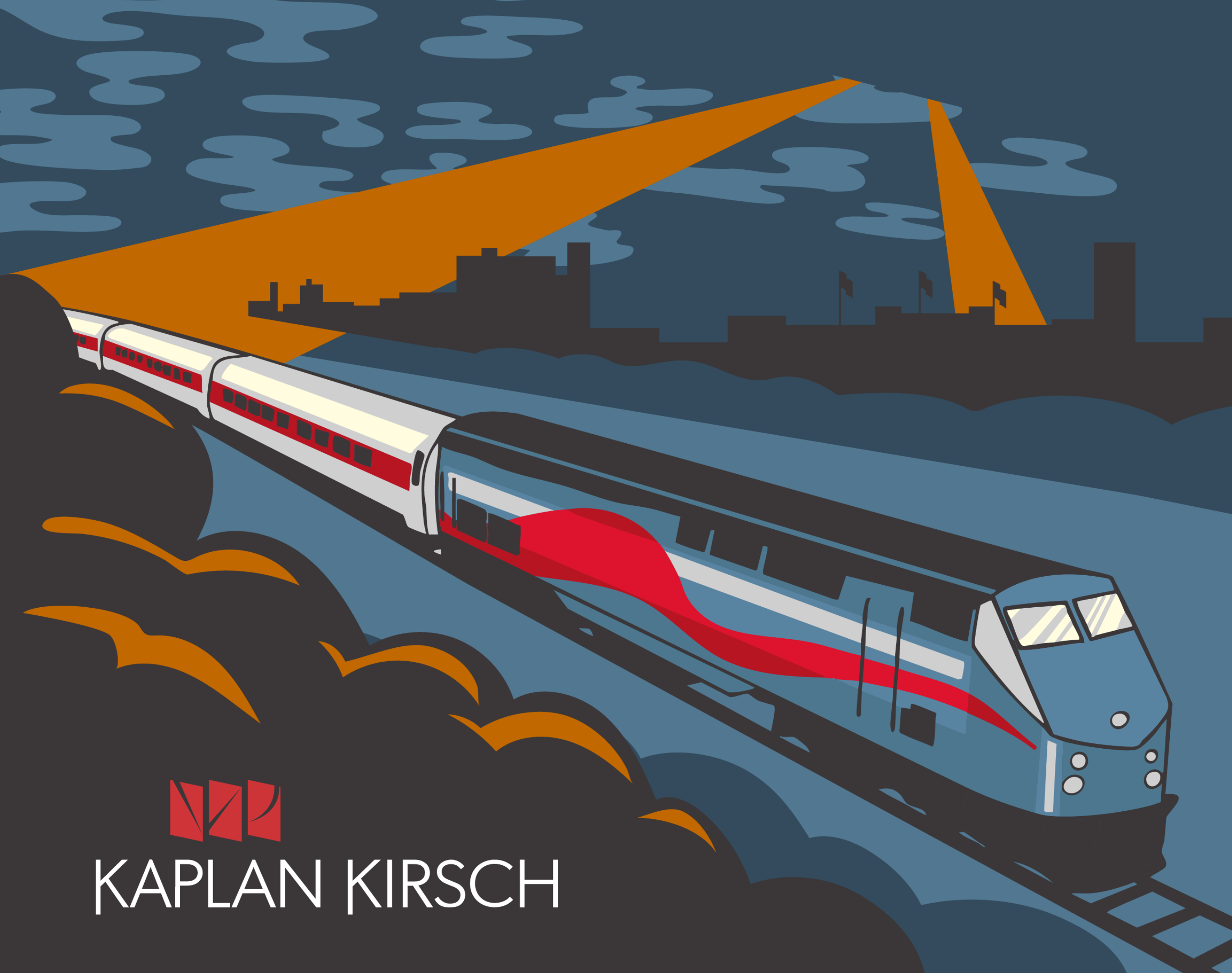




Session 1

Federal Grant Agreements

Tips on What You (and the Feds) Can, Can't, and Must Do to Meet Agreement Obligations


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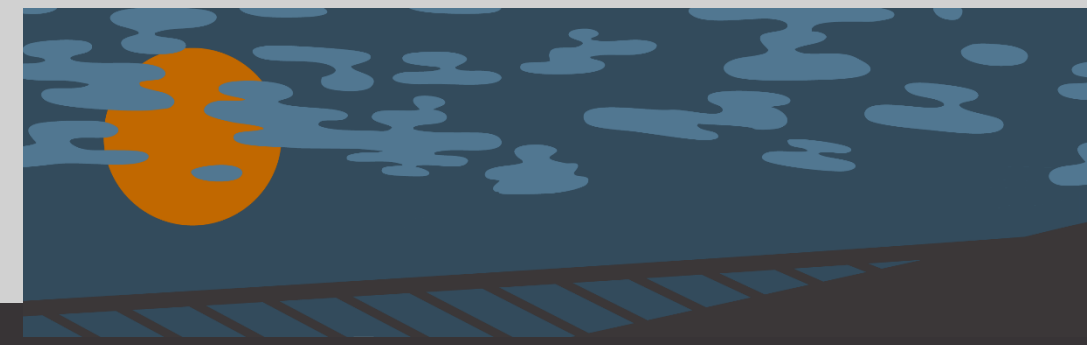


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Federal Government
(appearing in personal
capacity)



GRANTS 101: FRA FUNDING

Faris Mohammed

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GRANT LIFECYCLE



PROGRAM
DEVELOPMENT



SOLICITATION/
APPLICATION



SELECTION



PRE-
AWARD/OBLIGATION

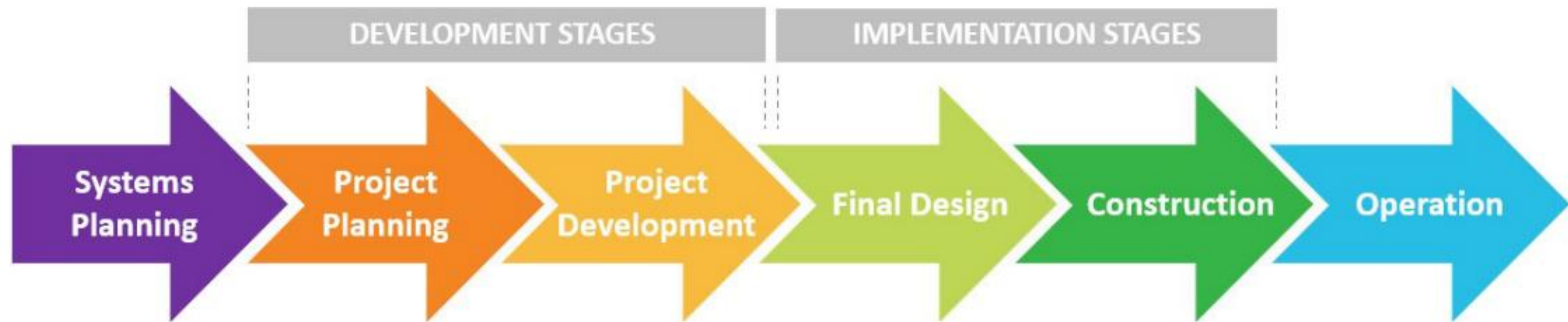


POST-AWARD/
COMPLIANCE



CLOSEOUT/DISPOSITION

FOR INFORMATIONAL PURPOSES ONLY | NOT INTENDED TO REFLECT STATEMENTS OF AGENCY POLICY OR LEGAL INTERPRETATION



Program Design: Railroad Capital Guidance

- [Guidance on Development and Implementation of Railroad Capital Projects](#) (88 Fed. Reg. 2163 (Jan. 12, 2023) (updated on July 18, 2025)).
- Defines lifecycle stages and project development process
- Describes expectations for project management tools, cost estimates, risk assessments, financial plans.

NOTICE OF FUNDING OPPORTUNITY

- NOFO describes program requirements, including eligibility, application requirements, and the agency's evaluation and selection process. 2 CFR 200.204.
- FRA recently issued the “[National Railroad Partnership Program](#)” NOFO (*previously Federal-State Partnership for Projects Not Located on the Northeast Corridor*), 90 Fed. Reg. 45976 (Sept. 24, 2025) (amended by 90 Fed. Reg. 48164 (Oct. 8, 2025))
 - The Fed-State Program is authorized under 49 U.S.C. 24911.
 - Allocates \$5 billion in funding for projects that enhance safety on intercity passenger rail networks, including improvements to grade crossings.
 - Reissue of FY2024 Funding + FY2025 Funding
 - Administration Priorities, including support for “projects that align with the Administration’s focus on the American family ... and other projects improving travel for families...”
 - Applications due 11:59 p.m. ET, Jan. 7, 2026.

AWARD DEVELOPMENT: TERMS AND CONDITIONS

- 2 CFR part 200; 2 CFR part 1201 (Requirements for Federal Awards/DOT Awards) + program authorization requirements (e.g., 49 U.S.C. 22905 [FRA Grant Conditions])
- Updates to Terms and Conditions
- [Executive Order 14332](#), “Improving Oversight of Federal Grantmaking” (Aug. 7, 2025).
 - Designates a senior agency official for grant review;
 - Discretionary awards should demonstrably advance the President’s policy priorities;
 - **Revisions to the uniform guidance**; and
 - Implementation of termination clauses.

PRE-AWARD: COSTS

- 2 CFR 200.210 (Pre-award costs); 200.458 (Pre-award costs).
- “Pre-award costs are those incurred before the start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. **These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the written approval of the Federal agency.** If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.” 2 CFR 200.458.
- [*Federal Railroad Administration Answers FAQs about Pre-Award Authority \(Sept. 22, 2023\).*](#)

PRE-AWARD: RAILROAD AGREEMENTS

- 49 U.S.C. 22905(c)
 - (1)a written agreement exist between the applicant and the railroad regarding such use and ownership, including—
 - (A)any compensation for such use;
 - (B)assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;
 - (C)an assurance by the railroad that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and
 - (D)an assurance that an applicant complies with liability requirements consistent with section 28103 of this title
- [*FAQs about Rail Improvement Grant Conditions under 49 U.S.C. 22905\(c\)\(1\) \(Mar. 30, 2023\).*](#)

PRE-AWARD: NEPA/Environmental Review

- National Environmental Policy Act (42 U.S.C. 4321 et seq.), as amended by the Fiscal Responsibility Act of 2023
 - [*Removal of NEPA Implementing Regulations*](#), 90 Fed. Reg. 11221 (Feb. 25, 2025)
 - [*IFR Updating FRA, FHWA, and FTA NEPA Procedures*](#), 90 Fed. Reg. 29426 (July 3, 2025)
- Section 139 (23 U.S.C. 139)
 - [*Section 139 Guidance*](#) (Dec. 17, 2024)
- National Historic Preservation Act (54 U.S.C. 300101 et seq.)
 - *Section 106 Program Comment for Rail Rights-of-Way* (Aug. 17, 2018)

POST-AWARD: PROCUREMENT

- Procurements under federal awards must comply with 2 CFR 200.318-327
 - Procurements by States and Indian Tribes (2 CFR 200.317)
 - For DOT awards, subrecipients of states (2 CFR 1201.317)
- Generally, “full and open competition” is required for all procurements. 2 CFR 200.319.
 - Noncompetitive procurements are allowed in limited circumstances. 2 CFR 200.320(c).
- Federal agency is not typically involved in recipient’s procurement
 - *But see 2 CFR 200.325, the federal agency may conduct pre-procurement reviews and review technical specifications of proposed procurements.*
- Additional considerations:
 - Bonding requirements (2 CFR 200.326)
 - Required contract provisions (2 CFR 200.327)

POST-AWARD: BUY AMERICA

- Applies to steel, iron, manufactured products, *and* construction materials.
- Statutes:
 - 49 U.S.C. 22905(a) (“FRA Buy America”)
 - P.L. 117-58, Sec. 70901-52 (“Build America, Buy America Act [BABA]”)
 - 49 U.S.C. 24305(f) (“Amtrak Domestic Preference”)
 - 49 U.S.C. 5323(j) (“FTA Buy America”)
 - 23 U.S.C. 313 (“FHWA Buy America”)
- Guidance:
 - *2 CFR part 180 (OMB Guidance Implementing BABA)*

POST-AWARD: REAL PROPERTY

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“the Uniform Act”) (42 U.S.C 4601 *et seq.*)
- 49 CFR Part 24 (updated by 89 Fed. Reg. 36944, May 3, 2024)
 - *The Federal Highway Administration (FHWA) is designated as the Lead Agency responsible for developing, issuing and maintaining government-wide regulations, providing assistance to Federal agencies and reporting to Congress.*
- Establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects.
- Cannot acquire property *in anticipation of award* to avoid Uniform Act compliance.

POST-AWARD: Single Audits and Other Audits

- 2 CFR part 200, Subpart F (does not apply to for-profits)
 - *But see, 2 CFR 200.501(i) (“As necessary, the pass-through entity is responsible for establishing requirements to ensure compliance by for-profit subrecipients.”).*
- A non-federal entity that expends \$1,000,000 or more in Federal awards during the non-Federal entity’s fiscal year must have a single or program-specific audit conducted for that year. 2 CFR 200.501.
- The Awarding Agency, the Government Accountability Office, and the Office of the Inspector General may also conduct audits.

Closeout/Disposition

- When all activities under the federal award are completed, the agency and recipient must close out the award. 2 CFR 200.344.
 - Submit final reports, submit final invoicing, make any adjustments, and **account for any property acquired with federal funds.**
- Property acquired or improved under a federal award is subject to the requirements in 2 CFR 200.311 (real property), 200.313 (equipment), and 200.314 (supplies).
- When property is no longer needed for its originally authorized purpose, the recipient must request disposition instructions from the federal agency.
 - *Property requirements apply, even if the grant is closed out.*

Grants 201

Recent Developments

Kaplan Kirsch

Administration policy directives



- **New criteria** for grant funding and decision making
- Increased **use of grants to require compliance** with policy objectives
 - Prohibition on “**illegal DEI**”
 - **ICE cooperation** requirements
- **Potential conflicts** between directives and other laws
- Current requirements shaped by **ongoing litigation**



Executive Orders

- #14159 “Protecting The American People Against Invasion”
- #14173 “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
- #14168 “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
- #14151 “Ending Radical and Wasteful Government DEI Programs and Preferencing”
- #14332 “Improving Oversight of Federal Grantmaking”

DOT Actions

- Secretary Duffy letters (4/24/25 and 7/2/25)
- Deputy Attorney General Blanche memo (5/19/25)
- Attorney General Bondi guidance (7/29/25)

Key Litigation Matters



King County (WA) (and 29 others) v. Turner (W.D. Wash.)

- Challenge to new HUD and DOT (FAA, FHWA, FTA, FRA) grant conditions
- Preliminary Injunction issued June 3
 - Applies to plaintiffs challenging the conditions
 - USDOT cannot impose or enforce new language
 - USDOT cannot rescind, withhold, cancel, pause, freeze, block, terminate, delay, or condition grants
 - If already signed agreement, new conditions are null and void
- Additional plaintiffs have joined and been granted injunctions since then.

State of California (and 19 states) v. DOT (D.R.I.)

- Challenge to immigration enforcement directive and subsequent grant conditions
- Preliminary Injunction issued June 19
 - Applies to plaintiff states
 - Enjoined enforcement of immigration enforcement directive
- Additional jurisdictions have been added

City of Fresno (and other cities and counties) v. Turner (N.D. Cal.)

- Further plaintiffs granted preliminary injunction on grant conditions

Recent USDOT grant actions



- **Reversing projects selected** for discretionary grant awards
- **Allowing funds to lapse** before obligation
- **Pausing reimbursement** of grants under agreement
- **Cancelling grant agreements** for failure to advance Departmental goals
 - 2 CFR Part 200
 - *California High-Speed Rail Authority v. USDOT* (E.D. Cal.)
- **Withholding certain formula funds**
 - *State of Washington, et al., v. USDOT* (W.D. Wash.)

How to navigate the changes



To understand where Federal policy is, look to:

- **Relevant statutes**
- **Regulations and Department Orders**
 - NEPA (Joint NEPA Reg., 90 FR 29426; DOT Order, 90 FR 29621)
 - DBE Interim Final Rule (90 FR 47969)
- **NOFOs**
- **Grant agreements / master agreement**
- **Grant assurances / certifications**

Available grant opportunities



- The Department continues to move forward with most discretionary grant programs.
- NOFOs highlight changes in Administration priorities.

FTA Grant Programs

- Urbanized Area Formula Grants (49 U.S.C. 5307)
- Capital Investment Grants (49 U.S.C. 5309)
- State of Good Repair Grants (49 U.S.C. 5337)
- Rail Vehicle Replacement Grants (IIJA; 49 U.S.C. 5337)

FRA Grant Programs

- Federal-State Partnership outside Northeast Corridor (FSP-National)

Complying with grant agreements



- 2 CFR Part 200
- FRA Grant Agreements (<https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements>)
- FTA Master Agreement (<https://www.transit.dot.gov/sites/fta.dot.gov/files/2025-04/FTA-Master-Agreement-v33-04-25-2025.pdf>)
- FTA Certifications and Assurances (<https://www.transit.dot.gov/funding/grants/grantee-resources/certifications-and-assurances/fy2025-annual-list-certifications>)

Grant Agreement Compliance



- Changes in personnel, scope and budget (Articles 3.6 and 5)
- Reporting requirements (Articles 6-8)
- Monitoring, financial management, controls and records (Article 11)
- Noncompliance, remedies and termination (Articles 9-10)
- Buy America, local hiring, procurement (Article 12)
- Property and equipment (Article 14)
- Critical infrastructure security and resilience (Article 19)
- Referenced federal statutes

Questions?

Thank You!