



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Oversight of Federal-aid Projects
Administered by Local Public Agencies

Date: April 4, 2007

//Original signed by: //

From: Frederick G. Wright, Jr.
Executive Director

Reply to
Attn. of: HIPA-1

To: Directors of Field Services
Division Administrators

Attached for your information is the final report from the recently completed national review titled, *The Administration of Federal-Aid Projects by Local Agencies* (Attachment 1). The review was sponsored by the Office of Professional and Corporate Development to assess the administration, stewardship, and oversight of Federal-aid projects administered by local public agencies (LPAs). The findings suggest that the administration of Federal-aid projects by LPAs may lack a systematic or comprehensive oversight approach. The review also suggests that the current oversight activities, as a whole, may be inconsistent from State to State and ineffective for ensuring that Federal-aid requirements are met on LPA-administered projects.

I want to express my sincere appreciation to the members of the LPA review team for their outstanding work on this difficult issue. Because the team's observations warranted a prompt response, I directed Associate Administrator for Infrastructure King W. Gee to appoint a Local Public Agency Oversight Team with representatives from the field and Headquarters offices. The team recommended a series of actions to ensure that Federal requirements are met on Federal-aid projects administered by LPAs. I concur with the team's recommendations, which include several actions that must be undertaken by FHWA. These actions are summarized below and discussed in more detail in this memorandum:

1. Utilizing existing laws and regulations, division offices must take steps to make certain that the State departments of transportation (DOT) are fulfilling their oversight responsibilities to ensure that LPA-administered Federal-aid projects are carried out in accordance with Federal requirements;
2. Each division office should work with its State DOT to develop or enhance the State DOT's oversight programs to ensure that LPA-administered projects are carried out in accordance with Federal requirements; and

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3. The FHWA will evaluate the need for regulations to more formally establish and implement a structured LPA project oversight program.

1. Review of Existing Laws and Regulations

Under existing statutes and regulations, State DOTs are responsible for ensuring that all Federal-aid projects are carried out in accordance with Federal requirements (see Attachment 2, *Legal and Regulatory Provisions Related to Oversight of Subrecipients of Federal-aid Funds*). This responsibility was specifically clarified in 23 U.S.C. 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59). This amendment to Section 106 specifically charges the States with the responsibility for determining that subrecipients of Federal funds (including LPAs) have adequate project delivery systems for projects and sufficient accounting controls to properly manage Federal funds. As the recipient of Federal-aid funds for the State, the State DOT may not delegate this responsibility and the State DOT is ultimately accountable for ensuring that Federal requirements are met for all LPA-administered Federal-aid projects.

Section 1904(a) also amended 23 U.S.C. 106 to require the Secretary (by delegation, FHWA) to periodically review the monitoring of subrecipients by the States. To assess the effectiveness of existing practices, each division office must review its State DOT's processes and procedures for LPA-administered projects to determine if improvements are warranted. The reviews must be comprehensive to ensure that all aspects of the LPA-administered projects are carried out in accordance with Federal requirements. In addition, the reviews should include sampling of LPA projects, as the division offices deem appropriate, to validate compliance with established processes and procedures.

Attachment 3, titled *Administration of Federal-aid Projects by Local Public Agencies, General Review Guidelines*, includes a list of topics that should be covered by the reviews. I recognize that a number of division offices have recently reviewed (or are in the process of reviewing) aspects of the LPA-administered projects in their State, which may have fulfilled this requirement. The scope of those existing reviews should be compared with the topics covered in Attachment 3, to determine if additional reviews are appropriate to ensure that LPA-administered projects meet Federal requirements.

In each coverage area listed in Attachment 3, division offices must determine within which of the following categories the State DOT's processes and procedures fit:

- a. The State DOT's processes and procedures reliably result in LPA projects being administered in accordance with the Federal requirements, or
- b. The State DOT's processes and procedures do not reliably result in LPA projects being administered in accordance with the Federal requirements.

If the State's processes and procedures fall in category "b", the division office must work with its State DOT to develop a date-specific action plan that will bring them into category "a." The division office should require the State DOT to take immediate steps, commensurate with the concerns identified, to mitigate the conditions and should continue to work with the State to achieve long term resolution. Where significant deficiencies are not corrected in a timely and effective manner, further action should be taken under the provisions of 23 CFR 1.36 and 49 CFR 18.12.

2. Development or Enhancement of LPA Oversight Programs

To facilitate compliance with 23 U.S.C. 106(g) and other requirements for State DOT oversight of LPAs, the division office should work with its State DOT to develop or enhance the State DOT's oversight programs, to ensure that LPA-administered projects are carried out in accordance with Federal requirements. To assist in this effort, the Local Project Oversight Team has developed a Web-based resource guide of good practices, which can be found at:

<http://intra.fhwa.dot.gov/programadmin/index.htm>

The Web site includes discussions on topics/areas that have been used in successful LPA project oversight programs. The Web site also includes other helpful resources, such as links to several State DOTs that have instituted a systematic and comprehensive approach to managing projects undertaken by LPAs. The materials on the Web site will be helpful as each division discusses steps that may be taken by its State DOT to emulate good practices that will ensure that projects carried out by LPAs will meet all Federal requirements, particularly 23 U.S.C. 106(g)(4).

3. Regulations Related To LPA Project Oversight Programs

Given the importance of the State DOTs fulfilling their responsibility to ensure that LPA-administered projects are carried out in accordance with Federal requirements, the Local Project Oversight Team has recommended that consideration be given to the development of regulations to require State DOTs to establish a structured LPA project oversight program. I have concurred with the team's recommendation to consider regulations based on the premise that new regulations may be necessary to ensure that LPA-administered projects meet Federal requirements. It is anticipated that any proposed regulations would follow the topics covered in the best practices Web site referenced above. To accomplish the rulemaking evaluation process, the Local Project Oversight Team will be recomposed and primarily focused on this task.

As the need for rulemaking is evaluated, each division office must continue to monitor its State DOT to ensure that the State DOT does in fact establish and carry out a comprehensive LPA project oversight program. The division offices will be asked to provide information on the status of their State DOT's programs as shown in the attached *Schedule of Actions for Oversight of Federal-aid Projects Administered by Local Public Agencies* (Attachment 4), which also includes actions to be taken by the division offices and the Local Project Oversight Team. This information will be considered in determining whether new regulations are appropriate.

To provide increased focus on this matter in FHWA, we are appointing Bob Wright as the Local Project Oversight Coordinator in the Office of Program Administration. Please contact Bob at 202-366-4630 for additional information.

4 Attachments

cc: HOA-1/2/3
Associate Administrators
Chief Counsel
Chief Financial Officer
Resource Center Director