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U.S. Department of Transportation
Federal Highway Administration

The Administration of Federal-aid Projects by Local Public Agencies

FINAL REPORT

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Program Improvement Team

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THE ADMINSTRATION OF FEDERAL-AID PROJECTS
BY LOCAL PUBLIC AGENCIES

INTRODUCTION

The transportation system when thought of as the life blood of our country can be analogous to the blood system of the human body. In order for the body to work at top efficiency all parts of the system must be working at peak capacity. From the smallest capillary to the largest vein or artery if any part of the system is blocked or is not working properly it can affect the whole system. Similarly with the road system, it is not just the interstate system or the major arterials that need to be healthy but the local and county roads as well if the nation's economy and our quality of life are to be maintained and improved.

The health of the body can be affected in many ways. It does not have to be the main arteries that are clogged to result in unconsciousness. If all of the capillaries and small blood vessels become clogged the rest of the body will ultimately suffer and die. While it is easy to overlook the loss of blood from a cut finger as having little effect on your overall health, think if you had hundreds, thousands or even hundreds of thousands of these small cuts!

So it is with the transportation system. While it could be argued that there should be little Federal interest in the smaller roads and highways, the health of the local road system is just as important to the overall health of the nation. Goods and services as well as people need to get to the actual point of service. A program that focuses on only one part of the system and ignores the health of the body as a whole is in peril of losing what makes the system vital and alive.

EXECUTIVE SUMMARY

In December 2005, the Office of Professional and Corporate Development (OPCD) asked the FHWA Division Offices and other units of FHWA to rank the FHWA programs that warranted review at the national level. The result was that the administration of Federal-aid projects by Local Public Agencies (LPA) ranked as the highest interest by a considerable margin, most likely due to the perceived risk in this area. This concern led the OPCD to designate the administration of Federal-aid projects by local public agencies as the first area to be addressed under the rejuvenated national review program.

To be effective, the scope of the review was made commensurate with the scope of the issue. While exact figures are not available, it is estimated that **$6-8 billion** in Federal-aid contracts is administered by cities and counties in at least 45 States across the nation. Therefore, locally administered projects represent roughly **20 percent** of the overall annual Federal-aid program. The review included a literature review, multiple surveys of all Division Offices, and site visits to 7 States. The LPA Review Team (Team) looked at 39 projects administered by 35 different local agencies. Several conclusions were made as a result of this review and they are identified below. Further confirmation of these observations is anticipated as a number of FHWA Divisions conduct process reviews on locally administered projects in FY 2007.

1. The LPA Federal-aid project activities are a significant portion of the Federal-aid program for which FHWA is responsible.
2. There were program weaknesses that allow shortcomings in ensuring project eligibility and compliance with law and regulation, including the billing process.
3. While no widespread waste, fraud and abuse were found; the many findings by the Team are indicative of the need for improved oversight and control.
4. No one area was identified as a nationwide problem but there were findings of non-compliance in almost all project delivery areas.
5. Numerous problems, findings and issues evident in the Federal-aid program areas (environment, right-of-way, design, construction, billing, etc.) demonstrate that Federal funds are often not used effectively and efficiently.

The Team recommends the FHWA Executive Leadership use the approach outlined in Alternative 1: Using Existing Laws and Regulations and take the following actions to strengthen the administration of Federal-aid projects by LPAs:

1. FHWA should treat the LPA administered projects as a program area and establish a Program Manager position at the Headquarters level that would lead a unit to implement the recommendations in this report, update and develop guidance, and provide assistance and direction for other unit offices.

2. FHWA Division Offices should identify someone with the responsibility to manage the LPA Program at the field level and to coordinate the overall efforts by the office

to ensure that the State Transportation Agencies (STAs) oversight and monitoring responsibilities over local projects are accomplished in accordance with the Agency's requirements.

3. FHWA Division Offices should assess the resource needs (i.e., staffing, training) necessary to ensure that the STAs perform their stewardship and oversight activities.

4. FHWA Division Offices should ensure that the States monitoring of LPA administered projects is accomplished through existing mechanisms such as risk assessments, stewardship agreements, unit plans, program evaluations, and process reviews.

5. FHWA should assist the STAs in developing and implementing a Local Project Stewardship Agreement as a companion to the Stewardship Agreement that is already implemented in each State. This Local Project Stewardship Agreement should include the following key elements:

    a. A written agreement between the STA and LPA regarding roles and responsibilities;
    b. A staffing plan for providing appropriate monitoring of LPA projects by the STA and administration of projects by LPA personnel;
    c. A training program to ensure qualified individuals are involved in oversight of LPA projects;
    d. A review and monitoring plan that details required oversight activities that will be performed for each project and LPA; and
    e. An audit plan to ensure that required project and single audits are conducted.

6. FHWA and the STAs should jointly develop a model Qualifications Program for local public agencies. Prior to being delegated the authority to administer a Federal-aid project, each LPA should be "qualified" by meeting minimum requirements in processes, training and experience.

7. FHWA should work with the STAs to take advantage of existing flexibilities to minimize regulatory burdens on local projects, such as the use of "buy-back" programs, the development of State design standards off the NHS, the use of Special Experimental Projects, etc.

The Team recommends that the FHWA further study the concept in Alternative 2: Eliminate Federal-aid from Functional Classifications below Minor Arterials which would require enabling legislation.

The Team does not recommend Alternative 3: Modify LPA Program Delivery to a Block Grant Program. There does not appear to be sufficient advantage to the FHWA or the LPAs to overcome the disadvantages of the basic grant, but further study may be needed.

BACKGROUND

For the purposes of this review, Local Public Agency (LPA) administered Federal-aid projects are those which are, at a minimum, managed through design or construction or both, by an LPA other than a State Transportation Agency (STA). In many cases, the LPA may also manage environmental studies and documentation, appraisal and acquisition of right-of-way, the bid and award process, and the billing process.

To a varying degree, STA are delegating the administration and management of Federal-aid highway projects to LPAs. The majority of these Federal-aid highway projects are off the National Highway System (NHS). However, a growing number of States allow LPAs to manage Federal-aid highway projects on the NHS and, in a few States, segments of the NHS are under the jurisdiction of the LPA. In addition, some States may not allow a LPA to manage environmental studies or right-of-way acquisition while in others States, these functions may be fully delegated. Even some States with jurisdiction over 90% of the roads in their State, have LPAs administering and managing Federal-aid projects in the Transportation Enhancement and Scenic Byways programs. At the other end of the spectrum, one State has $1.9 billion in Federal-aid highway projects administered by more than 800 participating LPAs. With the overall highway programs continued growth in size and complexity, there is more pressure to delegate more highway work to the LPAs. This is also evident by the proliferation of earmarked projects focused at the LPA level in new highway legislation.

The Federal-Aid Highway Program has grown significantly in size and complexity for LPAs. Some LPAs are mature and are able to handle these changes, but many others are not well equipped to handle a changing program. While a few LPA recipients have organizations and expertise that would rival that of many smaller STAs, many of the LPAs that become sub-recipients of Federal-aid program funds have little or no specialized staff and may only experience Federal-aid projects once every few years. LPAs now participate in a diverse range of projects from simple sidewalks to complex NHS interchanges and bridges.

In December 2005, the Office of Professional and Corporate Development (OPCD) asked the FHWA Division Offices and other units of FHWA to rank the FHWA programs that warranted review at the national level. The result was that local project administration ranked as the highest interest by a considerable margin, most likely due to the perceived risk in this area. This concern led the OPCD to designate the administration of Federal-aid projects by local public agencies as the first area to be addressed under the rejuvenated national review program.

PURPOSE

The purpose of the review was to assess the administration, oversight and stewardship of local public agency Federal-aid projects in several States and identify areas for

improvement that will ensure the overall quality and effectiveness of local project activities along with any needed changes in the oversight requirements.

In addition, the Associate Administrator for the Office of Professional and Corporate Development and the Director of Field Services West co-sponsored this first national review and requested that the review (1) verify or refute concerns relating to a lack of oversight by the STAs or the FHWA, (2) identify common weaknesses and recommendations for improving them, and (3) identify successful practices.

SCOPE, METHODOLOGY, AND CRITERIA

The LPA Review Team focused on the activities associated with the Federal-aid delivery processes, administrative procedures, and monitoring and oversight activities related to the LPA Federal-aid projects. The Team fully utilized the preliminary information gathered from all FHWA Federal-aid Division Offices and also made full use of the DFS North States' LPA survey results which included information relating to program concerns, oversight activities, and successful practices. In addition, the Team extended the DFS North State's survey to the DFS South and West States. The Team also utilized the results of these surveys to develop the reports observations.

The on-site reviews focused on the administration of LPA Federal-aid projects in **seven** States. States were selected to achieve a variety in program size, in program maturity and to be representative of the nation geographically. The LPA review team also focused on the Federal-aid Division Offices, the STA, the LPA, and the LPA Federal-aid project site activities. The Team reviewed **thirty-nine** Federal-aid projects administered by **thirty-five** different local agencies:

Washington – 6 projects	Ohio – 5 projects
Florida – 3 projects	California – 12 projects
Georgia – 4 projects	New Hampshire – 4 projects
Iowa – 5 projects	

The survey responses received from the FHWA Federal-aid Division Offices were used by the Team to identify the estimated $6 to $8 billion (i.e., about 20% of Federal-aid program funds per fiscal year) in Federal-aid projects administered by LPAs each year in the States.

The Team used review guidelines developed from the FHWA Federal-aid program delivery requirements in the areas of Program Management; Project Development; Right-of-Way; Environment; Contract Advertisement and Award; and Construction and Contract Administration. The Team interviewed key representatives from the FHWA Federal-aid Division Offices, the STAs and the LPAs. The Team also interviewed representatives of organizations such as the American Public Works Administration, the State's association for city or county engineers, and similar groups.

On-site reviews included a review of stewardship and oversight activities, risk assessments, process review reports, examinations of project records, supporting documents, inspection reports, project cost audits, and financial records. The projects reviewed were in the design phase, under construction or recently completed. The Team visited project sites and interviewed the LPA project engineers, inspectors and/or consultants. Project records were also reviewed to determine that the project processes and supporting documents followed the Federal, State and Local procedures.

Among other things, the Team criteria included 23 USC §302 (the capability to carry out the duties required by law) 23 USC §112 (contracting for engineering and design services), 23 CFR 630 (project authorizations and agreements); the review of Federal-aid construction contracts references 23 USC §106 (project approval), §109 (standards), §112 (letting of contracts), § 113, §114 (construction), §120 (Federal share payable), and §121 (payments for construction); 23 CFR 633 (required contract provisions), 635 (construction and maintenance procedures), 636 (design build), 637 (construction inspection approval), 646 (utilities) 710 (right-of-way), 771 (environmental impacts); and the National Environmental Policy Act, the Uniform Relocation Assistance and Real Property Acquisitions Policy Act, and the American Disabilities Act; 49 CFR 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and the OMB Circular's A-87, and A-133.

In addition, the LPA review used the provision in §1904 of SAFETEA-LU that revised §106 of 23 USC and broadened the State's oversight responsibilities and required sub-recipients to have adequate project delivery controls over Federal-aid funds.

TEAM MEMBERS

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OBSERVATIONS

The Team found that the administration of Federal-aid projects by LPA's lacked a systematic or comprehensive oversight approach. The review revealed that the current oversight activities, as a whole, were inconsistent from State to State, were ineffective for

administering the increasing number of LPA Federal-aid project activities on a national scale, and resulted in an inefficient use of Federal-aid funds. In addition, the results from the DFS State surveys supported these observations. Weaknesses were also found in the LPA processes associated with program management; project development, right-of-way, environment, contract award, and construction contract administration (see details in Appendix A). From a national perspective the review identified the following observations. Further confirmation of these observations is anticipated as a number of FHWA Divisions conduct process reviews on locally administered projects in FY 2007.

There are extreme differences in the LPA Federal-aid project activities:

The Team found that there is wide diversity in the capabilities, experience, staffing, goals and mission of recipients of Federal-aid funds. LPA administered projects occur on and off the NHS, vary is size and complexity from short sidewalk projects to large, complex bridges, and the magnitude of Federal-aid projects being administered by local agencies varies enormously from state to state. These differences across the nation result in inconsistencies in how the Federal and State partners manage and monitor these projects, often due to a misunderstanding regarding who is responsible and accountable for ensuring the projects are appropriately administered.

The LPA Federal-aid project risks vary widely:

Every office that was visited indicated that they believed that there is some risk in locally administered projects. The Team affirmed that belief. There were findings in every State visited and almost on every LPA project reviewed. Many States and LPAs did not review the project billings in a meaningful way, were not billing in a timely manner, and were relying on FHWA billing transaction sample reviews rather than a final project cost review. The Team found that design and construction quality was highly variable, and the quality and availability of records made it difficulty to verify compliance. Material testing was often either not done or was undocumented leaving project quality and durability questionable. There were numerous compliance issues identified relative to NEPA, Uniform Act, Brooks Act, as well as Title 23. In many cases the Team found that locally administered projects had a high dependency on the expertise of consultants to ensure that laws, regulations, guidance, and specifications were implemented appropriately. Given the number of concerns that were raised during the visits to seven States, it can easily be assumed that similar problems frequently exist in most states across the nation. There is a risk to the agencies who are responsible and accountable for local Federal-aid projects that funds are being used inefficiently and ineffectively. In addition, there may also be a risk of fraud, waste and abuse.

State LPA oversight activities were varied, limited or non-existent:

STA's remain the sole recipient of the majority of Federal-aid funds in each State. When a State delegates the responsibility to administer a Federal-aid project down to a local agency, the STA retains the responsibility for ensuring the Federal regulations

are met. Therefore, it is imperative that the STA provide adequate oversight of these projects. The Team found that some STAs do not recognize that they have a State role or responsibility for LPA projects, and STA review of design and construction is frequently limited to only those LPA projects on the State's routes. In general, State reviews of LPA administered projects, especially design and construction activities were found to be cursory at best, and States were reactive in oversight rather than proactive. Many States face very limited staffing ceilings and some have experienced recent cuts in staffing. The sufficiency in the number and experience of State staff assigned to monitor LPA projects is in many cases questionable.

Earmark projects directed to LPAs are problematic:

The fact that the administration of local projects is inconsistent across the country is compounded by the effect of Congressional earmarks or "pork projects." Earmarks are often directed to local agencies with limited experience in Federal-aid program procedures. In addition, since most of these projects are politically driven, the STAs have no "ownership" and no incentive to assume responsibility to assist LPAs with the complexities of Federal requirements. In fact, these earmarks are often considered nuisance projects. Since these earmarked projects are congressionally mandated and politically motivated, they often do not follow the normal project development processes which can complicate the problems. For example, these earmark projects are frequently outside the STIP, are under-funded, and require additional funds be drawn away from STIP projects. This further distances the STA from the project and increases the potential that local agencies be left to try to advance the project with no help, or oversight, from the STA.

The Federal-aid program guidance to LPAs is lacking:

In general, the Team found FHWA guidance regarding the administration of local projects is confusing and inconsistent. For example, the FHWA Office of Real Services' Real Estate Acquisition Guide for Local Public Agencies has been available for many years but the review found most States were not aware of the guide and did not take advantage of FHWA's workshop for their LPAs. In most cases, Division Office management and personnel were not clear regarding what their role should be in these projects. There is a feeling that these projects pose some risk, but they do not know what to do about it. It appears that with this lack of guidance at the Federal level, some states have tried to fill the void by developing guidance manuals. The Team found that some State manuals are so extensive that they intimidate local agency personnel to the point of non-use, while some State guidance is as brief as one page.

Training for local project administrators is also insufficient both in opportunity and in content. The result is again inconsistent administration of these projects by personnel who are inadequately equipped with the knowledge and skill to ensure that Federal-aid funds are being used efficiently and effectively.

FHWA oversight activities were inconsistent, varied and frequently without structure:

As was stated earlier, FHWA guidance on LPA oversight is scattered, incomplete and interpreted differently throughout the country. As a result, the Team found that oversight activities by Division Offices were similarly inconsistent. In many cases, this was due to the lack of clarity of the Federal role in these projects given the project exemptions resulting from ISTEA, TEA-21 and SAFETEA-LU. There is no FHWA "champion" of LPA activities at the Headquarters level since the projects are not currently treated as a "program". In addition, not all Divisions have a person assigned to LPA coordination and many Divisions find that it is also a resource issue and do not have sufficient staff time to devote to LPA work. The Team found that the lack of guidance, lack of structure, and lack of resources all contributed to weaknesses in oversight by FHWA which potentially contributed to the widespread concerns that were identified in the Team's projects site visits.

The LPA Federal-aid project activities impact the FHWA strategic goals:

The Team determined that this issue is not only relevant and significant due to the amount of Federal-aid funding that goes to locally administered projects. In addition, the ineffectiveness of the administration of these projects has an impact on FHWA's stated Strategic Goals. There are significant safety concerns off the National Highway System. For example, 38% of the nation's highway fatalities occur on collector and local roads and over 80% of those roads are under local agency jurisdiction. In addition, some local roads are now experiencing significant congestion, and environmental miscues on LPA Federal-aid projects have a detrimental affect on streamlining the overall environmental program.

ALTERNATIVE APPROACHES

The Team explored three approaches for consideration in FHWA's response to the observations made during this review. The first approach uses current laws and regulations. The second and third approaches include two possible concepts for modifying existing laws and regulations.

Alternative 1: Using Current Laws and Regulations.

This alternative is based on the existing law and regulation and in particular focuses on the language of Section §1904 of SAFETEA-LU. The language of Section §1904 is clear in its assignment of responsibility for locally administered projects to the States. Section §1904 states, that the States shall be responsible for determining that sub-

recipients of Federal funds have adequate project delivery systems for projects approved under this section; and sufficient accounting controls to properly manage such Federal funds. Under this alternative, States would be expected to put programs in place to fulfill this requirement. The same Section also states, that FHWA shall periodically review the monitoring of sub-recipients by the States. Under this alternative approach it is envisioned that the provisions within existing law and regulation be used to take actions to improve stewardship and oversight of LPA administered projects at the Local, State, and Federal level. See Appendices B, C and D for more discussion regarding this alternative approach.

Alternative 2: Eliminate Federal-aid from Functional Classifications Below Minor Arterials.

This addresses the issues of complexity in the Federal-aid highway program faced by local agencies by modifying the Federal-aid system, while still allowing sufficient resources to be devoted to federally ineligible roadways. The latter is accomplished by providing the opportunity for States to replace Federal-aid to collectors, local roads and non-roadway projects with their own revenue. To create this opportunity, the Federal-aid delivered to the arterial systems in a State would be at a 90-10 pro rata share, provided that the State agrees to support the collector-local and non-roadway type projects with a State delivery mechanism. The team recognizes that the benefits gained by such a change, would be offset by eliminating funding eligibility for some non-traditional, non-road projects such as TE, CMAQ, TCSP, Safe Routes to schools and Recreational Trails. The Team also believes that this approach would minimize the current risks associated with the administration of Federal aid projects by LPAs. See Appendix E for more detailed background about this alternative.

Alternative 3: Modify LPA Program Delivery to a Block Grant Program.

This would modify the delivery of that portion of the Federal-aid program for projects on collectors, local roads and non-roadway projects. While the highway program is already

technically a grant program, this delivery would more closely resemble grant programs administered by the FTA and FAA. The difference being that they are direct grants to Local agencies that eliminate the State as the pass thru entity and place more responsibilities on the Federal agency. Projects on collectors and local roads and projects not on any road would be exempt from Title 23 requirements, but subject to requirements either identical to or similar to those in 49 CFR 18, depending on implementing law and regulation. This would resemble a “block”

grant and the localities could receive a lump sum directly from FHWA to use for eligible purposes without any or with minimal FHWA oversight. This alternative would shift the State's oversight responsibilities to FHWA. The problem here is that only Title 23 requirements would be eliminated, not other cross cutting legislative regulatory requirements such as NEPA, Uniform Act, CAA. Based on the findings of our review, it appears that FHWA's and the STA's current oversight practices of local agencies administering Federal-aid are insufficient to reasonably ensure Federal regulations are being met. One potential solution to this problem is to reduce the regulatory requirements and thus FHWA, the STA, and the local agency responsibilities and risks associated with the program. Several States and FHWA Division Offices commented that the LPA program should be more like a "block" grant program. See Appendix F for more background regarding this Alternative approach.

RECOMMENDATIONS

The Team recommends that FHWA Executive Leadership use the approach outlined in Alternative 1: Using Existing Laws and Regulations and take the following actions to strengthen the administration of Federal-aid projects by LPAs:

1. FHWA should treat the LPA administered projects as a program area and establish a Program Manager position at the Headquarters level that would lead a unit to implement the recommendations in this report, update and develop guidance, and provide assistance and direction for other unit offices.

2. FHWA Division Offices should identify someone with the responsibility to manage the LPA Program at the field level and to coordinate the overall efforts by the office to ensure that the STA's oversight responsibilities over local projects are accomplished in accordance with the Agency requirements.

3. FHWA Division Offices should assess the resource needs (i.e., staffing, training) necessary to ensure that the STAs perform their stewardship and oversight activities over these LPA administered projects.

4. FHWA Division Offices should ensure appropriate monitoring of LPA administered projects is accomplished through existing mechanisms such as risk assessments, stewardship agreements, unit plans, program evaluations, and process reviews.

5. FHWA should assist the STAs developing and implementing a Local Project Stewardship Agreement as a companion to the Stewardship Agreement that is already implemented in each State. This Local Project Stewardship Agreement should include the following key elements:

    a. A written agreement between the STA and LPA regarding roles and responsibilities;
    b. A staffing plan for providing appropriate monitoring of LPA projects by the STA and administration of projects by LPA personnel;

c. A training program to ensure qualified individuals are involved in oversight of LPA projects;
d. A review and monitoring plan that details required oversight activities that will be performed for each project and LPA; and
e. An audit plan to ensure that required project and single audits are conducted.

6. The FHWA and the STAs should jointly develop a model Qualifications Program for LPAs. Prior to being delegated the authority to administer a Federal-aid project, each LPA should be "qualified" by meeting minimum requirements in processes, training and experience.

7. The FHWA should work with the STAs to take advantage of existing flexibilities to minimize regulatory burdens on local projects, such as the use of "buy-back" programs, the development of State design standards off the NHS, the use of Special Experimental Projects, etc.

The Team recommends that the FHWA further study the concept in Alternative 2: Eliminate Federal-aid from Functional Classifications below Minor Arterials which would require enabling legislation.

The Team does not recommend Alternative 3: Modify LPA Program Delivery to a Block Grant Program. There does not appear to be sufficient advantage to the FHWA or the Local Agencies to overcome the disadvantages of a block grant, but further study may be needed.

CONCLUSIONS

The Team concluded that the administration of LPA Federal-aid projects activities lacked a sufficient systematic or comprehensive stewardship and oversight approach. Among other things, the Team concluded that:

1. The LPA Federal-aid project activities are a significant portion of the Federal-aid program for which FHWA is responsible.

2. There were program weaknesses that allow shortcomings in ensuring project eligibility and compliance with law and regulation, including the billing process.

3. While no widespread waste, fraud and abuse were found; the many findings by the Team are indicative of the need for improved oversight and control.

4. No one area was identified as a nationwide problem but there were findings of non-compliance in almost all project delivery areas.

5. Numerous problems, findings and issues evident in the Federal-aid program areas (environment, right-of-way, design, construction, billing, etc.) demonstrate that Federal funds are often not used effectively and efficiently.

In addition, the Team believes that effective stewardship and oversight must be proactive and include good evaluation mechanisms that collect information and transfer lessons learned. Learning from past mistakes and successes and sharing this information are essential for improving the effectiveness of the Agency's stewardship and oversight program. A centralized, focused Local Program in FHWA would help serve this purpose. A more systematic approach to stewardship and oversight for LPA Federal-aid projects is essential. It will also help improve the Agency's control for ensuring the effective and efficient use of Federal-aid program funds under the new provisions in §1904 of SAFETEA-LU. Therefore, the LPA review team made several recommendations that may be useful in reducing the Agency's risk and improving the Agency's stewardship and oversight activities, associated with the administration of LPA Federal-aid projects.

SUCCESSFUL PRACTICES

Our review included data collection from all 52 FHWA division offices and on-site reviews in seven states. In all of the States visited, the personnel involved in LPA activities were extremely helpful, open, and sincerely interested in improving the efficiency and effectiveness of their administration of projects. We found numerous examples of LPA activities which we consider to be noteworthy.

1. *Washington State Department of Transportation (WSDOT)* –A Local Agency Guidelines (LAG) Manual is on their website and provides detailed instructions for administering local projects. Guidance on requirements for Non-Traditional Projects (example, Enhancement, Scenic Byway, etc.) has recently been added to the LAG Manual. A Certification Acceptance Program (CA) is used which permits a certified agency to administer projects with Federal-aid funds. The Highways and Local Programs website is an excellent reference for their local agencies: http://www.wsdot.wa.gov/TA/HomePage/HLPHP.html

2. *Florida Department of Transportation (FDOT)* - Checklists are used for locally administered projects and examples are at their website: http://www.dot.state.fl.us/ProjectManagementResearchDevelopment/LAP%20Files/lap_pmr&d.htm

3. *Georgia Department of Transportation (GDOT)* - GDOT has developed and implemented an audit program to review local payments and contract consultant agreements on a routine basis. This assures project cost claims are adequately supported for State and Federal reimbursement.

4. *Ohio Department of Transportation (ODOT)* - ODOT has developed a Highway Technician Academy that provides comprehensive training and certification for highway maintenance workers in both highway maintenance and contract administration duties. See their website at http://intranet.dot.state.oh.us/htacademy/. Their website at http://www.dot.state.oh.us/local/ provides additional detailed information.

5. *Iowa Department of Transportation (IDOT)* - IDOT has an excellent website at http://www.dot.state.ia.us/local_systems/index.htm for guidance on the administration of local projects.

6. *California Department of Transportation (CALTRANS)* - CALTRANS has a very comprehensive local agency program guidance manual. CALTRANS Local Assistance has an excellent and comprehensive website: http://www.dot.ca.gov/hq/LocalPrograms/index.htm

7. *Federal Highway Administration, Office of Real Estate Services* – The Office of Real Estate Services developed a Real Estate Acquisition Guide for Local Public Agencies that is available through STAs and through FHWA's internet website: http://www.fhwa.dot.gov/realestate/index.htm

APPENDIX A

OBSERVATIONS NOTED DURING THE REVIEW

The following is an aggregated and abridged list of observations made primarily through the 7 State site visits made by the Team. The observations are categorized into the core areas investigated by the Team.

LPA Program Management

- No State visited had standardized record keeping requirements implemented for local agencies, and as a result:
    - Critical documents were missing from project files. (NEPA document, agency coordination letters, checklists, State LPA agreements, permits, change orders, preliminary engineering reports, construction records, diaries, records, material test reports, certified payrolls, labor compliance reviews, EEO reviews, etc)
    - When consultant forces are used for contract administration (the situation in nearly all cases), the consultants typically keep the records associated with that administration after the project leaving the owner with insufficient project documentation.
- Many LPAs were not following Brooks Act for consultant selection:
    - Consultant contracts are being renewed year after year without re-competing,
    - Some LPAs have hired consultants that also act as city officials creating potential for conflicts of interest, and
    - Some local agencies that are hiring consultants are inexperienced in the necessary area of expertise to evaluate the consultant's qualifications or the consultant's work.
- The responsible person in charge of Federal-aid projects in many local agencies did not have sufficient knowledge or experience to adequately administer the complexity of the project underway.
- Many STAs had checklists as aids to oversight but the effectiveness was marginal due to the lack of follow up to ensure that the information represented by the checklist was correct.
- Many STAs have well developed local assistance manuals, which can be very helpful in addressing complex processes, but as was found in several instances, the existence of a good manual does not guarantee good practice.
- Most STA staffing levels were not sufficient to adequately provide oversight of LPA projects. Examples:
    - In one State there was only one person administering the LPA activities at the Headquarters level (Over 300 LPA projects valued over $375 million).
    - In another State, three people at the district level were providing oversight to local agencies with 400-500 active projects of which 100-150 were under construction.

- There is inconsistency from State to State and within many States in the certification or qualification processes used to evaluate LPA capabilities.
- Though some States have procedures calling for process or program reviews, very few examples of recent reviews could be located.
- Communication of changes to policies and regulations affecting LPAs varied from state to state. One project will have to be re-advertised because of changes to DBE provisions.
- Based on several examples observed in multiple States, the rules of eligibility for TE projects should be communicated between the Division and State and on to the local agencies.
- Many States and LPAs have billing issues such as:
    - States not reviewing the project billings in a meaningful way,
    - LPAs not billing in a timely manner and being slow to close out projects,
    - States relying on FHWA billing transaction sample reviews rather than a final project cost review.

Project Development

- Most States do not review design quality in local government projects unless that project is on a State highway.
    - Several examples were found of missing or improper design features (safety features, ADA elements, signalization, erosion control, etc.) that could have been avoided through a critical plan review during project development.
    - Some plans were reviewed in detail by special request of the local agency.
- Most States did not have a substantive review of the PS&E package prior to advertisement and award.
    - Required contract provisions were usually checked,
    - Design quality and special provisions were rarely checked,
    - Frequently, the staffs responsible for LPA monitoring were not qualified to do substantive reviews or were assigned too many projects to accomplish substantive reviews.
- Numerous projects observed involved sidewalks, but very few included installation of truncated domes indicating the full implementation of ADA standards has not occurred.
- Design standards used by local agencies were not always approved by the STA.
- Standard specifications and special provisions used by local agencies were not always approved by the STA.

Right-Of-Way

- Several instances were observed that demonstrated problems with ROW negotiations.
    - Negotiations took place without the involvement of certified appraisers,
    - Negotiations involved a significant amount of barter-negotiations that consumed a significant amount of time resulting in project delivery delay,

    - In many cases, actions may have been out-of-step with the Uniform Act.
- Several States had little to no Uniform Act training available to LPAs. In addition, these States were not aware of FHWA's Real Estate Acquisition Guide for Local Public Agencies and were not taking advantage of the training available to LPAs.
- Not all states have a list of qualified ROW consultants to aid LPAs in the selection of qualified firms.
- On one project the ROW certification indicated all ROW had been acquired, but that was not true. (Four of 37 parcels were still not acquired at the end of construction.)

Environment

- Most local agencies are totally dependent on consultants to do environmental documents and they do not have the expertise (1) to evaluate the consultant's qualifications or (2) to review the consultant produced environmental documents.
    - In many cases the State does not review the environmental documents and passes it directly to FHWA .
    - This results in extraordinary FHWA division staff review time.
- There were multiple situations in which the environmental classification of projects appeared to understate the actual situation.
    - A project was done under programmatic categorical exclusion although it involved an historic site, controversial tree removal, sound walls, right-of-way purchase and adding through lanes.
    - Another project was done under programmatic categorical exclusion based on no ROW although it involved 30 parcels of right of way, 18 of which had to be acquired by condemnation.
- Most project files did not contain a fully executed copy of the applicable environmental document or supporting documentation such as evidence of resource agency coordination.
- Many local agencies and States did not track environmental commitments from the NEPA stage to design or to implementation in construction.

Contract Advertisement and Award

- There were several examples of work occurring prior to Federal authorization.
- A few LPAs had shortened the advertising period without getting state approval.
- Hardcopy documentation of the actual authorization of the various key project stages was not available in many of the LPA's project records.

Construction Administration

- Most States performed no construction inspections of LPA projects unless the project was on a State route.
- The local officials in charge of projects have a very limited knowledge of materials sampling frequency and testing needs.

- Even where the municipalities use consultants to accomplish materials sampling and testing work, there is a need for more basic knowledge within the LPA so they know what services they should be buying and what documentation should be incorporated in the project records.
- Minimal evidence of quality assurance testing documentation existed in local files.
- Only one of 7 States had an on-site final inspection of LPA projects.
- In some States, local agency billings go directly to central accounting with no district level review prior to final billing.
- The LPA Review Team found several instances where there were no financial controls for the separate accounting of eligible and non-eligible work items.
- Over reliance on consultant inspection by LPAs resulted in quality issues and possible claims:
    - $1 million claim on large bridge project,
    - Leaking boat-section on railroad underpass.
- There does not appear to be any review at the project level of labor compliance reviews (Davis-Bacon payrolls).

<u>FHWA Related Observations</u>

- FHWA guidance on oversight of LPA activities is inconsistent, incomplete, scattered and interpreted differently throughout the Agency.
- There is no readily apparent FHWA champion for LPA activities.
- Many Division Offices are not devoting sufficient staff to LPA projects to ensure adequate State oversight.
- Some Divisions had fiscal clerks signing authorizations with no oversight.
- Some local agencies mentioned that they were unable to find what they needed on the FHWA website.
- While most Division Administrators interviewed said that they felt the LPA program was high risk, most also did not want additional duties to be mandated.

APPENDIX B

ALTERNATIVE 1: USING CURRENT LAWS AND REGULATIONS:

CONSIDERATIONS AT THE "FEDERAL" LEVEL

Headquarters Actions Needed

Historically, the Agency has decided that local projects could be covered as a collateral duty in Division Offices. Guidance and policy for the administration of these projects is provided (or not in some cases) by the various program offices in Headquarters. This lack of true ownership at both the Headquarters and Division level has contributed to the current ineffectiveness of the administration of local projects.

Locally administered projects need a home in FHWA. Currently these projects are not handled as a program. Each program area (i.e., Planning, Environment, ROW, Design, Bridge, Construction, Operations and Maintenance) is responsible for guidance and policy related to their area for local agencies. Many programs do not distinguish between local agency projects and any other types of projects. Simply put--this does not work. The likely candidate for this program would be Office of Infrastructure. Another option might be to establish a Local Programs Team in the Resource Center.

This office would be responsible for issuing and maintaining policy and guidance related to the administration of local projects and the Local Agency Monitoring Program in the Division Offices. Initially they would be responsible for implementing the changes recommended by this review report, such as the Qualifications Program, the Review Program and the Training Program. They would also provide expertise to Division Offices for and during LPA reviews. This office could also collect and maintain Review Reports from Division Offices. Additionally, the FHWA website needs a separate page that contains all of the relevant regulatory, policy and guidance information for Local Agency Projects.

FHWA Division Staffing

The Team recommends an increase in Division Office staffing dedicated or available to the local program area. Division Offices must identify staff responsible for the LPA Program.

Short of requiring a full-time FTE in every office (which of course is impossible in most Divisions) it is imperative that someone is assigned the responsibility of managing this program. Division Offices need a single point of contact that has the expertise to provide consistent policy guidance to State highway agencies.

The Team recommends that Divisions who's States have a local program that exceeds $250 million should have a Full-time Local Programs Coordinator. Additionally, the

chart below shows total FTE that should be available to work on Local Projects. This includes all functional areas.

FHWA FTE	Construction Award Program
1	$100,000,000
2	$150,000,000
2	$200,000,000
3	$250,000,000
4	$300,000,000
4	$350,000,000
5	$400,000,000
5	$450,000,000
6	$500,000,000
7	$550,000,000
7	$600,000,000
8	$650,000,000
9	$700,000,000
9	$750,000,000
10	$800,000,000
11	$850,000,000
11	$900,000,000
12	$950,000,000
13	$1,000,000,000

Staffing and resource allocation should be based on the annual risk assessment. The Team found over 80% of Divisions identified Local Project Administration as a high risk area in recent risk assessments. Only one of the seven states visited had a full-time position for this area.

A major concern expressed by nearly every Division Administrator interviewed was that there are far too many programs to cover. Applying more resources to the administration of local projects could be at the expense of some other program area, but the use of risk management or resource sharing concepts could mitigate this concern.

FHWA Local Agency Monitoring Program

General Guidance

How the FHWA Division Office will assure that the Federal-aid program at the local level is effectively managed should be outlined in the FHWA/STA stewardship agreement. Each of the recommended review types should be identified as tools that can be used to assess the effectiveness of the STA in overseeing those projects and programs that have been delegated to them. Other oversight methods could also be used. One

example would be to select certain high risk projects being managed by a LPA as a full oversight project. The most frequently used method would be to include one or more LPA administered projects as part of the normal FHWA program oversight effort.

When reviewing a STA it would also be necessary to assess the level of oversight needed to assure that LPAs are able to manage the Federal-aid program. Staffing levels and frequency of reviews would be one element of the review evaluation but ultimately it is the ability of the LPA to administer the program/project that would be in question.

Program Level Reviews

Program level reviews could be done in cooperation with STAs when they are conducting their reviews. However, FHWA program level reviews should be conducted with the idea that FHWA is assessing both the oversight by the STA, as well as the effectiveness of the LPA to administer Federal-aid projects. When developing a review program that targets project development from beginning to end, an assessment of the effectiveness of the STA to adequately oversee the LPA should be evaluated. This can also help determine if the STAs qualification program is effective in assuring that risks to the Federal-aid program have been minimized.

Evaluation Factors

The North DFS Divisions provided many suggestions on factors to consider when evaluating the adequacy, effectiveness and proper stewardship of FHWA and the STA in administering of LPA projects (See Appendix G). These factors include:

1. Are the STAs and LPAs are adequately trained, staffed and equipped to manage the programs they are administering?
2. Do the STA and Division conduct systematic oversight reviews of the LPA's administration of programs and projects?
3. Is the oversight of LPA administered programs/projects adequately addressed in the Division stewardship agreement with the STA?
4. Does the State have written processes/procedures for administering all areas of program and project development? Are the processes/procedures adequate, followed and/or enforced?
5. Does the State have dedicated liaisons to assist in administering LPAs?
6. Does the State or the Division take responsibility for the non-Title 23 laws (NEPA, Uniform Act, Civil Rights, etc) on LPAs?

APPENDIX C

ALTERNATIVE 1: USING CURRENT LAWS AND REGULATIONS: CONSIDERATIONS AT THE "STATE" LEVEL

State's Role in Federal-aid to Local Public Agencies

The Team concluded in its review, through observation of successful practices and the observation of LPA programs with various shortcomings, that an effective State monitoring and oversight program of local agencies receiving Federal-aid should include an agreement with each LPA clearly describing the roles and responsibilities of the State and the local agency, a meaningful qualification/evaluation process, dedicated State staffing, a training program for local Federal-aid recipients and a review and monitoring program.

Roles and Responsibilities Agreement

The roles and responsibilities agreement (or stewardship agreement) between the STA and the LPA should clearly establish each agency's respective part in the Federal-aid process and define what consequences will result if there is a failure to follow required processes. A STA could start with a basic stewardship agreement and then tailor it for a specific LPA based on different factors. The degree of delegation of responsibility from the State to the LPA should be made commensurate with the amount of experience and expertise actively applied by the LPA to a given project. The LPA's experience and expertise are to be evaluated during the State's qualification process for individual LPAs. Risk assessment processes could be used to help identify those areas where additional oversight is needed or where STA oversight could be reduced.

Staffing

The STAs must provide appropriate staffing to perform adequate oversight of the LPAs. The staffing must be qualified and in sufficient numbers to ensure that the program is managed effectively. Based on the seven states visited, there is wide variability in the staffing levels and staffing configurations currently being utilized by the STAs.

STAs need dedicated staff at the Headquarters level to oversee the program and to establish policies and procedures for the local agencies to follow. Dedicated Headquarters staff is also needed to monitor the program, ensure consistency among districts, and to make necessary revisions to policies and procedures. In the states reviewed with relatively large LPA programs the STA staff dedicated to the LPA program at the Headquarters level ranged from 73 in a state with an annual LPA program that exceeded 1 billion dollars, to 44 in a state with an annual LPA program of $200 - $300 million, to one in a state with an annual LPA program of about $100 million. Not all of these were adequate. In each of the states reviewed there was some degree of assistance provided to the LPA program by other branches of the STA. In some STAs, this assistance was minimal and limited to technical assistance in areas such as bridge.

In other STAs, a significant part of the Headquarters functions were performed by other branches of the STA.

One of the states reviewed had a relatively small locally administered program. The vast majority of projects off the State system that had Federal-aid funds were administered by the STA in the same manner as a project on the State system. Most districts had no more than one or two locally administered projects under construction at a time. The districts did not have staff dedicated solely to the local projects; instead existing staff provided the required oversight of the locally administered projects. This worked well for the small size of their current program; however, it is doubtful that this model would work well if the program grows significantly. Based on the findings from the states reviewed, dedicated staff is essential to oversee a larger program.

The establishment of good policies and procedures is critical to the success of an LPA program and the staff required to put it in place is needed relatively early. The Team recommends that a STA dedicate program and policy level staff to the LPA program if the number of LPA administered projects under design or construction is projected to exceed 10 per year total within three years, or if the total dollar amount administered by locals exceeds $50 million.

Project level oversight by the STA is essential. STA project level oversight staff needs to be sufficient to reasonably ensure that all requirements are met and that the project is constructed in accordance with the quality standards established for the program. The STAs visited used various staffing procedures to accomplish this function. Some used only staff dedicated to the LPA program where others used staff that had responsibilities in other areas. Due to the wide variability of the various state LPA programs and state approaches to administering the program, it is difficult to define the number of staffing needed to provide project level oversight. It is recommended that the Division and the STA use the findings of the review program to evaluate and make adjustments to levels of project oversight staff.

To allow the STAs the maximum flexibility in setting their staffing, the Team recommends that the STAs develop and submit to the Division Office a staffing plan detailing how they will administer the LPA program. The plan must be approved by the FHWA division office. The plan should be reviewed by the State DOT at least every 2 years and when necessary revised and resubmitted. If it is not necessary to revise the staffing plan, the justification of this fact and the review findings are to be sent to the FHWA for review and approval. The plan should contain the following elements:

1. A description of how the State plans to staff the LPA program to successfully implement the qualification program, audit program, training program, and review and monitoring program discussed in this report.
2. The minimum number of staff dedicated to establishing, monitoring and revising policies and procedures.
3. The maximum project loading for project level oversight staff. Including;

a. The maximum number of LPAs per dedicated staff.
b. The maximum number of LPA projects per dedicated staff.
c. The maximum dollar amount of LPA projects per dedicated staff.

The LPA program can become a rapidly expanding program. Setting a maximum project loading for a given staffing plan will provide the STA and the division with a temporary ceiling on the growth of the program. This will allow an evaluation of the program staffing prior to the program growing to another level. The findings of the STA and FHWA review programs should be used in setting, evaluating, and revising the staffing plan.

While it is difficult to define firm minimums for Headquarters staffing levels and for project level oversight staffing levels, some guidance on these numbers is necessary. The Team developed the following staffing matrix based on a statistical curve taken from Federal Lands Highways' organizational benchmarking study. Division offices should consider this when reviewing the staffing plan. The FTE numbers are total staff time, not dedicated staff.

STA FTE	Construction Award Program, Millions
43	$100,000,000
45	$150,000,000
46	$200,000,000
48	$250,000,000
49	$300,000,000
51	$350,000,000
52	$400,000,000
54	$450,000,000
55	$500,000,000
57	$550,000,000
58	$600,000,000
60	$650,000,000
61	$700,000,000
63	$750,000,000
64	$800,000,000
66	$850,000,000
67	$900,000,000
69	$950,000,000
70	$1,000,000,000

Training Needs

One component of the Qualification Program is a well defined training program available to those who provide administration and/or oversight on Federal-aid projects. The LPA

Review highlighted the importance of a well-trained workforce that understands the roles and responsibilities of administering Federal transportation projects.

Many of the local agencies we reviewed hire consultants for various aspects of projects such as environmental documentation, preliminary engineering services, etc. Although the use of consultants by local agencies is a good way of acquiring services that the local agency may not have the resources or expertise to accomplish, the Team found that local agencies need to have a basic understanding of the Federal-aid process and training in order to provide effective oversight to their consultants.

To address this issue, the Team recommends that each STA develop a core curriculum of training for those involved in the administration or oversight of Federal-aid projects. This program of training would apply to STA and Local Agency personnel, would be an important element in the successful administration of an LPA program, and could assist in ensuring that State and Federal laws, regulations and procedures are followed.

When developing a training program, consideration should be given to including the following core areas:

- Planning/Programming – project selection, project scoping, estimating
- Environment – NEPA, classification, documentation, resource agency coordination, public involvement, 4(f), etc.
- Design – standards, bridge, pavements, roadway, ADA compliance, etc.
- ROW – appraisal, acquisition, certificates
- Contract Administration – competitive bidding, authorization, DBE, Davis Bacon, required contract provisions, etc.
- Construction Oversight – change orders, inspections, labor compliance, materials, documentation, etc.
- Financial Accountability – Billing and proper payment, final acceptance, project close-out, etc.

Few of the States visited provide training in the above core areas and LTAP centers appear to primarily focus on local maintenance activities. This training could be added to the LTAP curriculum or acquired from local training vendors.

Review and Monitoring Program

The STA will accomplish their stewardship of the LPA program by actively providing engineering expertise, technical assistance, technology deployment, program assistance, program delivery, and oversight to assure accountability for the use of public resources. The STA oversight responsibilities are not only to assure the program is carried out in accordance with all applicable laws, regulations, and policies, but also to continually evaluate the program and improve processes. The STA stewardship and oversight of the LPA program should include a combination of quality assurance, project reviews, program reviews, and evaluation.

A program level review would be an independent review of a project to ascertain how well the project development process, and ultimately the project itself, followed agreed upon processes, met established policy and guidance, and met the goals of the program. Projects from pre-selected LPAs would be chosen for a review. All records documenting the project would be reviewed, project personnel including consultants if appropriate would be interviewed, and the completed project would be visited. Findings would be documented and used when qualifying the selected LPA. Findings that showed a pattern of problems from one LPA to the next could be used as a focus area for a phase review.

Program level reviews of the LPAs should be done on a regular basis. Review schedules could be done as part of the qualification process. These reviews would not take the place of regular oversight but would be an in-depth review of the LPAs capabilities to manage Federal-aid projects.

A review of the key activities would be an in-depth look at a specific area or phase of project development for multiple projects throughout the State. Areas would be selected based on the risk assessment or from findings from the program level review. Experts knowledgeable in the key activity element would review projects and look for any material weaknesses. This would also be a time to assist the LPA in the specific program area and provide guidance and informal training as needed. Key activities could include:

- ROW
  - Documentation and Plans
  - Appraisal
  - Acquisition
  - Relocation Assistance
  - Proper Payment
- Design
  - Standards
  - Safety features
  - Bridge
  - Pavements
  - Roadway
  - ADA
- Contract Administration
  - Competitive bidding
  - Authorization
  - Advertise and award
  - Davis Bacon
  - Required contract provisions
  - DBE
- Planning/Programming
  - Project selection
  - Project scoping
  - Estimating
- NEPA
  - Classification
  - Documents
  - Resource agency coordination
  - Public Involvement
  - 4(f)
  - Environmental Commitments
- Construction Oversight
  - Change orders
  - Inspections efforts
  - Labor compliance
  - Documentation
    - Diaries/logs
    - Materials
    - Testing/records
    - Quantity sheets and measurements
  - Final Inspection
- Financial Accountability
  - Billing and proper payment
  - Close-out procedures
  - Final acceptance

Local Agency Program Annual Audits

In accordance with the Office of Management and Budget (OMB) Circular A-133, Audits of States Local Governments and Non-Profit Organizations, establishes responsibilities and requirements for complying with the Single Audit Act. These entities are required to have a single or a program-specific audit conducted on annual expenditures of Federal funds that exceed $500,000 within a fiscal year.

Among other things, these annual audits must be conducted in accordance with generally accepted government auditing standards, cover the entire operations of the entity, encompass the financial statements, and the schedule of expenditures for Federal funds in the same fiscal year. In addition, the audit will determine the entity's internal control provided reasonable assurance Federal funds were managed in compliance with laws, regulations, and the provisions of the contracts or grant agreements that could have a material on Federal-aid project activities.

In addition, the provisions in **§**1904 of SAFETEA-LU revises **§**106 of Title 23 of the United States Code broadens the States oversight responsibilities and require that sub-recipients of Federal-aid funds have adequate project delivery systems for projects approved under this section; and sufficient accounting controls to properly manage such Federal funds. At a minimum, the State should review the effective and efficient use of Federal-aid funds and ensure the financial integrity and project delivery on these locally administered Federal-aid projects on a periodic basis.

Project Cost Audits

In accordance with OMB Circular A-87, Cost Principles for State, Local, & Indian Tribal Governments, Local Public Agencies will perform progress and/or final project cost audits that provide assurance that claimed costs are adequately supported for Federal reimbursement. Among other things, these audits ensure that project costs are allowable, reasonable, adequately documented, allocable, and applicable. In addition, the audits will verify that the LPA controls relating to the establishment and maintenance of local project cost records and that they are being followed. These project cost audits are an effective way to control project costs and validate cost records. At a minimum, the scope of these local Federal-aid project cost audits should include:

1. A risk assessment to determine areas in which to concentrate efforts.
2. A review of the work performed by others, such as engineers and technical specialists and other evaluations on the local project.
3. A review of previous project cost findings or citations to determine if corrective actions were taken on questionable items.
4. A review of project documentation procedures including initiation, processing, and retention of project documentation, Federal/State approvals, and interface between the local agencies and the State.
5. A review sample of the local agency's internal changes including payroll, preliminary engineering costs, cost center, equipment and other direct costs.

6. A review sample of consultant agreements and billings for adequate documentation.
7. A review sample of contract payments including progress and final estimate preparation, including supporting source documents.
8. A review of other audits (pre or post) performed on third party contracts or subcontracts.

APPENDIX D

ALTERNATIVE 1: USING CURRENT LAWS AND REGULATIONS:

CONSIDERATIONS FOR IMPLEMENTATION OF A QUALIFICATION PROGRAM

The Need for a Qualification Program

Federal-aid highway funds are authorized by Congress to assist the States in providing construction, reconstruction, and improvement of highways and bridges on eligible Federal-aid routes and other special purpose programs and projects. Under Title 23 United States Code, STAs are responsible for the administration of Federal-aid transportation projects. For projects that are not on the NHS, the STA assumes the responsibilities of the Secretary of Transportation for design, plans, specifications, estimates, contract awards, and inspection of projects.

Title 23 U.S.C. does not recognize local entities as direct recipients of Federal-aid funds; and therefore, STAs are not relieved of their responsibility by authorizing performance of work by a LPA. SAFETEA-LU reinforced this requirement by adding that the States shall be responsible for determining that sub-recipients of Federal funds under Title 23 have adequate project delivery systems for projects and sufficient accounting controls to properly manage Federal funds. In those cases where activities are preformed by Cities or Counties, the STA are required to review and take actions necessary to assure local compliance with all Federal laws, regulations, and policies. As part of the STA responsibility when authorizing work performed by a LPA, the STA must determine that such assumption of duties is appropriate.

Under current regulations, when operating in the capacity of the STA, the LPA has to be adequately staffed and suitably equipped to undertake and satisfactorily complete the work. Should the LPA elect to use a consultant to fulfill its authorized duties, the LPA must provide a full time public employee to be in responsible charge. One way to assure that LPA are sufficiently staffed and suitably equipped is to have a formalized qualification program.

In order to ensure a higher level of success in project delivery, the STA and LPA should possess a minimum organizational structure, credentialed employees, as well as certain processes and experience. These considerations apply to more than just the specific project development disciplines associated with design and construction, but also an understanding of fiscal accountability and stewardship of public resources.

The following sections provide guidance on implementing a qualification program for the administration of Federal-Aid projects and should assist the STA in developing written practices that define the essential components of a qualification program.

STA Prerequisites for Authorizing Work Performed by an LPA

The oversight responsibility and delegation of authority from the FHWA Division Offices to the STA for "State Authorized" projects is contained in individual State Stewardship Agreements. For these projects, the STA has been delegated both pre-construction and construction related responsibilities. The STA has the option of authorizing some or all of this work to qualified local agencies, state or Federal agencies, or Tribal governments. A STA may employ a consultant to provide construction engineering services, such as inspection or survey work on a project; however, the STA must provide a full-time employed State engineer to be in responsible charge of the project.

Several conditions should exist within the STA organization prior to authorizing capable LPAs to administer projects. The STA should establish policies and procedures, accountability, program direction, monitoring, and continuous improvement for the LPA program. The STA should establish a LPA program office within its organization to oversee the LPA program and to institutionalize State directives, standards, procedures, and guidance documents. The effectiveness of the LPA program should be periodically accessed using STA and/or FHWA experts. The STA needs to commit sufficient staff and other resources to project and program administration to ensure that all applicable state and Federal requirements are met, and the work is accomplished efficiently.

The STA should provide formal training and set proficiency requirements for its Local program staff. The LPA should also maintain training records that show Local Programs staffs, whom are listed as qualified, have the proper education and experience, and that they have completed all qualification requirements. Training records should also show that Local Programs staffs have completed all re-qualification requirements at specified time intervals. The examination process must challenge the staff sufficiently to verify the proper level of knowledge of all qualification areas and test the Local Program staff's technical understanding of Federal-aid requirements, Federal and State processes, judgment and decision-making abilities, and ability to communicate expectations to the LPA.

STA are responsible for ensuring that activities delegated to LPA are completed in conformance with Federal and State requirements. Where FHWA has not delegated final approval, STA should monitor LPA activities and makes recommendations to FHWA. The STA should also provide assistance to the local agencies in interpreting the regulations, manuals and guidelines as they apply to specific project conditions. Environmental issues, ROW concerns, hazardous wastes, labor compliance, equal employment opportunity, Title VI and DBE are among these areas where assistance may be needed. The STA should retain approval authority for the following regardless of LPA Qualification:

- NEPA documents
- Local Design Standards
- Design Exceptions
- Right of Way Certification

- Sole Source Justification Approval
- DBE Goals
- Owner Force Account Work
- Reject of Bids
- Labor Compliance Enforcement
- Project Cost Eligibility
- Project Final Inspection and Acceptance
- Federal-aid Payments

The Team recommends the development of a tiered approached to qualifying LPAs. This approach would allow for greater flexibility in the administration of LPA projects by allowing STAs to focus resources on those agencies that need the most assistance in administering Federal-aid projects. It would also provide a way for LPAs that have experience in managing Federal-aid projects to have more control over their projects.

An LPA accepted for Tier 1 management of a Federal-aid project would utilize the full oversight by the STA. All the approvals for the project would be made by the STA. The LPA would shadow the STA and participate in all project decision-making. The STA would assist the LPA in technical analysis and the development of project documentation. All new LPAs must administer a minimum of one project under the direction of the STA.

Once a STA is confident that the LPA understands the Federal-aid process as a Tier 1 agency, the STA may grant Tier 2 status to the LPA. The Tier 2 status would only be in the core element areas that the LPA has met the specialized expertise requirements. The STA would be responsible for full oversight in core element areas not granted Tier 2 status. The STA would be required to provide periodic project reviews to assure construction-related activities are performed in accordance with State policies, practices, and standards, and in accordance with all requirements of Title 23, USC.

Tier 3 status may only be granted by STA when the LPA has specialized experience in all core element areas. Upon qualification the LPA will be authorized to provide full oversight in all areas of project delivery. The STA will only be responsible for approval in those areas identified above. The STA will need to audit the performance of the LPA on a cyclic basis that is no less than once every 3 years. These compliance-based reviews should establish or improve control processes and documents for functional areas of responsibility (environment, design, construction, etc.), ensure Federal-aid funds are properly managed and effectively used in accordance with Federal policies, and make certain that safeguards are in place to minimize fraud, waste, and abuse.

Capabilities of the Local Public Agencies – A Tiered Approach

Under a tiered approach, a qualified LPA may administer only those parts of project delivery that have been authorized by the STA based on the qualifications of the LPA. A LPA can only move to a higher tier of responsibility when the lower tier criteria have been successfully met and the LPA has received the approval of the STA. If a consultant is providing the specialized expertise, the LPA will need to specify the qualifications of

the consultant, related experience, time availability or commitments to the tier activity, and the terms and duration of the contract when available.

The program might require that a Tier 1 (Beginner) LPA be under the direct supervision of the STA and all project approvals will be the responsibility of the STA. All LPAs should administer a minimum of one project under the direct supervision of the STA prior to moving to Tier 2. The LPA will need to show (1) personnel expertise which includes education, documented training or proficiency, and past experience; (2) policies, procedures, and processes that comply with applicable State and Federal law; and (3) record keeping and accounting systems. The LPA should be in good standing with the State Auditor, STA, and FHWA relative to its accounting practices and fiscal operations. The LPA must also designate a full-time public employee within the local government's organization to be in responsible charge. The named public official will actively participate with the STA in project decision-making as the project progresses.

A qualified LPA with a Tier 2 (Practiced) qualification will have the past experience of a Tier 1 LPA and will have demonstrated technical expertise necessary for the review and approval of various phases or functional areas associated with project development certifying that they are in conformance with applicable State and Federal law. Technical competencies could be used to determine if the LPA has the specialized expertise needed. This specialized expertise may be provided by the LPA personnel, consultant, or other as agreed to with the STA. A Tier 2 qualified LPA may be in one or more functional areas.

A Tier 3 (Proficient) LPA will have the past experience of a Tier 2 LPA and a minimum number of years of total experience participating in a local oversight program and documented experience of a minimum of three Tier 2 capitol improvement projects with full time experience of two staff members including one supervisor. Documentation could include a narrative of the three relevant projects specifying responsible staff and their experience, a description of relevant project tasks, methods for overcoming technical obstacles and additional training obtained by staff. Prior to qualification, an evaluation of the LPA should be completed and documented by the STA. In the event that the STA cannot approve an LPA for Tier 3 participation, the STA could provide in writing to the LPA the deficiencies identified as well as what the STA must do to overcome these deficiencies. The LPA qualification should remain in good standing with the STA. If substantive findings are found on State audits or program reviews, the STA will withdraw its determination of Tier 3 qualification.

Following a determination of qualification, if resources available to a LPA changed such that the LPA can no longer conduct or oversee project delivery activities, the LPA would be required to notify the STA within 30 days of the change. The STA should make its own determination of the impact to the LPA's qualification.

Personnel Expertise Requirements

LPA personnel designated to perform project delivery activities should have the educational background and technical expertise sufficient to perform the activities

described above. For example, competency statements could identify three levels defined as:

Novice level has basic knowledge of or exposure to the subject or process adequate to discuss the subject or process with individuals of greater knowledge.

Journeyman or Working level has the knowledge required to monitor and assess operations/activities, to apply standards of acceptable performance, and to reference appropriate materials and/or expert advice.

Expert level has a comprehensive, intensive knowledge of the subject or process sufficient to provide advice in the absence of procedural guidance.

	Tier Qualification		
Project Delivery Elements	**Tier 1**	**Tier 2**	**Tier 3**
Program Management	✓	✓	✓
Planning / Programming		**X**	✓
Procurement		✓	✓
Design		**X**	✓
NEPA /Environment		**X**	✓
Right Of Way Plans		**X**	✓
Right Of Way Appraisal / Acquisition		**X**	✓
Contract Administration		✓	✓
Construction Oversight		**X**	✓
Finance	✓	✓	✓

✓ The LPA's must have specialized experience that meet the core element technical competencies to qualify for the Tier.

X A LPA may qualify in one or more of these core element areas to qualify for Tier 2.

The qualification program might require a training component to be STA approved curricula and regularly audited by the STA to verify compliance with State and Federal regulations, policies, and procedures. The responsibility of obtaining approved training should remain with the STA or LPA for their employees. It should be noted, that independent training organizations may be utilized by STA/LPA having inadequate resources and/or facilities to conduct training themselves. It is important that statements of exam successes and/or certificates of satisfactory completion of a training course be issued by such organizations.

Competencies for Program Management, Finance, and Construction Oversight are included here **as examples**.

<u>Construction Oversight Technical Competencies (Example)</u>

Construction Oversight personnel shall demonstrate:

- Novice level knowledge of techniques, equipment, and documentation of survey and establishing control points

- Journeyman level knowledge of the principles and construction methods associated with grading, paving, and drainage for site preparation
- Journeyman level knowledge of techniques for preparing cost estimates
- Journeyman level knowledge of techniques for scheduling construction projects
- Journeyman level knowledge of contract law applicable to contract specifications and drawings
- Journeyman level knowledge and ability to read and interpret engineering construction drawings
- Journeyman level knowledge of the application of Federal regulations to construction project
- Journeyman level knowledge of construction methods and accepted construction practices for pavements and structural elements
- Novice level knowledge of the basic principals and concepts of geotechnology as applied to soils, erosion, foundations, and earth embankments
- Novice level knowledge of the basic concepts of hydrology
- Novice level knowledge of systems for sanitary waste treatment and storm drains
- Journeyman level knowledge of the following laws related to environmental protection, safety, and health: National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Clean Water Act (CWA), Clean Air Act (CAA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and relevant State laws
- Journeyman level knowledge of quality assurance processes and procedures applicable to construction management
- Journeyman level knowledge in the application of construction management principals for constructability reviews, planning, and performance measurement of a construction project
- Journeyman level knowledge of assessment techniques, reporting and follow-up actions used to evaluate contractors
- Journeyman level knowledge to interact with Federal, State, Local and public stakeholder representatives

<u>Finance Technical Competencies (Example)</u>

Finance Personnel shall demonstrate:

- Novice level knowledge of accounting principles, auditing standards and billing requirements in accordance with AICPA, GAAP, GAO standards, OMB Circulars and Federal requirements
- Novice level knowledge and ability to work in general accounting, pre-payment reviews, and billing procedures
- Journeyman level knowledge and ability to conduct independent billing reviews and project cost audits, in accordance with guidelines to verify and support the eligible of contractor claims for reimbursement purposes
- Journeyman level knowledge and ability to assist in performing program specific-audit reviews that determine the adequacy of internal controls that have an effective on Federal-aid project activities
- Journeyman level knowledge and ability to draft findings and recommendations, follow-up on open issues to resolve questioned or unsupported costs

- Journeyman level knowledge and ability to participate in the final estimate review and project closing procedures and drafting of final audit report
- Expert level knowledge and ability to design, plan and manage project cost audit and comprehensive billing processes, or program-specific reviews

Program Management Technical Competencies (Example)

Program Management personnel shall demonstrate:

- Expert level knowledge to manage programs and projects effectively and in compliance with State and Federal processes and procedures (scheduling, cost estimates, budgets, procurement, resources, Davis-Bacon, etc…)
- Expert level knowledge and ability to represent the LPA on civil/structural engineering activities during oversight and management of the capitol improvement program
- Journeyman level knowledge of contract provisions necessary to provide oversight and assessment of contractor performance
- Journeyman level knowledge to conduct peer review of structural analysis and computations and to verify and assess field operations
- Journeyman level knowledge of the application of environmental standards, laws, and regulations
- Journeyman level knowledge of quality assurance policies, programs, and procedures
- Journeyman level knowledge of training and qualifying personnel to establish and maintain technical competency
- Journeyman knowledge of problem identification, solving, and decision making techniques
- Journeyman knowledge of contract management to assess contractor performance

Monitoring

As part of the LPA qualification process, the STA could be required to perform annual monitoring and periodic program review of individual LPAs and self assess their own management of the LPA program. The self assessments are necessary to ensure laws, regulations, departmental policies, and standard operating procedures are implemented in a uniform manner, to identify where noncompliance exists, and to provide guidance and assistance in order to achieve operational uniformity. The self assessments should be performed annually.

Prior to qualifying an LPA program, the STA should determine if the LPA is in good standing relative to its accounting and practices and fiscal operations, and determine if the LPAs policies, procedures, and processes comply with applicable State and Federal law. To make theses determinations, the program review should focus on four primary areas: (1) assessing the risk associated with the LPA's current operations; (2) reviewing the financial processes of the LPA; (3) evaluating the LPA organizational structure and staff; and (4) assessing the LPA's overall management.

Once the LPA is qualified at Tier 1, the STA will need to provide annual monitoring in addition to their full oversight of the project. This annual evaluation is defined as continually appraising the LPA's ability through their program, processes, procedures, and personnel.

As an LPA moves to the Tier 2 qualification, the STA will need to add quality assurance, program reviews, and core element reviews. Both program level and core element reviews help determine the overall health of the program and should be used as a part of a risk reduction effort. Each of these review types should be prioritized based on an overall program assessment that is conducted annually. The core element reviews for Tier 2 would only be in those areas the LPA has the required competency and has been authorized to administer. An LPA cannot be qualified for Tier 3 without both a program and core element review completed.

The Tier 3 qualification level would require the STA to continue the process of program and core element reviews. Evaluations of Tier 3 LPAs should typically include an assessment of organizational structure, staffing levels and resources, roles and responsibilities, standard operating procedures, staff training and expertise. These reviews should provide a reliable, predictable framework in which to carry out LPA activities resulting in a minimization of long term risk.

APPENDIX E

ALTERNATIVE 2: ELIMINATE FEDERAL-AID FROM FUNCTIONAL CLASSIFICATIONS BELOW MINOR ARTERIALS:

CONSIDERATIONS FOR IMPLEMENTATION

How the Money is Apportioned

In SAFETEA-LU there are currently over 20 Federal-aid formula appropriation types with varying funding amounts. The big three are:

- Interstate funding which is about 20% of the program,
- NHS non-interstate which is 25% of the program, and
- STP which is 30% of the program.

The remaining 25% includes such things as the Bridge Program, the Highway Safety Improvement Program, the CMAQ program, and Planning and Research. This does not include any earmarked projects which add to the total program dollars. If these projects are added to the total, the above percentages would be reduced.

The Federal share for projects varies with funding type. Interstate funding is a 90-10 program with the Federal portion 90%. The rest of the program is generally an 80-20 program with the Federal Government share at 80%. However, this ratio can be misleading as many projects are not funded at the full pro-rata share. For example, the actual participation ratio based on a report run for Minnesota is approximately 55% for projects on major collectors and below including those not on any roadway system and 65% for the total construction program.

It should also be noted that in the same report it was revealed that the number of construction projects on major collectors and below, including those not on any roadway system makes up approximately 55% of the projects. The dollar values of those same projects made up only 13% of the construction program. In other words, well over half of the Federal-aid construction projects use only one eighth of the funds.

The same report run in Nebraska revealed that 25% of the total construction program is expended on projects on major collectors and below. This represents 56% of the projects. Additional States are shown in the table below:

State	% of Construction Dollars	% of Projects
MN	13	55
NE	25	56
OH	23	58
ND	18	76
AL	20	68

The Funding and Project Selection Process

During interviews of local agency representatives the group discussed the planning process and how projects came to be selected for funding. In many cases the Team found that the process for getting money for projects was long and arduous. Time frames from 5 -10 years were not uncommon when discussing how long it took to get the project delivered. And these were not projects with complicated environmental documents but primarily Categorical Exclusions with little public controversy.

While the Team found a variety of ways in which money is distributed to the LPAs, in many cases funds are allocated based on a formula that distributes Federal dollars to a central agency such as a metropolitan planning organization, a regional planning organization or a State district office. LPAs are then solicited to submit projects that meet established criteria. Projects submittals are then subjected to a prioritization and selection process. Many projects are selected based on how well an application and a project description is put together and sold.

LPAs are very savvy at how to get money for their constituents. Sometimes the actual project is not as important as which pot of money is available and how much can the LPA get. STAs can be very limited in the ways they spend State money and in many states money can only be spent on State highways. This leaves the LPAs with limited choices. Federal-aid funding is one pot of money that is available to them.

This is even more evident with the proliferation of earmarked projects. The current system allows for direct influx of Federal dollars to projects that may or may not have gone through the projects selection and prioritization process. One of the reasons for this could be the time it takes to get through the process as well as the limited amount of funds available to fund the project. Unfortunately in many cases the amount of Federal earmarked dollars allocated to a specific project is insufficient to fully construct the project. This again leaves the LPA to look for alternate funding sources or to scale back the project.

One thing this review has shown is that the current system of allocating resources to the lowest level of the system is not working well. Federal laws and regulations made to protect the system as a whole work well at the macro scale but breakdown when applied at the smallest local level. It was a common mantra from all of the LPAs interviewed that the Federal-aid program was onerous and that many times the amount of funds that was available was overshadowed by the amount of resources that must be consumed to obtain them. Small projects that came from grass roots support would patch together funds from a variety of sources in order to get enough money to be constructed. Projects would be scaled back to a dim resemblance of what was really needed based on the amount of Federal funds that could be obtained through the planning and funding allocation process.

Types of Projects Being Funded

During this review the Team visited 7 States and reviewed 39 projects from 35 different LPAs. While the types of projects reviewed varied there were some project types that appeared most often. An example of these projects includes:

- Sidewalk projects
- Bike path projects
- Streetscape projects
- Bridge projects
- Asphalt overlay projects

The construction cost of these projects varied from an $85,000 asphalt bike path/sidewalk to a $16 million bridge over a waterway. Sidewalk projects usually ran around $300 to $800 thousand. Many of these projects had limited Federal funds. Very few were actually funded at the normal 80% participation ratio. Many States cap the amount of Federal dollars that they will invest in a project and let the LPA make up the rest in any way they can. This can result in projects that have some Federal non-participating work mixed in with the Federal project. It also results in a somewhat complicated billing process when items of work need to be broken out by funding category. While the Team found that most LPAs indicated that the funding was broken out during the billing process, the Team was unable to verify how well this was accomplished. In one instance the LPA indicated that there were over 10 funding sources in addition to Federal-aid funds in the construction of a streetscape/sidewalk project.

Types of Funds Being Used

As might be expected the types of Federal-aid funding most commonly used by the LPAs was Transportation Enhancement funds and CMAQ funds. Also fairly prevalent was the use of Off-system Bridge funds, and other STP funds. How the Division Offices interpreted which types of projects these funds could be used for was fairly consistent and stayed within previously issued guidance. There were occasions however where the Team found that the use of these funding types stretched the limits of eligibility. This was partly due to the nature of the projects themselves. Because some State laws prohibit the use of State highway money off the state highway system, locals developed innovative ways to fund their projects using the types of Federal funds available to them. For example, a bike path project using TE funds was merged with a LPA asphalt paving project. This allowed the LPA to use TE funds to construct shoulders which would be used as a bike path and also widen and repave the road.

What Should Be Done

The problem of using Federal-aid funding in the most effect and efficient manner has long been debated. The need to look at the transportation system as a whole and provide sufficient funding to assure all parts of the system are working effectively cannot be over

emphasized. With that said, how can the Federal Government use its resources to most effectively assure that the transportation system remains healthy and vibrant?

One of the ideas that we heard from the LPAs during our review was the concept of having STAs "buy back" Federal-aid money and then uses State dollars to fund local projects. What this would entail is the STA substituting State dollars for some projects or programs currently funded by the Federal Government and using Federal dollars on State administered projects. The concept of buying back Federal dollars is not new and the Team was told that some States are currently doing this or something similar.

An example of how this would work could be as follows. A STA has a State funded project for $5 million. There are also 10 LPA projects with $500 thousand of Federal dollars in each project. The STA "buys back" the Federal money in each of the 10 local projects and creates a $5 million dollar State administered Federal-aid project. State money is then used to fund the 10 local projects. This not only allows the LPA to develop a project without the need to learn and follow the project development procedures associated with Federal-aid, but also reduces the burden on the Federal-aid office as they have traded 10 projects to administer for one. The ten small cuts are transformed into one large cut which can be dealt with more cleanly and efficiently.

With that concept in mind, the Team proposes that the Federal-aid highway program be changed to focus resources where FHWA can have the greatest impact while at the same time shifting the local programs to the STAs to administer. This would allow greater flexibility for the STAs to focus their resources on the highest priority areas without the need to become embroiled in the Federal-aid project development process.

The method proposed to accomplish this goal has a few key parts.

- First, the Team recommends that the Federal-aid program become a 90-10 program for all funding categories.
- Second, but tied to the 90-10 recommendation, Federal-aid funding would be limited to roadways with a classification of Minor Arterial or higher. This would in effect reduce the number of funding codes.
- Third, States would be required to develop programs that would backfill those areas where Federal-aid no longer applies. This would be accomplished using the money saved from a reduced match program.
- Finally, STAs would be required to establish performance goals for those roadways and projects not on the Federal-aid system and report annually on the success of that program.

While the Team agrees that this is an oversimplified concept and that there would be many details to work out, it is worth exploring. The Team believes this approach would minimize the current risks associated with the administration of Federal-aid projects by LPAs. The Team recommends that a work group be established to look into the issues associated with this concept and that a report is prepared in time to effect upcoming transportation legislation. Some of the questions that will need to be addressed include:

- Will this be mandatory for all States or a voluntary program?
- Can legislatively selected earmarked projects be allowed off the newly defined Federal-aid system?
- How will this affect the currently defined NHS system?
- How will this affect those States that are not able through State law to fund off the state system roadways?

APPENDIX F

ALTERNATIVE 3: MODIFY EXISTING LAWS AND REGULATIONS MODIFY LPA PROGRAM DELIVERY TO A BLOCK GRANT PROGRAM:

CONSIDERATIONS FOR IMPLEMENTATION

Several States and FHWA Division Offices commented that the LPA program should be a block grant program. There seems to be a misunderstanding of just what is meant by a grant program and what requirements would apply. Technically, all of FHWA's programs are grant programs. The wish is for a program with little if any FHWA and State responsibility.

Government wide efforts have been made in the past to reduce the Federal requirements involved with block grant programs and give States the maximum administrative discretion possible. In 1983, a 20-agency task force chaired by OMB was established to explore streamlining grants management and review. This effort resulted in a Government wide "common rule" for grant management. The DOT and FHWA adopted the "common rule" as 49 CFR Part 18 on March 11, 1988. All of our programs are administered under the provisions of 49 CFR Part 18.

In the interest of uniformity and consistency among Federal agencies, the OMB has made it very difficult for an agency to implement grant management policies or requirements that are inconsistent with the "common rule." Deviations from the "common rule" must either be required by legislation or approved by the OMB. In OMB Circular A-102 it is stated that OMB will permit deviations only in exceptional circumstances. It is clear that we cannot reduce the grant management requirements in 49 CFR Part 18.

A Federal block grant program without Federal regulations does not exist and cannot feasibly be created. Many of the requirements applicable to the Federal-aid Highway Program are not 23 U.S.C. requirements and cannot be feasibly eliminated; such as NEPA, CAA, and the Uniform Act. FHWA will still have a significant oversight responsibility that cannot be ignored.

Establishment of a program that applies to local agencies with materially different requirements from current laws and regulations would create a disparate set of parallel Federal-aid highway programs. The regulations need to stay the same for a project regardless of what agency administers it. The Team does not recommend broad changes in regulations for projects administered by local agencies.

If a project has Federal dollars, the Federal interest and Federal oversight responsibilities cannot be taken away or fully delegated. The only way to remove the Federal interest and responsibilities is to remove the Federal dollars.

APPENDIX G

North DFS LPA Project Survey Results

Team Sponsor:

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September 8, 2006

Executive Summary

Background:
As a result of concerns expressed at the February, 2006 North DFS Division Administrator's meeting in Boston a decision was made to charter a team to collect and analyze data on FHWA and STA stewardship/oversight of Local Public Agency Administered projects. The team developed a list of survey questions that was sent to each of the 18 North DFS states. Responses were received from all 18 States. The review focused on highway and bridge locally administered projects. The detailed survey responses from the 18 States are on file in the Michigan Division. A copy of the survey questionnaire is attached.

Findings:

1. Most Divisions believe the administration of LPA projects is a high risk area even though a STA may have oversight guidance/procedures in place.
2. Most Division's believe additional guidance is needed to better define the role and responsibility of the STA and FHWA in overseeing/administrating LPA projects "off" the NHS particularly in the program areas of design and construction.
3. Many Divisions believe there needs to be minimum expectations, criteria or standards developed to evaluate the adequacy/acceptability of the STA's stewardship/oversight mechanism for LPA projects and to provide direction to STA's & LPA's.
4. Many Divisions are including a sample of LPA projects in process reviews and several Divisions have recently conducted process reviews specifically on local program/project administration.
5. Most STA's have written procedures for administering local projects that are accessible on a SHA website.
6. STA involvement in LPA projects for construction varies from "available upon request" to direct "day to day" involvement.

Recommendations:

1. The Division's need to conduct periodic stewardship/oversight reviews of LPA Administered projects to be assured that both the STA and the LPA administration of these projects meet federal law and regulatory requirements. This includes establishing STA oversight mechanisms if none exist or verification that the existing STA oversight mechanisms are followed.
2. FHWA needs to develop guidance that clearly defines the role and responsibility of the FHWA Division Office and the STA for stewardship and oversight of LPA projects "off" the NHS particularly in the program areas of design and construction where Federal law has allowed for the delegation of oversight authority to the STA's. Specifically, Title 23 states: "Projects (other than highway projects on the National Highway System) shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards".

3. FHWA needs to establish a definition for ‘oversight mechanism” and identify the minimum components that an acceptable STA oversight mechanism should contain including what specific actions can be delegated to the STA. Guidance to evaluate and judge the acceptability of the STA’s oversight mechanism for LPA projects should also be developed.
4. Reinforce the existing stewardship guidance that all process reviews contain a sample of LPA projects as appropriate and encourage Divisions to conduct periodic process reviews focused on LPA program administration areas of high risk.
5. Establish a web site that contains a hot link to those STA procedures and oversight mechanisms for administering local projects that are considered to exemplary.
6. Criteria for the minimum field involvement a STA should have during the construction phase of an LPA project should be established.

Evaluation Factors:
The North DFS Divisions provided many suggestions on factors to consider when evaluating the adequacy, effectiveness and proper stewardship of FHWA and the STA in administering of LPA projects. These factors include:

1. Are the STA’s and LPA’s are adequately trained, staffed and equipped to manage the programs they are administering?
2. Do the STA and Division conduct systematic oversight reviews of the LPA’s administration of programs and projects?
3. Is the oversight of LPA administered programs/projects adequately addressed in the Division stewardship agreement with the STA?
4. Does the State have written processes/procedures for administering all areas of program and project development? Are the processes/procedures adequate, followed and/or enforced?
5. Does the State have dedicated liaisons to assist in administering LPAs?
6. Does the State or the Division take responsibility for the non-Title 23 laws (NEPA, Uniform Act, Civil Rights, etc) on LPAs?

Questions for Local Projects Survey

Procedures

1. Does your State Transportation Agency (STA) Delegate to Local Public Agencies (LPA) the authority to administer Federal-aid projects?
    a) If yes, does the STA have administrative requirements?
    b) May we have a copy?
    c) Do they have any procedures for the LPA to follow in administering the projects?
    d) Are the guidance/procedures adequate?
2. Does your Division have policies/procedures/practices related to LPA administered projects that you would consider to be effective (best practice)?

a. If you do would you please identify them and provide a copy?

Responsibility

3. What is your understanding of FHWA's and the STA's oversight role and responsibility for LPA administered projects?
4. Is current FHWA guidance adequate for FHWA's role and responsibility for oversight of Local Projects?
    a. Is current guidance adequate? If not please list areas for improvement.
    b. Is additional guidance required? If yes please list areas that need to be added.
5. Is current FHWA guidance adequate for the STA's role and responsibility for oversight of Local Projects?
    a. If not, please list areas needing improvement?
    b. If additional guidance is required please list areas to be added?
6. Do you have any areas of concern and/or suggestions on FHWA's or the STA's role and responsibilities for LPA administration of Local Projects? If yes then please list and give a brief description of the issue.

<u>Oversight</u>

7. What evaluation factors should a FHWA Division consider in determining whether an STA is adequately managing its LPA administered program?
8. What expectations should FHWA have of an STA in administering LPA projects.
9. What do you think Congress expects of FHWA in our oversight of STA and LPA in this program?

Reviews

10. When did your FHWA Division Office last conduct a process review, program review, or Inspection-in-Depth review of LPA and/or local administered projects?
    a. Were significant findings identified and were corrective actions taken?
    b. Would you send us a copy of the findings?
11. Has the STA conducted an oversight review of the delegated LPA administered projects?
    a. If so what were the findings and were any corrective actions taken?
    b. May we have a copy of the findings?