



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

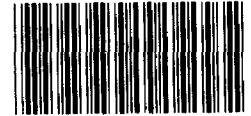
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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-207439

JULY 13, 1982

The Honorable Drew L. Lewis
The Secretary of Transportation



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Dear Mr. Secretary:

Subject: Highway Right-of-Way Program Administration
by Wisconsin and Michigan and the Federal
Highway Administration (GAO/CED-82-110)

Our survey disclosed several weaknesses in the administration of the right-of-way program. Wisconsin did not promptly return to the Federal Government several million dollars in revolving fund advances used to acquire land for highway projects that were subsequently dropped. Additionally, Wisconsin used revolving funds to acquire land for projects that would not be built within the required time limitation. The Federal Highway Administration (FHWA) division office in Wisconsin believed it did not have the authority to initiate action to require repayment of the advances before the expiration of the required time limit unless notified by the State that the projects would not be built.

In Michigan, construction had not begun within the required time limitation on right-of-way projects for which the State received about \$2 million in regular Federal-aid funds. The FHWA division office in Michigan did not initiate action to recover these funds because it believed the time limitation had not expired.

In both Wisconsin and Michigan, some land costing about \$16,000 was erroneously acquired under the requirement to purchase uneconomic remnants. 1/

1/FHWA defines an uneconomic remnant as a remaining part of land, after a partial acquisition, that is of little or no utility or value to the owner.

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OBJECTIVES, SCOPE, AND METHODOLOGY

This survey was conducted because of the magnitude of State land acquisitions for Federal-aid highway projects--for fiscal years 1978 through 1980 some 75,000 parcels of land were acquired at a cost of \$1.2 billion. The survey objectives were to determine whether FHWA was effectively administering Federal right-of-way acquisition funds and whether States were effectively using the land acquired for right of way in their highway construction programs. Our work was conducted in accordance with our current "Standards For Audit of Governmental Organizations, Programs, Activities, and Functions."

To obtain information on right-of-way acquisitions, we reviewed Federal and State land acquisition and management regulations, policies, and procedures. We also examined Federal-aid land acquisition project authorizations, cost summaries, and billings; reviewed land acquisition files, appraisal reports, and inventory records; and compared land acquisition activities with State highway programs and construction plans. Our work was conducted at the Wisconsin and Michigan Departments of Transportation and FHWA's headquarters Office of Right-of-Way, region 5 office, and division offices in Wisconsin and Michigan. We discussed the results of our survey with FHWA headquarters and division officials and State transportation officials.

The States were selected because they had large right-of-way acquisition programs and were active in Federal-aid revolving fund, property management, or property disposal programs.

HOW FHWA'S RIGHT-OF-WAY PROGRAM WORKS

Recognizing that acquisition of right of way requires lengthy planning and negotiations if it is to be done in the most expeditious and economical manner, the Congress authorized the Secretary, upon the States' requests, to make funds available to them for right-of-way acquisitions in advance of anticipated highway construction (23 U.S.C. 108). To assist in carrying out this advance acquisition, the Congress created a right-of-way revolving fund. Through this fund, FHWA may advance up to 100 percent of the costs of lands for highways that are to be constructed in not less than 2 years, but not more than 10 years after the end of the fiscal year in which the Secretary approved the advance, unless the Secretary provides for an earlier or later termination date. States must repay revolving fund advances when FHWA approves construction plans and specifications,

when 10 years elapse, or when the project is withdrawn or converted to a regular Federal-aid project. When FHWA approves construction plans and specifications, or when the project is converted, the Federal share of the right-of-way acquisition cost is charged to the State's apportionment under the respective regular Federal-aid highway program. Whenever work on revolving fund projects is not progressing in a timely manner, States are also required to notify FHWA so that revolving fund advances can be withdrawn and used on other projects.

Federal payments from regular Federal-aid highway program funds may also be used for right-of-way acquisitions. These funds must be refunded to FHWA if actual construction does not begin within 10 years after the close of the fiscal year in which the agreement for the acquisition was made. If the States apply in writing, FHWA may approve an extension of this 10-year limit.

WISCONSIN SHOULD RETURN REVOLVING
FUND ADVANCES ON INACTIVE PROJECTS

Wisconsin spent \$7.5 million of Federal revolving funds on right-of-way acquisition for highway projects where planned construction has either been dropped or will not occur before 10 years elapse. Since 1973, \$3.5 million was spent on nine right-of-way projects on which planned construction has now been dropped because highway needs have changed and available funds are limited. Wisconsin spent an additional \$4 million on five right-of-way acquisition projects which, according to State Bureau of Real Estate and State Program Planning and Budget officials, will not be constructed before the 10 years elapse in 1985. According to these officials, construction will not occur on four of the projects before 10 years elapse because of insufficient funds. The fifth project was initiated anticipating that additional highways would be needed to serve a developing mining industry. However, these officials were uncertain when mining operations would start, but they did not expect operations to occur for at least several years.

Although construction plans have changed, the \$7.5 million has not been repaid to FHWA. Wisconsin Bureau of Real Estate and Wisconsin Program Planning and Budget officials told us that there is no reason to repay the interest-free advances before 10 years elapse. The State plans to repay the advances as they expire and has budgeted \$3 million for the initial repayment due in 1983. The FHWA Wisconsin Division Administrator said

that he does not have the authority to require the State to repay the advances before 10 years elapse unless the State formally notifies him that the planned projects will not be constructed. Without a State notification, he said that FHWA could not require repayments unless it had other evidence that clearly shows that planned highway projects have been dropped.

We believe that FHWA has the authority and the responsibility to require the State to repay the advances for projects that are not progressing before the expiration of 10 years and without waiting until the State notifies FHWA that the projects are not progressing. The Secretary has the discretion under 23 U.S.C. 108(c)(3) to provide that advances be repaid before or after the 10 years. Therefore, we believe that in cases where projects are not progressing and will not be built within the 10 years, FHWA should not wait until the expiration of the 10 years before requiring the State to either repay the funds or justify retaining them.

FHWA headquarters right-of-way officials agreed that the division offices have the authority and responsibility to monitor right-of-way projects and to initiate actions to recover revolving fund advances when appropriate. They further said that subsequent to the completion of our field work, the FHWA Wisconsin Division asked the State to make a decision on whether it intends to complete these projects so that FHWA can take appropriate action.

Recommendations

We recommend that you direct FHWA to recover such revolving fund advances from Wisconsin as are appropriate.

Because FHWA officials in Wisconsin said that they did not have authority to initiate actions to recover revolving funds before the 10 years elapse or before the State notifies them that the project will not be constructed, other divisions also may not be aware of this authority. Accordingly, we recommend that you direct FHWA to (1) emphasize to its division offices their authority to initiate such actions and (2) instruct the divisions to review their revolving fund projects and, where appropriate, to require the States to justify retaining the revolving fund advances or to refund them.

MICHIGAN RIGHT-OF-WAY PROJECTS
FUNDED OVER 10 YEARS AGO HAVE NOT
BEEN CONSTRUCTED

In 1969 and 1970 FHWA advanced right-of-way revolving funds to Michigan for the acquisition of right of way for two highway projects on which construction had not started at the time of our review in April 1982. In 1977 and 1975 Michigan repaid these advances and converted these projects to regular Federal-aid highway program funding and received about \$1.8 million. According to a State financial planning official, these conversions were made primarily to avoid maintaining separate revolving fund records.

Although over 10 years have elapsed since Federal funds were advanced for acquisition of these rights of way, construction had not begun and FHWA had neither requested the State to return the Federal funds nor formally granted the State an extension for beginning construction.

The FHWA Michigan Division was not aware that the projects were more than 10 years old. Its records showed the date of conversion to a regular highway program and not the date revolving funds were advanced. However, the FHWA Division Administrator said that these right-of-way projects had not reached the 10-year limit when construction must begin or Federal funds must be refunded.

Although the regulations are not specific as to whether a new 10-year period begins after the date of conversion or whether the 10 years includes the time funded with revolving fund advances, we believe it would be unreasonable to allow the States to have an additional 10 years after conversion to begin construction. Accordingly, we believe that the State should be required either to formally request an extension or to refund the Federal funds.

The FHWA headquarters Office of Right-of-Way agrees with our position. The office informed us that the 10-year periods cited for revolving funds and for regular Federal-aid funds are not exclusive of one another but refer to the same 10-year period. The office further informed us that should any project or combination of projects (regular and revolving fund) reach the 10-year limit, the State must take action to (1) advance the project to the construction stage, (2) request FHWA approval of an extension of the 10-year limit, or (3) refund any payments made by FHWA.

Recommendation

Because the regulations are not specific, other divisions also may not be aware of how the 10-year limit is to be computed. Accordingly, we recommend that you direct FHWA to emphasize to its division offices how this limit is to be computed and to instruct them to review their converted right-of-way projects to assure that they comply with the limitation.

SOME UNECONOMIC REMNANT PURCHASES
WERE INELIGIBLE FOR HIGHWAY FUNDS

Title III, section 301, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 states that if the acquisition of only part of the property would leave its owner with an uneconomic remnant, the head of the Federal agency will offer to buy the entire property. For federally funded right-of-way projects, FHWA requires States to purchase and to keep records on these uneconomic remnants. States are also required to pay the Federal Government its share of the proceeds if these remnants are sold.

Because of these requirements, Michigan and Wisconsin have accumulated a large inventory of excess land paid for with Federal funds. As of October 31, 1981, Michigan had more than 2,900 acres of remnant land costing more than \$3 million. The majority of the remnants were small. For example, 657 remnants--or nearly 75 percent--were less than 1 acre. The inventory also included many larger parcels, including 37 parcels ranging from more than 20 acres to almost 150 acres. Wisconsin, as of November 1981, had almost 500 acres in 96 parcels of excess land costing more than \$400,000.

During our survey, we noted that Michigan purchased a 22-acre remnant costing \$10,900 and Wisconsin purchased a 24-acre remnant costing \$5,700 that did not seem to qualify as uneconomic remnants. We brought this to the attention of FHWA division officials who agreed to review these acquisitions and obtain reimbursements from the States, if warranted.

We subsequently were informed by FHWA's Michigan Division office that it had received credit from Michigan for the questioned land purchase. FHWA headquarters officials informed us that the \$5,700 for 24 acres in Wisconsin had been erroneously charged to the Federal Government, apparently because of a coding error, and that the improper charge had been corrected.

They agreed to furnish us with documentation supporting the correction.

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As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report, and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of this report.

We are also sending copies of this report to the Director, Office of Management and Budget; appropriate Senate and House committees; and other interested parties. In addition, we are sending copies of this report to the FHWA Administrator.

Sincerely yours,



Henry Eschwege
Director