



Georgia Department of Transportation

KEYS to FTA COMPLIANCE

September 1, 2020

2:00 PM

Michele Nystrom, Transit Compliance & Asset Manager

MONDAY AFTERNOON SCHEDULE

Keys to FTA Compliance

- Introduction – Keys to FTA Compliance - Michele 2:00 - 2:10
- Session 1 – FTA Surplus disposition – Greg Harnett 2:10 – 2:20
- Session 2 – Procurement – Greg Harnett 2:20 – 2:50
- Break 2:50 – 3:00
- Session 3 – D&A Monitoring – Sean Oswald 3:00 – 3:20
- Title VI - Julie Schaffer 3:20 – 4:00
- Break: 4:00 – 4:10
- Session 4 – DBE Compliance – Kimberly King 4:10 – 4:20
- Session 4 – ADA – Vicky Warner, RLS 4:20 – 5:00
- ADJOURN

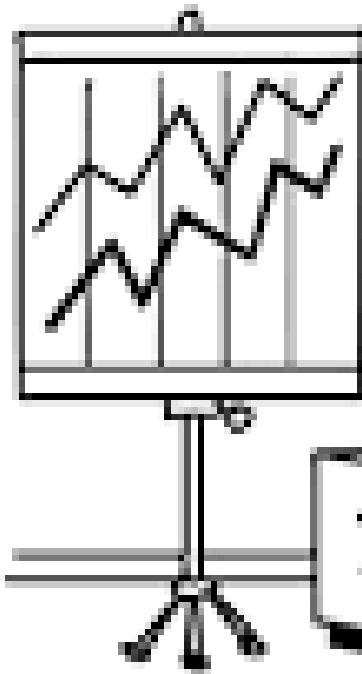


2020 FTA Contractor Guide

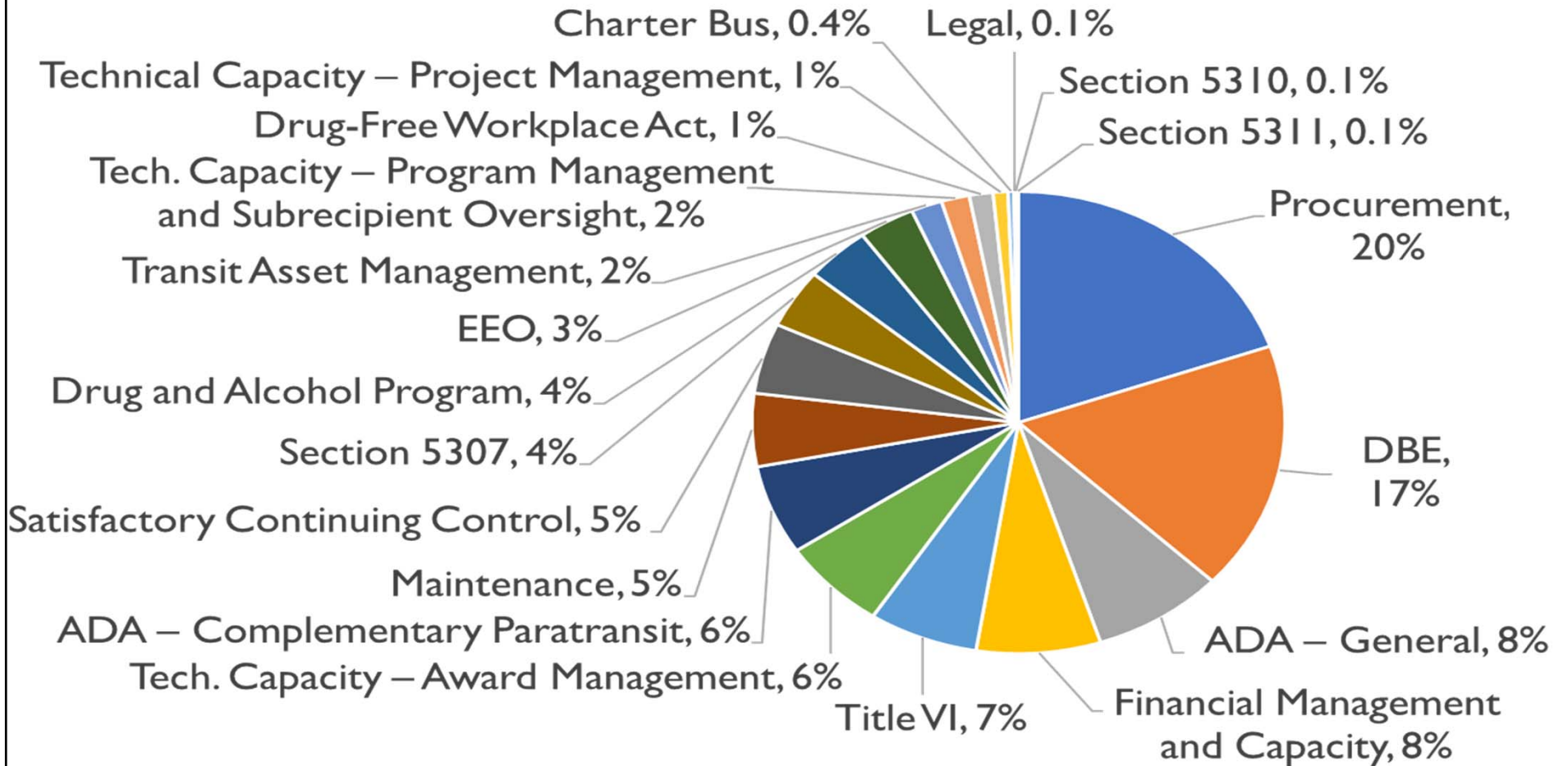
FTA detailed resource guide with instructions necessary to maintain minimum federal compliance

- <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/oversight-policy-areas/56711/fy20-comprehensive-review-contractor%E2%80%99s-manual.pdf>

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FY2019 FTA National Findings



GEORGIA FTA REVIEW 2021

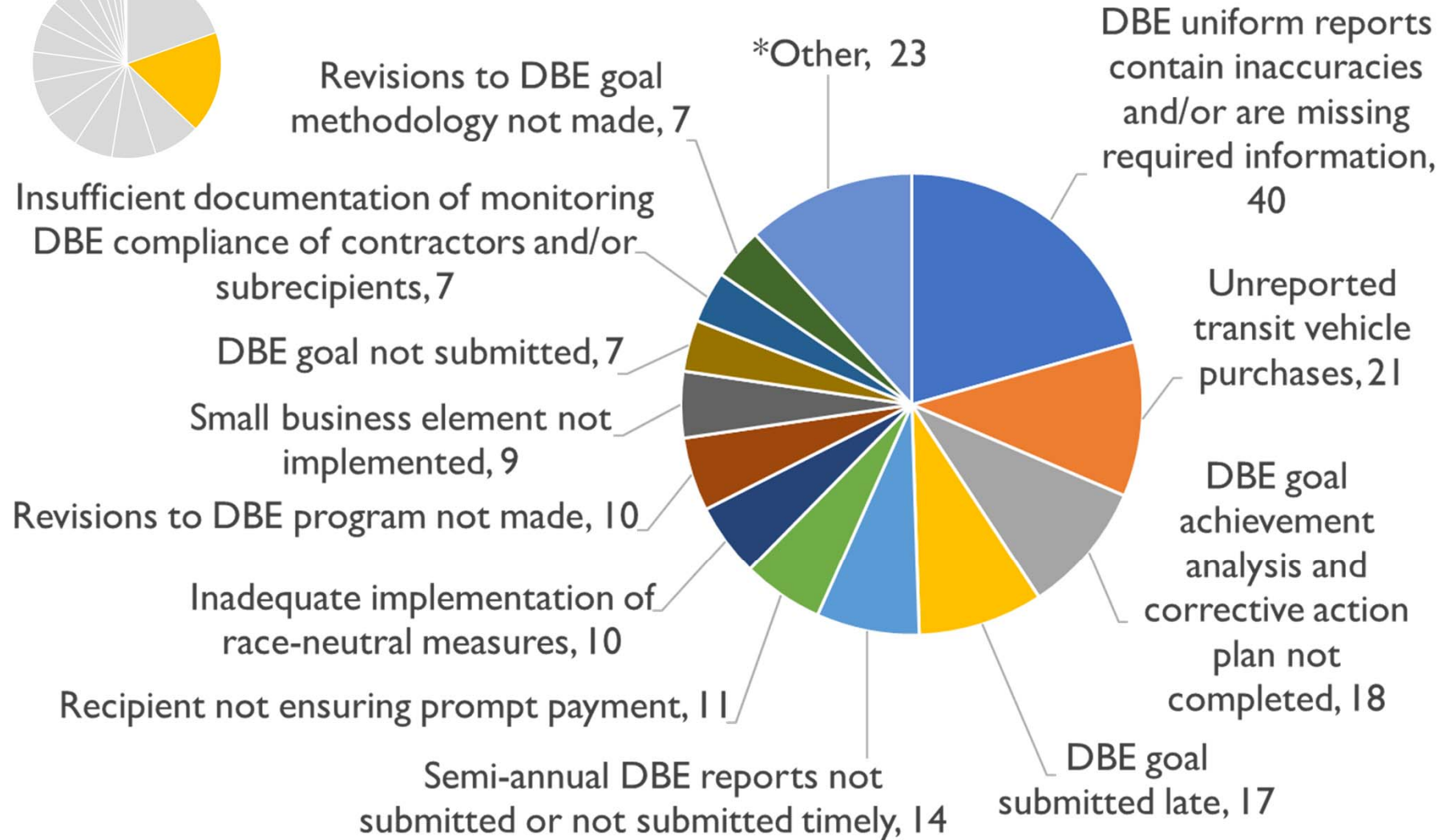
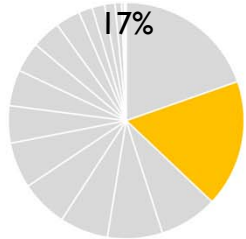
Preparation Underway

- 5311 Risk Assessments conducted June 2020
- 5307 Compliance Reviews prior to December 31, 2020
- GDOT ensuring collection and updating of written policies
 - Drug & Alcohol Title VI Maintenance Plans Procurement files
 - Financial Management Oversight Policy DBE program

“Be Prepared” - You could be chosen for an on-site

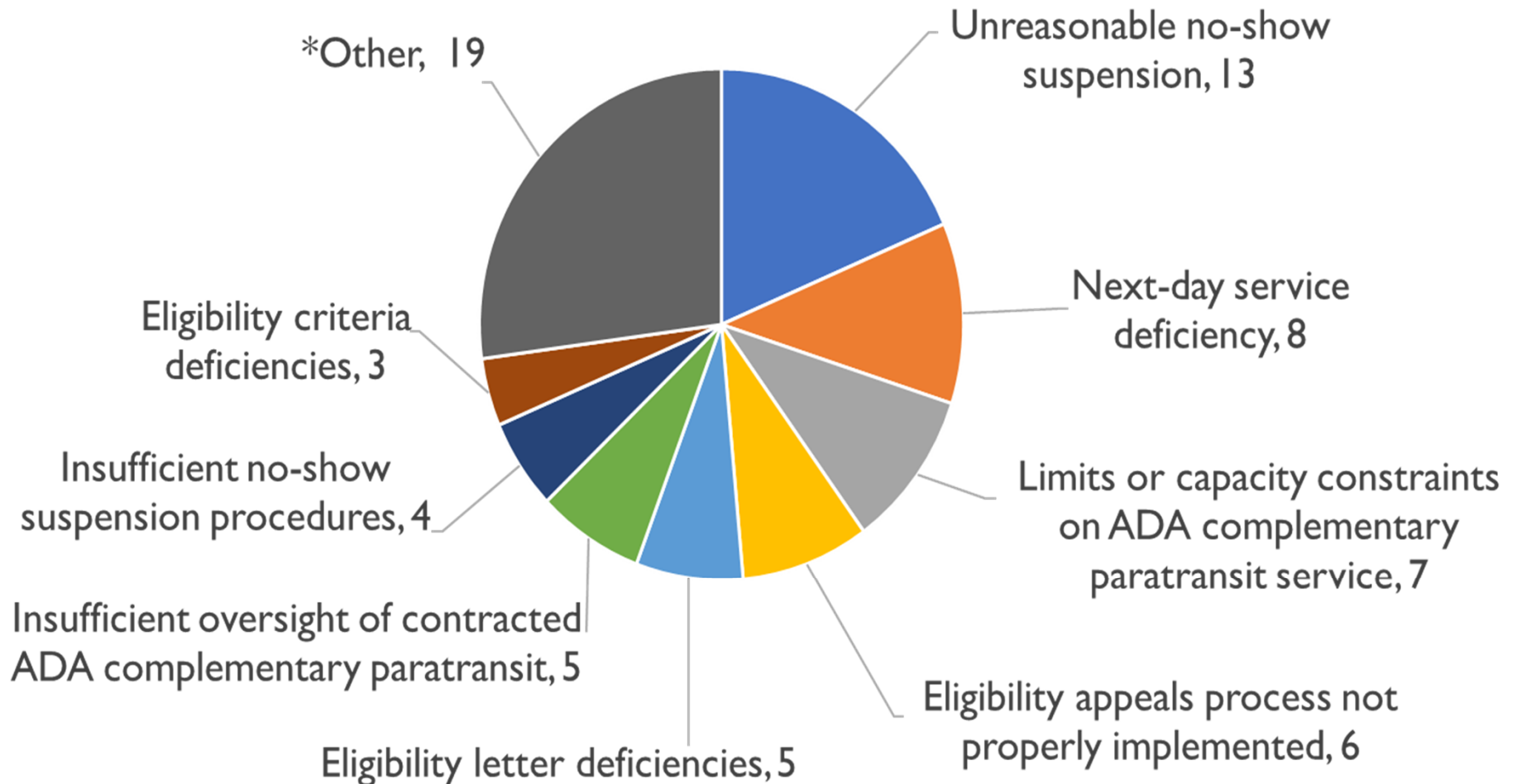
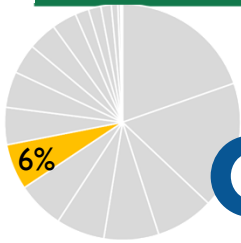


DBE

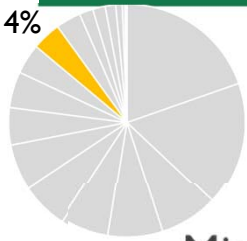


ADA

Complementary Paratransit



Drug and Alcohol Program



Missing qualifications of service agents, 4

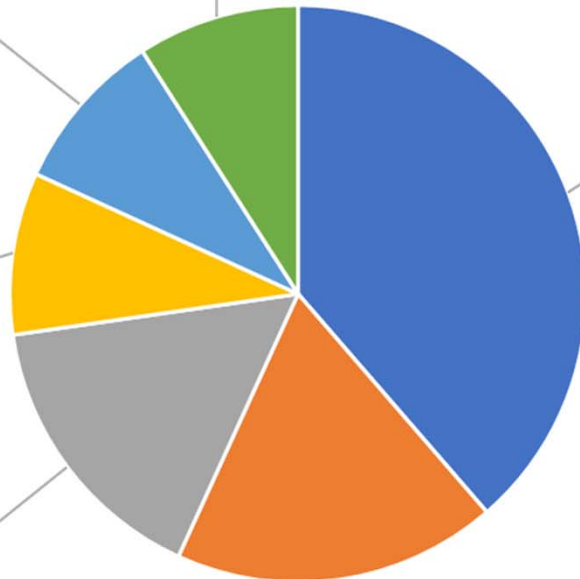
Drug and alcohol policy missing or lacking required elements, 4

Deficiencies in process of checking previous drug and alcohol testing records, 4

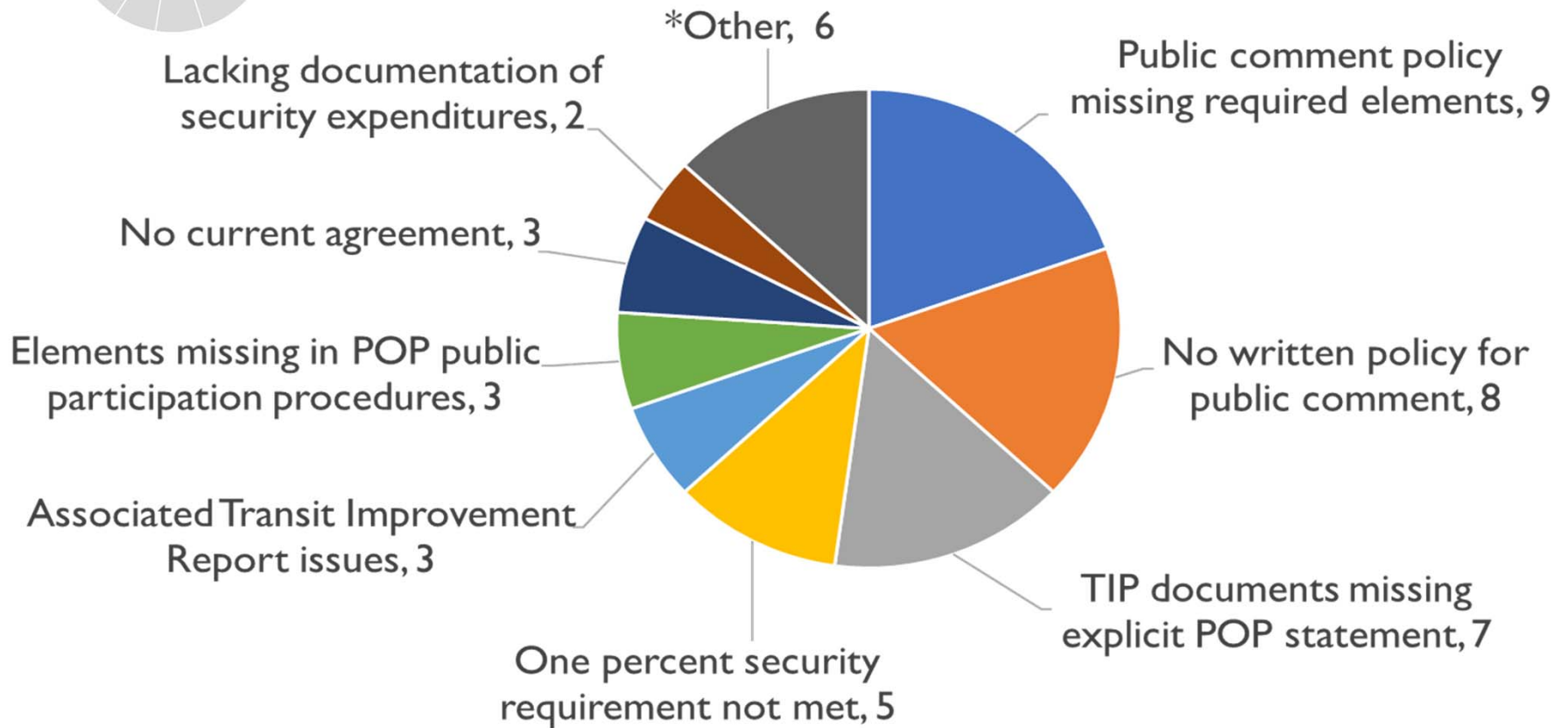
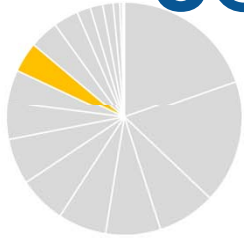
Employee training not provided/insufficient, 7

Supervisor training not provided/insufficient, 8

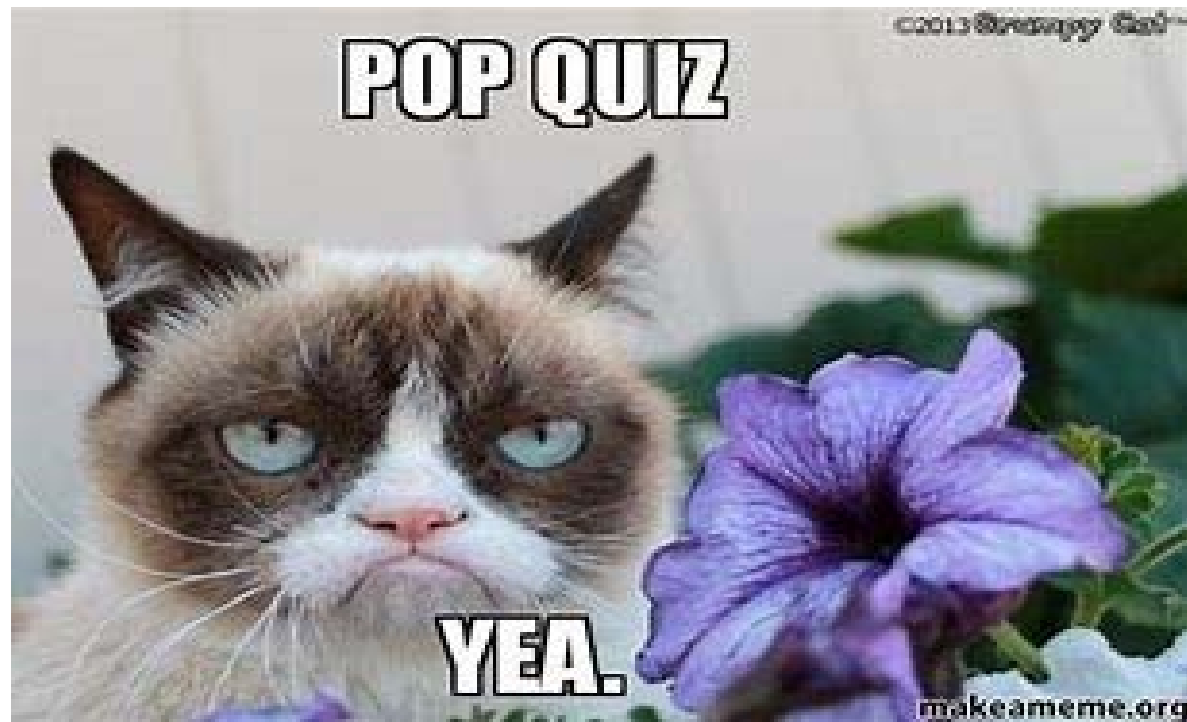
Insufficient oversight over drug & alcohol programs of subrecipients, contractors, subcontractors, and/or lessees, 17



Section 5307 - 4% findings



Testing your Knowledge FTA Compliance



FTA Disposition of Federal Assets

2:10 – 2:20

GREG HARNETT, RLS & Associates

FTA Procurement & Disposition

2:20 – 2:50

Greg Harnett, RLS & Associates

Mr. Greg Harnett works in RLS' Dayton headquarters and serves as the leader of the firm's compliance section. He is a key contributor to the Federal Transit Administration's Comprehensive Oversight Review and Technical Assistance Program (CORTAP) and has conducted numerous Triennial Reviews. Additionally, he has led dozens of comprehensive on-site compliance reviews for State DOTs throughout the country, including in Oregon, Arizona, Massachusetts, Illinois, and North Carolina.



Procurement Resources

- GDOT Procurement SOP
- GDOT Procurement Checklists
- GDOT Procurement Policy Tool
- FTA Circular 4220.1F ([link](#))
 - *Last updated March 2013; new revision expected “soon”*
- Best Practices Procurement Manual ([link](#))
 - *Last updated October 2016; due for revision*
- FY2020 FTA Contractors Manual ([link](#))
 - *Updated yearly; previously know as the Comprehensive Review Guide*
- 2 CFR 200 “Super Circular” ([link](#))



Increases to Procurement Thresholds

- The Office of Management and Budget (OMB) raised the Federal micro-purchase limit from \$3,500 to \$10,000 and the Federal simplified acquisition threshold from \$150,000 to \$250,000, effective June 20, 2018
 - *Auditors will review procurements based on the thresholds in place at the time of purchase*
- FTA has yet to update its procurement guidance to reflect OMB's increases
 - *Circular 4220 and the BPPM are due for updates*
- It is important to note that recipients/subrecipients are free to set thresholds lower than the Federal thresholds set by OMB



Micro Purchases: Overview

Micro Purchases (up to \$10,000)

- FTA's only documentation requirement for micro purchases is a determination that the price is fair and reasonable as well as a basis for this determination
- To the extent practicable, recipients must distribute micro purchases equitably among qualified suppliers
- Recipients may not divide or reduce the size of procurements to avoid the additional procurement requirements applicable to larger acquisitions (this is also applicable to small purchases)

Micro Purchase “Stamp”

Micro Purchase Stamp (Purchases Up to \$10,000)

The price is considered fair and reasonable based on:

- Personal knowledge of item procured
- Current catalog or price list
- Commercial market advertisement
- Other (specify): _____

- Effort was made to distribute purchases equitably
- Purchase was not divided merely to become a micro purchase

Name

Date

GDOT Micro Purchase Checklist

PROCUREMENT CHECKLIST FOR GDOT SUBRECIPIENTS

MICRO-PURCHASES: Up to \$10,000

Procurement procedures at the Micro level apply to purchases of \$10,000 or less. Micro purchases should be distributed equitably among qualified local suppliers to the degree feasible. Splitting of procurements to avoid larger-threshold procedures is prohibited. A Fair & Reasonable Price Documentation Form must be submitted to GDOT along with the other required documents and the signed checklist when submitting requests for reimbursement. The Davis-Bacon Act applies to construction contracts over \$2,000. In addition to following FTA regulations, subrecipients are responsible for following the procurement policies of their governing entity and all applicable state and local regulations.

Date	Task
	Fair & Reasonable Price Documentation Form
	Davis-Bacon Clause (Construction Only \$2,000+)
	Invoice
	Delivery Receipt (Capital Items Only)
	P.O.

Small Purchases: Overview

Small Purchases (\$10,000.01 - \$250,000)

- Recipients must obtain oral or written price quotations from an adequate number of qualified sources (i.e., at least two)
- A written procurement history must be maintained for small purchases, commensurate with the size and complexity of the procurement
- **Relevant FTA-required contract clauses must be included**
- **Develop an Independent Cost Estimate (ICE) prior to the receipt of bids or proposals**
- **Conduct a Cost or Price Analysis after the receipt of bids or proposals but prior to the award of a contract**

Small Purchases

A note for GDOT subrecipients:

- Consultation with a GDOT representative is required prior to engaging in any procurement that is estimated to cost more than \$10,000 (i.e., anything above a micro purchase)





FTA-Required Third Party Contract Clauses

- Recipients/subrecipients must include specific required clauses in FTA-funded contracts, intergovernmental agreements, and subrecipient agreements
- Not all clauses apply to every contract. The applicability of clauses depends on the size and type of the procurement as illustrated on the following slide (***but don't strain your eyes trying to read everything – we have some resources to help with this requirement***)

FTA-Required Third Party Contract Clauses

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal Changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000
Provisions for resolution of disputes, breaches, or other litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Lobbying	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Clean Air	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Clean Water	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
Davis Bacon Act				>\$2,000 (including ferry)	
Copeland Anti-Kickback Act Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$250,000	>\$250,000	>\$250,000 (including ferry vessels)	
Bonding (not required of states)				>\$250,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	CLAUSE
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds		Recycled Products	
Charter Service Operations		All		ADA Access	
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
	A&E	All	All	All	All



Dealing with the FTA Clauses Requirement

The Takeaway: there is a large number of FTA-required clauses and determining their applicability can be complicated. But worry not...

- GDOT has created a tool for its subrecipients that clearly indicates the applicability and the clause language
- An additional resource is National RTAP's ProcurementPRO



Independent Cost Estimate (ICE)

- An ICE is a recipient/subrecipient's estimate of what an item or service “should” cost
- An ICE can range from a simple budgetary estimate to a complex estimate
- Available data points for developing an ICE include: published price lists, historical pricing information from contracts awarded by the recipient's agency, comparable purchases by other agencies, and independent third party estimates
- The word “independent” does not imply that it must be performed by someone other than the recipient, although this may be the case for complex procurements

Sample ICE Form

Sample: INDEPENDENT COST ESTIMATE SUMMARY FORM

Requisition Number: _____ Date of Estimate: _____

Description of Goods/Services:

___ New Procurement ___ Contract Modification (Change Order)

___ Exercise of Option

Method of Obtaining Estimate:

Attach additional documentation such as previous pricing documentation, emails, internet screen shots, estimates on letterhead, etc.

___ Published Price List (attach source and date)

___ Historical Pricing (attach copy of documentation from previous PO/Contract)

___ Comparable Purchases by Other Agencies (attach email correspondence)

___ Engineering or Technical Estimate (attach)

___ Independent Third-Party Estimate (attach)

___ Other (specify) _____ (attach

documentation) _____ Pre-established pricing resulting from competition
(Contract Modification only)

Through the method(s) stated above, it has been determined the estimated total cost of the goods/services is \$_____.

The preceding independent cost estimate was prepared by:

Name

Signature

Date



Cost/Price Analysis

- The purpose of a cost or price analysis is to ensure the recipient does not pay unreasonably high prices to third party contractors
- A cost or price analysis is performed after the receipt of bids or proposals but prior to the award of a contract
- While “cost/price analysis” is often used as a combined phrase, cost analysis and price analysis are distinguishable concepts



Price Analysis vs Cost Analysis

When contracting on a fixed price basis, a comparison of the proposed prices will normally satisfy the requirement to perform a price analysis

When price competition is inadequate, such as in a single bid or sole source procurement, the recipient must develop a cost analysis

- Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost should be assuming reasonable economy and efficiency

GDOT Small Purchase Checklist

PROCUREMENT CHECKLIST FOR GDOT SUBRECIPIENTS	
SMALL PURCHASES: \$10,000.01 to \$250,000.00	
<p>FTA procurement procedures at the Small/Simplified Acquisition level apply to purchases greater than \$10,000 through \$250,000. Note that consultation with a GDOT representative for all purchases over \$10,000 is required prior to engaging in procurement activity. All required documentation along with the signed procurement checklist must be completed and submitted to GDOT with request for reimbursement. In addition to following FTA regulations, subrecipients are responsible for following the procurement policies of their governing entity and all applicable state and local regulations.</p>	
Date	Task
	GDOT Pre-Approval Prior to Purchase
	Independent Cost Estimate (ICE)
	Complete Specifications w/ Required FTA Clauses
	Price Quotations
	Price Analysis
	SAM Search
	Responsible Vendor Determination
	Awarded Vendor's Proposal
	P.O. with Applicable FTA Clauses
	Invoice from Vendor
	Delivery Receipt (Capital Items Only)
	Procurement Overview & Summary Form
	DBE Form
	Notice of Contract Claims & Resolutions (If applicable)
	Notice of Protests & Resolutions (If applicable)
	Davis Bacon (Construction Only)



Formal Purchases: Overview

Formal Purchases (above \$250,000)

- Typically involves purchase through use of sealed bids (IFBs) or competitive proposals (RFPs)
- Requires an ICE, a cost or price analysis, and applicable FTA contract clauses
- Also requires a written procurement history including:
 - *the rationale for the method of procurement*
 - *selection of contract type*
 - *contractor selection or rejection*
 - *the basis for the contract price*



Other Types of Procurement

- **Non-competitive procurements** (sole source and single bid)
- **Joint and “piggyback” procurements**
- **Rolling stock purchases**
- **Qualifications-based procurements** (for A&E services only)

Disposition of FTA-funded Vehicles

Greg Harnett, RLS & Associates





Disposition of FTA-funded Vehicles

FTA disposition requirements apply to vehicles that have met their useful lives as well as vehicles withdrawn from service before the end of their useful lives.

In many situations, FTA retains financial interest in disposed vehicles and it must be reimbursed. Specifically, FTA is entitled to its share of the remaining Federal interest upon disposition of:

- *FTA-funded vehicles before the end of their useful lives*
- *FTA-funded vehicles that have met their useful lives but still have a current market value of more than \$5,000 per unit*

Threshold Question: Has the vehicle met its useful life?

Determining the Useful Life

The following table defines the useful life of several typical FTA-funded items (based on FTA Circular 5010.1E)

Vehicle	FTA-Defined Useful Life
35-40' heavy duty bus and articulated transit buses	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus	7 years or 200,000 miles
25-35' light duty transit bus (body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (e.g., small buses, vans, sedans)	4 years or 100,000 miles



Disposition After the End of Useful Life

Vehicles with a current fair market value of \$5,000 or less per unit may be retained, sold, or otherwise disposed of (in accordance with GDOT's procedures) with no further obligation to reimburse FTA.

For vehicles valued at more than \$5,000 that have met their useful lives, FTA is entitled to the amount calculated by multiplying the current fair market value (or proceeds from sale) by FTA's percentage of participation in the cost of the original purchase.

- ***For example, a vehicle acquired with 80% FTA funding that is valued at \$10,000 at the time of disposition would require reimbursement to FTA in the amount of \$8,000.***



Disposition Before the End of Useful Life

Any disposition of project property before the end of its useful life requires prior FTA (and GDOT!) approval.

FTA also requires that a Rolling Stock Status Report accompany the request for early disposition, which will be used to verify the remaining Federal interest in each vehicle (example on next slide).

The Federal interest that must be returned is FTA's share of the unamortized value of the remaining useful life per unit (based on either miles or years) using straight line depreciation from the original purchase price.

Disposition Before the End of Useful

Example: Rolling Stock Status Report

TransAmerica Buses

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Veh #	Vehicle Year	Make/Model or Vehicle Description	Date in Service	Out of Service	Fed Useful Life (yr)	Actual Service (yr)	Remaining yrs	Remaining % based on yrs	Actual Mileage	Minimum Useful Life Mileage	Remaining % based on miles	Total Federal Share	Remaining Fed Share based on yrs	Remaining Fed Share based on miles
151	2000	30' New Flyers	9/1/00	9/1/07	7	7	0	-0.04%	200,000	200,000	0.00%	\$120,000	-	-
152	2000	30' New Flyers	9/1/00	9/3/07	7	7	-0.01	-0.12%	200,000	200,000	0.00%	\$120,000	-	-
154	2000	30' New Flyers	9/1/00	9/2/07	7	7	-0.01	-0.08%	210,000	200,000	-5.00%	\$120,000	-	-
155	2000	30' New Flyers	9/1/00	9/2/07	7	7	-0.01	-0.08%	205,000	200,000	-2.50%	\$120,000	-	-
156	2000	30' New Flyers	3/1/01	3/1/06	7	5	2	28.53%	140,851	200,000	29.57%	\$120,000	\$34,239	\$35,489
157	2000	30' New Flyers	3/1/01	3/1/06	7	5	2	28.53%	154,649	200,000	22.68%	\$120,000	\$34,239	\$27,211
158	2000	35' Flexible	3/1/01	6/3/06	10	5.3	4.74	47.40%	200,000	350,000	42.86%	\$120,000	\$56,877	\$51,429
159	2001	35' Flexible	3/1/01	6/3/06	10	5.3	4.74	47.40%	300,000	350,000	14.29%	\$195,000	\$92,425	\$27,857
160	2001	35' Flexible	3/1/01	11/2/07	10	6.7	3.32	33.23%	300,000	350,000	14.29%	\$195,000	\$64,804	\$27,857
161	2001	35' Flexible	3/1/01	7/2/07	10	6.3	3.66	36.60%	325,000	350,000	7.14%	\$195,000	\$71,375	\$13,929
163	2001	35' Flexible	3/1/01	11/2/07	10	6.7	3.32	33.23%	325,000	350,000	7.14%	\$195,000	\$64,804	\$13,929
164	1996	40' Buses	3/21/96	4/3/06	12	10	1.96	16.32%	425,000	500,000	15.00%	\$295,000	\$48,156	\$44,250
165	1996	40' Buses	6/19/96	4/3/07	12	10.8	1.21	10.05%	435,000	500,000	13.00%	\$295,000	\$29,635	\$38,350
166	1996	40' Buses	6/19/96	4/3/07	12	10.8	1.21	10.05%	450,000	500,000	10.00%	\$295,000	\$29,635	\$29,500
167	1996	40' Buses	6/20/96	6/2/07	12	11	1.04	8.70%	450,000	500,000	10.00%	\$295,000	\$25,661	\$29,500
168	1996	40' Buses	6/23/96	6/2/07	12	10.9	1.05	8.77%	450,000	500,000	10.00%	\$295,000	\$25,863	\$29,500

Disposition Before the End of Useful Life

Remember: the Federal interest that must be returned is FTA's share of the unamortized value of the remaining useful life per unit (based on either miles or years) using straight line depreciation from the original purchase price.

- **For example, if a vehicle has a 12-year/500,000-mile minimum useful life, its value decreases by 1/12th of the original purchase price each year OR it decreases by 1/500,000th for each mile driven.**
 - *The recipient can calculate the straight line depreciation based on either years or miles, whichever is more advantageous to the recipient. It should be noted that periods of extended removal from service (generally more than six months) and non-revenue miles do not count towards useful life, so adjustments would need to be made in such cases.*

A Real Disposition Story





Vehicle Disposition Resources

- *2 CFR 200.313 Equipment ([link](#))*
- *FTA Circular 5010.1E ([link](#))*