

# FEDERAL TRANSIT ADMINISTRATION COMPLIANCE REVIEW UNIVERSITY OF MINNESOTA, 2019

*Program Evaluation and Audit*

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DRAFT



February 5, 2020

# INTRODUCTION

## Background

University of Minnesota (U of M) is a Metropolitan Council subrecipient. U of M operates several transportation services through its Parking and Transportation Services department (PTS). The U of M has 4 federally funded buses among its bus fleet, which are used to service five fixed routes within the University's Minneapolis and St. Paul campuses. U of M contracts with First Transit to operate the service and maintain the fleet. First Transit operates out of the Como Avenue garage.

## Purpose

As a direct recipient of federal funds from the Federal Transit Administration (FTA), the Metropolitan Council is required to conduct oversight of its subrecipients and ensure that they comply with federal requirements. Program Evaluation and Audit reviews subrecipients on a triennial basis to help fulfill the Council's obligations as a direct recipient.

## Objective

The objective of the Audit is to determine University of Minnesota compliance with federal requirements in twelve (12) areas.

## Scope

This review covers activities conducted during the last three years. However, coverage was expanded to earlier periods if necessary. It covers University of Minnesota's transit activities that used FTA or Metropolitan Council funded vehicles.

## Methodology

Audit conducted its review from September 2019 through December 2019. Audit conducted a desk review of U of M's policies, procedures, and practices for compliance using the FTA's *Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2019*. Once the desk review was complete, two onsite interviews were simultaneously held with U of M's Parking and Transportation Services department and First Transit Management. Audit also reviewed 4 vehicles at the First Transit Como Garage.

## Findings and Responses

### 1. Americans with Disabilities Act (ADA)

**Basic Requirement:** Recipients must track, resolve, and respond to ADA-related complaints and advertise this process to the public in an easily accessible format for individuals with disabilities.

During this Triennial Review of U of M, one (1) deficiency was found with the FTA requirements for Americans with Disability Act.

1. **Finding ADA1-1:** 49 CFR 27.121(b) requires that recipients adopt accessible complaint procedures that are advertised to the public. U of M does not advertise their Americans with Disabilities Act (ADA) complaint process to the public in an accessible manner. The form for filing complaints is labeled as a 'feedback form' and does not specify it is for ADA-related complaints. (**DEFICIENCY CODE ADA1-1:** Insufficient ADA complaint process).

**Corrective Action(s) and Schedule:** By March 6, 2020, U of M Transit must create an ADA complaint process, including an ADA complaint form, advertise it on its website in an accessible format and submit evidence to the Metropolitan Council that this action has been completed.

*Management Response: The University concurs and will implement an ADA-complaint form by March 6, 2020.*

*Status: Open*

### 2. Charter Service

**Basic Requirement:** Except under exemption and limited exceptions, recipients may not use FTA assistance to operate or maintain charter bus service. The FTA's Charter service exemptions include services for Transportation of Employees, Contractors, and Government Officials; Private Charter Operators; Emergency Preparedness Planning and Operation; Section 5310, 5311, 5316 and 5317 Recipients; and Emergency Response. Under 49 CFR Part 604, exceptions include charter service provided for Government officials on official government business; Qualified human service organizations; Leasing FTA funded equipment and drivers; When no registered charter provider responds to notice from a recipient, Agreement with registered charter providers; and Petitions to the Administrator.

During this Triennial Review of U of M, two (2) deficiencies were found with the FTA requirements for Charter Service.

1. **Finding CB1-1:** The University's Parking and Transportation Services Department routinely runs charter services at the request of other department/faculties. These services occur outside U of M's regular normal fixed-route service and the department that requests the service pays for the use. (**DEFICIENCY CODE: CB1-1:** Charter service not operated under exemption or exception).

**Corrective Action(s) and Schedule:** Effective immediately, U of M must cease operating charter service that does meet the FTA's definition of an exemption or exception with federally funded buses. If the U of M wishes to continue to provide charter service, they

must submit to the Council procedures for ensuring that services are consistent with an exemption or exception allowed under the charter regulation and evidence that the procedures have been implemented.

*Management Response: Effective immediately, the University concurs with the finding, and as a result will cease to use its four federally funded buses for any "charter services."*

*Status: Open*

2. Finding CB2-2: U of M occasionally uses federally funded buses to service the transportation needs of the Board of Regents outside of its regular fixed route service. Members of the Board of Regents are considered "government officials." Providing charter services for government officials on official government business is one of the FTA's six exceptions for operating charter services. 49 CFR Part 604.12 however requires all recipients that operate charter service under an authorized exception to maintain notices and records for at least three years and report to the FTA quarterly. During this review, U of M could not provide a charter service record and quarterly charter report for these trips. (**DEFICIENCY CODE CB2-1**: Charter bus records and notices not maintained; **DEFICIENCY CODE CB2-2**: Charter reports not submitted on time)

Corrective Action(s) and Schedule:

1. BY March 6, 2020, U of M must submit to the Council procedures for maintaining notices and records for at least three years and evidence that the procedures have been implemented.
2. By March 6, 2020, U of M must submit missing quarterly reports in the FTA charter reporting website. U of M must also submit to the Council procedures for submitting the required information for all applicable exceptions on time.

*Management Response: The University concurs that this use falls within the charter rules and will work with Metro Transit to form a procedure for operating this service by March 6, 2020.*

*The University will submit the missing quarterly reports in the FTA charter reporting website by March 6, 2020.*

*Status: Open*

### 3. Drug and Alcohol (D&A)

**Basic Requirement:** The subrecipient must ensure that its contractor with safety-sensitive employees administer their drug and alcohol programs in accordance with the requirements of 49 CFR parts 40 and 655.

During this Triennial Review of U of M, one (1) deficiency was found with the FTA requirements for Drug and Alcohol.

1. Finding DA5-1: U of M does not actively oversee First Transit's D&A program. The University does not effectively use the monthly program updates it receives, nor does it reconcile annual testing charts with management information system (MIS) reports. (**DEFICIENCY CODE DA5-1**: Insufficient oversight over drug & alcohol programs of subrecipients, contractors, subcontractors, and/or lessees).

Corrective Action(s) and Schedule: By April 6, 2020, the U of M must submit evidence of active oversight of First Transit's D&A program to the Metropolitan Transportation Services (MTS). Evidence of actively overseeing First Transit's D&A program should include:

- Routine evaluation and documentation of MIS reports, random testing spreads, and monthly program updates;
- On-site personnel records inspections and check-ins with the D&A Program Manager and documentation of these events; and
- Verification that service agents are complying with current licensing requirements and testing procedures.

*Management Response: The University concurs and will implement an oversight program by April 6, 2020.*

Status: Open

#### 4. Equal Employment Opportunity (EEO)

Basic Requirement: Subrecipient and contractors are required to submit an abbreviated EEO program based on its number of transit-related employees and whether it reaches a monetary threshold.

During this Triennial Review of U of M, one (1) deficiency was found with the FTA requirements for EEO.

1. Finding EEO5-1: U of M did not have First Transit's most recent Affirmative Action Plan on file. Additionally, U of M has not documented its review and oversight of First Transit's EEO Program. (**DEFICIENCY CODE: EEO 5-1:** Insufficient oversight of subrecipient/contractor EEO Program)

Corrective Action(s) and Schedule: By March 6, 2020, U of M must submit to Audit documentation that it has received and reviewed First Transit's EEO program.

*Management Response: The University concurs with the corrective action and will submit documentation that it has received and reviewed First Transit's EEO program by March 6, 2020. The University will review First Transit's EEO plan annually going forward.*

Status: Open

#### 5. Financial Management and Capacity

Basic Requirement: Recipients must have financial policies and procedures to ensure effective financial management of FTA awards and establish a system of internal controls to safeguard against waste, loss, and misuse of federal funds.

During this Triennial Review of U of M, no deficiencies were found with the FTA requirements for Financial Management and Capacity.

#### 6. Legal

Basic Requirement: Recipients must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

During this review of U of M, no deficiencies were found with the FTA requirements for Legal Matters.

## 7. Maintenance

**Basic Requirement:** Recipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

During this Triennial Review of U of M, no deficiencies were found with the FTA requirements for Maintenance.

## 8. Procurement

**Basic Requirement:** Recipients must have written procurement policies and procedures that reflect applicable State, local, and tribal laws and regulations.

During this Triennial Review of U of M, no deficiencies were found with the FTA requirements for Procurement.

## 9. Satisfactory Continuing Control

**Basic Requirement:** Recipients must maintain adequate property records and submit annual reports on the status of real property in which the Federal Government retains interest.

During this review of U of M, no deficiencies were found with the FTA requirements for Satisfactory Continuing Control.

## 10. Technical Capacity

**Basic Requirement:** Recipients must report progress of projects in awards to the Federal Transit Administration in a timely manner.

During this review of U of M, no deficiencies were found with the FTA requirements for Technical Capacity.

## 11. Transit Asset Management (TAM)

**Basic Requirement:** Recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans. TAM plans must include all required elements outlined under 49 CFR 625.25. Additionally, transit agencies are required to appoint an Accountable Executive who is responsible for TAM-related duties.

During this Triennial Review of U of M, three deficiencies were found with the FTA requirements for TAM.

1. **Finding TAM2-2:** The U of M's TAM plan had an incomplete capital asset inventory and condition assessment and did not include decision support tools. The capital asset inventory did not include administrative facilities, paratransit vehicles, and paratransit facilities they own or are owned by a third party. The condition assessment did not include administrative facilities, maintenance facilities, paratransit vehicles, and paratransit facilities they own. (**DEFICIENCY CODE TAM 2-2:** Plan elements missing).

Corrective Action(s) and Timelines: By April 6, 2020, U of M must submit to the Metropolitan Council a revised TAM plan that addresses all required elements, including a complete capital asset inventory and condition assessment and decision support tools.

*Management Response: The University concurs that a complete TAM plan is required. It will work to document University Transit facility use and condition and work with First Transit to provide a complete TAM plan for the vendor's vehicle fleet used to provide the University's fixed route transit system by April 6, 2020.*

*Status: Open*

2. Finding TAM3-1: U of M did not designate an Accountable Executive on their TAM plan, as is required under 49 CFR 625.25. (**DEFICIENCY CODE TAM 3-1:** No designation of accountable executive).

Corrective Action(s) and Timelines: By April 6, 2020, U of M must submit to the Metropolitan Council evidence that it has designated an Accountable Executive that is responsible for the implementation of the TAM plan.

*Management Response: The University concurs. It will designate an Accountable Executive and submit that information to Metropolitan Council by the deadline.*

*Status: Open*

3. Finding TAM3-2: No one at U of M is exercising Accountable Executive responsibility. Additionally, U of M could not adequately address TAM-related questions during Audit's onsite interview. (**DEFICIENCY CODE TAM 3-2:** Accountable executive responsibilities not implemented.)

Corrective Action(s) and Timelines: By April 6, 2020, U of M must submit evidence to the Metropolitan Council that the responsibilities of the Accountable Executive have been implemented.

*Management Response: The University concurs. It will designate an Accountable Executive and submit that information to Metropolitan Council by the deadline.*

*Status: Open*

## 12. Title VI

Basic Requirement: Recipients are required to prepare and submit a Title VI Program based on the recipient's transit-related characteristics. Recipients must provide information regarding its Title VI obligations to the public and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients must implement a Language Assistance Plan (LAP) to address the needs of the populations it serves, and recipients must offer early and continuous participation opportunities for the public, including minority and Limited English Proficient (LEP) populations, in the identification of social, economic, and environmental impacts of proposed transportation decisions.

During this Triennial Review of U of M, three (3) deficiencies were found with the FTA requirements for Title VI.



1. Finding TVI1-1: U of M has not developed a Title VI program. The U of M received an advisory comment in a previous review to develop a plan and chose not to do so. (**DEFICIENCY CODE TVI1-1**: Title VI program not submitted).

Corrective Action(s) and Timelines: By April 6, 2020, the U of M must prepare a TVI program that contains:

- All general requirements set out in Section 4 of Chapter III of FTA Circular 4702.1B;
- System-wide service standards and system-wide service policies for each specific fixed route mode of service that the U of M provides.

*Management Response: The University concurs and will work with the U of M EEO and other departments to develop a Title VI program that includes minority and LEP communities by the deadline.*

*Status: Open*

2. Finding TVI2-1: The University has several resources that are available to assist LEP persons. However, U of M has not prepared a LAP to address the needs of the LEP persons they serve. Furthermore, the U of M has not conducted a Four Factor Analysis to determine specific language service needed by the LEP population within their service area. (**DEFICIENCY CODE TVI2-1**: Language Assistance Plan implementation deficiencies)

Corrective Action(s) and Timelines:

1. By April 6, 2020, the U of M must conduct a Four Factor Analysis to determine what, if any, LEP populations the U of M serves. Then, it must use the results to determine specific language services that are appropriate.
2. By April 6, 2020, the U of M must develop a LAP/LEP plan that
  - Include the results of the Four Factor Analysis, with a description of the LEP population(s) served;
  - Describe how it provides language assistance services by language;
  - Describe how LEP persons are notified about the availability of the LAP;
  - Describe how its recipient monitors, evaluates and updates the LAP; and
  - Describe how it trains employees to provide timely and reasonable language assistance.

*Management Response: The University concurs and will work with the U of M EEO and other departments to develop a Language Assistance Program by the deadline.*

*Status: Open*

3. Finding TVI5-1: The U of M has not documented its public engagement with minorities and Limited English Proficient (LEP) population. (**DEFICIENCY CODE TVI5-1**: Title VI Public Participation Plan not implemented).

Corrective Action(s) and Timelines:

1. By April 6, 2020, U of M must submit to Audit a Public Participation Plan that includes:



- A list of public engagement activities anticipated within the next year.
- A procedure that describes how minority and LEP populations will be considered in the U of M's public outreach activities.

*Management Response: The University concurs and will work with the U of M EEO and other departments to develop a Public Participation Plan by the deadline.*

Status: Open

## Grant Agreement

Basic Requirement: 2 CFR Part 200.331(d) requires all pass-through entities to monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

During this Triennial Review, Audit did not find an active grant agreement between the U of M and MTS.

1. Finding: MTS allowed the grant agreement with the U of M to expire in 2015, did not specifically identify continuing obligations, and did not create a Vehicle Use and Maintenance Agreement (VUMA).

### Corrective Action(s) and Timelines:

1. By June 1, 2020, MTS should create or otherize memorialize a current agreement with the U of M that establishes their relationship with the Council and the Council's continuing compliance and contractual obligations. MTS should also review other grant agreements for the purchase of federal assets to determine if similar coverage gaps exist.

*U of M Management Response: The University concurs and is looking forward to working in partnership with MTS to create an agreement. The University expects to be able access its federal funds for years 2015-2019 while this agreement is being negotiated.*

*MTS Management Response: MTS will work with general counsel to create an agreement that ensures ongoing obligations will be met for capital grants. The Council will enter into an agreement with the U of M by June 1, 2020.*

*By April 6, 2020, MTS will scope out a project workplan laying out the review process for other federal grant agreements resulting in the purchase of federal assets. This project will be programmed as part of the 2020 workplan.*

Status: Open

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**METROPOLITAN**  
C O U N C I L

390 Robert Street North  
Saint Paul, MN 55101-1805

651.602.1000  
TTY 651.291.0904

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