

# National Association of County Engineers



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**LOCAL ROADS MATTER!**

JUL 10 2009

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July 7, 2009

**The Honorable Victor Mendez**  
Administrator, Federal Highway Administration  
U. S. Department of Transportation  
1200 New Jersey Ave., S. E.  
Washington, DC 20590

Dear Administrator Mendez:

I would like take this opportunity to congratulate you on your appointment as the new Federal Highway Administration's Administrator. Your experience and background will serve you well in this new assignment. While you agency will face many challenges during these hard economic times I want to assure you that the National Association of County Engineers stands ready to assist you in your efforts to maintain a seamless transportation network which supports all of our country's citizens.

Today I want to address major concern county engineers and other local jurisdictions face in accessing and administering federal-aid dollars. As background, in April 2007 the FHWA issued a final report titled, *The Administration of Federal-Aid Projects by Local Agencies*. The findings suggested that the administration of Federal-aid projects by Local Public Agencies (LPAs) may lack a systematic or comprehensive oversight approach. The review also suggests that the current oversight activities, as a whole, may be inconsistent from State to State and ineffective for ensuring that Federal-aid requirements are met on LPA-administered projects. It emphasized the need for a stronger emphasis on educating local agencies on how to navigate through the Federal-aid processes, but also identified a need for a stronger partnership between the States and the locals to get this done.

In April 2008 then NACE President Sue Miller established a NACE Federal-aid Improvement Task Force to study how improvements in the administration of federal-aid dollars by local agencies could be attained and to pursue improvements in the federal-aid highway program to allow more accessibility of federal-aid funding to local agencies. Associated with this would be an effort to "Restore the Partnership" among government agencies by the establishment of improved communications

and collaboration with state departments of transportation and FHWA Division offices located in every state. We were very fortunate to include in this task force several members of existing State transportation agency state aid offices to provide a reality check on the deliberations. Many of these states were already implementing streamlining on federal-aid funds.

The task force completed its deliberations earlier this year and the attached "NACE Federal-Aid Process Streamlining Issue Paper" outlined 6 conclusions and recommendations on how to improve the current federal-aid system through a combination of legislative, regulatory and procedural changes. During this process we invited the participation and involvement of the FHWA Office of Infrastructure. They were very cooperative and attended 3 meetings of our membership to brief us on the existing programs to improve federal-aid oversight. We were also able to discuss our issues with the current Associate Administrator King Gee this past June at the National Association of Counties legislative conference in Washington D. C. Regrettably, no follow on actions are being entertained by FHWA staff on our recommendations. It appears to us that our proposed recommendations can only be addressed by the FHWA Administrator.

In summary, we request your serious consideration of our recommendations and your leadership in addressing improvements and streamlining of the administration of federal-aid by local agencies.

Sincerely,



Chris E. Bauserman, P. E. & P. S.  
President

Copy: Jeff Paniati, FHWA Executive Director  
✓ A.R. Giancola, P.E.

## **NACE Federal-Aid Process Streamlining Issue Paper**

(Approved NACE Board of Director 4/19/2009)

### **Issue(s):**

In April 2008 NACE President Sue Miller established a NACE Federal-aid Improvement Task Force to study how improvements in the administration of federal-aid dollars by local agencies could be attained and to pursue improvements in the federal-aid highway program to allow more accessibility of federal-aid funding to local agencies. Associated with this would be an effort to “Restore the Partnership” among government agencies by the establishment of improved communications and collaboration with state departments of transportation and FHWA Division offices located in every state.

### **Background & Discussion:**

In April 2007 the FHWA issued a final report from the recently completed national review titled, *The Administration of Federal-Aid Projects by Local Agencies*. The findings suggested that the administration of Federal-aid projects by Local Public Agencies (LPAs) may lack a systematic or comprehensive oversight approach. The review also suggests that the current oversight activities, as a whole, may be inconsistent from State to State and ineffective for ensuring that Federal-aid requirements are met on LPA-administered projects. It emphasized the need for a stronger emphasis on educating local agencies on how to navigate through the Federal-aid processes, but also identified a need for a stronger partnership between the States and the locals to get this done.

From the input of several State DOT local roads offices on the Task Force it is clear some states are implementing improvements to allow greater access to programs involving federal-aid dollars.

In Minnesota they are trying to streamline the application processes particularly with safety improvements projects for HSIP projects. They are simplifying the process by combining reporting and getting out of the actual contracting of work, limiting MNDOT involvement to design approval. The on line project memorandum writer process for simple project approval has simplified the paperwork and is receiving favorable response from local agencies. They have State Aid staff in all district offices as well as in expert offices like Bridge, Cultural Resources and Construction. The State Aid manual documenting processes is online. They are pursuing a fund exchange of state aid funds for federal funds to concentrate the federal funds on fewer projects. This will save money and time by using the more streamlined state aid process. The HELPP process is a program of streamlining between MNDOT and the FHWA Division office which is separating out what are federal vs. state requirements with a view toward just requiring what is absolutely needed for project approvals under federal-aid. While primarily administrative, not legislative, requirements they have included County Engineers on the review committee. A key to its success is the progressiveness of the FHWA Division office to seek improvements through process review and change.

Iowa was one of the pilot states in the national report and have been working on improvements over the past two years. Iowa has developed a Federal-aid project guidance manual that is on line. While it does not streamline the steps they have done some streamlining items in some projects with negligible impacts on the environment. If a project has no impact they can issue clearance and do not have to go to FHWA to gain additional approval. Work is continuing on the manual outlining all the federal steps and it is available on the web along with a detailed description of the approval process. It may be necessary to encourage FHWA headquarters to provide clear direction on regulations. In summary they have their oversight agreement with FHWA, a guidance document and environmental streamlining process. Locals are using about \$20 to \$26 million per year at the county level in the federal aid bridge program while cities receive about \$6 million. The cities submit applications for funds and the state funds projects until

the available funds are gone. Counties are provided an annual allocation of funds that they can allocate to qualifying bridges. The STP funds for counties and cities are programmed through 18 Rural Planning Affiliations and 10 Metropolitan Planning Organizations. Projects are programmed in local TIPs and then submitted to the DOT for inclusion on the STIP. The counties do not like going through these steps to obtain STP funds. You can find the Programmatic Agreement at the following locations.

<http://www.ole.dot.state.ia.us/documents/106PA&Procedures.pdf>

<http://environment.fhwa.dot.gov/strmlng/searchresults.asp?keyword=&StateSelect=Iowa&CategorySelect=all&startrow=1&ResultsSelect=10>

California has an office of local assistance in the State DOT (CALTRANS) with each of the 12 district offices having an office working with locals. All projects compete and go through their planning agencies. They have a local assistance manual which is available on line. While the program is well defined the biggest challenge is the environmental process. In SAFETEA-LU California was identified to work on streamlining and NEPA delegation whereby the State DOT could get approval authority without going back to the federal government for a second review. This is still being pursued.

In Oregon they have a Local Agency Guidelines (LAG) manual (also on-line). ODOT has put together a training program on the federal aid system which is in the website. ODOT has an "Exchange Program" for STP funds with counties and cities where ODOT provides 96 cents on the dollar of state monies in lieu of local agency STP allocated federal dollars. It was noted that other states also grant local agencies state-aid in lieu of federal dollars. Oregon noted that some programs like CMAQ at the federal level limit how you can use the dollars and do not allow use of the monies for program management. This is an item which needs to be changed to allow states to use monies for program staff. This appears to be a language issue in the current legislation and/or regulations which we should try to address through the legislative process.

In Kansas, they have a "Bureau of Local Projects" within the KDOT organization. It was noted that while Locals have some opportunity interact with the Kansas FHWA Division staff at professional meetings, Counties are expected to work through KDOT when seeking interpretation or clarification of FHWA requirements. This generally is reinforced by both KDOT and the Division office itself, which adds to the confusion about whose requirement/regulation it is. In the past, it had been found some of these requirements originated within KDOT, not the FHWA. Counties have been able to resolve these issues in some instances but not easily.

Washington has a "Highways & Local Programs" office within WSDOT. A strong relationship has existed between WSDOT and local entities for many years, including well established procedures and standards. General communication and coordination efforts are supported and enhanced through Washington's County Road Administration Board. Very limited contact occurs directly between locals and FHWA. Even with the long history of cooperation, declining resources has begun to create more adversarial situations, especially due to an increasing role being taken by the State Legislature in determining funding distributions. Even a long standing Federal-Aid program such as Washington's can benefit from improvements in federal guidance and simplification of rules.

In Idaho, the Local Highway Technical Assistance Council (LHTAC) was formed by the Idaho Legislature in 1994 to improve the coordinated efforts to all Local Highway Jurisdictions (LHJ) with the Idaho Transportation Department (ITD). The primary intent of LHTAC is to provide technical assistance to each of the LTJ's. LHTAC is independent of ITD. In 2000, LHTAC's role was expanded. Its purpose is to promote the continuing, cooperative, comprehensive, multi-jurisdictional transportation planning, and achievable capital improvement programs within the Local Highway Jurisdictions. LHTAC is authorized by Idaho Code to "cooperate with and receive and expend aid and donations from

the federal or state government and from other sources for the administration and operation of the council". LHTAC provides technical training to the LHJ's, administers and oversees the application processes, prioritizes and makes recommendations to the State Transportation Board for Federal Funding. The Federal STP projects are assigned to one of three engineers in the LHTAC office. The assigned engineer coordinates the efforts of the Federal Aid money between the Idaho Department of Transportation, the consulting engineer, FHWA, and the LHJ's. At this time, LHTAC is required to conform to ITD's Project Development process which has been approved by the Idaho Division of the Federal Highway Administration (FHWA). One goal was to better formulate the process to use Federal-aid Highway Funds on the Federal-aid system. The Local Federal-aid Funds are to be used on the Local Federal-aid system. When the fiscal year for project construction arrives, ITD administers the advertisement, bidding process, and construction of the local projects. The volume of road projects and bridges that LHTAC is trying to oversee causes some projects to sit, when other projects are demanding time and or attention. Idaho is evaluating the process, addressing the needs, and proposing improvements.

### **Conclusions:**

1. Under a certain value, pursuing federal-aid dollars by Local Agencies is not cost effective due to the excessive reporting, environmental reviews, and time commitments. Thresholds should be considered for projects with federal-aid funding under which local jurisdictions would comply with state and/or local regulations only.
2. Local Agencies are not always familiar with federal and state regulations regarding State Transportation Agency and federal-aid programs and the funding of these programs.
3. There appears to be a need for clarity of legislative language in some federal programs to authorize and possibly mandate the funding of program management with federal-aid funds. Declining resources have begun to create more adversarial situations with the result of restrictive interpretations which have the effect of inhibiting and/or discouraging Local Agencies from applying for federal-aid dollars.
4. A need exists to get all the players talking to each other on a continuing basis to respond to questions and resolve possible confusion over the interpretation of both state and federal-aid regulations and to suggest changes to streamline the processes.
5. There are many best practices being implemented by State Transportation Agencies with some practices being more effective than others. Those truly best practices need to be shared with all states.
6. There exists confusion on regulations by both state and local agencies as to whether some are a state requirement or a federal requirement. This confusion may discourage Local Agencies from applying for federal-aid and State Agencies from providing assistance in conforming to FHWA rules.

### **Recommendations:**

1. Establish Federal-aid funding thresholds below which procedures, reviews, certifications and the process would be relaxed and/or streamlined to reflect the risk encountered. Additionally certain projects under a designated dollar threshold involving no real estate transactions would receive categorical exclusions from meeting federal and state requirements and comply with local regulations only. For example, projects under \$1 million in value for safety, intersection improvements, beautification, sidewalk improvements, bridge and road reconstruction projects (replacement in kind within existing footprint and/or on previously disturbed land) and involving no real estate acquisition would qualify.

2. Establish in every State Transportation Agency the equivalent of a “federal and state aid office” or “local roads office” to work with Local Agencies on how to access both state and federal-aid dollars. This office should facilitate communications about, and serve as a clearinghouse for, information about federal-aid programs involving Local Agencies, and ensure that local agencies are educated —by the DOT or another entity such as LTAP—on both the federal and state regulations related to the administration of those programs.
3. Modify federal legislative language in specific programs to clarify or authorize and possibly mandate the use of federal funds on program management of federal-aid projects being submitted by Local Agencies.
4. With clear and consistent FHWA Division Office interpretations of federal-aid regulations State Transportation Agencies need to take the lead to implement in a continuing communications process with Local Agencies on the administration of federal-aid and state programs. The goal of all stakeholders is to work in cooperation and collaboration to clarify and distinguish between regulations as to whether they are state or federal requirements and engage in a continuous process to review these regulations for streamlining opportunities.
5. The FHWA should provide consistent interpretations of their regulations and provide firm guidance and direction to State FHWA Division offices to help facilitate cooperation and collaboration among State and Local agencies in the streamlining and administration of federal-aid programs. The several best practices already being implemented by some states need to be shared and promoted among all State Transportation Agencies.
6. The FHWA Division offices should willingly respond to questions from Local Agencies about interpretations of federal regulations without automatically referring those questions to the State Transportation Agency to reply.