













ISSUE BRIEF:
Monitoring Report for Policy 2.8 Asset Protection

Finance Committee Review Date: June 9, 2020

Board Meeting Review Date: June 18, 2020

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Compliant



Partially Compliant

Preliminary CEO Interpretations and Evidence

EXECUTIVE LIMITATIONS POLICY 2.8:

The CEO will not cause, allow, or fail to address circumstances in which corporate assets are to be unprotected, inadequately maintained, or unnecessarily risked. Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

Degree of Compliance: Partial Compliance

EXECUTIVE LIMITATIONS POLICY 2.8: Interpretation

Compliance with policies 2.8.1- 2.8.5 constitutes compliance with 2.8.

Notes:

1. Liquid financial assets are managed in compliance with policy 2.6: Cash and Investments.
2. This policy is noted as partially compliant due to policy 2.8.5.6 which is currently noted as partially compliant.

EXECUTIVE LIMITATIONS POLICY 2.8: Evidence

The data to follow, taken cumulatively, demonstrates compliance with this global provision.

EXECUTIVE LIMITATIONS POLICY 2.8.1:

Allow Board members, staff, and the organization itself to be inadequately insured against theft, embezzlement, casualty, and liability losses.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.1: Interpretation

Compliance with this policy will be demonstrated when the AAATA carries property and liability insurance (private or self-insured) necessary to:

1. Provide full replacement costs for vehicles, buildings, liquid assets, etc.
2. Provide cost-effective coverage for liability, including casualty, theft/embezzlement.
3. Indemnify staff and Board members.

Adequate coverage will mean that losses will not jeopardize the financial integrity of the agency, services to the communication can be restored in a reasonable period of time without undue financial hardship for the agency. For board members and staff, adequate insurance means that they will be indemnified and free of personal liability for decisions made when pursuing their duties in good faith.

EXECUTIVE LIMITATIONS POLICY 2.1.1: Evidence

During the monitoring period staff have confirmed the insurance parameters, below, were in place. We judge the level of coverage to be adequate based on advice from our broker and our professional experience. AAATA’s Risk Management Team has met with the broker to review claims and the adequacy of coverage (this meeting occurs annually during budget preparation). The table below illustrates coverage levels and open claims.

Financial Risks	Coverage Limits	Claims on File Total Incurred (as of March 2020)
1. Replacement of Vehicles and Buildings		
a. Automobile (Vehicles): full replacement for losses within 2700 facility (terminal fire and catastrophic loss)	\$50,000,000 (Adequate to replace all buses and support vehicles.)	\$0
b. Property: full replacement for building, business personal property, disasters (e.g. earthquake, flood, data systems, tools)	\$26,310,300 Building \$4,576,000 Business Personal Property \$360,000 Extra Expense \$25,000,000 Earthquake \$2,500,000 Flood	\$0

	\$2,139,000 Data Systems \$660,000 Tools	
2. Liabilities		
a. General Liability (Each Occurrence, General Aggregate)	\$2,000,000	\$0
b. General Liability (Personal & Advertising Injury, Products/Completed Operations Aggregate, Damage to Premises Rented)	\$1,000,000	\$0
c. Umbrella Lead Liability (General Aggregate, Products/Completed Operations Aggregate, Personal & Advertising Injury)	\$4,000,000	\$0
d. Employee Benefits Liability	\$300,000	\$0
e. Public Officials Liability	\$2,000,000	\$0
f. Each Employee Liability Limit	\$1,000,000	\$0
g. Umbrella Excess Liability	\$10,000,000	\$0
h. Automobile (Comprehensive and Collision)	\$1,000,000	\$928,263*
i. Crime	\$500,000	\$0
j. Fiduciary (Each Loss, Each Policy Period)	\$4,000,000	\$0
k. Premises Pollution Legal Liability (Per Pollution Condition Limit, Per Pollution Aggregate)	\$2,000,000	\$0
3. Worker's Compensation		
a. Worker's Compensation	Self-Insured (\$450,000 Retention)	\$33,108
b. Worker's Compensation Excess (Aggregate Limit)	\$5,000,000	\$216,554

Detailed records supporting all of the above evidence are available for Board inspection upon request.

EXECUTIVE LIMITATIONS POLICY 2.8.2

Operate without ensuring appropriate risk management.

- A. Subject property, plant, and equipment to improper wear and tear or insufficient maintenance.
- B. Fail to proactively anticipate the financial requirements needed to maintain assets.
- C. Operate without internal processes, procedures and systems that encourage informed decisions and would deter and prevent theft, fraud, or malfeasance.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.2: Interpretation

Compliance with this policy will be demonstrated when:

- A. All facilities, vehicles, and durable equipment are managed in a manner that maximizes the value of the asset over its lifespan, ensures safety; and minimizes the risks of premature failure, replacement, or excessively costly operation. Because they are the greatest potential risk, all buses and facilities will be managed with appropriate preventative maintenance practices.
- B. AAATA has a rolling 10-year capital plan that addresses major purchases and anticipates comprehensive lifecycle costs to keep assets in a state of good repair or plan for their replacement.
- C. Appropriate loss-control practices are in place to minimize the risks of theft, wrongful or criminal deception (fraud), or wrongdoing (malfeasance). Consistent with federal law (2 CFR Part 200.302) the AAATA's internal controls will comply with *Standards for Internal Control for the Federal Government* issued by the Comptroller of the U.S. and the *Internal Control Integrated Framework issued by the Committee of Sponsoring Organizations (COSO)* of the Treadway Commission.

EXECUTIVE LIMITATIONS POLICY 2.8.2: Evidence

AAATA has taken the following proactive steps to reduce the potential for loss or damage to physical assets:

- Buses and facilities do have documented preventative maintenance plans which are available for Board inspection upon request. The Federal Transit Administration (FTA) recently sampled the AAATA's records for maintenance and made the following conclusion on page 19 of the 2018 Triennial Review:

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.

Finding: During this Triennial Review of AAATA, no deficiencies were found with the FTA requirements for Maintenance.

- TheRide has set a useful life of 12 years for its fixed route buses. To ensure an even distribution of cash flow for bus replacements, the average age is set at a target range of 5-7 years. The table below shows that our fixed route buses were within target for the period being monitored.

	Useful Bus Life	Target Fleet Average Age	Actual Average Age	Status
Fixed-Route Bus Fleet	12 years	5-7 years old	6.125 years old	Within target

- Capital costs for implementing preventative maintenance and replacement programs can be seen in the adopted 2020 Budget overview (p. 19, 24) listed as Capital Expenses: State of Good Repair. \$11.8 million is budgeted for FY2020 for bus replacements, facilities rehabilitations, IT hardware and software, bus capital repairs, A&E, and other equipment. Narratives provide further explanations on p. 25. The 10-year program for ongoing capital investment is provided on p. 26.
- The CEO adopted a new Internal Control System in FY2019, and training was provided for all administrative staff to ensure compliance with the loss control requirements of this policy. It describes fraud and its characteristics, identifies each employee's responsibility to report fraud, and describes the procedures required to report and investigate fraud, theft, or malfeasance. Other key policies and procedures include the Ethics Policy within the Purchasing Manual, with annual disclosure of conflicts of interest by Board members, Senior Management, and Executive Staff. There were no reports of theft, fraud, or malfeasance during the monitoring period.

EXECUTIVE LIMITATIONS POLICY 2.8.3:

Unreasonably expose the organization, its Board, or staff to claims of liability.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.3: Interpretation

Compliance with this policy will be demonstrated when the AAATA has put reasonable risk-management processes in place to minimize the expose to being found legally responsible for damages.

To be liable means to be accountable or legally responsible for financial damages in the case of loss or injury. The nature of transportation operations means there is always exposure to certain risks of being genuinely liable. Therefore, I interpret that unreasonable exposure to liability would be to allow activities to occur without appropriate risk management, voluntarily accepting legal responsibility or excessive risk for something the agency should not be responsible for or operating without adequate liability insurance (see policy 2.8.1).

EXECUTIVE LIMITATIONS POLICY 2.8.3: Evidence

- AAATA has an internal risk management team comprised of the Deputy CEO Operations, Deputy CEO Finance and Administration, Manager of Human Resources, Manager of Finance, Safety Officer, and the Safety and Training Coordinator. This team meets regularly with representatives from Marsh, our insurance broker, and our insurance providers to review claims and manage risks. This group participates in ongoing reviews to ensure that exposures to liabilities are mitigated and are reasonable.
 - As evidence of the results of risk management efforts, no court judgements resulting from liability claims were made against the AAATA during the monitoring period.
- Contracts that assign legal responsibilities and risks are carefully reviewed by internal staff, corporation counsel, and when necessary, the insurance broker, to avoid the voluntary acceptance of inappropriate risks.
- AAATA has adequate liability coverage as determined by the work of the risk management team and our insurance broker. Details are provided in the evidence presented for policy 2.8.1.

EXECUTIVE LIMITATIONS POLICY 2.8.4:

Allow intellectual property, information, and files to be exposed to loss, significant damage or unauthorized access.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.4: Interpretation

Compliance with this policy will be demonstrated when the AAATA’s paper records and electronic files are kept in secure environments that minimize exposure to unauthorized access, theft, fire, or water damage; and back-ups of critical files are kept.

EXECUTIVE LIMITATIONS POLICY 2.8.4: Evidence

Loss/Damage Prevention: Files on the computer network are backed up nightly to redundant servers located in separate locations. Cabinets for maintaining personnel records are fire/water proofed, and locked when not in use.

Unauthorized Access: Proper controls are in place to prevent unauthorized access to records and files.

- **Data and Infrastructure Safety:** All agency computer equipment are kept up-to date, and data on laptops is encrypted. Real-time monitoring for viruses, malware and other threats are on all server and endpoint equipment, with redundant anti-virus software installed on our server infrastructure. There was an external security assessment conducted in 2017 and another one is scheduled for this Fall. Further improvements that have been made include required use of 16-character network passwords, and implementation of two-factor authentication for external/remote access to the network. There have been no known breaches of the AAATA’s electronic records during the monitoring period.
- **Applicant/Rider Information.** Documents identified as Protected Personal Information (PPI) and/or Protected Health Information (PHI) are stored with restricted access in locked file cabinets and secure network locations. Further, the Record Retention Procedure (Internal Control System) limits access only to authorized persons and assigns recordkeeping accountabilities. There have been no known breaches of this information during the monitoring period.
- **Safety Policies:** AAATA implemented new IT Policies in 2019 for the acceptable use of technology systems, handling of confidential data, passwords, email, physical security, remote access, data retention, guest access, third party access, and wireless access.
- **Financial:** Access to the accounting system is controlled by the Manager of Finance and the IT Manager. During the annual financial audit, auditors confirm that access controls are correctly implemented. There were no reports of any problems in this area in the FY2019 audit, nor in prior years.

EXECUTIVE LIMITATIONS POLICY 2.8.5:

Endanger the organization's public image, credibility, or its ability to accomplish Ends by...

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.5: Interpretation

Compliance with this policy during the monitoring period will be demonstrated when there are no *legitimate* public controversies suggesting mismanagement of the AAATA, and there is compliance with the other policies in this section.

EXECUTIVE LIMITATIONS POLICY 2.8.5: Evidence

The CEO is not aware of any public controversy during the monitoring period that suggested mismanagement of the AAATA or that damaged public confidence in the agency. There were no newspaper articles criticizing the AAATA, or public or political petitions to the Board.

Compliance with the following policies further demonstrates compliance with this policy.

EXECUTIVE LIMITATIONS POLICY 2.8.5.1:

Operating the organization in a manner that jeopardizes grantor relationships.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.5.1: Interpretation

Compliance with this policy will be demonstrated when the AAATA meets expectations set forth by the Federal Transit Administration, the Michigan Department of Transportation, or other funders, that apply to the AAATA upon receipt or use of funds.

EXECUTIVE LIMITATIONS POLICY 2.8.5.1: Evidence

Evidence of compliance for this sub-policy is primarily provided via outside audits and assessments by the AAATA auditors, the Federal Transit Administration (FTA), and the Michigan Department of Transportation. The AAATA does not receive grant funding from any other body besides the Federal and State governments.

Federal Compliance: In 2018 the FTA conducted a Triennial Review and found no problems with the AAATA's internal control or business decisions that would jeopardize federal funding. Review is available for inspection upon request. The CEO and CFO are not aware of any failures of AAATA to comply with requirements which would place such grants at risk. In addition, the AAATA's FY2019 audit assessed compliance with federal grant regulations (p. 47) and found that: *In our opinion, Ann Arbor Area Transportation Authority complied, in all material respects, with the types of compliance requirements ... that could have a direct and material effect on each of its major federal programs for the year ended September 30, 2019.*

State Compliance: Grant agreements from the Michigan Department of Transportation were fully awarded and executed during the monitoring period and for the current fiscal year. MDOT has not indicated any concern with the AAATA's compliance with State grants; all state grants are intact and there are no known risks resulting from noncompliance for these grants. Grant agreements with MDOT are available for inspection upon Board request.

Detailed records supporting all of the above evidence are available for Board inspection upon request.

EXECUTIVE LIMITATIONS POLICY 2.8.5.2:

Ignoring the social, environmental, and economic implications of major decisions.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.5.2: Interpretation

Compliance with this policy will be demonstrated when a formal decision regarding switching from diesel propulsion for buses to any alternative propulsion (e.g. electric, natural gas, etc.) is based upon a transparent accounting of emission reductions, financial impacts, and implications for passengers and the community at large. This interpretation is reasonable because bus propulsion is the largest future decision where a detailed assessment of social, environmental, and economic impacts will be necessary. While other Means decisions are made with similar concerns in mind, they are not “major” and do not require such a large effort to demonstrate the legitimacy of the process and final decision.

EXECUTIVE LIMITATIONS POLICY 2.8.5.2: Evidence

No formal decision regarding the potential for alternative propulsion technologies was made or considered during the monitoring period. The AAATA continue da FY 2018 decision to purchase clean-diesel buses. A study of bus propulsion is scheduled for FY 2022 in the FY2019 and FY2020 budgets and Business Plans.

EXECUTIVE LIMITATIONS POLICY 2.8.5.3:

Allowing third-party advertising that violates stated agency guidelines for community standards.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.5.3: Interpretation

Compliance with this policy will be demonstrated when the AAATA has and consistently enforces an administrative policy that restricts third-party advertising appropriately in order to protect AAATA's image and reputation.

EXECUTIVE LIMITATIONS POLICY 2.8.5.3: Evidence

The AAATA has an administrative Advertising Policy (see below). All third-party advertising must meet the Policy. There were no legal challenges to the policy during the monitoring period. The CEO is not aware of any instance or accusation of inconsistent enforcement.

AAATA Advertising Policy, 2014

A. The AAATA, by permitting commercial advertising in or on its vehicles, shelters, informational material, buildings, and benches, does not thereby intend to create a public forum. Further, AAATA requires that such advertising comply with specified standards to further the purposes of providing revenue for AAATA, increasing ridership, and assuring that AAATA riders will be afforded a safe and pleasant environment. AAATA reserves the right to approve all advertising, exhibit material, announcements, or any other display and their manner of presentation.

B. In order to minimize the chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience, advertising in or on AAATA vehicles, in AAATA shelters, buildings, benches or informational material which does any of the following shall be prohibited.

- 1. Contains false, misleading, or deceptive material.*
- 2. Promotes an illegal activity.*
- 3. Advocates violence or crime.*
- 4. Infringes copyright, service mark, title, or slogan.*
- 5. Defames or is likely to hold up to scorn or ridicule a person or group of persons.*
- 6. States or implies the endorsement of a product or service by AAATA.*
- 7. Contains political or political campaign advertising.*
- 8. Contains advertising that is obscene or pornographic, or in advocacy of imminent lawlessness or violent action.*
- 9. Promotes alcohol or tobacco products.*

EXECUTIVE LIMITATIONS POLICY 2.8.5.4 & 2.8.5.5:

Hiring a former Board member as an agency employee or supplier within one year of that member's departure from the Board.

Hiring a sitting elected official or former elected official that has not been out of office for at least one year from any jurisdiction that appoints members to the AAATA Board.

Degree of Compliance: In Compliance

EXECUTIVE LIMITATIONS POLICY 2.8.5.4 & 2.8.5.5: Interpretation

This policy is unambiguous.

EXECUTIVE LIMITATIONS POLICY 2.8.5.4 & 2.8.5.5: Evidence

In concert with the Managers of Human Resources and Purchasing, we state that during the monitoring period the AAATA did not hire a current or former board member, or current or former elected officials as staff, and there were no such people on staff. Nor did any current or former board members or elected officials own any of the suppliers we engaged for goods or services.

EXECUTIVE LIMITATIONS POLICY 2.8.5.6:

Ignoring exploration for innovation or opportunities that open capacity for the organization.

Degree of Compliance: Compliance Unknown

EXECUTIVE LIMITATIONS POLICY 2.8.5.6: Interpretation

Compliance with this policy will be demonstrated when ideas for new approaches (Means) are given an appropriate level of genuine consideration, to the satisfaction of the CEO or their delegate.

I define “innovative” to mean novel or new, and workable (i.e. is viable and produces results that are worth the investment of resources such as time, money, energy, opportunity costs, etc.). Given that innovation often involves higher risks, such risks must be acceptable.

EXECUTIVE LIMITATIONS POLICY 2.8.5.6: Evidence

No evidence provided. This policy is so broad that the CEO cannot imagine how to provide satisfactory or compelling evidence of compliance, aside from attempting to document every staff decision which would paralyze the organization.

CEO Notes

The CEO is asking the Board to delete policies 2.8.5.2 and 2.8.5.6. The CEO believes that the policies themselves may be inherently unworkable as written:

1. On reflection, the CEO believes that these policies may actually be Means **prescriptions** rather than **proscriptions**. In spite of the negative wording they seem to require certain activities, rather than prohibiting unacceptable outcomes. Means prescriptions are not acceptable under Policy Governance.
2. The CEO has not been able to write satisfying **interpretation** for either policy. As written, the policies are so broad as to seem to apply to every staff decision. The requirements are so general (innovation, social impacts, etc.) that the CEO cannot see how to offer an operational definition that could cover so many situations without becoming very vague. Such vagueness makes accountability difficult and opens a door for continuing arguments about the interpretation. Alternately, limiting the scope via the interpretations (see 2.8.5.2) produces a very narrow focus where documentation of a decision is feasible and possibly warranted, but arguably defeats the written blanket intent of the policy. The CEO cannot see how to write an interpretation that would be truly reasonable given the present wording of the policies.
3. The CEO cannot see how to present convincing **evidence** for such broad policies affecting so many decisions (see 2.8.5.6). The work required to document even a fraction of staff decisions would paralyze the organization.
4. These policies also have little to do with the broader point of 2.8.5 regarding the public image or credibility of the AAATA.
5. These policies pre-date the Ends policies. Now that we have Ends policies that follow a triple-bottom line, the value of Executive Limitation 2.8.5.2 is not clear.

Monitoring Policy 2.8 Asset Protection

Guidance on Determining “Reasonableness” of CEO Interpretations

The International Policy Governance Association has developed the following guidance for Board members to use in deciding whether a CEO’s interpretation is “reasonable”:

An interpretation is deemed to be reasonable when it provides an operational definition which includes defensible measures and standards against which policy achievement can be assessed...

Defensible measures and standards are those that:

- *Are objectively verifiable (e.g., through research, testing, and/or credible confirmation of observable phenomena.)*
- *Are relevant and conceptually aligned with the policy criteria and the board’s policy set.*
- *Represent an appropriate level of fulfillment within the scope of the policy.*

- *“What makes an Interpretation Reasonable and What are the Expectations for the Operational Definition: Policy Governance Consistency Framework Report Number 2”.* International Policy Governance Association. June 11, 2016. Available on the IPGA website.

Board’s conclusion on monitoring report

The Board has received and reviewed the CEO’s Monitoring Report references above. Following the Board’s review and discussion with the CEO, the Board makes the following conclusions:

Executive Limitations Report (select one)

The Board finds that the CEO:

- A. Is in compliance
- B. Is in compliance, except for item(s) noted.
- C. Is making reasonable progress toward compliance.
- D. Is *not* in compliance or is *not* making reasonable progress toward compliance
- E. Cannot be determined.

Board notes: (If applicable)

The Board voted unanimously that the CEO is in compliance except for item(s) noted (B) at the June 18th, 2020 AAATA Board meeting