the local government will pay for and administer certain improvements that are not eligible for Federal funding but directly benefit the local government. The local government generally does not receive any funding from ODOT for these projects and these agreements are not titled “LPA Agreements”. Although ODOT’s project may involve Federal funding, such local participation does not constitute Federal financial assistance. Since the local government does not apply for the ODOT project, the government should not record memo receipts and disbursements, per AOS Bulletin 2000-08. However, if funding is received from ODOT, the local government may be a subrecipient. The specific terms of these agreements will vary, so the auditor must always refer to the agreement.

*(Source: AOS CFAE)*

Henceforth, any reference in this document to “LPA agreements” refers solely to LPA Federal Local-Let Project Agreements.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**Project Administration**

ODOT administers the Highway Planning and Construction Cluster. The subrecipient determination process for local governments is complex. The following information from ODOT is to assist auditors in differentiating subrecipient (i.e., LPA) projects from non-subrecipient projects (i.e., vendors, non-participants, etc.).

There are generally two opportunities for a local government to receive Federal funds from ODOT.

1. The LPA can administer a project, or specific phases of a project, and is responsible for the administration of the project. The LPA is required to report the project expenditures, for any phase of the project it administered, on its Schedule of Expenditures of Federal Awards (SEFA).
2. ODOT can administer projects in the LPA’s geographic area, providing Federal and/or State funding for the project, but the LPA does not administer the project and has no responsibility for the project. (these projects will not be reported on the LPA’s SEFA)

Generally, there are four phases to a construction project:

1. Preliminary Engineering (PE),
2. Right-of-Way Acquisition,
3. Construction, and
4. Other.

Each phase may be performed and administered independently. For example, the LPA may perform the PE and Right-of-Way Acquisition phases of a project, while ODOT administers the Construction phase. Alternatively, the LPA may administer all phases of the project.

The local Engineer’s Office typically administers the LPA work and is the best source for obtaining an understanding of the project scope and the work performed by the LPA. Additionally, project agreements and enabling legislation would also be available from the local Engineer’s Office.

**LPA Subrecipient Projects** –

In the past, ODOT prepared and published an annual report of Federal expenditures on LPA projects. However, LPAs frequently reported the exact dollar amount from ODOT’s report on their respective SEFAs when there should have been timing differences and the amounts often should not match. The inclusion/exclusion of these amounts would correspondingly yield an overstatement/understatement of expenditures on an LPA’s SEFA report. Occasionally, these overstatements/understatements would also erroneously eclipse the Single Audit threshold for an LPA’s annual reporting. As a result of these errors and the present incapability of ODOT’s systems to consistently capture accurate project expenditure data for LPAs to utilize for reporting purposes, ODOT no longer provides a listing of LPA PIDs with their corresponding expenditure information. The LPA is responsible to report their expenditures; not the reimbursements from ODOT. The LPA must have a tracking process established to capture relevant data for reporting. The LPA cannot rely upon ODOT’s records as their only source of project expenditures data.

ODOT also had a CMS Portal available in past years, which became inaccessible due to technology updates in December 2016. In February 2017 ODOT created a new “Construction Management Reporting System (CMRS)”. However, this report **cannot be used for determining amounts for Federal Reporting** purposes because ODOT is unable to correct known deficiencies in the associated data including (1) It shows ODOT’s disbursements; not the LPA’s expenditures; (2) It does not show disbursements by phase or identify which entity should report those particular disbursements; ODOT or the LPA; and (3) If for some reason an ODOT disbursement were to be reversed and reprocessed, the report would most likely show inaccurate results.. Rather than use this system, the LPA (or SEFA compiler) should email confirmation requests to ODOT at [DOT.LPAQuestions@dot.ohio.gov](mailto:DOT.LPAQuestions@dot.ohio.gov) . Best practice is for the LPA to complete the tracking spreadsheet (see link below) and the draft SEFA and then attach them to this confirmation request. Since this process can be quite time consuming for ODOT’s staff, AOS is recommending that the Auditors inform LPA representatives of this need as soon as possible (preferably during the entrance conference). ODOT has provided guidance to LPAs to assist in this process, see [*2019-12-26 Docs to submit for OEA SEFA Confirmations – FINAL*](2019-12-26_Docs_to_submit_for_OEA_SEFA_Confirmations-FINAL.pdf)and additional related guidance located at <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**Additional AOS Guidance for 2019 and Subsequent SEFAs:**

Beginning with the 2019 fiscal year end the ODOT Office of External Audits has been directing LPA subrecipients to use the State of Ohio’s Warrant Date for SEFA reporting for transactions where the LPA reviews and approves the contractor’s invoice and then forwards that invoice to ODOT for the State to make a direct payment to the contractor. This change in guidance was documented as item number 6 in the December 26, 2019 ODOT letter with the subject line *Tracking of ODOT Project Expenditures and Federal SEFA Reporting Requirements*. This document was posted to ODOT’s Office of External Audits’ webpage on December 30, 2019. See <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>.

The revised guidance is applicable for LPA project transactions occurring in proximity to the 12/31/2019 fiscal-year-end and for future fiscal years. The basic concept is that going forward Federal funds transactions will be assigned to a fiscal year for SEFA reporting based upon a specific certain date (the State of Ohio Warrant Date); not an estimated date.

In addition ODOT is providing the following additional guidance to LPAs for properly using the State of Ohio warrant date:

Most Ohio local governments have elected to prepare their SEFA using the cash-basis of accounting. Therefore, since they are using the cash-basis, for those transactions where the LPA reviews the contractor’s / vendor’s invoice and then forwards the invoice to ODOT so that the State issues a direct payment to the contractor/vendor, the LPA must use the State of Ohio Warrant Date to assign that transaction to a fiscal year for SEFA reporting. The use of any other date field may result in transactions of this type being assigned to the wrong fiscal year. So, for cash-basis SEFA preparers, for transactions of this type, the use of the State of Ohio Warrant Date is required.

Also, for cash-basis SEFA preparers, when the LPA issues a payment to the contractor for the Federal Share and is then subsequently reimbursed by ODOT, for these transactions the LPA must use their check date; not the date ODOT issued the reimbursement payment.

Further, for cash-basis SEFA preparers, for Federally reimbursed labor costs that originate within the LPA, the LPA is to use the dates the corresponding payroll was paid; not the date of ODOT’s reimbursement payment.

Finally, there is a Capital Program Payments Report available from ODOT’s Construction Management Reporting System (CMRS) at <https://cmsportal.dot.state.oh.us/Home/ViewExtReport?RptNme=CMSPortal%252fCapitalProgramPaymentReport&RptTitle=Capital%20Program%20Payment>. That report can be used to confirm State of Ohio Warrant Dates. However, as Federal, State and/or Local funds disbursed by ODOT may be commingled/combined in the Warrant or EFT, this report **cannot** be used to verify the disbursement of specific Federal funds **amounts**. This issue is one of the primary reasons for the Notice which appears on page one of the reports and the watermark which appears on every page. A different LPA source document must be used to confirm the Federal funds portion of the payment.

*(Source: AOS CFAE and* [*2020-03-31 LPA Cash-Basis SEFA Reporting Guidance - FINAL*](2020-03-31_LPA_Cash-Basis_SEFA_Reporting_Guidance-FINAL.pdf)*)*

**ODOT-Administered (Let) Projects**–

* ODOT provides a cost estimate to the LPA prior to beginning the project and informs the LPA how much it will likely be expected to contribute.
* The LPA is then required to pass enabling legislation (i.e., an ordinance or resolution) indicating it is authorized and able to contribute a certain amount of funding toward the project.
* In an ODOT-Administered project agreement, ODOT will be responsible for administering the construction phase of the project, and may also administer all other phases, while the LPA only is responsible for its financial contribution to the project and for keeping the construction site free of items that may interfere with the project.
* After passing legislation and signing the contract, the LPA must place the contribution on deposit with ODOT prior to the start of the project. ODOT then may assume all administrative and federal compliance responsibility for the project and pays the contractors from the Federal, State and local contribution funds that are on deposit.
  + Where there are multiple ODOT-administered projects, a separate resolution must be passed for each project. A separate ODOT-Let Project agreement will likely exist for each project as well; however, that decision is at ODOT‘s discretion.
* For those projects that ODOT fully administers all project phases, the LPA usually has no further responsibility or input in the project (except removing and managing possible interferences such as utilities and vehicles, etc.).
  + *However*, there are ODOT projects for which ODOT does not administer every phase of the project, and the LPA will administer one or more phases of the project. The Agreement between ODOT and the LPA will provide clarification for which phases are administered by ODOT and which phases are administered by the LPA. This split-administration can make the ODOT projects difficult to understand the reporting responsibility specific to the LPA and is usually where the Engineer’s Office can provide valuable input and clarification for the auditor.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

See Also: [*2019-12-26 Docs to submit for OEA SEFA Confirmations-FINAL*](2019-12-26_Docs_to_submit_for_OEA_SEFA_Confirmations-FINAL.pdf)and additional related guidance available at [LPA Auditing - Tools and Templates](https://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx).

### Program Overview and Testing Considerations

**LPA Participation Requirements**

The Federal Highway Administration (FHWA) permits the Ohio Department of Transportation (ODOT) to delegate administration of project activities on Federal-aid projects to Local Public Agencies (LPAs). However, ODOT is ultimately responsible and, as such, must assure local compliance with all Federal and State laws, regulations, and policies. LPA participation is at ODOT’s discretion; it is a privilege and not a right. In order to uphold the integrity of ODOT’s Local-let program, and as evidence of their capability to administer a Local-let construction project, LPAs must possess a minimum organizational structure, credentialed employees, and certain documented processes and experience. These considerations apply to more than just the specific project development disciplines associated with design and construction. The considerations also apply to general aspects of public business, fiscal accountability, and other applicable requirements associated with Federal and State funding. Through the qualification process outlined in this chapter, ODOT determines if an LPA possesses the qualified staff, experience, and management oversight to successfully administer a project from preliminary development through project completion.

An LPA seeking qualification to participate in the Local-let process, must meet standardized requirements described within this chapter. General requirements include:

1) The LPA must have designated a Person in Responsible Charge to act as its authority for all ODOT delegated responsibilities and project approvals pertaining to the Local-let project

2) All Qualification Modules MUST be completed by an LPA staff person. While the responsibility for completing the modules may be shared among the LPA staff, it is highly recommended that the LPAs “Person in Responsible Charge” be the LPA staff member responsible for completing all of the Qualification Modules on behalf of the LPA.

3) The LPA shall have sufficient expertise and capability to perform and/or supervise the design, environmental, Plans, Specifications & Estimates (PE&E), and construction administration phases of the project.

4) All LPA projects must be administered by a Licensed Professional Engineer or Architect, as applicable, registered in the State of Ohio, and who is either on staff as a public employee or contracted through a qualified engineering firm and designated as the LPA Project Engineer.

5) Projects must be administered in accordance with ODOT’s Locally Administered Transportation Projects (LATP) Manual of Procedures.

Once a project has been formally identified, the LPA may make a request to the ODOT District LPA Manager to administer the project utilizing the Local-let process. The LPA’s intentions should be made known prior to the initial project-scoping meeting. Upon this request, the LPA Manager will provide the LPA with ODOT’s prequalification requirements and associated forms. The qualification requirements include the eLearning training modules and the Local-let Participation Requirement Review Form. These shall be completed and submitted by the LPA to the District LPA Manager prior to the PS&E being submitted. Required criteria will be addressed as a component of the Local-let Participation Requirement Review Form, and are as follows:

1. Person in Responsible Charge: As provided for in 23 CFR 635.105(c) (4), an LPA must provide a full-time employee of that agency to be in “responsible charge” of the project. This individual is held accountable for ensuring all applicable Federal and State regulations are followed on the project and must have the responsibility, authority, and resources to manage it effectively. This person serves as the agency contact for all project issues or inquiries and should be familiar with project progress, involved in all decisions requiring change orders, and visit the project on a frequency commensurate with the project magnitude and complexity. This person is also responsible for ensuring the project is delivered on time, in accordance with established milestone dates. The Person in Responsible Charge may be the project engineer provided the project engineer is a full-time employee of the public agency. In situations where the project engineer is a consultant, the Person in Responsible Charge must be a full-time employee of the LPA.

2. Local Project Administration Training Series: The LPA’s designated Person in Responsible Charge, or eLearning designee, and all other LPA staff involved with the project’s administration must complete the eLearning Local Project Administration Training Series based upon the LATP Manual of Procedures and Equal Employment Opportunity (EEO) laws. Successful completion of the training is a threshold requirement before an LPA may apply for local project administration qualification. The training series is available through Ohio’s Local Technical Assistance Program (LTAP) Center. More information and access to the training is available at: <http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/LTAP/Pages/Ohio_LTAP_eLearning.aspx> .

3. Previous Project Experience: The LPA should have previously delivered and maintained successful capital improvement projects of a similar nature, size and complexity. If the LPA has no previous experience with a Federal-aid project, previous project experience examples may include projects funded solely by the LPA themselves.

4. Project Engineer:

a. The LPA’s designated Project Engineer must be a Licensed Professional Engineer registered in the State of Ohio, who has previously performed/provided similar engineering services/products (including project management) in a successful manner on comparable projects. The Project Engineer shall exercise the primary, day-to-day responsibilities over the engineering and other technical aspects of designing and constructing the project.

b. In the event the role of Project Engineer is to be filled through an ODOT Prequalified consultant, the required separation of interests between the design and construction phase necessitates this role be divided between two distinct, unaffiliated consultant service providers with respect to the two phases of the project, resulting in both a Project Design Engineer and a Project Construction Engineer from separate providers. In unusual circumstances, a waiver of this requirement may be provided as described in the Consultant Contract Administration Chapter of this manual.

5. Project Administration Processes: The LPA must have established and documented practices for each of the following project administration components. The LPA must identify, whether on LPA staff or through consultant services, the individual(s) responsible for the management of these processes, whether on the LPA staff or through consultant services.

a. Consultant Services Evaluation and Selection: Selection of consultants for the provision of professional services to the project must result from an objective, qualification based selection process pursuant to State and Local laws. If Federal funds are used in a consultant agreement, the selection and contract administration must comply with Federal requirements as stated in 23 CFR 172. Geographic location of a business entity, or other restrictions on competition, may not be imposed in selecting a service provider.

b. Consultant Services Management: Established practices and processes in place to ensure each consultant is held accountable for delivering its services in a quality and timely fashion pursuant to the terms of the contractual agreement and schedule.

c. Right-of-Way Design and Acquisition: Established practices and processes must be in place to ensure property acquisition is managed and paid in accordance with the Uniform Relocation and Real Estate Acquisition Act of 1970 and/or Chapter 163 of the Ohio Revised Code. Note: At this time, all LPAs must follow ODOT’s Right-of-Way Design and Acquisition process for any Local-let projects utilizing Federal funds.

d. Environmental: Established practices and processes must be in place to ensure compliance with the proper level of coordination in accordance with the National Environmental Policy Act of 1969. Note: Due to the National Environmental Policy Act (NEPA) Assignment, all LPAs must follow ODOT’s Environmental process for any Local-let projects utilizing Federal funds.

e. Change Order Process: Established practices and processes must be in place for the review and approval of change orders on a project. This process should follow the general guidance outlined in the LPA Change Order Guidance in Appendix K of the LPA Construction Contract Administration Chapter.

f. Dispute Resolution / Claims Management Process: Established and defined process must be in place identifying at least a two-tiered approach taken in the resolution of a dispute or claim.

g. Finance, Accounting and Record Keeping: Established practices and processes must be in place to ensure all financial transactions associated with the project are properly accounted for and accurate records are maintained in this regard for subsequent audit purposes. (OBM Circular A-87 – based on 2 CFR 225 “Cost Principles for State, Local and Tribal Governments”)

h. Project Award Procedures, Policies, and Processes: Established practices and processes must be in place identifying activities associated with bid opening, review, and award.

i. Disadvantaged Business Enterprise (DBE) / Ensuring Diversity, Growth and Equity (EDGE) Business Enterprises: Established practices and processes must ensure all applicable DBE / EDGE requirements are met.

j. Davis-Bacon and/or State Prevailing Wages: Established practices and processes must to ensure the proper payment, reporting and record keeping associated with Federal Davis-Bacon and/or State Prevailing Wage Requirements.

k. Maintenance of Project Files: Established practices and processes must ensure all required documentation is maintained in the project file and the project file is retained for a specified length of time in accordance with Federal, State, and Local laws.

l. Title VI: Established practices and processes must ensure all applicable Title VI requirements are met.

The LPA must meet additional requirements not outlined on the Local-let Participation Requirement Review Form. The LPA must not be under fiscal watch or fiscal emergency for its most recently completed fiscal year. In the event the LPA is emerging from fiscal watch or fiscal emergency, the LPA must be able to clearly demonstrate it has adequate financial resources to fund matching and/or cost overruns on the project.

Additionally, the LPA must have established authority in place for executing the project. The LPA must also be willing to provide a copy to ODOT of the approved legislation allowing the mayor, county engineer or other designated local official with clear authority to enter into a project agreement with ODOT. A sample of this legislation can be found at the end of this chapter, labeled “SAMPLE LEGISLATION FOR AUTHORITY”.

An evaluation of the LPA qualification package will be performed by the LPA Manager upon receipt into the district. The LPA Manager will provide feedback to the LPA, if necessary, as to any corrections that should be made. Once the LPA Manager is satisfied with the submission, they will send it on to ODOT’s Office of Local Programs for their review and concurrence.

Once an LPA has qualified to participate in the Local-let process, the qualification is valid for a number of years. The LPA will then complete the training modules every five (5) years and complete the Local-let Participation Requirement Review Form every four (4) years. The LPA may be asked to go through the qualification process prior to the end of the qualification time period if there are changes in key personnel within the LPA. It will be at the discretion of the District LPA Manager to determine if this is necessary. Further, the LPA understands Federal and State laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project, and agrees the most recent Federal and State requirements will apply to the project, unless ODOT or FHWA issues a written determination otherwise.

*(Source:* [*LPA Locally Administered Transportation Projects Manual of Procedures, LPA Participation Requirements Chapter*](LPA_Participation_Requirements_May2019.pdf) *(updated May 2019); & Michael Miller, ODOT Office of External Audits, and Nichole Lawhorn, Office of Local Programs, LPAs, on 3/2/21)*

**Metropolitan Planning Organization (MPO) Projects**

MPO projects are governed by a biennial MPO agreement and an annual work program funding. ODOT reimburses the MPO for costs claimed that are eligible under the work program. Though the MPO Agreement covers two years, funding is on an annual basis.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**MPO Structure**

Federal transportation law requires that a Metropolitan Planning Organization (MPO) be designated for each urbanized area. An “Urbanized Area” is defined by the U.S. Census Bureau and recognized by federal law as a densely settled area with a population of at least 50,000. Ohio has 17 areas designated as MPOs.

Each MPO may select a governance structure and voting procedure that best meets the needs and desires of its member governments. Typically, each MPO has a policy board which sometimes is referred to as the policy committee. The board is comprised of local elected officials, ODOT, public transit operators, and operators of major modes of transportation. The board is the entity formally designated as the Metropolitan Planning Organization and is responsible for conducting the urbanized area’s transportation planning process.

ODOT contracts with an agency, established pursuant to Ohio Revised Code (ORC), willing to house a staff responsible for assisting the board in performing the policy development, technical analysis, and administrative activities necessary for conducting the area’s planning process. The staff is not the MPO. The MPO board or policy committee is the MPO. The government entity that houses the staff for the board is the “monetary handling agency.” Contractual agreements are between the monetary handling agency and ODOT.

*(Source:* [*Ohio MPO Administration Manual, January 2019*](MPO_Administration_Manual_Jan2019.pdf) *p.2)*

**Ohio Municipal Bridge Program**

The Municipal Bridge Program provides Federal funds to municipal corporations and Regional Transit Authorities (RTA) for highway bridge replacement, bridge rehabilitation, or bridge demolition projects. A funding limit of $2 million per project has been established. Funding awarded through this program may not be used in conjunction with funding awarded through the Ohio Bridge Partnership Program.

ODOT will provide up to 80% of eligible costs for construction only (including construction engineering, i.e. testing and inspection), up to the specified funding limit. Currently, the 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through Fiscal Year 2024. The local entity is responsible for the remaining 5% non-Federal share of the construction costs and for all costs associated with preliminary engineering, environmental studies and documents, final design and right of way. The local match portion for construction is required to be cash. In-kind contributions cannot be accepted as part of the local share. The municipality must demonstrate the ability and commitment to oversee the project through to completion.

To be eligible for the Municipal Bridge program, the bridge must be owned by a city, village or RTA and must be open to vehicular traffic. It must also meet the federal definition of a bridge, i.e. have an NBIS bridge length greater than 20 feet. Further detail on the NBIS bridge length can be found in FHWA’s MT guide link (<https://www.fhwa.dot.gov/bridge/mtguide.pdf>) on page 73 under item #112. The bridge must also have a sufficiency rating of 80 or less, a general appraisal of 5 or less, and must be structurally deficient. For a list of eligible bridges, refer to the Target Bridge List posted on the Office of Local Programs’ website (<http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/LocalFundingOpportunities.aspx> and click on the Municipal Bridge tab). An updated list will be published every May.

The allocation for the Municipal Bridge Program will be established by ODOT and be administered by the Division of Planning, Office of Local Programs. Currently, the annual budget for this program is $10 million. There are approximately 1,424 bridges that have a municipal owner and meet the Federal Definition of a bridge as described above. These 1,424 bridges are both on and off of Federal-Aid Highways.

A criteria-based project selection process has been developed to focus on eliminating deficiencies (both on and off Federal-Aid Highways), while keeping within a financial plan that utilizes existing available resources. Funding of all projects will be linked to defined deficiencies, so each dollar invested results in system improvement.

A scoring system has been established for use in prioritizing projects. The scoring criteria includes items currently utilized for traditional funding of bridge projects such as General Appraisal, Deck Summary, and Legally Posted Bridge Load Limit. Other categories used are Economic Health and Regional Impact. In addition to the scoring system, a multi-disciplinary team also reviews the applications and provides feedback. This information is then taken into consideration prior to granting awards. Lastly, whether the municipality has or has not been awarded funds in previous years may factor into the decision to award depending on the amount of funding requested by that year’s applicants.

Scope of project and commitment dates are established and agreed to by the municipality, MPO, if applicable, and ODOT, when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the municipality. ODOT reserves the right to move any project to the end of the selected project list or withdraw funding if commitment dates are missed by the municipality.

Federal law requires that Federally-funded projects conform to the National Environmental Policy Act and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year. Additionally, with the revision of the dates of the solicitation cycle, there was no solicitation cycle for SFY 2019.

*(Source:* [*Municipal Bridge Program Guidelines Rev. 4/2020*](MunicipalBridgeProgramGuidelinesSFY21.pdf) *and Michael Miller, ODOT Office of External Audits, & Nichole Lawhorn, Office of Local Programs, LPAs, on 3/2/21)*

Based on the Note above from ODOT, auditors will need to utilize the *Municipal Bridge Program Guidelines* for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.

*(Source: AOS CFAE)*

**Local Major Bridge Program**

The Local Major Bridge Program provides Federal funds to counties and municipal corporations for bridge replacement, major bridge rehabilitation, and bridge demolition projects. Bridge replacement and bridge rehabilitation projects will be given a higher priority in funding consideration than bridge demolition projects.

A Local Major Bridge is defined as a moveable bridge or a bridge having a deck area greater than 35,000 square feet. The bridge must also carry vehicular traffic. The annual allocation for the Local Major Bridge Program is established by the Ohio Department of Transportation (ODOT) and administered by the Division of Planning, Office of Local Programs and is currently set at $20 million annually.

Currently, there are 54 bridges identified statewide as Local Major Bridges. To be eligible for funds, projects must have a General Appraisal of 4 or less *or* legally posted for load restriction. The project must also be open to vehicular traffic and structurally deficient. Those bridges that are not structurally deficient but are functionally obsolete may be considered on a case by case basis. Projects must also have a completed feasibility study and are required to submit it with the project application.

ODOT will provide up to 80% of eligible costs for construction only (including construction engineering, i.e. testing and inspection), up to the specified funding limit. *There is a maximum of $20,000,000 per project (not application). Currently*, 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through fiscal year 2022. The local entity is responsible for the 20% non-federal share of the construction costs and for all costs associated with preliminary engineering, environmental studies and documents, final design and right of way. The local contribution for construction is required to be a cash match. In-kind contributions cannot be accepted as part of the local share. The proposed project must be publicly-owned and on existing publicly-owned property. Based on past experience, the Local Agency must demonstrate the ability and commitment to oversee the project to completion.

A criteria-based project selection process has been developed to focus on eliminating deficiencies, while keeping within a financial plan that utilizes existing available resources. Funding of all projects is linked to defined deficiencies, so each dollar invested results in system improvement. A scoring system is used to prioritize projects. The scoring criteria includes items currently utilized for traditional funding of bridge projects, such as General Appraisal, Local Share, Economic Health, and Regional Impact*.*

Scope of project and commitment dates are as agreed to by the Local Agency, MPO if applicable, and ODOT when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the Local Agency. ODOT reserves the right to move any project to the end of the selected project list or withdraw funding if any commitment dates are missed by the Local Public Agency.

Once selected projects are programmed and are at an appropriate stage of project development, a value engineering session will be required on all projects with a construction cost exceeding $20,000,000. Value engineering may be required on projects less than $20,000,000 if deemed necessary by the Department.

Federal law requires that all Federally-funded projects conform to the National Environmental Policy Act and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended. The project must also be in compliance with all other applicable Federal and State regulations.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year. Additionally, with the revision of the dates of the solicitation cycle, there was no solicitation cycle for SFY 2019.

*(Source:* [*Local Major Bridge Program Guidelines*](LocalMajorBridgeGuidelinesSFY21.pdf) *& Michael Miller, ODOT Office of External Audits, and Nichole Lawhorn, ODOT Office of Local Programs, on 3/2/21)*

Based on the Note above from ODOT, auditors will need to utilize the *Local Major Bridge Program Guidelines* for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.

*(Source: AOS CFAE)*

**Small City Program**

The Small City Program provides Federal funds to small cities with populations from 5,000 to 24,999 that are NOT located within Metropolitan Planning Organizations' boundaries. Currently there are 54 small cities that meet this program’s criteria. A listing of the eligible cities that meet the program’s criteria can be found on the Local Programs website at:

<https://www.transportation.ohio.gov/static/Programs/LocalPrograms/SmallCity/EligibleSmallCities.pdf>

This program may be used by the incorporated localities for any road, safety or signal project on the Federal-aid system. A funding limit of $2 million per project has been established. ODOT will provide up to 80% of eligible costs for construction only (including construction engineering, i.e. testing and inspection), up to the specified funding limit. Currently, 15% Toll Revenue Credit (TRC) is available to increase the Federal percentage to 95% and will continue as long as TRC is available, which is currently through fiscal year 2024. The small city is responsible for the 5% non-federal share of the construction costs and for all costs associated with preliminary engineering, environmental studies and documents, final design, right of way, and utilities. The local match for construction is required to be cash. In-kind contributions cannot be accepted as part of the local share. The small city must demonstrate the ability and commitment to oversee the project through to completion.

The allocation for the Small City Program will be established by ODOT and administered by the Office of Local Programs. Currently, the annual budget for this program is $10 million. As previously stated, there are currently 54 small cities identified as eligible for this program. The population is determined by the official U.S. Census and those cities eligible for the Small City Program will be re-evaluated every ten years after the census has occurred and the data has been provided to the public. A criteria-based project selection process has been developed to focus on enhancing system performance, both on and off Federal-Aid Highways, while keeping within a financial plan that utilizes existing available resources. Funding of all projects will be linked to defined deficiencies, so each dollar invested results in system improvement.

A scoring system has been established to be used in prioritizing projects. The scoring criteria includes: Annual Average Daily Traffic (AADT), Volume to Capacity, Pavement Condition Rating, Safety Integrated Project (SIP) Maps, Crash Frequency, Equivalent Property Damage Only (EPDO) Index, and Economic Health. In addition to this scoring system, a multi-disciplinary committee reviews the applications and provides feedback and determination for each project. The committee’s determinations are taken into consideration when determining which projects to award funding. Lastly, whether the Small City has been awarded funds in previous years may play a factor in the decision to award depending on the amount of funding requested during that year’s solicitation cycle.

Scope of project and commitment dates are established and agreed to by the Small City and ODOT when the project is programmed. These dates are the milestones for each phase of the project through final inspection. The number and types of milestones differ as to whether a project is sold and administered by ODOT or by the Small City. ODOT reserves the right to move any project to the end of the selected project list or withdraw funding if commitment dates are missed by the Small City.

Federal law requires that Federally-funded projects conform to the National Environmental Policy Act and the National Historic Preservation Act. To comply with these laws, projects must have an environmental review to assess and/or mitigate effects on social, economic, and environmental factors. Section 404/401 Waterway permits are the responsibility of the Small City. Any property acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Act, as amended.

Note: This guidance applies only to the solicitation cycle for that fiscal year. While projects could be awarded during the 2020 solicitation cycle that won’t go to construction until 2022 or 2023, testing should be performed using the solicitation and guidance for the year the project was awarded funds and not the actual construction year.

*(Source:* [*Small City Program Guidelines Revised 4/2020*](SmallCityProgramGuidelinesRev42020.pdf) *& Michael Miller, ODOT Office of External Audits, and Nichole Lawhorn, ODOT Office of Local Programs, on 3/2/21)*

Based on the Note above from ODOT, auditors will need to utilize the *Small City Program Guidelines* for the solicitation cycle in which the project was awarded. Documentation hyperlinked above (the most recent available) is included for informational purposes only and guidelines for the solicitation year being tested should be obtained from the auditee.

*(Source: AOS CFAE)*

**Transportation Alternative Programs**

**I. Purpose & Eligibility** *(p.2-4)*

The Transportation Alternatives Program (TAP) provides funds for projects that advance non-motorized transportation facilities, historic transportation preservation, and environmental mitigation and vegetation management activities. ODOT encourages adding alternatives to planned transportation projects rather than stand-alone projects. TAP funded activities must be accessible to the general public or targeted to a broad segment of the general public.

ODOT’s TAP funds are for those projects sponsored by local governments outside the county boundaries of Metropolitan Planning Organizations (MPOs), unless the local is within a small MPO (population less than 200,000) that has opted to join the ODOT program. There are four (4) counties that return their TAP funding, these counties are Allen, Belmont, Licking and Washington.

**Bicycle and Pedestrian Facilities**

For the purposes of the TAP Program, a pedestrian is not only defined as a person traveling by foot but also “any mobility impaired person using a wheel chair.” Projects proposed under this category that connects activity centers such as businesses, schools, libraries, shopping areas, recreational areas, etc. will receive higher priority.

Provision for Bicycle and Pedestrian Facilities - This may include activities such as separated multiuse or shared use paths, bike lanes, widened outside lanes or paved shoulders, geometric improvements, turning lanes, traffic signs, new sidewalks, and sidewalk gap closures. Also eligible are bicycle parking racks, bicycle lockers, designated areas with safety lighting, and covered bicycle shelters.

Upgrading facilities to meet Federal, State and/or local responsibilities for compliance with ADA requirements (such as ramps, and/or other necessary design features) is also eligible. This category may also include traffic calming improvements to reduce conflicts in heavy pedestrian areas. Traffic calming improvements could include roundabouts, bulb-outs, speed humps, raised crossings, raised intersections, median refuges, narrowed traffic lanes, lane reductions, full- or half-street closures, automated speed enforcement, variable speed limits, and demarcations with color, texture, and/or pattern.

Some amenities that make these facilities safer or more accommodating to users, such as vegetative management (see eligibility description below), street furnishings for pedestrians (including lighting, trash receptacles, and seating apparatuses) are also eligible. Street parking construction costs, stand-alone parking lot projects for future bicycle or pedestrian facilities are ineligible, however, parking facilities (with restrooms) at a trailhead of an existing bicycle/pedestrian are eligible for funding.

For all bicycle and pedestrian projects please review the following criteria outlined in The Guide for the Development of Bicycle Facilities, 2012 and [ODOT's L & D Manual](https://www.dot.state.oh.us/Divisions/Engineering/Hydraulics/Location%20and%20Design%20Volume%202/LD%20Volume%202%20Archive%2012013/ODOT-Location%20and%20Design%20Manual%20Volume%20II.pdf), and A Policy on Geometric Design of Highways and Streets, where applicable. Pedestrian facility projects must be American’s with Disabilities Act (ADA) compliant.

**Abandoned Railway Corridors (Rails-to-Trails)**

Conversion of abandoned railway corridors for the purpose of creating shared use (includes acquisition and construction) - This category includes the acquisition, rehabilitation and development of corridors for bicycle and pedestrian use. The acquisition of right-of-way can be a stand-alone project; however, there must be a planned trail use. Eligible railway corridors must either have been authorized for abandonment, have abandonment proceedings pending or have been set aside for future transportation use under applicable federal or state laws. Preservation of an abandoned rail corridor must lead to the development of a pedestrian and/or bicycle facility and is not intended to solely preserve the rail corridor for future use. Sponsors must comply with federal regulations involving property acquisitions contained in the “Uniform Act.” (Talk to your ODOT District representative. Also, see <https://www.fhwa.dot.gov/real_estate/uniform_act/index.cfm>).

**Community Improvement Activities**

Archaeological planning and research - This category is limited to research on sites relating to impacts from implementation of a transportation project eligible under United States Code of Federal Regulations Title 23 – Highways. This category is not for routine excavations. All work must be done in compliance with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation or the Secretary of the Interior’s Standards for Historic Preservation Projects and must be managed under the direction of qualified professionals who are educated and experienced in archaeology.

Construction of turnouts, overlooks and viewing areas- This category allows for the construction of overlooks, turnouts and viewing areas that allow for the visual enjoyment of significant scenic or historic view sheds. Significant view sheds can include Ohio Scenic Byways and recognized historic districts or historic sites.

Historic Preservation and Rehabilitation of historic transportation facilities - Historic transportation buildings are buildings or structures associated with the operation, passenger and freight use, construction, or maintenance of any mode of transportation where such a building is listed in or eligible for listing in the National Register as determined by SHPO. Historic structures and facilities include, but are not restricted to, tunnels, bridges, trestles, canals, viaducts, stations, rails, non-operational vehicles, and other transportation features related to the operation, passenger and freight use, construction, preservation or maintenance of any mode of transportation. Funds for operation of historic transportation facilities are ineligible. Any Historic structure or site must be on or eligible for the National Register of Historic Places. If the structure or site is found not to be on or eligible for the National Register the project will not be eligible. All work must be done in compliance with the *Secretary of the Interior’s Standards for Historic Preservation Projects*.

Vegetation management- Practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control. Routine maintenance of landscaping / vegetation is not eligible.

**Environmental Mitigation Activity**

Including pollution prevention and pollution abatement activities and mitigation to address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in 23 U.S.C. 133(b)(11), 328(a), and 329; or to reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats

**Recreational Trails**

Includes projects that will provide and maintain recreational trails for both motorized and non-motorized recreational trail use. This category provides funds for all kinds of recreational trail uses. Examples are pedestrian uses like hiking, running, and 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.

Eligible projects under Recreational Trails category can include maintenance and restoration of existing recreational trails, development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails, and construction of new recreational trails (with restrictions for new trails on Federal lands). Recreational trail projects offering a transportation component will take priority over those that are only recreational.

**Safe Routes for Non- Drivers**

The construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs, and projects that are otherwise eligible under ODOT’s Safe Routes to School Program. These projects be either infrastructure or non-infrastructure in nature. However, funding for a Safe Routes to School Coordinator is not eligible for TAP funds.

*(Source:* [*ODOT Transportation Alternatives Program 2018 Guidance*](TAP_2018_Program_Guidance.pdf) *(for FYE 6/30/20) and* [*2020-21 Guidance*](TAP_Program_Guidance_Rev07.20.20.pdf) *(for FYE 12/31/20)*)

ODOT suballocates TAP funds to MPOs for local government projects within MPO boundaries. **MPOs are responsible for policies and criteria for their projects.**

The allocation for the TAP Program will be established by ODOT and will be administered by the Office of Local Programs.

**GOVERNING AUTHORITY:**

23 USC 133

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**State Infrastructure Bank (SIB) Loans**

The Department maintains a direct loan and bond financing program, authorized under the Ohio Revised Code, Chapter 5531, for developing transportation facilities throughout Ohio.   The State Infrastructure Bank (SIB) shall be used as a method of funding highway, rail, transit, intermodal, and other transportation facilities and projects which produce revenue to amortize debt while contributing to the connectivity of Ohio's transportation system and further the goals such as corridor completion, economic development, competitiveness in a global economy, and quality of life.

The Ohio SIB was initially capitalized with a $40 million authorization of state general revenue funds (GRF) from the Ohio State Legislature, $10 million in state motor fuel tax funds, and $87 million in Federal Title XXIII Highway funds. Any highway or transit project eligible under Title XXIII, as well as aviation, rail and other intermodal transportation facilities is eligible for direct loan funding under the SIB.

ODOT's objective is to maximize the use of federaland state funds in order to make direct loans for eligible projects. Repayments will be made to ODOT and then re-loaned to subsequent projects hence creating a SIB revolving loan program. The SIB revolving loan program will increase the number of delivered transportation projects that otherwise would not have been considered due to unavailable funding.

**Administration**

ODOT will be the primary decision maker for SIB projects. Within ODOT, the SIB Loan Committee will manage the approval process.

ODOT's Division of Finance will promulgate the application process and will be the contact source for information on the program. The Division of Finance will receive applications, review them, and make recommendations to the SIB Loan Committee.

ODOT will administer the loans and bonds using prudent financial guidelines and policies.

*(Source:* [*http://www.dot.state.oh.us/divisions/finance/pages/stateinfrastructurebank.aspx*](http://www.dot.state.oh.us/divisions/finance/pages/stateinfrastructurebank.aspx) *& Michael Miller, ODOT Office of External Audits, on 3/2/21)*

Additional Guidance:

The Ohio Department of Transportation (ODOT) has a webpage that includes a Manual of Procedures (hereafter referred to as “LPA Manual”) and a summary of various LPA agreement requirements *Division of Planning Local Programs Procedures and Guidance:* <http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/LocalLetProcesses.aspx>

ODOT provided further guidance in the following documents at <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>:

[2019-12-26 LPA SEFA Reporting Guidance – Final](2019-12-26_LPA_SEFA_Reporting_Guidance-FINAL.pdf)

[2019-12-26 Docs to submit for OEA SEFA Confirmations - Final](2019-12-26_Docs_to_submit_for_OEA_SEFA_Confirmations-FINAL.pdf)

Note: Some changes may have been made by ODOT after creation of this FACCR. Whenever possible auditors should utilize the internet link rather than the linked PDF document.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

### Reporting

Additional SEFA and Footnote resources available for AOS Staff in the Audit Employees Briefcase and on the [IPA Resource Internet Page](http://www.ohioauditor.gov/references/practiceaids.html):

* Examples SEFA and Footnote shells
* Additional SEFA Guidance in the “Single Audit SEFA 2020 Completeness Guide”

*(Source: AOS CFAE)*

# PART III – APPLICABLE COMPLIANCE REQUIREMENTS

## A. ACTIVITIES ALLOWED OR UNALLOWED

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

### OMB Compliance Requirements

**Important Note:** For a cost to be allowable, it must (1) be for a purpose the specific award permits and (2) fall within [2 CFR 200 subpart E](2CFR200_Subpart%20E.pdf) Cost Principles. These two criteria are roughly analogous to classifying a cost by both program/function and object. That is, the grant award generally prescribes the allowable program/function while 2 CFR 200 subpart E prescribes allowable object cost categories and restrictions that may apply to certain object codes of expenditures.

For example, could a government use an imaginary Homeland Security grant to pay OP&F pension costs for its police force? To determine this, the client (and we) would look to the grant agreement to see if police activities (security of persons and property function cost classification) met the program objectives. Then, the auditor would look to Subpart E (provisions for selected items of cost [§ 200.420-200.475](2CFR200.420_thru_200.475.pdf)) to determine if pension costs (an object cost classification) are permissible. (200.431(g) states they are allowable, with certain provisions, so we would need to determine if the auditee met the provisions.) Both the client and we should look at 2 CFR 200 subpart E even if the grant agreement includes a budget by object code approved by the grantor agency. Also, keep in mind that granting agencies have codified 2 CFR 200 and some agencies have been granted exceptions to provisions within 2 CFR 200.

*(Source: AOS CFAE)*

The specific requirements for activities allowed or unallowed are unique to each Federal program and are found in the laws, regulations, and the provisions of the Federal award contracts or grant agreements pertaining to the program. For programs listed in this Supplement, the specific requirements of the governing statutes and regulations are included in Part 4, “Agency Program Requirements” or Part 5, “Clusters of Programs,” as applicable. This type of compliance requirement specifies the activities that can or cannot be funded under a specific program.

**Source of Governing Requirements**

The requirements for activities allowed or unallowed are contained in program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

HHS, DOL, HUD, DOT, and EPA have not made any adjustments or exceptions that directly impact references within this compliance requirement.

**Part 4 OMB Program Specific Requirements**

***US Department of Transportation Program Specific Information:***

1. Federal funds can be used only to reimburse costs that are (a) incurred subsequent to the date of authorization to proceed, except for certain property acquisition costs permitted under 23 USC 108, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note); (b) in accordance with the conditions contained in the project agreement and the plans, specifications, and estimates (PS&E); (c) allocable to a specific project; and (d) claimed for reimbursement subsequent to the date of the project agreement (23 CFR sections 1.9, 630.106, 630.205, and 635.112).

2. Federal funds can be used for administrative settlement costs incurred in defending contract claim proceedings before arbitration boards or State courts only if approved by FHWA for Federal-aid projects. If special counsel is used, it must be recommended by the State Attorney or State Department of Transportation (State DOT) legal counsel and approved in advance by FHWA (23 CFR section 140.505).

3. ADHS funds may be used only for work included in the ADHS cost estimate approved by the ARC.

4. FLTTP funds may be used for work on projects that provide access to or within Federal or Tribal lands (23 USC 201 through 204).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

**LPA Projects**

8. CONSTRUCTION CONTRACT ADMINISTRATION

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA’s construction contractor (“Contractor”), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor’s invoice from the LPA.

*(Source:* [*LPA Federal Local-Let Project Agreement Rev. Feb. 2019*](LPA_Federal_Local-Let_Project_Agreement_rev_02.2019.pdf) *(for FYE 6/30/20) and* [*Rev. Mar. 2020*](LPA%20Federal%20Local-Let%20Project%20Agreement_rev03.26.2020.pdf) *(for FYE 12/30/20))*

LPA Invoices

For on-behalf payments that ODOT makes directly to contractors, the LPA initiates the request for payment. No on-behalf payments can be made for Local-Let projects unless the LPA initiates a request for payment. (The LPA must track these payments since it submits these requests to ODOT.) The LPA should provide invoice copies to the auditor.

The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenditures involved, attaching copies of all source documentation associated with pending invoices or paid costs.

ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay the LPA’s construction contractor (“Contractor”) directly, the eligible items of expense in accordance with the cost sharing provisions of the LPA Agreement. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of the receipt of the approved Contractor’s invoice from the LPA.

It is important to review applicable local government agreements to determine if the language is consistent with the guidance/reference above, as applicable.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

The Construction Project Engineer (CPE) is responsible for preparing documentation to support payment for work performed by the Contractor by measurement of completed and accepted quantities of work. The documentation shall provide validation that the quantity for payment has been determined in accordance with contract requirements with necessary measurements, calculations, material certifications, etc., and that the work was done in close conformity to the plans and specifications.

*(Source:* [*ODOT Locally Administered Transportation Projects Manual of Procedures, LPA Construction Contract Administration Chapter*](LPAConstructionContractAdminChapter.pdf) *(p.10))*

**Ohio Municipal Bridge Program**

**ELIGIBLE WORK**

Municipal Bridge funds may be used for the following:

* Bridge Replacement
* Bridge Rehabilitation
* Bridge Demolition
* Minimal Approach Work: as necessary and related to the bridge project (general rule of thumb is 50’ on each side)
* Utilities: if the utility lines are on the bridge and it is necessary to the project to move or replace (will not pay for “upgrades” to the current system; e.g. a 30’ pipe rather than the existing 24’)

Ineligible items include, but are not limited to:

* New Roadway
* Roadway Improvements: except as necessary to complete the bridge project
* Utilities: except as necessary to complete the bridge project
* Upgrades to Existing Utilities
* Pedestrian Bridges
* Rail Bridges
* Design Risk Contingency costs
* Right-of-Way
* Preliminary Engineering
* Environmental work
* Design work (even if project is design build, this work must be tracked separately)

*(Source:* [*Municipal Bridge Program Guidelines Rev. 4/2020*](MunicipalBridgeProgramGuidelinesSFY21.pdf)*)*

**Small City Program**

ELIGIBLE WORK

Small City funds may be used for the following:

* Pavement rehabilitation
* Roundabouts
* Bridge overlay, as part of a paving project
* Signals
* Roadway widening
* Road diets\*
* Utilities and storm water pump station: if deemed necessary to the project to move or replace (will not pay for “upgrades” to the current system; e.g. a 30” pipe rather than the existing 24”)
* Curb and ramps: if deemed necessary as part of the eligible project

\*May be eligible items under the Safety Program depending on existing conditions (i.e. speed, ADT, demand/need, network gaps, alignment with the State & US Bike Route System) and proposed work.

Ineligible items include, but are not limited to:

* Bridge replacement, rehabilitation, or demolition
* Utilities: except as necessary to complete the roadway project
* Upgrades to existing utilities
* Pedestrian/bicycle bridges\*
* Sidewalks and shared use paths\*
* Stand-alone storm water pump stations
* Pedestrian signals and signage\*
* Enhancement items such as streetscapes, benches, trash receptacles, decorative poles, etc.\*\*
* Design risk contingency costs
* Right-of-Way
* Preliminary Engineering
* Environmental work
* Design work (if the project is design build, this work must be tracked separately)

\*May be eligible items under the Safety Program depending on existing conditions (i.e. speed, ADT, demand/need, network gaps, alignment with the State & US Bike Route System) and proposed work. These are also eligible items under the Transportation Alternatives Program (TAP).

\*\*Eligible items under TAP. TAP is the preferred funding source for these work items or project types.

*(Source:* [*Small City Program Guidelines Revised 4/2020*](SmallCityProgramGuidelinesRev42020.pdf) *& Michael Miller, ODOT Office of External Audits, and Nichole Lawhorn, ODOT Office of Local Programs, on 3/2/21)*

**Transportation Alternative Program**

**II. Ineligible Costs**

Though not a comprehensive list, these are some activities that will not be funded with federal dollars and are the sponsor’s responsibility. Items that are ineligible for funding by the TAP program can be included in the construction contract as nonparticipating items with the funding provided by the sponsor.

* Landscaping and scenic enhancements as independent projects- However, landscaping and scenic enhancements could be eligible as part of the construction of any Federal-aid highway project under 23 U.S.C. 319, including TAP-funded projects.
* Acquisition of scenic easements and scenic or historic sites.
* Administrative costs - Some examples of actions considered to be administrative are application preparation; consultant selection and management; coordination with ODOT, etc.
* Public art - Items of public art include, but are not limited to: statuary, decorative banners, flag displays (including flagpoles), murals, fountains, clock towers, etc.
* Standard roadway or bridge infrastructure items, such as roadway paving or structural work, will not be considered for funding unless incidental to the TAP project.
* Parking - The exception is if the facility is related to a bicycle trailhead, or to access a turnout, overlook, viewing area, or historic transportation facility.
* Mitigation - A work item that serves to mitigate (compensate for) an environmental impact (including historic, natural, or cultural).
* Operation of historic transportation facilities
* Transportation Museums

Any action or work taken prior to FHWA project authorization will make the entire project ineligible for compensation.

*(Source:* [*ODOT Transportation Alternatives Program 2018 Guidance*](TAP_2018_Program_Guidance.pdf) *(for FYE 6/30/20) and* [*2020-21 Guidance*](TAP_Program_Guidance_Rev07.20.20.pdf) *(for FYE 12/31/20)*)

**This section should also contain program specific information for Activities Allowed and Unallowed that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Activities_Allowed_or_Unallowed_Audit_Objectives.pdf)

|  |
| --- |
| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures – Compliance

|  |
| --- |
| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 1. Identify the types of activities which are either specifically allowed or prohibited by the laws, regulations, and the provisions of the contract or grant agreements pertaining to the program.  2. When allowability is determined based upon summary level data, perform procedures to verify that:  a. Activities were allowable.  b. Individual transactions were properly classified and accumulated into the activity total.  3. When allowability is determined based upon individual transactions, select a sample of transactions and perform procedures to verify that the transaction was for an allowable activity.  4. The auditor should be alert for large transfers of funds from program accounts which may have been used to fund unallowable activities. |

### Audit Implications Summary

|  |
| --- |
| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## B. ALLOWABLE COSTS/COST PRINCIPLES

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

### Applicability of Cost Principles

**Important Note:** For a cost to be allowable, it must (1) be for a purpose the specific award permits and (2) fall within 2 CFR 200 subpart E Cost Principles. These two criteria are roughly analogous to classifying a cost by both program/function and object. That is, the grant award generally prescribes the allowable program/function while 2 CFR 200 subpart E prescribes allowable object cost categories and restrictions that may apply to certain object codes of expenditures.

For example, could a government use an imaginary Homeland Security grant to pay OP&F pension costs for its police force? To determine this, the client (and we) would look to the grant agreement to see if police activities (security of persons and property function cost classification) met the program objectives. Then, the auditor would look to Subpart E (provisions for selected items of cost §200.420-200.475) to determine if pension costs (an object cost classification) are permissible. (200.431(g) states they are allowable, with certain provisions, so we would need to determine if the auditee met the provisions.) Both the client and we should look at 2 CFR 200 subpart E even if the grant agreement includes a budget by object code approved by the grantor agency. Also keep in mind that granting agencies have codified 2 CFR 200 and some agencies have been granted exceptions to provisions within 2 CFR 200.

*(Source: AOS CFAE)*

The cost principles in [2 CFR part 200, subpart E](2CFR200_Subpart%20E.PDF) (Cost Principles), prescribe the cost accounting requirements associated with the administration of Federal awards by:

1. States, local governments and Indian tribes
2. Institutions of higher education (IHEs)
3. Nonprofit organizations

As provided in [2 CFR section 200.101](2CFR200.101.pdf), the cost principles requirements apply to all Federal awards with the exception of grant agreements and cooperative agreements providing food commodities; agreements for loans, loan guarantees, interest subsidies, insurance; and programs listed in [2 CFR section 200.101(d)](2CFR200.101(d).pdf) (see [Appendix I](2CFR200_APPENDIX_I.pdf) of this Supplement). Federal awards administered by publicly owned hospitals and other providers of medical care are exempt from 2 CFR part 200, subpart E, but are subject to the requirements [45 CFR part 75, Appendix IX](45CFR75_Appendix_IX.pdf), the Department of Health and Human Services (HHS) implementation of 2 CFR part 200. The cost principles applicable to a non-Federal entity apply to all Federal awards received by the entity, regardless of whether the awards are received directly from the Federal awarding agency or indirectly through a pass-through entity. For this purpose, Federal awards include cost-reimbursement contacts under the Federal Acquisition Regulation (FAR). The cost principles do not apply to Federal awards under which a non-Federal entity is not required to account to the Federal awarding agency or pass-through entity for actual costs incurred.

**Source of Governing Requirements**

The requirements for allowable costs/cost principles are contained in [2 CFR part 200, subpart E](2CFR200_Subpart%20E.PDF), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

The requirements for the development and submission of indirect (facilities and administration (F&A)) cost rate proposals and cost allocation plans (CAPs) are contained in [2 CFR part 200, Appendices III-VII](2CFR200_Appendix_III_thru_VII.pdf) as follows:

* Appendix III to Part 200—Indirect (F&A) Const Identification and Assignment and Rate Determination for Institutions of Higher Education (IHEs)
* Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
* Appendix V to Part 200—State/Local Government-Wide Central Service Cost Allocation Plans
* Appendix VI to Part 200—Public Assistance Cost Allocation Plans
* Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Except for the requirements identified below under “Basic Guidelines,” which are applicable to all types of non-Federal entities, this compliance requirement is divided into sections based on the type of non-Federal entity. The differences that exist are necessary because of the nature of the non-Federal entity organizational structures, programs administered, and breadth of services offered by some non-Federal entities and not others.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

HUD, DOT, and EPA have not made any adjustments or exceptions that directly impact references within this compliance requirement.

**Basic Guidelines**

Except where otherwise authorized by statute, cost must meet the following general criteria in order to be allowable under Federal awards;

1. Be necessary and reasonable for the performance of the Federal award and be allocable thereto under the principles in [2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF).

2. Conform to any limitations or exclusions set forth in 2 CFR part 200, subpart E or in the Federal award as to types or amount of cost items.

3. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-Federal entity.

4. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

5. Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian tribes only, as otherwise provided for in 2 CFR part 200.

6. Not be included as a cost or used to meet cost-sharing or matching requirements of any other federally financed program in either the current or a prior period.

7. Be adequately documented.

**Selected Items of Cost**

[2 CFR sections 200.420 through 200.475](2CFR200.420_thru_200.475.pdf) provide the principles to be applied in establishing the allowability of certain items of cost, in addition to the basic considerations identified above. These principles apply whether or not a particular item of cost is treated as a direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment provided for similar or related items of cost and the principles described in [2 CFR sections 200.402 through 200.411](2CFR200.402_thru_411.pdf).

[List of Selected Items of Cost Contained in 2 CFR Part 200](Selected_Items_of_Cost_Part_3_ComplianceSupplement.pdf)

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

There are no Program Specific requirements for this compliance requirement.

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

**Written Procedure Requirements:**

[2 CFR 200.302](2CFR200.302.pdf)(b)(7) requires written procedures for determining the allowability of costs in accordance with Subpart E-Cost Principles of this part and the terms and conditions of the Federal award.

[2 CFR 200.430](2CFR200.430.pdf) states that costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees: (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities; (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

[2 CFR 200.431](2CFR200.431.pdf) requires established written leave policies if the entity intends to pay fringe benefits.

[2 CFR 200.464](2CFR200.464.pdf)(a)(2) requires reimbursement of relocation costs to employees be in accordance with an established written policy must be consistently followed by the employer.

[2 CFR 200.474](2CFR200.474.pdf) requires reimbursement and/or charges to be consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies.

*(Source: CFAE/eCFR)*

### Additional Program Specific Information

**LPA Agreements**

The LPA can recover direct, fringe and/or indirect costs incurred on federally funded projects through one of four cost recovery methods described later in the chapter. A method of cost recovery must be selected at the time the agreement is signed between the LPA and ODOT, and the methodology selected by the LPA will apply to the entire life of the construction contract. (p.2)

LPA Agreements and Cost Recovery

An original LPA agreement signed prior to December 26, 2014 will be eligible to utilize Safe Harbor as a cost recovery option. Any modification to the agreement made after this date will not hinder the LPA’s ability to choose Safe Harbor as a cost recovery method. All original LPA agreements signed on or after December 26, 2014 can no longer utilize Safe Harbor and will have to select one of the cost recovery options in section 15.1 of the LPA agreement, outlined below.

1. **No cost recovery of any LPA direct labor, fringe benefits, or overhead costs:** The LPA may elect not to seek recovery for any labor costs, direct or indirect.
2. **Direct Labor plus indirect costs determined using the Federal De Minimis Indirect Cost Rate:** An LPA may elect to recover its direct labor and 10% De Minimis.
3. **Direct Labor plus Approved Fringe Benefit Costs (fringe benefits only) plus indirect costs determined using the Federal De Minimis Indirect Cost Rate:** An LPA may elect to recover its direct labor plus applicable fringe benefit costs (determined by establishing a fringe rate, which is discussed further in the chapter) plus 10% De Minimis.
4. **Direct Labor plus approved fringe benefit costs plus indirect costs calculated using the LPA’s ODOT approved indirect cost rate:** An LPA may elect to recover its direct labor, applicable fringe benefit costs, and applicable indirect costs (determined by establishing a fringe rate and an indirect cost rate, which is discussed further in the chapter).

The cost recovery method selected is only applicable to the LPA signing the agreement. For example, if an LPA were hiring a consultant in lieu of using their own labor forces, they would select no cost recovery of any LPA direct labor, fringe benefits, or indirect costs as their recovery option on the agreement. Since the agreement pertains only to the LPA, this does not prevent the LPA from still seeking reimbursement for any consultant costs incurred on the project.

A cost recovery option must be made at the time the agreement is signed between ODOT and the LPA. Only one method of cost recovery may be selected by the LPA. However, the LPA may elect to amend the agreement and select an alternative cost recovery method than the one originally selected.

If the LPA chooses to amend their cost recovery selection, it must be done prior to the Plans, Specifications, and Estimates (PS&E) package being submitted to ODOT’s Office of Local Programs by the ODOT district office. No changes to the cost recovery method selected can be made after the PS&E has been submitted to the Office of Local Programs. This ensures that the selected cost recovery method is not changed mid-project and provides consistency in the process across the state.

*(Source:*  [*ODOT Local-Let Manual Finance Chapter 11*](ODOT_Local_Let_Manual_Ch.11_Finance_Chapter_Rev.02.2019.pdf)*, Pages 2-4)*

The Construction Project Engineer (CPE) is responsible for ensuring that costs submitted for work performed are allowable, allocable and reasonable. At a minimum, costs must be:

* Incurred subsequent to FHWA authorization of the project
* Supported through adequate and sufficient source documentation
* Eligible for reimbursement
* Necessary for the project
* In accordance with all laws, regulations and sponsored agreements
* Net of applicable credits

*(Source:* [*ODOT Locally Administered Transportation Projects Manual of Procedures, LPA Construction Contract Administration Chapter*](LPAConstructionContractAdminChapter.pdf) *(p.10))*

Establishing an ODOT Approved Indirect Cost Rate

An LPA may recover its direct labor, as well as its fringe benefit and indirect costs, using a documented ODOT approved indirect cost rate. ODOT will provide one average rate for each LPA using a defined process and an indirect rate form. The average indirect cost rate will apply to all employees charging time to a project and seeking federal and/or state reimbursement. While utilizing the approved indirect cost rate does provide the maximum reimbursement, it does require significantly more effort and documentation to obtain. (p.11)

To obtain an approved ODOT indirect cost rate that can be applied to the LPA’s direct labor costs, the LPA will need to:

* Communicate with the District LPA Manager its desire to obtain an approved indirect cost rate.
* Complete the CAP (cost allocation plan) rate form (located at: [http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgenci es-LPA.aspx](http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgenci%20es-LPA.aspx)) and submit the form, along with cost support, to the Office of External Audits using the following email address: [Michael.Miller@dot.ohio.gov](mailto:Michael.Miller@dot.ohio.gov). A checklist of required items can be found with the form.
* Upon receiving the CAP rate form and supporting documentation, the Office of External Audits will review. If further documentation is required, the Office of External Audits will contact the LPA and request the remaining documentation.
* Once all supporting documentation is received and reviewed, the Office of External Audits will provide an approved indirect cost rate for the LPA to use during a specified time period (i.e., calendar year).
* The LPA will apply this rate to all direct labor costs incurred during the time period for which the rate applies. (p.11)

The LPA must submit a new rate request each year it elects to use the indirect cost rate option for calculating total labor costs on ODOT projects administered by either the LPA or ODOT (if the LPA is administering a specific phase that includes funds eligible for reimbursement). Once an indirect cost rate has a been established, the LPA may elect for a one-time extension of up to four (4) additional fiscal years. If the LPA wants to extend its rate, they will need to submit a request to the Office of External Audits. However, once an extension is approved, the LPA cannot obtain a new rate until the extension period expires. The LPA must renegotiate a new rate between each extension request. (p.13)

*De Minimis Rate (p.10)*

The De Minimis Rate allows the LPAs to be reimbursed an additional 10% of their direct labor and fringe benefit costs. The LPA does not have to apply for a De Minimis rate. They simply have to select a cost recovery option that allows de minimis to be applied to their base labor and, if applicable, fringe benefits, and have an approved timekeeping system.

*(Source:*  [*ODOT Local-Let Manual Finance Chapter 11*](ODOT_Local_Let_Manual_Ch.11_Finance_Chapter_Rev.02.2019.pdf)*, p.10, 11, and 13)*

LPAs that do not have an approved indirect cost allocation plan may still be eligible to receive reimbursement via the 10% “de minimis indirect cost rate” provided by 2 CFR 200.414. In prior years, the Safe Harbor rate (unique to Ohio from other states through FHWA) was available to be applied to LPA projects. However, the eligibility to select the Safe Harbor rate was terminated for new agreements signed after 12/26/2014 with the implementation of the Uniform Guidance (UG). If the Safe Harbor rates are documented in the signed project agreement, the rates may be used on that project until the project is completed.

To recover labor, fringe, and indirect costs, the LPA must have adequate time tracking systems in place, including the ability to track all labor costs and assign them to cost objectives (projects), including Federal and non-Federal funding sources. This election is executed on a contract by contract basis and is part of the standard LPA agreement. When invoices are submitted to ODOT for reimbursement of the LPA’s labor, fringe, and indirect costs, the LPA must ensure that it follows the cost recovery method selected on the agreement. If no method was selected, then the LPA is not eligible for reimbursement of its costs.

LPA’s charging fringe and indirect costs to ODOT projects should have in their possession a Certificate of Indirect Costs approved by ODOT Office of External Audits. The rates charged must be consistent with those documented in the Certificate. An example of the Certificate is located at: <http://www.dot.state.oh.us/Divisions/Finance/Auditing/Pages/LocalPublicAgencies-LPA.aspx>

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**MPO Agreements**

10.6: Allowable Costs *(p.45)*

Allowable costs are determined in accordance with 2 CFR Part 200 as well as ODOT Contract Audit Circulars. Costs must be described in the approved MPO work program to be allowable.

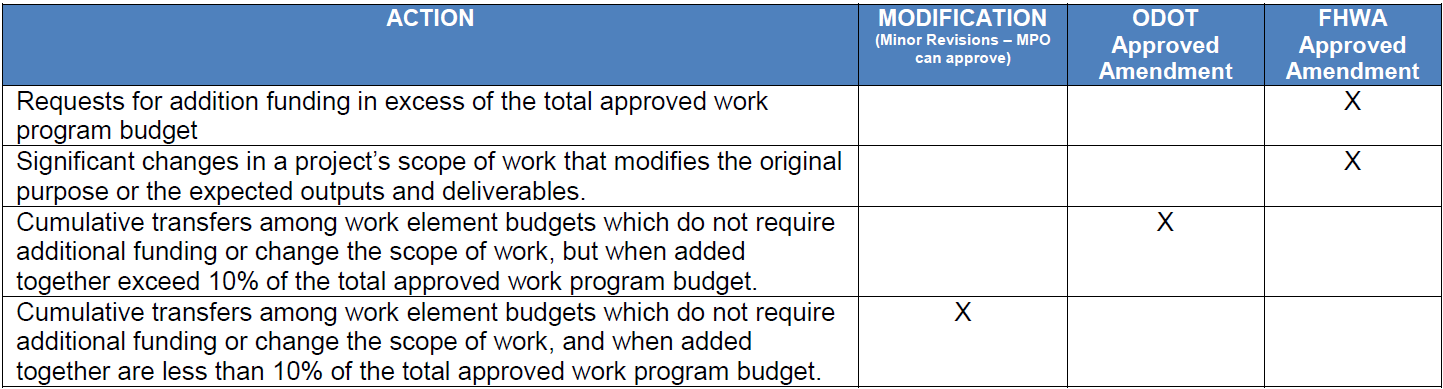
The following are qualifications to 2 CFR Part 200:

* Work Categories: The MPO will account for activities and costs as defined in Section 8.4 - Work Program Subcategories.
* Multi-funded Activities: ODOT may cooperate with work program participants to fund activities of mutual interest. ODOT’s share in the cost of a multi-funded activity will not exceed the ratio specified in the approved work program. If the effective dates of funding sources differ, ODOT’s participation will be limited to its predetermined rate applicable to actual eligible cost incurred, regardless of when other funding sources are approved. At no time will ODOT participate at a higher rate than that agreed to and specified in the work program to temporarily cover the share of costs to be borne by other funding sources.
* Lease/Option Equipment Purchases: The total cost of equipment rented or leased under an agreement with a purchase option at lease termination cannot exceed the original purchase price of the equipment.
* Cost Allocation Plans: Each MPO must develop an annual Cost Allocation Plan (CAP) to cover all overhead (indirect) costs associated with activities included in the work program. The methodology used to develop the CAP shall be uniform and consistent with prior fiscal years and shall identify the period of time from which the cost data were extracted. The MPO must submit the proposed CAP with its annual work program for ODOT approval (or concurrence, if the State of Ohio is not the cognizant agency) to establish a predetermined, fixed or provisional indirect cost rate applicable to the work program. Indirect costs are not eligible for federal or state reimbursement without an approved CAP from the MPO’s cognizant agency.
* The costs of discretionary, non-recurring or special occasions of paid employee leave are allowable if the benefits are identified in the MPO’s formal written leave policies.

8.5: Work Program Modifications *(p.36)*

Throughout the fiscal year, MPO work programs may need to be modified due to changes in scope and budget. All modifications should first be approved by the MPO Policy Committee. Once approved by the MPO Policy Committee, they should be sent to ODOT.

However, not all work program modifications need ODOT or FHWA/FTA approval. The following table identifies the approval requirements for different types of work program modifications. MPOs may reallocate funding within the direct cost elements of the work program budget to meet unanticipated requirements without prior ODOT approval unless the revisions results in any of the following:



10.5: Cost Allocation Plan *(p.45)*

MPO handling agencies typically receive funding from a variety of funding sources. One of the specific requirements of the reimbursement process is development of a Cost Allocation Plan (CAP). The CAP covers all overhead costs to be allocated to the services proposed in the work program. Indirect agency expenses are distributed proportionately among the respective funding sources of the monetary handling agency. Indirect costs are those that have been incurred for common or joint purposes. The CAP distributes agency indirect costs proportionately among these funding sources. More detail is available in [2 CFR Part 200](https://www.ecfr.gov/cgi-bin/text-idx?SID=66aa0ef4acbb67ba07556b68a6484ba2&node=pt2.1.200&rgn=div5).

[ODOT Contract Audit Circular No. MPO-02](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%202%20CAP%20Documentation%20-%20update%2012-26-2014.pdf) requires CAP proposals be submitted 4 months before the start of the recipient or subrecipient agency’s fiscal year. ODOT, as the pass thru entity, is the cognizant approval agency for most MPO handling agencies. For MPOs which cover multiple states, one state shall be designated as the cognizant, or responsible, state. Any costs incurred after the beginning of the fiscal year, but prior to approval for the CAP, will be reimbursed only upon approval of the CAP. Refer to ODOT Contract Audit Circulars No. [MPO-01](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%201%20Preparing%20Overhead%20Rates%20-%20update%2012-26-2014.pdf) and [MPO-02](http://www.dot.state.oh.us/Divisions/Finance/Auditing/MPO%20Contract%20Audit%20Circulars/ODOT%20Circular%20MPO%20-%202%20CAP%20Documentation%20-%20update%2012-26-2014.pdf) for guidance.

*(Source:* [*Ohio MPO Administration Manual*](MPO_Administration_Manual_Jan2019.pdf)*)*

MPOs and Regional Transportation Planning Organizations (RTPOs) charge labor, fringe, and indirect costs to most ODOT planning projects. The fringe and indirect rates charged are documented in a Fringe Benefit and Indirect Cost Rate Agreement executed annually with ODOT. The rates charged must be consistent with those documented in the Rate Agreement. The fringe and indirect rates are reconciled to actual costs annually. Year-end adjustments will be made consistent with the Rate Agreement.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**This section should also contain program specific information for Allowed Costs/Cost Principles that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional requirements and place that information with the related suggested audit procedures and delete the yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Indirect Cost Rate

Except for those non-Federal entities described in [2 CFR part 200, Appendix VII, paragraph D.1.b](2CFR200_Appendix_VII_Para_D(1)(b).pdf), if a non-Federal entity has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC). Such a rate may be used indefinitely or until the non-Federal entity chooses to negotiate a rate, which the non-Federal entity may do at any time. If a non-Federal entity chooses to use the de minimis rate, that rate must be used consistently for all of its Federal awards. Also, as described in [2 CFR section 200.403](2CFR200.403.pdf), costs must be consistently charged as either indirect or direct, but may not be double charged or inconsistently charged as both. In accordance with [2 CFR section 200.400(g)](2CFR200.400(g).pdf), a non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the award. A non-federal entity can always choose to charge the federal award less than the negotiated rates or the de minimis rate.

*(Source: 2020 OMB Compliance Supplement Part 3)*

#### Audit Objectives (Deminimis Indirect Cost Rate) and Control Testing Procedures

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Allowable%20Costs%20audit%20objectives_deminimis%20indirect%20cost%20rate.pdf)

|  |
| --- |
| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

#### Suggested Compliance Audit Procedures – De Minimis Indirect Cost Rate

**Note**: The following subsections identify requirements specific to each type of non-Federal entity.

|  |
| --- |
| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| The following suggested audit procedures apply to any non-Federal entity using a de minimis indirect cost rate, whether as a recipient or a subrecipient. None of the procedures related to indirect costs in the sections organized by type of non-Federal entity apply when a de minimis rate is used.  **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 1. Determine that the non-Federal entity has not previously claimed indirect costs on the basis of a negotiated rate. Auditors are required to test only for the three fiscal years immediately prior to the current audit period.  2. Test a sample of transactions for conformance with [2 CFR section 200.414(f)](2CFR200.414(f).pdf).  a Select a sample of claims for reimbursement of indirect costs and verify that the de minimis rate was used consistently, the rate was applied to the appropriate base, and the amounts claimed were the product of applying the rate to a modified total direct costs base.  b Verify that the costs included in the base are consistent with the costs that were included in the base year, i.e., verify that current year modified total direct costs do not include costs items that were treated as indirect costs in the base year.  3. For a non-Federal entity conducting a single function, which is predominately funded by Federal awards, determine whether use of the de minimis indirect cost rate resulted in the non-Federal entity double-charging or inconsistently charging costs as both direct and indirect. |

**2 CFR PART 200**

### Cost Principles for States, Local Governments and Indian Tribes

**Introduction**

[2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF), and [Appendices III-VII](2CFR200_Appendix_III_thru_VII.pdf) establish principles and standards for determining allowable direct and indirect costs for Federal awards. This section is organized into the following areas of allowable costs: States and Local Government and Indian Tribe Costs (Direct and Indirect); State/Local Government Central Service Costs; and State Public Assistance Agency Costs.

***Cognizant Agency for Indirect Costs***

[2 CFR part 200, Appendix V, paragraph F](2CFR200_Appendix_V_Para_F.pdf), provides the guidelines to use when determining the Federal agency that will serve as the cognizant agency for indirect costs for States, local governments, and Indian tribes. References to the “cognizant agency for indirect costs” are not equivalent to the cognizant agency for audit responsibilities, which is defined in [2 CFR section 200.18](2CFR200.18.pdf). In addition, the change from the term “cognizant agency” in OMB Circular A-87 to the term “cognizant agency for indirect costs” in 2 CFR part 200 was not intended to change the scope of cognizance for central service or public assistance cist allocation plans.

For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest value of direct Federal awards (excluding pass-through awards) with a governmental unit or component, as appropriate. In general, unless different arrangements are agreed to by the concerned Federal agencies or described in 2 CFR part 200, Appendix V, paragraph F, the cognizant agency for central service cost allocation plans is the Federal agency with the largest dollar value of total Federal awards (including pass-through awards) with a governmental unit.

Once designated as the cognizant agency for indirect costs, the Federal agency remains so for a period of 5 years. In addition, 2 CFR part 200, Appendix V, paragraph F, lists the cognizant agencies for certain specific types of plans and the cognizant agencies for indirect costs for certain types of governmental entities. For example, HHS is cognizant for all public assistance and State-wide cost allocation plans for all States (including the District of Columbia and Puerto Rico), State and local hospitals, libraries, and health districts and the Department of the Interior (DOI) is cognizant for all Indian tribal governments, territorial governments, and State and local park and recreational districts.

*(Source: 2020 OMB Compliance Supplement Part 3)*

#### Audit Objectives/Compliance Requirements and Control Tests Allowable Costs –– Direct and Indirect Costs

The individual State/local government/Indian tribe departments or agencies (also known as “operating agencies”) are responsible for the performance or administration of Federal awards. In order to receive cost reimbursement under Federal awards, the department or agency usually submits claims asserting that allowable and eligible costs (direct and indirect) have been incurred in accordance with [2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF).

The indirect cost rate proposal (ICRP) provides the documentation prepared by a State/local government/Indian tribe department or agency to substantiate its request for the establishment of an indirect cost rate. The indirect costs include (1) costs originating in the department or agency of the governmental unit carrying out Federal awards, and (2) for States and local governments, costs of central governmental services distributed through the State/local government-wide central service CAP that are not otherwise treated as direct costs. The ICRPs are based on the most current financial data and are used to either establish predetermined, fixed, or provisional indirect cost rates or to finalize provisional rates (for rate definitions refer to [2 CFR part 200, Appendix VII, paragraph B](2CFR200_Appendix_VII_Para_B.pdf)).

*(Source: 2020 OMB Compliance Supplement Part 3)*

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Allowable%20Costs_DirectandIndirect_ComplianceReq_Auditobjectives.pdf)

**Additional Control Test Objectives for Written Procedures**

When documenting and identifying the key control(s) in place to address the compliance requirement, consider if the client has written procedures to document the control process.

* UG requires written policies for the requirements outlined in [2 CFR 200.302](2CFR200.302.pdf)(b)(7), [2 CFR 200.430](2CFR200.430.pdf), [2 CFR 200.431](2CFR200.431.pdf), [2 CFR 200.464](2CFR200.464.pdf)(a)(2), and [2 CFR 200.474](2CFR200.474.pdf)*.*
* Document whether the non-Federal entity established written procedures consistent with the following requirements:
  + 2 CFR 200.302(b)(7) for determining the allowability of costs in accordance with Subpart E-Cost Principles.
  + 2 CFR 200.430 for allowability of compensation costs.
  + 2 CFR 200.431 for written leave policies.
  + 2 CFR 200.464(a)(2) for reimbursement of relocation costs.
  + 2 CFR 200.474 for travel reimbursements.
* It is auditor judgment how to report instances where the entity either lacks having a written policy or their written policy is insufficient to meet the requirements of 2 CFR 200.302(b)(7), 2 CFR 200.430, 2 CFR 200.431, 2 CFR 200.464(a)(2), and 2 CFR 200.474.
  + While auditors would normally use a written policy as the basis for the compliance control, there could be other key controls in place to ensure program compliance.
  + The lack of a policy would be noncompliance, which could rise to the level of material noncompliance and even a control deficiency (SD / MW) if there were underlying internal control deficiencies.
    - If there are key controls in place operating effectively, AOS auditors would report the lack of the required UG policy as a management letter citation. However, in subsequent audits, evaluate if the noncompliance should be elevated if not adopted. Written policies aid in consistency and adherence to requirements strengthening internal control processes.

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

#### Suggested Compliance Audit Procedures – Direct and Indirect Costs

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| --- |
| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| ***Direct Costs***  Test a sample of transactions for conformance with the following criteria contained in 2 CFR part 200, as applicable:   1. If the auditor identifies unallowable direct costs, the auditor should be aware that “directly associated costs” might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would not have been incurred if the other cost had not been incurred. For example, fringe benefits are “directly associated” with payroll costs. When an unallowable cost is incurred, directly associated costs are also unallowable. 2. Costs were approved by the Federal awarding agency, if required (see the above table (Selected Items of Cost, Exhibit 1) or [2 CFR section 200.407](2CFR200.407.pdf) for selected items of cost that require prior written approval). 3. Costs did not consist of improper payments, including (1) payments that should not have been made or that were made in incorrect amounts (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; (2) payments that do not account for credit for applicable discounts; (3) duplicate payments; (4) payments that were made to an ineligible party or for an ineligible good or service; and (5) payments for goods or services not received (except for such payments where authorized by law).   d. Costs were necessary and reasonable for the performance of the Federal award and allocable under the principles of [2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF).  e. Costs conformed to any limitations or exclusions set forth in 2 CFR part 200, subpart E, or in the Federal award as to types or amount of cost items.  f. Costs were consistent with policies and procedures that apply uniformly to both federally financed and other activities of the State/local government/Indian tribe department or agency.  g. Costs were accorded consistent treatment. Costs were not assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances was allocated to the Federal award as an indirect cost.  h. Costs were not included as a cost of any other federally financed program in either the current or a prior period.  i. Costs were not used to meet the cost-sharing or matching requirements of another Federal program, except where authorized by Federal statute.  j. Costs were adequately documented.  ***Indirect Costs***  a. If the State/local department or agency is not required to submit an ICRP and related supporting documentation, the auditor should consider the risk of the reduced level of oversight in designing the nature, timing, and extent of compliance testing.  b. *General Audit Procedures* – The following procedures apply to charges to cost pools that are allocated wholly or partially to Federal awards or used in formulating indirect cost rates used for recovering indirect costs under Federal awards.  (1) Test a sample of transactions for conformance with:  (a) The criteria contained in the “Basic Considerations” section of [2 CFR sections 200.402 through 200.411](2CFR200.402_thru_411.pdf).  (b) The principles to establish allowability or unallowability of certain items of cost ([2 CFR sections 200.420 through 200.475](2CFR200.420_thru_200.475.pdf)).  Note: While several selected items of cost are included in Exhibit 1, one item to note is *Compensation - Personnel Services*, (formally referred to as Time and Effort/Semi Annual Certification). See [2 CFR 200.430](2CFR200.430.pdf).  (2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.  c. *Special Audit Procedures for State, Local Government, and Indian Tribe ICRPs (see also the AOS discussion on* [*testing the ICRP*](Testing%20the%20ICRP%20discussion.pdf)*)*  (1) Verify that the ICRP includes the required documentation in accordance with [2 CFR part 200, Appendix VII, paragraph D](2CFR200_Appendix_VII_Para_D.pdf).  (2) *Testing of the ICRP* – There may be a timing consideration when the audit is completed before the ICRP is completed. In this instance, the auditor should consider performing interim testing of the costs charged to the cost pools and the allocation bases (e.g., determine from management the cost pools that management expects to include in the ICRP and test the costs for compliance with 2 CFR part 200). Should there be audit exceptions, corrective action may be taken earlier to minimize questioned costs. In the next year’s audit, the auditor should complete testing and verify management’s representations against the completed ICRP.  The following procedures are some acceptable options the auditor may use to obtain assurance that the costs collected in the cost pools and the allocation methods used are in compliance with [2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF):  (a) *Indirect Cost Pool* – Test the indirect cost pool to ascertain if it includes only allowable costs in accordance with 2 CFR part 200.  (i) Test to ensure that unallowable costs are identified and eliminated from the indirect cost pool (e.g., capital expenditures, general costs of government).  (ii) Identify significant changes in expense categories between the prior ICRP and the current ICRP. Test a sample of transactions to verify the allowability of the costs.  (iii) Trace the central service costs that are included in the indirect cost pool to the approved State/local government or central service CAP or to plans on file when submission is not required.  (b) *Direct Cost Base* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of 2 CFR part 200 and produce an equitable distribution of costs.  (i) Determine that the proposed base(s) includes all activities that benefit from the indirect costs being allocated.  (ii) If the direct cost base is not limited to direct salaries and wages, determine that distorting items are excluded from the base. Examples of distorting items include capital expenditures, flow-through funds (such as benefit payments), and subaward costs in excess of $25,000 per subaward.  (iii) Determine the appropriateness of the allocation base (e.g., salaries and wages, modified total direct costs).  (c) *Other Procedures*  (i) Examine the records for employee compensation to ascertain if they are accurate, and the costs are allowable and properly allocated to the various functional and programmatic activities to which salary and wage costs are charged. (Refer to [2 CFR section 200.430](2CFR200.430.pdf) for additional information on support of salaries and wages.)  (ii) For an ICRP using the multiple allocation base method, test statistical data (e.g., square footage, audit hours, salaries and wages) to ascertain if the proposed allocation or rate bases are reasonable, updated as necessary, and do not contain any material omissions.  (3) *Testing of Charges Based Upon the ICRA* – Perform the following procedures to test the application of charges to Federal awards based upon an ICRA:  (a) Obtain and read the current ICRA and determine the terms in effect.  (b) Select a sample of claims for reimbursement and verify that the rates used are in accordance with the rate agreement, that rates were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the costs that were included in the base year (e.g., if the allocation base is total direct costs, verify that current-year direct costs do not include costs items that were treated as indirect costs in the base year).  (4) *Other Procedures* – No Negotiated ICRA  (a) If an indirect cost rate has not been negotiated by a cognizant agency for indirect costs, the auditor should determine whether documentation exists to support the costs. Where the auditee has documentation, the suggested general audit procedures under paragraph 3.b above should be performed to determine the appropriateness of the indirect cost charges to awards.  (b) If an indirect cost rate has not been negotiated by a cognizant agency for indirect costs, and documentation to support the indirect costs does not exist, the auditor should question the costs based on a lack of supporting documentation. |

### Allowable Costs – State/Local Government-wide Central Service Costs

Most governmental entities provide services, such as accounting, purchasing, computer services, and fringe benefits, to operating agencies on a centralized basis. Since the Federal awards are performed within the individual operating agencies, there must be a process whereby these central service costs are identified and assigned to benefiting operating agency activities on a reasonable and consistent basis. The State/local government-wide central service cost allocation plan (CAP) provides that process. ([Refer to 2 CFR part 200, Appendix V](2CFR200_Appendix_V.pdf), for additional information and specific requirements.)

The allowable costs of central services that a governmental unit provides to its agencies may be allocated or billed to the user agencies. The State/local government-wide central service CAP is the required documentation of the methods used by the governmental unit to identify and accumulate these costs, and to allocate them or develop billing rates based on them.

Allocated central service costs (referred to as Section I costs) are allocated to benefiting operating agencies on some reasonable basis. These costs are usually negotiated and approved for a future year on a “fixed-with-carry-forward” basis. Examples of such services might include general accounting, personnel administration, and purchasing. Section I costs assigned to an operating agency through the State/local government-wide central service CAP are typically included in the agency’s indirect cost pool.

Billed central service costs (referred to as Section II costs) are billed to benefiting agencies and/or programs on an individual fee-for-service or similar basis. The billed rates are usually based on the estimated costs for providing the services. An adjustment will be made at least annually for the difference between the revenue generated by each billed service and the actual allowable costs. Examples of such billed services include computer services, transportation services, self- insurance, and fringe benefits. Section II costs billed to an operating agency may be charged as direct costs to the agency’s Federal awards or included in its indirect cost pool.

*(Source: 2020 OMB Compliance Supplement Part 3)*

#### Audit Objectives/Compliance Requirements and Control Tests Allowable Costs - State/Local Government-wide Central Service Costs

[**See here for the OMB Compliance Supplement Audit Objectives and Compliance Requirements**](Allowable%20Costs_StateLocal_Govtwide_Centralservicecosts_ComplianceReq_Auditobjectives.pdf)

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

#### Suggested Compliance Audit Procedures – State/Local Government-Wide Central Service Costs

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| a. For local governments that are not required to submit the central service CAP and related supporting documentation, the auditor should consider the risk of the reduced level of oversight in designing the nature, timing and extent of compliance testing.  b. *General Audit Procedures for State/Local Government-Wide Central Service CAPs* – The following procedures apply to charges to cost pools that are allocated wholly or partially to Federal awards or used in formulating indirect cost rates used for recovering indirect costs under Federal awards.  (1) Test a sample of transactions for conformance with:  (a) The criteria contained in the “Basic Considerations” section of [2 CFR part 200, subpart E](2CFR200_subpart%20E.PDF) (sections [200.402 through 200.411](2CFR200.402_thru_411.pdf)).  (b) The principles to establish allowability or unallowability of certain items of cost [(2 CFR sections 200.420 through 475](2CFR200.420_thru_200.475.pdf)).  (2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.  c. *Special Audit Procedures for State/Local Government-Wide Central Service CAPs*  (1) Verify that the central service CAP includes the required documentation in accordance with [2 CFR part 200 Appendix V, paragraph E](2CFR200_Appendix_V_Para_E.pdf).  (2) *Testing of the State/Local Government-Wide Central Service CAPs – Allocated Section I Costs*  (a) If new allocated central service costs were added, review the justification for including the item as Section I costs to ascertain if the costs are allowable (e.g., if costs benefit Federal awards).  (b) Identify the central service costs that incurred a significant increase in actual costs from the prior year’s costs. Test a sample of transactions to verify the allowability of the costs.  (c) Ascertain if the bases used to allocate costs are appropriate, i.e., costs are allocated in accordance with relative benefits received.  (d) Ascertain if the proposed bases include all activities that benefit from the central service costs being allocated, including all users that receive the services. For example, the State-wide central service CAP should allocate costs to all benefiting State departments and agencies, and, where appropriate, non-State organizations, such as local government agencies.  (e) Perform an analysis of the allocation bases by selecting agencies with significant Federal awards to determine if the percentage of costs allocated to these agencies has increased from the prior year. For those selected agencies with significant allocation percentage increases, ascertain if the data included in the bases are current and accurate.  (f) Verify that carry-forward adjustments are properly computed in accordance with [2 CFR part 200, Appendix V, paragraph G.3](2CFR200_Appendix_V_Para_G(3).pdf).  (3) *Testing of the State/Local Government-Wide Central Service CAPs – Billed Section II Costs*  (a) For billed central service activities accounted for in separate funds (e.g., internal service funds), ascertain if:  (i) Retained earnings/fund balances (including reserves) are computed in accordance with the cost principles;  (ii) Working capital reserves are not excessive in amount (generally not greater than 60 calendar days for cash expenses for normal operations incurred for the period exclusive of depreciation, capital costs, and debt principal costs); and  (iii) Adjustments were made when there is a difference between the revenue generated by each billed service and the actual allowable costs.  (b) Test to ensure that all users of services are billed in a consistent manner. For example, examine selected billings to determine if all users (including users outside the governmental unit) are charged the same rate for the same service.  (c) Test that billing rates exclude unallowable costs, in accordance with the cost principles and Federal statutes.  (d) Test, where billed central service activities are funded through general revenue appropriations, that the billing rates (or charges) were developed based on actual costs and were adjusted to eliminate profits.  (e) For self-insurance and pension funds, ascertain if the fund contributions are appropriate for such activities as indicated in the current actuarial report.  (f) Determine if refunds were made to the Federal Government for its share of funds transferred from the self-insurance reserve to other accounts, including imputed or earned interest from the date of the transfer. |

### Allowable Costs – State Public Assistance Agency Costs

State public assistance agency costs are (1) defined as all costs allocated or incurred by the State agency except expenditures for financial assistance, medical vendor payments, and payments for services and goods provided directly to program recipients (e.g., day care services); and (2) normally charged to Federal awards by implementing the public assistance cost allocation plan (CAP). The public assistance CAP provides a narrative description of the procedures that are used in identifying, measuring, and allocating all costs (direct and indirect) to each of the programs administered or supervised by State public assistance agencies.

[2 CFR part 200, Appendix VI, paragraph A](2CFR200_Appendix_VI_Para_A.pdf), states that, since the federally financed programs administered by State public assistance agencies are funded predominantly by HHS, HHS is responsible for the requirements for the development, documentation, submission, negotiation, and approval of public assistance CAPs. These requirements are specified in [45 CFR part 95, subpart E](45CFR95%20Subpart%20E.pdf).

Major Federal programs typically administered by State public assistance agencies include: Temporary Assistance for Needy Families (CFDA 93.558), Medicaid (CFDA 93.778), Supplemental Nutrition Assistance Program (CFDA 10.561), Child Support Enforcement (CFDA 93.563), Foster Care (CFDA 93.658), Adoption Assistance (CFDA 93.659), and Social Services Block Grant (CFDA 93.667).

*(Source: 2020 OMB Compliance Supplement Part 3)*

#### Audit Objectives/Compliance Requirements and Control Tests Allowable Costs - State Public Assistance Agency Costs

[**See here for the OMB Compliance Supplement Audit Objectives and Compliance Requirements**](Allowable%20Costs_State%20Public%20Assistance%20Agency%20Costs_OMB%20supplement.pdf)

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

#### Suggested Compliance Audit Procedures – State Public Assistance Agency Costs

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| This may be applicable to public assistance programs at the local level  a. Since a significant amount of the costs in the public assistance CAP are allocated based on employee compensation reporting systems, it is suggested that the auditor consider the risk when designing the nature, timing, and extent of compliance testing.  b. *General Audit Procedures* – The following procedures apply to direct charges to Federal awards as well as charges to cost pools that are allocated wholly or partially to Federal awards.  (1) Test a sample of transactions for conformance with:  (a) The criteria contained in the “Basic Considerations” section of 2 CFR part 200 ([sections 200.402 through 200.411](2CFR200.402_thru_411.pdf)).  (b) The principles to establish allowability or unallowability of certain items of cost ([2 CFR sections 200.420 through 200.475](2CFR200.420_thru_200.475.pdf)).  (2) If the auditor identifies unallowable costs, the auditor should be aware that directly associated costs might have been charged. Directly associated costs are costs incurred solely as a result of incurring another cost, and would have not been incurred if the other cost had not been incurred. When an unallowable cost is incurred, directly associated costs are also unallowable. For example, occupancy costs related to unallowable general costs of government are also unallowable.  c. *Special Audit Procedures for Public Assistance CAPs*  (1) Verify that the State public assistance agency is complying with the submission requirements, i.e., an amendment is promptly submitted when any of the events identified in [45 CFR section 95.509](45CFR95.509.pdf) occur.  (2) Verify that public assistance CAP includes the required documentation in accordance with [45 CFR section 95.507](45CFR95.507.pdf).  (3) *Testing of the Public Assistance CAP* – Test the methods of allocating the costs to ascertain if they are in accordance with the applicable provisions of the cost principles and produce an equitable distribution of costs. Appropriate detailed tests may include:  (a) Examining the results of the employee compensation system or in addition the records for employee compensation to ascertain if they are accurate, allowable, and properly allocated to the various functional and programmatic activities to which salary and wage costs are charged.  (b) Since the most significant cost pools in terms of dollars are usually allocated based upon the distribution of income maintenance and social services workers’ efforts identified through random moment time studies, determining whether the time studies are implemented and operated in accordance with the methodologies described in the approved public assistance CAP. For example, verifying the adequacy of the controls governing the conduct and evaluation of the study, and determining that the sampled observations were properly selected and performed, the documentation of the observations was properly completed, and the results of the study were correctly accumulated and applied. Testing may include observing or interviewing staff who participate in the time studies to determine if they are correctly recording their activities.  (c) Testing statistical data (e.g., square footage, case counts, salaries and wages) to ascertain if the proposed allocation bases are reasonable, updated as necessary, and do not contain any material omissions.  (4) *Testing of Charges Based Upon the Public Assistance CAP* – If the approved public assistance CAP is determined to be in compliance with the cost principles and produces an equitable distribution of costs, verify that the methods of charging costs to Federal awards are in accordance with the approved CAP and the provisions of the approval documents issued by HHS. Detailed compliance tests may include:  (a) Verifying that the cost allocation schedules, supporting documentation and allocation data are accurate and that the costs are allocated in compliance with the approved CAP.  (b) Reconciling the allocation statistics of labor costs to employee compensation records (e.g., random moment sampling observation forms).  (c) Reconciling the allocation statistics of non-labor costs to allocation data, (e.g., square footage or case counts).  (d) Verifying direct charges to supporting documents (e.g., purchase orders).  (e) Reconciling the costs to the Federal claims. |

### Cost Principles for Nonprofit Organizations

If the federal program is an NPO, pull up the 2019 OMB compliance supplement [Allowable Costs/Cost Principles section](Cost%20Principles%20for%20Nonprofit%20Organizations.pdf). This section can be completed as an addendum to the FACCR, saved within in your working papers and can the cross referenced section can also be added on this page.

Cross Reference to the NPO Allowable cost principles testing: \_\_\_\_\_\_\_\_\_\_\_\_\_

*(Source: 2020 OMB Compliance Supplement Part 3)*

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## F. EQUIPMENT AND REAL PROPERTY MANAGEMENT

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

### OMB Compliance Requirements

***Equipment Management -- Grants and Cooperative Agreements***

Equipment means tangible personal property, including information technology systems, having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000 ([2 CFR section 200.33](2CFR200.33.pdf)). Title to equipment acquired by a non-Federal entity under grants and cooperative agreements vests in the non-Federal entity subject to certain obligations and conditions (2 CFR section 200.313(a)).

*Non-Federal Entities Other than States – See here for* [*2 CFR 200.313 (a)-(e)*](2CFR200.313.pdf)

Non-Federal entities other than States must follow 2 CFR sections 200.313(c) through (e) which require that:

1. Equipment, including replacement equipment, be used in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award or, when appropriate, under other Federal awards; however, the non-Federal entity must not encumber the equipment without prior approval of the Federal awarding agency (2 CFR sections 200.313(c) and (e)).
2. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal award identification number), who holds title, the acquisition date, cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sales price of the property (2 CFR section 200.313(d)(1)).
3. A physical inventory of the property must be taken and the results reconciled with the property records at least once every 2 years (2 CFR section 200.313(d)(2)).
4. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated (2 CFR section 200.313(d)(3)).
5. Adequate maintenance procedures must be developed to keep the property in good condition (2 CFR section 200.313(d)(4)).
6. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return (2 CFR section 200.313(d)(5)).

7. When original or replacement equipment acquired under a Federal award is no longer needed for a Federal program (whether the original project or program or other activities currently or previously supported by the Federal government), the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the award. Items of equipment with a current per-unit fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency. If the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained or sold. The Federal awarding agency is entitled to the Federal interest in the equipment, which is the amount calculated by multiplying the current market value or sale proceeds by the Federal agency’s participation in total project costs ([2 CFR section 200.313](2CFR200.313.pdf)(e) and [200.41](2CFR200.41.pdf)).

The COFAR’s Frequently Asked Questions includes the following, which addresses the relationship between the requirement for property records to show the percentage of Federal participation in the project costs and the calculation of the Federal interest.

.313-2 Changes to Equipment Inventory Systems.

*Section 200.313(d)(1) of the guidance specifies the attributes that must be maintained in property records of the non-Federal entity. For non-Federal entities that have followed Circular A-110, there are two changes: “percentage of Federal participation in the project costs” (Uniform Guidance) versus “information from which one can calculate the percentage of Federal participation in the cost of the equipment” (A-110.34(f)(1)(vi), and “the location, use and condition of the property” (Uniform Guidance) versus “location and condition of the equipment and the date the information was reported” (A-110.34(f)(1)(vii). Are non-Federal entities expected to change the attributes of their property records and ultimately be required to implement costly changes to their existing equipment inventory systems?*

No. The requirements for property records have not substantively changed in the Uniform Guidance. The requirements for property records are meant to ensure that the non-Federal entity maintains an equipment inventory system that demonstrates the Federal entity has an effective system of controls to account for and track equipment that has been acquired with Federal funds. Non-Federal entities are not expected to change their equipment inventory systems or the data elements contained in those systems, if they are in compliance with the current requirements in Circular A-110. In the examples in question:

- The percentage of Federal participation in the cost of equipment in Circular A-110 was identical to the percentage of Federal participation in the cost of the original project or program. One could infer that from the amount of compensation a recipient was required under 2 CFR 215.34(g) to make to a Federal agency at the time of disposition—i.e., “compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.” The A-110 requirement in 2 CFR 215.34 for the recipient’s records to have information from which one could calculate the percentage of Federal participation in the cost of the equipment then required two numbers, the percentage of Federal participation in the original project or program and information from which one could derive the current fair market value. The Uniform Guidance makes that more explicitly clear through the definition of Federal interest in [2 CFR 200.41](2CFR200.41.pdf); and

-“the location, use and condition of the property” is referring to an indicator in the property records that the specific equipment item I active and linked with the appropriate Federal award, identical to the requirement in Circular A-110.

**Note**: Intangible property that is acquired under a Federal award, rather than developed or produced under the award, is subject the requirements of [2 CFR section 200.313(e)](2CFR200.313.pdf) regarding disposition ([2 CFR section 200.315(a)](2CFR200.315a.pdf)).

***Real Property Management -- Grants and Cooperative Agreements***

Title to real property acquired or improved by non-Federal entities under grants and cooperative agreements vests in the non-Federal entity subject to the obligations and conditions specified in [2 CFR section 200.311](2CFR200.311.pdf) (2 CFR section 200.311(a)). Real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber title to or other interests in the real property (2 CFR section 200.311(b)).

When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or the pass-through entity, as applicable. When real property is sold, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return. If sold, non-Federal entities must compensate the Federal awarding agency for the portion of the net sales proceeds that represents the Federal agency’s interest in the real property, which is the amount calculated by multiplying the current market value or sale proceeds by the Federal agency’s participation in total project costs. If the property is retained, the non-Federal entity must compensate the Federal awarding agency for the Federal portion of the current fair market value of the property. Disposition instructions may also provide for transfer of title to the Federal awarding agency or a designated third party, in which case the non-Federal entity is entitled to the non-Federal interest in the property, which is calculated by multiplying the current market value or sale proceeds by the non-Federal entity’s share in total project costs (2 CFR section 200.311(c)(3)).

***Equipment and Real Property Management – Cost-Reimbursement Contracts Under the Federal Acquisition Regulation (FAR)***

Equipment and real property management requirements for cost-reimbursement contracts are specified in the FAR clause at [48 CFR section 52.245-1](48CFR52.245.1.pdf). Federal government property as defined in the FAR includes both equipment and real property. Title to Federal government property acquired by a non-Federal entity normally vests in the Federal government, unless otherwise noted in the contract terms and conditions. The FAR requires:

1. A system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Federal government property and a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Federal government property.
2. Federal government property must be used for performing the contract for which it was acquired unless otherwise provided for in the contract or approved by the Federal awarding agency.
3. Property records must be maintained and include the name, part number and description, and other elements as necessary and required in accordance with the terms and conditions of the contract, quantity received, unit acquisition cost, unique-item identifier, accountable contract number, location, disposition, and posting reference and date of transaction.
4. A physical inventory must be periodically performed, recorded, and disclosed. Except as provided for in the contract, the non-Federal entity must not dispose of inventory until authorized by the Federal awarding agency. The non-Federal entity may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value.

**Source of Governing Requirements**

The requirements for equipment and real property are contained in [2 CFR section 200.313](2CFR200.313.pdf) (equipment), [2 CFR section 200.311](2CFR200.311.pdf) (real property), [48 CFR section 52.245-1](48CFR52.245.1.pdf) (equipment and real property), program legislation, Federal awarding agency regulations, and the terms and conditions of the Federal award.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

DOT and HHS, have made additions and edits to part 313. Additionally HHS has made additions and edits to part 311. The most recent compilation of agency additions and exceptions is provided on the CFO website here <https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf>. However, this list is only updated through 12/2014. AOS evaluated agency exceptions through August 2019. For further evaluation of exceptions, AOS auditors only will need to reference our internal AOS evaluation process [at the following link](http://portal/BP/Intranet/Auditor%20Resources%20File%20Bin/UG%20Exception%20Evaluation%20by%20Federal%20Agency.xlsx).

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

The state and LPA sub recipients shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal of real property acquired with state assistance from the Highway Trust Fund (other than the Mass Transit Account). The state shall use such income for projects eligible under 23 USC. Exceptions may be granted to allow use for social, environmental, or economic purposes (23 USC 156). Tribes are not subject to 23 USC 156 and fall under tribal self-governance provisions and 2 CFR 200.

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

**LPA Agreements**

**MAINTENANCE**

In accordance with ODOT’s LPA Federal Local-let Project Agreement, Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, upon completion of a Federal-aid construction project, the LPA shall maintain the improved facility to design standards and provide adequate maintenance activities, unless otherwise agreed to by ODOT. The PROJECT must remain under the ownership and authority of the LPA for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

*(Source:* [*ODOT Locally Administered Transportation Projects Manual of Procedures, LPA Construction Contract Administration Chapter*](LPAConstructionContractAdminChapter.pdf) *(p.12))*

**This section should also contain program specific information for Equipment and Real Property Management that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Equipment_and_Real_Property_Management_Auditobjectives.pdf)

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| --- |
| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures – Compliance

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| --- |
| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 1. Inventory Management of Equipment Acquired Under Federal Awards  a. Identify equipment acquired and trace selected purchases to the property records. Verify that the property records contain the required information.  b. Verify that the required physical inventory of equipment was performed. Test whether any differences between the physical inventory and equipment records were resolved.  c. Select a sample from all equipment acquired under Federal awards from the property records and physically inspect the equipment and determine whether the equipment is appropriately safeguarded and maintained.  2. Disposition of Equipment Acquired Under Federal Awards  a. Identify equipment dispositions for the audit period and perform procedures to verify that the dispositions of equipment acquired under Federal awards were properly reflected in the property records.  b. For dispositions of equipment acquired under grants and cooperative agreements with a current per-unit fair market value of $5,000 or more, verify whether the Federal awarding agency was reimbursed for the Federal portion of the current market value or sales proceeds.  c. For dispositions of equipment acquired under cost-reimbursement contracts, verify that the non-Federal entity followed Federal awarding agency disposition instructions.  3. Disposition of Real Property Acquired Under Federal Awards  a. Identify real property dispositions for the audit period and determine whether such real property was acquired or improved under Federal awards.  b. For dispositions of real property acquired or improved under Federal awards, perform procedures to verify that the non-Federal entity followed the instructions of the Federal awarding agency or pass-through entity, which normally require reimbursement to the Federal awarding agency for the Federal portion of net sales proceeds or fair market value at the time of disposition, as applicable.  c. Also for dispositions of real property, verify that the LPA retained ownership and authority over real property related to a Federal-Funded project for 20 years, unless otherwise agreed to by ODOT. *(Source: ODOT)* |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## I. PROCUREMENT AND SUSPENSION AND DEBARMENT

### OMB Compliance Requirements – Procurement

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

***Procurement—Grants and Cooperative Agreements***

*Non-Federal Entities Other than States*

Non-Federal entities other than States, including those operating Federal programs as subrecipients of States, must follow the procurement standards set out at [2 CFR sections 200.318 through 200.326](2CFR200.317_thru_200.326.pdf). They must use their own documented procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal statutes and the procurement requirements identified in 2 CFR part 200. A non-Federal entity must:

1. Meet the general procurement standards in 2 CFR section 200.318, which include oversight of contractors’ performance, maintaining written standards of conduct for employees involved in contracting, awarding contracts only to responsible contractors, and maintaining records to document history of procurements.

2. Conduct all procurement transactions in a manner providing full and open competition, in accordance with 2 CFR section 200.319.

3. Use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR sections 200.320(a) and (b). Under the micro-purchase method, the aggregate dollar amount does not exceed $3,500 ($2,000 in the case of acquisition for construction subject to the Wage Rate Requirements (Davis-Bacon Act)). Small purchase procedures are used for purchases that exceed the micro-purchase amount but do not exceed the simplified acquisition threshold. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable (2 CFR section 200.320(a)). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources (2 CFR section 200.320(b)). See discussion regarding higher thresholds for micro-purchase and small purchase methods in the NDAA 2017 and 2018 sections in this Part.

4. For acquisitions exceeding the simplified acquisition threshold, the non-Federal entity must use one of the following procurement methods: the sealed bid method if the acquisition meets the criteria in 2 CFR section 200.320(c); the competitive proposals method under the conditions specified in 2 CFR section 200.320(d); or the noncompetitive proposals method (i.e., solicit a proposal from only one source) but only when one or more of four circumstances are met, in accordance with 2 CFR section 200.320(f).

5. Perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold, including contract modifications (2 CFR section 200.323(a)). The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used (2 CFR section 200.323(d)).

6. Ensure that every purchase order or other contract includes applicable provisions required by 2 CFR section 200.326. These provisions are described in Appendix II to 2 CFR part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.”

***Procurement—Cost-Reimbursement Contracts under the Federal Acquisition Regulation***

When awarding subcontracts, non-Federal entities receiving cost-reimbursement contracts under the Federal Acquisition Regulation (FAR) must comply with the clauses at [48 CFR section 52.244-2](48CFR52.244-2.pdf) (consent to subcontract), [52.244-5](48CFR52.244-5.pdf) (competition), [52.203-13](48CFR52.203-13.pdf) (code of business ethics), [52.203-16](48CFR52.203-16.pdf) (conflicts of interest), and [52.215.12](48CFR52.215-12.pdf) (cost or pricing data); and the terms and conditions of the contract. The FAR defines “subcontracts” as a contract, i.e., a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

**Source of Governing Requirements – Procurement**

The requirements that apply to procurement under grants and cooperative agreements are contained in [2 CFR sections 200.317 through 200.326](2CFR200.317_thru_200.326.pdf), program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The requirements that apply to procurement under cost-reimbursement contracts under the FAR are contained in 48 CFR parts [03](48CFR_Part_3.pdf), [15](48CFR_Part_15.pdf), [44](48CFR_Part_44.pdf) and the clauses at [48 CFR section 52.244-2](48CFR52.244-2.pdf), [52.244-5](48CFR52.244-5.pdf), [52.203-13](48CFR52.203-13.pdf), [52.203-16](48CFR52.203-16.pdf), and [52.215-12](48CFR52.215-12.pdf); agency FAR Supplements; and the terms and conditions of the contract.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**National Defense Authorization Act (NDAA) of 2017and 2018**

The following information is provided regarding timing and impact of the NDAA of 2017 and 2018. Additional guidance to the auditor is provided in Appendix VII -A – “Other Audit Advisories of the Supplement.

*NDAA of 2017*

The NDAA of 2017, Section 217 (Pub. L. No. 114-328, 130 Stat. 6 (2051)) and 41 USC 1902(a)(2) contained the following provisions.

Raise the micro-purchase threshold to $10,000 for procurements under grants and cooperative agreements to institutions of higher education, or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations.

Allow a threshold higher than $10,000 as determined appropriate by the head of the relevant executive agency.

The provisions of this Act are specific to, institutions of higher education, or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations. Official OMB guidance [M-18-18](OMB%20Procurement%20Memo%20M-18-18.pdf) was issued on June 20, 2018, and indicated that the effective date of this Act was when the NDAA 2017 was signed into law on December 23, 2016. It also states that the non-Federal entity must document this decision in its internal procurement policies.

Note that the exception for the higher micro-purchase threshold is not available to ALL auditees and that when implemented by eligible auditees, it would apply to procurements purchased under ALL federal grants and cooperation agreements.

Institutions of higher education, or related or affiliated nonprofit entities, independent research institutes and nonprofit research organizations also can request micro-purchase threshold higher than $10,000, but in accordance with OMB M-18-18, it would need a formal approval from the entity’s cognizant federal agency for indirect cost rates. Once approved, the non-Federal entity must document this decision to use the higher threshold in its internal procurement policies.

*NDAA of 2018*

The NDAA of 2018, Sections 805 (41 USC 134) and 806 (41 USC. 1902 (a) (1)), increased the simplified acquisition threshold to $250,000 and the micro-purchase threshold to $10,000, respectively. These changes effectively redefine the level for the simplified acquisition threshold (section 200.88 of the Uniform Guidance) and the micro-purchase threshold (section 200.67 of the Uniform Guidance). These changes will become effective when they are formally codified in the Federal Acquisition Regulations (FAR) (proposed 10/02/2019, 84 FR 52420).

Once codified, the higher thresholds will be available to all auditees. The non-Federal entity must document this decision to use the higher thresholds in its internal procurement policies.

OMB M-18-18 allows the Federal agencies to permit the use of the higher thresholds by the grant recipients and states that “agencies should apply this exception to all recipients.” This action allows the maximum flexibility to grant recipients for early implementation, effectively June 20, 2018, with the approval of the Federal cognizant agency for indirect costs rates. Grant recipients should document any change based on this exception in its internal procurement policies. Also see [Appendix VII](OMB_Compliance_Supplement_APP_VII.pdf) of this Supplement related to audit findings.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

DOT has made additions and edits to part 317. EPA has made additions and edits to part 318. HHS has made additions and edits to parts 212, 318, 320 and 325. The most recent compilation of agency additions and exceptions is provided on the CFO website here <https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf>. However, this list is only updated through 12/2014. AOS evaluated agency exceptions through August 2019. For further evaluation of exceptions, AOS auditors only will need to reference our internal AOS evaluation process [at the following link](http://portal/BP/Intranet/Auditor%20Resources%20File%20Bin/UG%20Exception%20Evaluation%20by%20Federal%20Agency.xlsx).

### OMB Compliance Requirements – Suspension and Debarment

**Auditors will need to review Appendix II in the link under Source of Governing requirements to determine where the agency codified 2 CFR 180. Citations of non-compliance must start with the agencies codification of 2 CFR part 180.**

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. “Covered transactions” include contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed $25,000 or meet certain other criteria as specified in [2 CFR section 180.220](2CFR180.220.pdf). All non-procurement transactions entered into by a pass-through entity (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in [2 CFR section 180.215](2CFR180.215.pdf).-

When a non-Federal entity enters into a covered transaction with an entity at a lower tier, the non-Federal entity must verify that the entity, as defined in [2 CFR section 180.995](2CFR180.995.pdf) and agency adopting regulations, is not suspended or debarred or otherwise excluded from participating in the transaction. This verification may be accomplished by (1) checking the System for Award Management (SAM) Exclusions maintained by the General Services Administration (GSA) and available at <https://www.sam.gov/SAM>/ (click on Search Record, then click on Advanced Search-Exclusions) (**Note:** The OMB guidance at 2 CFR part 180 and agency implementing regulations still refer to the SAM Exclusions as the Excluded Parties List System (EPLS)), (2) collecting a certification from the entity, or (3) adding a clause or condition to the covered transaction with that entity ([2 CFR section 180.300](2CFR180.300.pdf)).

Non-Federal entities receiving contracts from the Federal Government are required to comply with the contract clause at [48 CFR 52.209-6](48CFR52.209-6.pdf) before entering into a subcontract that will exceed $30,000, other than a subcontract for a commercially available off-the-shelf item.

**Source of Governing Requirements – Suspension and Debarment**

The requirements for nonprocurement suspension and debarment are contained in OMB guidance in [2 CFR part 180](2CFR_Part_180.pdf), which implements Executive Orders 12549 and 12689, “Debarment and Suspension;” Federal awarding agency regulations in Title 2 of the CFR adopting/implementing the OMB guidance in 2 CFR part 180; program legislation; and the terms and conditions of the award.

Most of the Federal agencies have adopted or implemented 2 CFR part 180, generally by relocating their associated agency rules in Title 2 of the CFR. [Appendix II to the Supplement](OMB_Compliance_Supplement_APP_II.pdf) includes the current CFR citations for all agencies adoption or implementation of the nonprocurement suspension and debarment guidance.

Government-wide requirements related to suspension and debarment and doing business with suspended or debarred subcontractors under cost reimbursement contracts under the FAR are contained in [48 CFR section 9.405-2(b)](48CFR9.405-2(b).pdf) and the clause at [48 CFR section 52.209-6](48CFR52.209-6.pdf).

**Availability of Other Information**

2 CFR part 200.110(a) Effective/Applicability Date, was amended of May 17, 2017, to allow non-Federal entities to continue to comply with the procurement standards in OMB Circular A-110 or the A-102 common rule, as applicable, through December 25, 2017 extending the grace period from 2 years to 3 years. Implementation of the procurement standards in [2 CFR sections 200.317 through 200.326](2CFR200.317_thru_200.326.pdf) was required for auditee fiscal years beginning on or after December 26, 2017. . For example, for a non-Federal entity with a June 30th year end, implementation is required for its fiscal years beginning July 1, 2018.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

**Written Procedure Requirements:**

[2 CFR 200.318](2CFR200.318.pdf)(c)(1) requires non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

[2 CFR 200.318](2CFR200.318.pdf)(c)(2) requires non-Federal entities maintain written standards of conduct covering organizational conflicts of interest when the non-federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe.

[2 CFR 200.320](2CFR200.320.pdf)(d)(3) requires non-federal entities to have a written method for conducting technical evaluations of the competitive proposals received and for selecting contract recipients.

[2 CFR 200.319](2CFR200.319.pdf)(c) requires that the written procedures required by 2 CFR 200.320(d)(3) ensure all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

*(Source: CFAE/eCFR)*

### Additional Program Specific Information

**LPA Agreements**

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State’s website at <https://ohioauditor.gov/findings.html>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.

*(Source:* [*LPA Federal Local-Let Project Agreement Rev. Feb. 2019*](LPA_Federal_Local-Let_Project_Agreement_rev_02.2019.pdf) *(for FYE 6/30/20) and* [*Rev. Mar. 2020*](LPA%20Federal%20Local-Let%20Project%20Agreement_rev03.26.2020.pdf) *(for FYE 12/30/20))*

It is important to review applicable local government agreements to determine if the language is consistent with the guidance/reference above, as applicable.

*(Source: Michael Miller, ODOT Office of External Audits, on 3/2/21)*

**This section should also contain program specific information for Procurement and Suspension and Debarment that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Procurement_Suspension_Debarment_Auditobjectives.pdf)

**Additional Control Test Objectives for Written Procedures:**

When documenting and identifying the key control(s) in place to address the compliance requirement, consider if the client has written procedures to document the control process.

* UG requires a written policy for the requirements outlined in [2 CFR 200.318](2CFR200.318.pdf)(c)(1), [2 CFR 200.318](2CFR200.318.pdf)(c)(2), [2 CFR 200.320](2CFR200.320.pdf)(d)(3), and [2 CFR 200.319](2CFR200.319.pdf)(c)*.*
* Document whether the non-Federal entity established written procedures consistent with the following requirements:
  + 2 CFR 200.318(c)(1) for employee conflicts of interest.
  + 2 CFR 200.318(c)(2) for organizational conflicts of interest.
  + 2 CFR 200.320(d)(3) for selection and awarding of competitive contracts.
  + 2 CFR 200.319(c) for minimum evaluation criteria for bids and proposals.
* It is auditor judgment how to report instances where the entity either lacks having a written policy or their written policy is insufficient to meet the requirements of 2 CFR 200.318(c)(1), 2 CFR 200.318(c)(2), 2 CFR 200.320(d)(3), and 2 CFR 200.319(c).
  + While auditors would normally use a written policy as the basis for the compliance control, there could be other key controls in place to ensure program compliance.
  + The lack of a policy would be noncompliance, which could rise to the level of material noncompliance and even a control deficiency (SD / MW) if there were underlying internal control deficiencies.
    - If there are key controls in place operating effectively, AOS auditors would report the lack of the required UG policy as a management letter citation. However, in subsequent audits, evaluate if the noncompliance should be elevated if not adopted. Written policies aid in consistency and adherence to requirements strengthening internal control processes.

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures – Compliance

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| *(Procedures 2 – 5 apply to non-Federal entities other than States.)*  2. Obtain the entity’s procurement policies and verify that the policies comply with the compliance requirements highlighted above.  3. Verify that the entity has written standards of conduct that cover conflicts of interest and govern the performance of its employees engaged in the selection, award, and administration of contracts ([2 CFR section 200.318(c)](2CFR200.318(c).pdf) and [48 CFR sections 52.203-13](48CFR52.203-13.pdf) and [52.203-16](48CFR52.203-16.pdf)).  4. Ascertain if the entity has a policy to use statutorily or administratively imposed in‑State or local geographical preferences in the evaluation of bids or proposals. If yes, verify that these limitations were not applied to federally funded procurements except where applicable Federal statutes expressly mandate or encourage geographic preference ([2 CFR section 200.319(b)](2CFR200.319(b).pdf)).  5. Select a sample of procurements and perform the following procedures:  a. Examine contract files and verify that they document the history of the procurement, including the rationale for the method of procurement, selection of contract type, basis for contractor selection, and the basis for the contract price ([2 CFR section 200.318(i)](2CFR200.318(i).pdf) and [48 CFR part 44](48CFR_Part_44.pdf) and section [52.244-2](48CFR52.244-2.pdf)).  b. For grants and cooperative agreements, verify that the procurement method used was appropriate based on the dollar amount and conditions specified in [2 CFR section 200.320](2CFR200.320.pdf).Current micro-purchase and simplified acquisition thresholds can be found in the FAR (48 CFR subpart 2.1, “Definitions”)  c. Verify that procurements provide full and open competition ([2 CFR section 200.319](2CFR200.319.pdf) and [48 CFR section 52.244-5](48CFR52.244-5.pdf)).  d. Examine documentation in support of the rationale to limit competition in those cases where competition was limited and ascertain if the limitation was justified ([2 CFR sections 200.319](2CFR200.319.pdf) and [200.320(f)](2CFR200.320(f).pdf) and [48 CFR section 52.244-5](48CFR52.244-5.pdf)).  e. Ascertain if cost or price analysis was performed in connection with all procurement actions exceeding the simplified acquisition threshold, including contract modifications, and that this analysis supported the procurement action [(2 CFR section 200.323](2CFR200.323.pdf) and [48 CFR section 15.404-3](48CFR15.404-3.pdf)).  **Note**: A cost or price analysis is required for each procurement action, including each contract modification, when the total amount of the contract and related modifications is greater than the simplified acquisition threshold.)  f. Verify consent to subcontract was obtained when required by the terms and conditions of a cost reimbursement contract under the FAR ([48 CFR section 52.244-2](48CFR52.244-2.pdf)).  **Note**: If the non-Federal entity has an approved purchasing system, consent to subcontract may not be required unless specifically identified by contract terms or conditions. The auditor should verify that the approval of the purchasing system is effective for the audit period being reviewed.  g. Refer to Appendix VII for guidance on reporting audit test results during the implementation periods for the National Defense Authorization Acts of 2017 and 2018.  *(Procedures 6 and 7 apply to all non-Federal entities)*  6. Review the non-Federal entity’s procedures for verifying that an entity with which it plans to enter into a covered transaction is not debarred, suspended, or otherwise excluded ([2 CFR sections 200.212](2CFR200.212.pdf) and [200.318(h)](2CFR200.318(h).pdf); [2 CFR section 180.300](2CFR180.300.pdf); [48 CFR section 52.209-6](48CFR52.209-6.pdf)).  7. Select a sample of procurements and subawards and test whether the non-Federal entity followed its procedures before entering into a covered transaction. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## J. PROGRAM INCOME

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

### OMB Compliance Requirements

Program income is gross income earned by a non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance (unless there is a requirement for disposition of program income after the end of the period of performance as provided in [2 CFR section 200.307(f)](2CFR200.307(f).pdf)).

Program income ([2 CFR section 200.80](2CFR200.80.pdf)) includes, but is not limited to income from:

* Fees for services performed,
* The use or rental of real or personal property acquired under Federal awards,
* The sale of commodities or items fabricated under Federal awards,
* License fees and royalties on patents and copyrights, except as provided below, and
* Principal and interest on loans made with Federal award funds.

Program income does not include:

* Interest earned on advances of Federal funds.
* Except as otherwise provided in Federal statutes, regulations or the terms and conditions of the Federal award, rebates, credits, discounts and interest earned on any of them.
* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity, unless the Federal award or Federal awarding agency regulations specifically identify the revenues as program income ([2 CFR section 200.307(c)](2CFR200.307(c).pdf)).
* The proceeds from the sale of equipment or real property acquired in whole or in part under the Federal award ([2 CFR section 200.307(d)](2CFR200.307(d).pdf)).
* Royalties or income earned by an institution of higher education or a nonprofit organization on inventions conceived or first actually reduced to practice in the performance of work under a funding agreement with a Federal agency that is shared with the inventor ([2 CFR section 200.307(g)](2CFR200.307(g).pdf); [37 CFR sections 401.2](37CFR401.2.pdf) and [401.14(k)](37CFR401.14(k).pdf); 35 USC 201(i), and 35 USC 202(c)(7)(B)).

If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determineprogramincome, provided those costs have not been charged to the Federal award ([2 CFR section 200.307(b)](2CFR200.307(b).pdf)).

Program income may be used in any of the following three methods, consistent with [2 CFR section 200.307(e)](2CFR200.307(e).pdf):

1. Deduction.

Program income is deducted from total allowable costs in order to determine the net allowable costs, rather than to increase the funds committed to the project. This method must be used if the Federal awarding agency has given no prior approval for how program income is to be used and its regulations and the terms and conditions of the Federal award are silent on this matter. Where this method is used, program income must be applied to current costs unless the Federal awarding agency authorizes otherwise (2 CFR section 200.307(e)(1)).

2. *Addition*.

With prior approval of the Federal awarding agency, program income may be added to the Federal award by the Federal agency and the non-Federal entity. This method must be used for Federal awards to institutions of higher education and nonprofit research institutions if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used (2 CFR section 200.307(e)(2)).

3. *Cost Sharing or Matching*.

With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same (2 CFR section 200.307(e)(3)).

Unless Federal awarding agency regulations or the terms and conditions of the Federal award specify otherwise, non-Federal entities have no obligation to the Federal government regarding program income earned after the end of the period of performance ([2 CFR section 200.307(f)](2CFR200.307(f).pdf)).

**Source of Governing Requirements**

The requirements that apply to program income are contained in [2 CFR section 200.80](2CFR200.80.pdf) (definition of “program income”), [2 CFR section 200.307](2CFR200.307.pdf) (program income), program legislation, Federal awarding agency regulations, and the terms and conditions of the Federal award.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

DOT has made additions and edits to part 80. EPA has made additions and edits to part 307. HHS has made additions and edits to parts 80 and 307. The most recent compilation of agency additions and exceptions is provided on the CFO website here <https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf>. However, this list is only updated through 12/2014. AOS evaluated agency exceptions through August 2019. For further evaluation of exceptions, AOS auditors only will need to reference our internal AOS evaluation process [at the following link](http://portal/BP/Intranet/Auditor%20Resources%20File%20Bin/UG%20Exception%20Evaluation%20by%20Federal%20Agency.xlsx).

**Part 4 OMB Program Specific Requirements**

**U.S. Department of Transportation Program Specific Information:**

State and local governments may only use the state share of net income from the sale, use, or lease of real property previously acquired with state funds if the income is used for projects eligible under 23 USC (23 USC 156).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

**MPO Agreements**

10.7: Reimbursements *(p.47)*

The MPO is permitted and encouraged to generate program income to defray costs incurred in the performance of work program activities. Accordingly, the MPO must have a formal written policy that identifies which reports, materials and services will be made available to the local area without charge as well as those that will be used to generate program income.

Program income shall be reflected in the work program as a deduction from total outlays to determine net costs on which the federal and state shares for each affected category or subcategory will be based. Unless the MPO agreement with ODOT specifically identifies another alternative, requests for reimbursement shall be net of program income.

*(Source:* [*Ohio MPO Administration Manual*](MPO_Administration_Manual_Jan2019.pdf)*)*

**This section should also contain program specific information for Program Income that is applicable to the program CFDA being tested from the pass-through agency and contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Program_Income_Auditobjectives.pdf)

|  |
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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures – Compliance

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 1. *Identify Program Income*  a. Review the statutes, regulations, and terms and conditions of the Federal award applicable to the program and ascertain if program income was anticipated. If so, ascertain the requirements for determining or assessing the amount of program income (e.g., a scale for determining user fees, prohibition of assessing fees against certain groups of individuals, etc.), and the requirements for recording and using program income.  b. Inquire of management and review accounting records to ascertain if program income was received.  2. *Determining or Assessing Program Income* – Perform tests to verify that program income was properly determined or calculated in accordance with stated criteria, and that amounts collected were classified as program income only if collected from allowable sources.  3. *Recording of Program Income* – Perform tests to verify that all program income was properly recorded in the accounting records.  4. *Use of Program Income* – Perform tests to ascertain if program income was used in accordance with [2 CFR section 200.307(e)](2CFR200.307(e).pdf) and the program requirements set by the Federalawarding agency in its regulations and the terms and conditions of the award. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## M. SUBRECIPIENT MONITORING

**Federal awarding agencies adopted/implemented the Uniform Guidance in 2 CFR part 200. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-federal entities. Throughout the FACCR 2 CFR part 200 has been referenced, however in determining compliance auditors need to refer the applicable agency codification of 2 CFR Part 200. Auditors should review this** [**link**](Agency%20Adoption%20of%20the%20UG%20and%20Example%20Citations.pdf) **for a full discussion of agency adoption of the UG and how to cite non-compliance exceptions. Auditors will need to start with the agency codification of the UG when citing exceptions.**

**Note:** Transfers of Federal awards to another component of the same auditee under [2 CFR part 200, subpart F](2CFR200_subpart_F.pdf), do not constitute a subrecipient or contractor relationship.

### OMB Compliance Requirements

A pass-through entity (PTE) must (see here for [2 CFR 200.331(a)](2CFR200.331(a).pdf)):

- *Identify the Award* *and Applicable Requirements* – Clearly identify to the subrecipient: (1) the award as a subaward at the time of subaward (or subsequent subaward modification) by providing the information described in 2 CFR section 200.331(a)(1); (2) all requirements imposed by the PTE on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the award (2 CFR section 200.331(a)(2)); and (3) any additional requirements that the PTE imposes on the subrecipient in order for the PTE to meet its own responsibility for the Federal award (e.g., financial, performance, and special reports) (2 CFR section 200.331(a)(3)).

- *Evaluate Risk* – Evaluate each subrecipient’s risk of noncompliance for purposes of determining the appropriate subrecipient monitoring related to the subaward (2 CFR section 200.331(b)). This evaluation of risk may include consideration of such factors as the following (see here for [2 CFR 200.331(b)-(f)](2CFR200.331(b)_through_(f).pdf)):

1. The subrecipient’s prior experience with the same or similar subawards;
2. The results of previous audits including whether or not the subrecipient receives single audit in accordance with 2 CFR part 200, subpart F, and the extent to which the same or similar subaward has been audited as a major program;
3. Whether the subrecipient has new personnel or new or substantially changed systems; and
4. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

- *Monitor* – Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, complies with the terms and conditions of the subaward, and achieves performance goals (2 CFR sections 200.331(d) through (f)). In addition to procedures identified as necessary based upon the evaluation of subrecipient risk or specifically required by the terms and conditions of the award, subaward monitoring must include the following:

1. Reviewing financial and programmatic (performance and special reports) required by the PTE.
2. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the PTE detected through audits, on-site reviews, and other means.
3. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the PTE as required by [2 CFR section 200.521](2CFR200.521.pdf).

* *Ensure Accountability of For-Profit Subrecipients* – Some Federal awards may be passed through to for-profit entities. For-profit subrecipients are accountable to the PTE for the use of the Federal funds provided. Because 2 CFR part 200 does not make subpart F applicable to for-profit subrecipients, the PTE is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients for the subaward. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits ([2 CFR section 200.501(h)](2CFR200.501(h).pdf)).

**Source of Governing Requirements**

The requirements for subrecipient monitoring for the subaward are contained in 31 USC 7502(f)(2) (Single Audit Act Amendments of 1996 (Pub. L. No. 104-156)), [2 CFR sections 200.330](2CFR200.330.pdf), [.331](2CFR200.331.pdf), and .[501(h)](2CFR200.501(h).pdf); Federal awarding agency regulations; and the terms and conditions of the award.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Agency Codification Adjustments/Exceptions:**

USDA, HUD, DOL, DOT, and EPA have not made any adjustments or exceptions that directly impact references within this compliance requirement.

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

There are no Program Specific requirements for this compliance requirement that are anticipated to apply at the local level.

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

None noted.

**This section should also contain program specific information for Subrecipient Monitoring that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

[**See here for the OMB Supplement Audit Objectives and Compliance Requirements**](Subrecipient_Monitoring_Auditobjectives.pdf)

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures – Compliance

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Note**: The auditor may consider coordinating the tests related to subrecipients performed as part of C., “Cash Management” (tests of cash reporting submitted by subrecipients); E., “Eligibility” (tests that subawards were made only to eligible subrecipients); and I., “Procurement and Suspension and Debarment” (tests of ensuring that a subrecipient is not suspended or debarred) with the testing of “Subrecipient Monitoring.”  **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 1. Review the PTE’s subrecipient monitoring policies and procedures to gain an understanding of the PTE’s process to identify subawards, evaluate risk of noncompliance, and perform monitoring procedures based upon identified risks.   2. Review subaward documents including the terms and conditions of the subaward to ascertain if, at the time of subaward (or subsequent subaward modification), the PTE made the subrecipient aware of the award information required by [2 CFR section 200.331(a)](2CFR200.331(a).pdf) sufficient for the PTE to comply with Federal statutes, regulations, and the terms and conditions of the award.  3. Review the PTE’s documentation of monitoring the subaward and consider if the PTE’s monitoring provided reasonable assurance that the subrecipient used the subaward for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward.  4. Ascertain if the PTE verified that subrecipients expected to be audited as required by [2 CFR part 200, subpart F](2CFR200_subpart_F.pdf), met this requirement [(2 CFR section 200.331(f)](2CFR200.331(f).pdf)). This verification may be performed as part of the required monitoring under [2 CFR section 200.331(d)(2)](2CFR200.331(d)(2).pdf) to ensure that the subrecipient takes timely and appropriate action on deficiencies detected though audits. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS - Replacement of Publicly Owned Real Property

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

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).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

None noted.

**This section should contain program specific information for Special Tests and Provisions that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

Obtain an understanding of internal control, assess risk, and test internal control as required by [2 CFR section 200.514(c)](2CFR200.514(c).pdf) and using the guidance provided in the following:

* [Part 6](OMB_Compliance_Supplement_Part_6.pdf) of the OMB Compliance Supplement, Internal Control
* [2013 COSO](https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf)
* GAO’s 2014 Green Book (<http://www.gao.gov/assets/670/665712.pdf>).

Consider the results of the testing of internal control in assessing the remaining risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

*(Source: 2020 OMB Compliance Supplement Part 3)*

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| a. Ascertain if there were any functional replacements of publicly owned real property.  b. Verify that FHWA concurred in the state’s determination that the functional replacement is in the public interest.  c. Review a sample of transactions involving functional replacements and verify that the transactions were consistent with the FHWA requirements. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS - Quality Assurance Program

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

**MATERIALS QUALITY CONTROL**

The LPA, through its CPE, must provide for and ensure that all materials and Job Mix Formulas (JMF’s) incorporated into the project are tested, sampled, inspected, and/or certified according to plan specifications and ODOT’s Materials Management Process. This is an important process that is critical to both the quality of the finished project and the ability of the LPA to receive payment. Only laboratories certified by AASHTO Materials Reference Laboratory (AMRL) for the materials to be tested are permitted. At the Pre-Construction Meeting, the LPA must provide to ODOT an Implementation Plan listing the individuals responsible for testing and inspection, their certifications, and those of an independent testing laboratory to be utilized. The LPA shall adhere to the requirements of Appendix J which outlines the processes for materials management. Appendix J was developed to assist LPAs in setting up controls to ensure materials meet ODOT specifications during construction management. The Project Bill of Materials (PBOM) shall be created to track material and quantities for each construction bid item. The expectations for material submittals shall be discussed at the preconstruction conference.

*(Source:* [*ODOT Locally Administered Transportation Projects Manual of Procedures, LPA Construction Contract Administration Chapter*](LPAConstructionContractAdminChapter.pdf) *(p.8))*

**This section should also contain program specific information for Special Tests and Provisions that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

Obtain an understanding of internal control, assess risk, and test internal control as required by [2 CFR section 200.514(c)](2CFR200.514(c).pdf) and using the guidance provided in the following:

* [Part 6](OMB_Compliance_Supplement_Part_6.pdf) of the OMB Compliance Supplement, Internal Control
* [2013 COSO](https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf)
* GAO’s 2014 Green Book (<http://www.gao.gov/assets/670/665712.pdf>).

Consider the results of the testing of internal control in assessing the remaining risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

*(Source: 2020 OMB Compliance Supplement Part 3)*

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures

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| --- |
| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| 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. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS - Project Approvals

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

FHWA project approval/authorization to proceed is required before costs are incurred for all phases or projects, except for certain property acquisition costs permitted under 23 USC 108, certain emergency repair work under 23 USC 125, and preliminary engineering under Section 1440 of the FAST Act (23 USC 121 note). Based on the Stewardship and Oversight agreement between the State DOT and the FHWA Division office, projects may be authorized under the authority in 23 USC 106(c), which allows the State DOT to assume responsibilities for designs, plans, specifications, estimates, contract awards, and inspection of progress. When FHWA authorizes a construction project or phase in a project agreement, the State DOT may incur costs (i.e. advertise for bids or use force account work) (23 CFR sections 630.205(c), 635.112(a), 635.204, and 635.309).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

**PS&E Package**

The Plans, Specifications & Estimate package (PS&E) is necessary for obtaining Federal authorization to advertise for bids. The LPA is responsible for assembling and submitting the package which is to contain the following material:

* 1. A complete set of plans that are signed and sealed by a licensed engineer or architect. The title sheet must include the county-route-section, Federal Project Number and PID number. If the licensed engineer or architect is a different person than the LPA authority, the LPA authority shall sign the title sheet of the plans. Plans may be generated in the LPA’s format. (This item is not included in a Design-Build project.)
  2. The Bid Proposal
  3. A copy of the engineer’s estimate, signed and sealed by the Design Engineer
  4. The LPA agreement between ODOT and the LPA, if not previously submitted
  5. Environmental consultation form
  6. Right-of-Way Certification Letter
  7. Proposal Notes
  8. Utility Note
  9. Web Bid Submission form if required by the District LPA Manager (upon authorization and for a period of one month, ODOT’s Office of Local Programs will post an LPA’s project information on their website at <http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Pages/BidNotices.aspx> . A copy of this form is located at the end of the chapter.)

The ODOT district will review the package to ensure that it is complete, and then send it to ODOT’s Office of Local Programs for processing. Once the PS&E package has been received in Central Office, Federal authorization will be issued in approximately ten (10) days. This period covers processing by ODOT’s offices of Local Programs and Federal Accounting, and by FHWA. Upon receipt of authorization, provided to the LPA through the District LPA Manager, the LPA can begin to advertise the project.

*(Source:* [*Locally Administered Transportation Projects Manual of Procedures, Advertising, Sale & Award Chapter*](Advertising%20Sale%20Award%20Roles%20and%20Responsibilities.pdf)*, p.8-9)*

The LPA shall submit to ODOT any addendum to be issued during the advertisement period. ODOT must approve such addendum for project eligibility. The addendum then must be distributed to all potential bidders prior to opening bids and awarding of the contract.

*(Source:* [*Locally Administered Transportation Projects Manual of Procedures, Advertising, Sale & Award Chapter*](Advertising%20Sale%20Award%20Roles%20and%20Responsibilities.pdf)*, p.5-6)*

**This section should also contain program specific information for Special Tests and Provisions that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

Obtain an understanding of internal control, assess risk, and test internal control as required by [2 CFR section 200.514(c)](2CFR200.514(c).pdf) and using the guidance provided in the following:

* [Part 6](OMB_Compliance_Supplement_Part_6.pdf) of the OMB Compliance Supplement, Internal Control
* [2013 COSO](https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf)
* GAO’s 2014 Green Book (<http://www.gao.gov/assets/670/665712.pdf>).

Consider the results of the testing of internal control in assessing the remaining risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

*(Source: 2020 OMB Compliance Supplement Part 3)*

Determine whether project activities are started with required state approvals.

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| a. Review a sample of projects and identify dates of the necessary approvals, authorizations, and concurrences.  b. Identify dates that projects were advertised and contract or force account work was initiated and compare to the date of FHWA’s project agreement. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## N. SPECIAL TESTS AND PROVISIONS - Administration of Engineering and Design-Related Service Contracts

### OMB Compliance Requirements

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the statutes, regulations, and the provisions of contract or grant agreements pertaining to the program. For programs listed in this Supplement, the compliance requirements, audit objectives, and suggested audit procedures for Special Tests and Provisions are in Part 4, “Agency Program Requirements.” or Part 5. “Clusters of Programs.” For programs not included in this Supplement, the auditor must review the program’s contract and grant agreements and referenced statutes and regulations to identify the compliance requirements and develop the audit objectives and audit procedures for Special Tests and Provisions which could have a direct and material effect on a major program. The auditor should also inquire of the non-Federal entity to help identify and understand any Special Tests and Provisions.

Additionally, both for programs included and not included in this Supplement, the auditor must identify any additional compliance requirements which are not based in statute or regulation (e.g., were agreed to as part of audit resolution of prior audit findings) which could be material to a major program. Reasonable procedures to identify such compliance requirements would be inquiry of non-Federal entity management and review of the contract and grant agreements pertaining to the program. Any such requirements which may have a direct and material effect on compliance with the requirements of that major program shall be included in the audit.

*(Source: 2020 OMB Compliance Supplement Part 3)*

**Part 4 OMB Program Specific Requirements**

***U.S. Department of Transportation Program Specific Information:***

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

a. Contracting agencies (State DOTs and LPAs) must have written policies and procedures for each method of procurement used to procure engineering and design services. State DOT policies and procedures, or recipient LPA policies and procedures, must be approved by FHWA. LPAs that are subrecipients may adopt written policies and procedures prescribed by the awarding State DOT or prepare and maintain their own written policies and procedures approved by the State DOT (23 CFR section 172.5(b)).

b. Contracting agencies (State DOTs and LPAs) are required to accept the indirect cost rates for consultants and sub-consultants that have been established by a cognizant agency in accordance with the Federal Acquisition Regulation (48 CFR part 31) for 1-year applicable accounting periods, if such rates are not currently under dispute. Consultants and sub-consultants providing engineering and design-related services contracts must certify to contracting agencies that costs used to establish indirect cost rates are in compliance with the applicable cost principles contained in the Federal Acquisition Regulation (48 CFR part 31) by submitting a “Certificate of Final Indirect Costs” (23 USC 112(b)(2)(C); 23 CFR section 172.11(c)(3)).

c. Contracts for a consultant to act in a management support role on behalf of a contracting agency or subrecipient for engineering or design related services must be approved by FHWA before the consultant is hired, unless an alternative approval procedure has been approved by FHWA (23 CFR section 172.7(b)(5)).

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

### Additional Program Specific Information

None noted.

**This section should also contain program specific information for Special Tests and Provisions that is applicable to the program CFDA being tested contained within the individual grant application, agreement, and policies. Include any additional material requirements and delete this yellow highlighted text. Be sure to indicate the source of your information. If no additional requirements are noted, indicate as such.**

### Audit Objectives and Control Testing

Obtain an understanding of internal control, assess risk, and test internal control as required by [2 CFR section 200.514(c)](2CFR200.514(c).pdf) and using the guidance provided in the following:

* [Part 6](OMB_Compliance_Supplement_Part_6.pdf) of the OMB Compliance Supplement, Internal Control
* [2013 COSO](https://www.coso.org/Documents/990025P-Executive-Summary-final-may20.pdf)
* GAO’s 2014 Green Book (<http://www.gao.gov/assets/670/665712.pdf>).

Consider the results of the testing of internal control in assessing the remaining risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

*(Source: 2020 OMB Compliance Supplement Part 3)*

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

*(Source: 2020 OMB Compliance Supplement, Part 4, U.S. Department of Transportation Highway Planning and Construction Cluster)*

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| **What Control Procedures Address the Compliance Requirement (reference/link to documentation or where the testing was performed):** |
| **Basis for the control** (reports, resources, etc. providing information needed to understand requirements and prevent or identify and correct errors):  **Control Procedure** (description of how auditee uses the “Basis” to prevent, or identify and correct or detect errors):  **Person(s) responsible for performing the control procedure** (title):  **Description of evidence documenting the control was applied** (i.e. sampling unit): |

### Suggested Audit Procedures

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| **Suggested Audit Procedures – Compliance (Substantive Tests)**  **(Reference / link to documentation where testing was performed testing):** |
| **Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.** |
| a. Verify that the State DOT, or recipient LPA, has written policies and procedures (usually in the form of a Consultant Manual) for procurement of engineering and design services and that those procedures have been approved by FHWA. For subrecipient LPAs, verify that they are using written policies and procedures prescribed by the awarding State DOT or that the subrecipients’ written policies and procedures have been approved by the State DOT.  b. Verify that contracting agencies are accepting the appropriate indirect cost rates.  c. Verify that consultants and sub-consultants have submitted to the contracting agency a “Certificate of Final Indirect Costs.”  d. Verify that contracts for consultants acting in a management support role have been approved by FHWA or are covered by an FHWA-approved alternate procedure. |

### Audit Implications Summary

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| **Audit Implications (adequacy of the system and controls, and the effect on sample size, significant deficiencies / material weaknesses, material non-compliance and management letter comments)** |
| 1. **Results of Test of Controls: (including material weaknesses, significant deficiencies and management letter items)** 2. **Assessment of Control Risk:** 3. **Effect on the Nature, Timing, and Extent of Compliance (Substantive Test) including Sample Size:** 4. **Results of Compliance (Substantive Tests) Tests:** 5. **Questioned Costs: Actual \_\_\_\_\_\_\_\_\_\_ Projected \_\_\_\_\_\_\_\_\_\_** |

## Program Testing Conclusion

We have performed procedures sufficient to provide reasonable assurance for federal award program compliance requirements (to support our opinions). The procedures performed, relevant evidence obtained, and our conclusions are adequately documented. (If you are unable to conclude, prepare a memo documenting your reason and the implications for the engagement, including the audit reports.)

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| **Conclusion** | | |
| **The opinion on this major program should be:** | |  |
| **Unmodified:** |  | |
| **Qualified (describe):** |  | |
| **Adverse (describe):** |  | |
| **Disclaimer (describe):** |  | |

Per paragraph 13.39 of the **AICPA Audit Guide, *Government Auditing Standards and Single Audits*,** **[Permalink to here](https://checkpoint.riag.com/app/view/docPermaLink?DocID=iAICPAIGS:767.2440&docTid=T0AICPAIGS:767.2440-1&feature=ttoc&lastCpReqId=97899&tlltype=AICPAIGS:767.2668)**, the **following are required to be reported** as audit findings in the federal awards section of the schedule of findings and questioned costs **(**[**see 2CFR200 section 516**](2CFR200.516.pdf)**):**

* Significant deficiencies and material weaknesses in internal control over major programs
* Material noncompliance with the federal statues, regulations, or the terms and conditions of federal awards related to major programs
* Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. The auditor also must report (in the schedule of findings and questioned costs) known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program.
* Known questioned costs that are greater than $25,000 for programs that are not audited as major.
* The circumstances concerning why the opinion in the auditor's report on compliance for major programs is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for federal awards (for example, a scope limitation that is not otherwise reported as a finding).
* Known or likely fraud affecting a federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for federal awards.
* Significant instances of abuse relating to major programs
* Instances in which the results of audit follow-up procedures disclosed that the summary schedule\* of prior audit findings prepared by the auditee in accordance with [Section 200.511(b)](2CFR200.511(b).pdf) of the Uniform Guidance, materially misrepresents the status of any prior audit finding.

[Appendix I](OMB_Compliance_Supplement_APP_I.pdf) lists block grants and other programs excluded from the requirements of specified portions of 2 CFR part 200.

[Appendix II](OMB_Compliance_Supplement_APP_II.pdf) provides regulatory citations for Federal agencies’ codification of the OMB guidance on “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” (in 2 CFR part 200).

All departments and agencies other than the following have OMB-approved exceptions as part of their adoption/implementation: Departments of Commerce, Homeland Security, Housing and Urban Development, and Veterans Affairs; Gulf Coast Restoration Council; Institute of Museum and Library Services; National Endowments for the Arts and Humanities; Office of National Drug Control Policy; and Social Security Administration. The complete list of exceptions is available at <https://www.cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf> and Appendix II of the OMB Compliance Supplement.

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| **Cross-reference to internal control matters (significant deficiencies or material weaknesses), if any, documented in the FACCR:** |
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| **Cross-reference to questioned costs and matter of noncompliance, if any, documented in this FACCR:** |
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**Per paragraph 13.50 of the AICPA Audit Guide, *Government Auditing Standards and Single Audits*,** the schedule of findings and questioned costs should include all audit findings required to be reported under the Uniform Guidance. A separate written communication (such as a communication sometimes referred to as a management letter) may not be used to communicate such matters to the auditee in lieu of reporting them as audit findings in accordance with the Uniform Guidance. See the discussion beginning at paragraph 13.33 for information on Uniform Guidance requirements for the schedule of findings and questioned costs. If there are other matters that do not meet the Uniform Guidance requirements for reporting but, in the auditor's judgment, warrant the attention those charged with governance, they should be communicated in writing or orally. If such a communication is provided in writing to the auditee, there is no requirement for that communication to be referenced in the Uniform Guidance compliance report. Per table 13-2 **a matter must meet the following in order to be communicated in the management letter:**

* Other deficiencies in internal control over compliance that are not significant deficiencies or material weaknesses required to be reported but, in the auditor's judgment, are of sufficient importance to be communicated to management.
* Noncompliance with federal statutes, regulations or terms and conditions of federal awards related to a major program that does not meet the criteria for reporting under the Uniform Guidance but, in the auditor's judgment, is of sufficient importance to communicate to management or those charged with governance.
* Abuse that is less than material to a major program and not otherwise required to be reported but that, in the auditor's judgment, is of sufficient importance to communicate to management and those charged with governance.
* Other findings or issues arising from the compliance audit that are not otherwise required to be reported but are, in the auditor's professional judgment, significant and relevant to those charged with governance.

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| **Cross-reference to any Management Letter items and explain why not included in the Single Audit Compliance Report:** |
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