

# Changes to Federal Requirements

## “Supercircular”

The Office of Management and Budget (OMB) published 2 CFR Part 200 to streamline the Government-wide guidance on Administrative Requirements, Costs Principles, and Audit Requirements for Federal awards. USDOT adopted the Supercircular with an effective date of December 26, 2014.

The policy implications are wide-ranging across many FHWA programs. Over the past couple months Local Programs has been working with FHWA on their interpretation and expectations for the implementation of 2 CFR 200. Local Programs is currently updating the Local Agency Guidelines (LAG) manual and associated forms to reflect these changes to ensure that agencies are compliant with these requirements. Local Programs has reviewed the provisions and based on the significant changes to the federal requirements, FHWA has concurred that implementation of 2 CFR 200 will begin on **May 1, 2015**.

The planned implementation date is based on providing adequate time to: 1) update the Local Agency Guidelines (LAG) manual, the Local Agency Agreement and Project Prospectus for FHWA approval; 2) present the overview of changes and implementation schedule to all local agencies at various conferences and public forums; and 3) notify and provide guidance to local agencies of the required changes for all project authorization submittals.

Project Agreement End Date – All projects are required to have a Period of Performance which includes both a begin date and an end date. A project’s begin date is the date of FHWA authorization. Local agencies are required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the “Project Agreement End Date” local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project’s period of performance and add one year.
- For **Preliminary Engineering** (PE - design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add one year to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add two years, to provide adequate time to acquire all the necessary paperwork, releases and negotiate any claims for closure of the project.

Modifying the Project Agreement End Date – Any change to the end date has to be approved by FHWA. FHWA may approve a local agency change to the Project Agreement End Date during a phase if:

- a project has a change in the terms and conditions of the Federal award (e.g., cost increase or scope change); or
- adequate justification is provided for project schedule revisions or other circumstances (e.g., litigation) and there is no change to the terms and conditions of the Federal project.

Requests for Reimbursement after the Project Agreement End Date – Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. Any eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date.

Indirect Cost Rate – When requesting federal fund authorization all agencies are required to identify if they will be claiming indirect costs on a federal project. Approval by the agency's federal cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and/or State Auditor.

Audit Requirements – The threshold for single audits has been increased to \$750,000.

### **Utilizing Federal Funds Prior to Construction**

To maintain eligibility of federal funds utilized in a project prior to construction, certain federal requirements must be met even though the project is being constructed using local funds. The following federal provisions are applicable for the construction of the project:

- Buy America [LAG - Chapter 14]
- Title VI, Americans with Disabilities Act (ADA) [LAG - Chapter 29]
- Compliance with the Uniform Act (no certification required) [LAG - Chapter 25]
- NEPA requirements [LAG - Chapter 14]

Local Programs and/or FHWA may review these projects at a later date.

### **Utility and Railroad Requirements**

The LAG manual and Project Prospectus are being updated to include additional information necessary to reflect if and when utility and railroad work is required as part of a federal project (23 CFR 635.309(b)). To ensure these activities are adequately addressed, local agencies are required to provide an updated and signed project prospectus prior to construction phase authorization.

### **Americans with Disabilities Act (ADA) Compliance**

FHWA and Local Programs are putting an increased emphasis on ADA, as federal funds cannot participate in a project that is not ADA compliant. To assist in this effort, local agencies are recommended to address these items at the pre-construction meetings with the contractors/sub-contractors so that all are aware of the compliance requirements. In addition, local agency inspectors are to take the extra steps necessary to ensure ADA compliance before and after the installation of these elements on projects. Local agencies are required to notify Region Local Programs Engineers at the time a project is substantially complete so that a final inspection can be performed. Any concerns identified during the final inspection should be incorporated into the local agency's punch list for the contractor. Finally, final payment to the contractor should not be made until all items are in compliance. Additional guidance is being incorporated into the April LAG update.