U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **ACTION:** Project Funds Management Guide for State Grants

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In Reply Refer To:
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To: Associate Administrators
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We are pleased to provide the attached guidance to assist Federal Highway Administration (FHWA) division offices implement key funds management principles. The attached guide summarizes current statutes, regulations, and policies for project funds management.

This guide applies specifically to projects authorized in the Fiscal Management Information System (FMIS), including discretionary funded and congressionally designated (earmarked) projects. This guidance applies to FHWA's division offices' oversight of recipients of Federal funding (e.g., State departments of transportation) and associated subrecipients (e.g. local governments or other eligible subrecipients).

We do not intend for this guidance to fully cover all types of projects or situations, such as innovative financing or contracting methods or projects with other unique or experimental features. In addition, we plan to provide additional guidance on applying these principles to projects authorized through processes other than FMIS, such as Federal lands projects. In the meantime, this guidance can be used as a reference for these projects also.

The primary points of this guidance include:

- The project authorization must reflect the Federal funds needed based on an accurate cost estimate for the phase of work that is ready to proceed for an allowed purpose.
- An obligation is proper when supported by a documented binding agreement supporting the amount of Federal funds recorded to reflect the Federal Government's potential liability.

- Projects must be monitored to ensure Federal funds and project agreement estimates reasonably align with current cost estimates and the performance schedule.
- Projects should be closed within a reasonable timeframe after all required work and applicable administrative actions (e.g., reporting and final billings) have been completed.

Supplemental funds management guidance memorandums are planned to include topics such as Federal Assistance Guidelines (2 CFR 200) and Preconstruction Procedures (23 CFR 630) after implementation of final rules on these topics. The implementation of 2 CFR 200 also will include additional guidance on project closeout requirements.

Please direct questions to:

- Tony DeSimone in the Office of Financial and Management Programs (HCFB-31) on funds management and monitoring (317-226-5307 or anthony.desimone@dot.gov);
- David Bartz in the Office of Program Administration (HIPA-10) on properly authorizing and obligating projects (512-536-5906 or david.bartz@dot.gov); and
- Gerald Yakowenko in the Office of Program Administration (HIPA-30) on project closure requirements (202-366-1562 or gerald.yakowenko@dot.gov).

Attachments

Obligation Funds Management Guide

This guidance defines the expectations and requirements for:

- Properly authorizing and obligating Federal funds;
- Project funds management and monitoring; and
- Promptly closing projects in FMIS.

Sound funds management entails efficiently advancing projects from authorization of the scope of work and funds to closing the project, while ensuring proper use of available Federal funding. This guidance discusses the due diligence that must be taken to ensure the recipient complies with applicable Federal laws and regulations for authorizations and obligations of all types of projects authorized through the Fiscal Management Information System (FMIS).[1] For innovative financing or alternative contracting methods, some alternative considerations may be necessary outside the scope of this guidance. Deviations from this guidance should be documented within the project agreement or in other sources supporting the project.

Since November 2012, the U.S. Department of Transportation's (DOT) independent financial statement auditors have opined that the Federal Highway Administration (FHWA) lacks sufficient internal controls over inactive obligations (also known as undelivered orders). Until this significant deficiency is corrected, there is a risk that the U.S. DOT financial statements could be misstated. While significant progress has been made to address inactive obligations since the 2012 audit opinion, the auditors reiterated their concern about the effectiveness of our funds management in November 2013.

To address the auditors' concerns, FHWA issued revised procedures in December 2013 to further improve Federal funds management and the accuracy of our financial data. These revised procedures were built on the progress made since 2012 and emphasize a proactive approach to project funds management. Specifically, they target high-risk, high-dollar balances while lessening the reporting burden for FHWA and the State DOTs.[2] Our overall goal of this guidance is for State DOTs to focus their efforts on establishing and executing sustainable and proactive procedures for timely review of all FHWA funded projects and ensure Federal obligations are adjusted to align with the project's current cost estimate.[3]

Properly Authorizing Federally Funded Projects

Properly authorizing a project[4] is the first step in sound funds management. A proper authorization includes a clearly defined scope of work for the applicable phase with sufficient funds to accomplish that work. The FHWA is required to authorize all federally funded projects, including those using advance construction (AC) provisions, before work is started[5] or advertised for construction.[6] The Federal share

[1] FHWA Order 4560.1C, Financial Integrity Review and Evaluation Program, dated April 21, 2014, establishes the FIRE program requirements, including the framework for financial internal control to support an annual certification required by 31 U.S.C. 1108(c).
[2] State DOTs are referenced in this document as FHWA's primary direct recipient of funding through FMIS. This guidance should be applied as applicable to any recipient of FHWA-administered funds and their subrecipients.
[3] Cost estimates may include a reasonable level of contingency based on documented State practice within the budget and relative risk involved for the cost estimate. That is, the contingency amount may be higher at the start of the project and lower as the project nears completion.
[4] For this guidance, a project is the FMIS authorized project (typically by phase) and should not be confused with a project as defined in NEPA or major project legislation and regulation.
[5] 23 CFR 630.106(a).
[6] 23 CFR 635.112(a), Proper authorizations for AC, which constitutes an authorization to proceed without an obligation of funds, must meet all Federal requirements, the same as a fully obligated project except that the obligation of funds may occur at a later

is established when the agreement is executed to fund a project or phase of a project.[7] Federal funds cannot reimburse any cost incurred prior to the authorization to proceed with the project or phase of work, unless specifically authorized in statute or approved under procedures set forth in 23 CFR 1.9(b).[8] The funding authorized in the project agreement must be supported by a documented current cost estimate aligned with the eligible work being completed.[9]

Projects may be authorized only after applicable Federal and State laws and regulations have been met. Each project, or phase of a project, should be supported by information demonstrating that it is ready to advance, such as inclusion in the Statewide Transportation Improvement Program (STIP), letting schedule, project design schedule, etc.[10] Division offices may only authorize the work that is ready to proceed, which typically anticipates the State DOT issuing a request for proposals, qualifications, and/or bids within 90 days and awarding the contract soon thereafter. Authorizing a phase of a project before it is ready to advance is a significant cause of project inactivity and is not allowable. Authorization is FHWA's internal control mechanism to ensure Federal and State laws, regulations, policies and procedures have been met before costs are incurred.[11] The division office's and State DOT's Stewardship and Oversight Agreement outline approvals and actions required for Federal authorizations.

If a State DOT elects to include all phases of work within one FMIS project agreement (i.e., use one Federal-aid project number), each phase should be authorized and funds obligated only when that phase is actually ready to proceed. Authorizing preliminary engineering (PE), right of way, and construction costs at the same time should not occur as this is prematurely obligating phases of work not yet ready to proceed. For example, to authorize construction, 23 CFR 635.309 requires that certain conditions concerning right-of-way acquisition be completed. If the expenses related to right-of-way acquisition have not been previously authorized and incurred (if they are to be paid with Federal funds), then it is typically not proper to authorize the construction phase. When the next sequential phase of a project is ready to proceed, the project agreement may be modified to include additional costs and the phase authorization date may be entered in FMIS to denote the project's progression to the next phase. Certain contracting methods, such as design-build construction, may result in two or more phases being authorized concurrently if, for example, preliminary engineering was not previously authorized for the development of the plans or documents for the request for proposals.

Authorizing each phase of work and the funds necessary for that phase at the time it is ready to proceed ensures that costs are readily traceable to the applicable phase of work and that confirmation has occurred that all Federal requirements have been met for that phase. As each phase is authorized, the actions taken in FMIS should be clearly defined in the State/Division Remarks fields. Each authorized phase of the project needs specific deliverables to be able to determine a reasonable cost estimate for completion of that phase. For example, a deliverable for the PE phase of a project may be the National Environmental Policy Act (NEPA) document or the plans, specifications and estimate (PS&E) package. Project agreements for work to be accomplished under open-ended consultant services contracts should be obligated only based on the specific deliverable and related cost of that deliverable. Such contracts should not be based on the upper funding limit of the open ended contract.

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date. 23 U.S.C. 115 and 23 CFR 630, subpart G, prescribes the requirements and procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State. There is no authority provided to waive or delay provisions because the project is authorized as AC.

[7] 23 CFR 630.106(f), AC agreements provide an estimated share that may be adjusted when funds are actually obligated to the project.

[8] Federal funds include all sources of funding such as the Highway Trust Fund and General Fund.

[9] 31 U.S.C. 1554(b)(2)(E) requires that obligated balances reflect proper existing obligations to support eligible and allowable expenditures.

[10] 23 CFR 635.309 and 23 CFR 172.

[11] 23 CFR 1.9(a).

The project authorization should clearly define the scope of work authorized and the estimated total cost of the authorized work. The authorization will document the Federal Government's share of the eligible cost of the project or phase of work.[12] The scope of work should articulate the project location and character of work.[13] The total project cost should account for all costs for the authorized work from all sources—Federal, State, local, private, and donations, including non-participating costs. For example, the total project costs being authorized for a contract to be advertised should be equal to the estimated cost of that contract (i.e., the cost listed in the PS&E, including all participating and non-participating costs). There should be a direct relationship to source documents and the project agreement total cost. It should be noted that phases or contracts not included in the FMIS agreement because they will have no Federal obligations but are part of the "overall" project based on the NEPA document, are not relieved from being subject to certain Federal requirements, such as Buy America requirements.[14]

Non-participating costs associated with the authorized phase of work may be due to ineligible work or a determination by the recipient to not commit Federal funds for a portion of the project. These costs should be identifiable to a reviewer not familiar with the project. Non-participating costs should be included in the total project cost for applicable phases and recorded in FMIS as instructed in FMIS guidance with a description of the non-participating costs noted in the appropriate remarks fields. Although the total cost recorded in the project agreement includes non-participating costs, the Federal pro rata share is based only on those costs that are identified as participating.

Project authorizations with conditional approvals should only be used in very limited circumstances. Such approvals limit FHWA's controls to ensure funds are obligated in accordance with laws and regulations. It is important to note that a conditional approval is an obligation of Federal funds that requires the recipient to satisfy particular conditions before the cost may be incurred and billed to the project. Due diligence must be performed to ensure all Federal requirements are met prior to the expenditure occurring. An example of a legitimate conditional approval is when the State DOT can clearly demonstrate that Federal requirements will be met before a project is awarded, but a need has been demonstrated to advertise the project early and delay of the authorization would negatively impact the project schedule. Conditional approvals should not be made for the purpose of reserving funding before the project is ready to proceed.

Proper Obligations and Advance Construction Authorizations

An obligation is proper when there is a documented binding agreement between a Federal agency and an authorized grant recipient or other legal entity (including another Federal agency).[15] This documentation must support that the obligation is for purposes authorized by law. An AC authorization is an authorization pursuant to 23 U.S.C. 115 for a future obligation associated with State incurred expenses for an authorized project pursuant to this unique provision, except there is no current Federal commitment of funds and the Federal share is not set.[16] Otherwise, AC authorizations are administered in the same

[12] The Federal share of eligible project costs is established at project authorization, or the initial AC conversion, using either a pro-rata share or lump sum agreement, as required by 23 CFR 630.106(f). See HCF memo, "Clarification on Modification of Lump Sum Federal Share – Project Agreement," dated January 3, 2012 for more information.
[13] The *FMIS User Manual* provides more information on properly authorizing a project within the system and what information is to be included in a project header.
[14] 23 U.S.C. 313(g).
[15] 31 U.S.C. 1501 defines the documentary evidence requirements for Government obligations.
[16] The AC authorization should represent the estimated Federal share that could be converted to an obligation in the future though there is no requirement to convert the full amount. In addition, the Federal share could be higher if an eligible fund source is available at the time of conversion to an obligation. If the State DOT intends to limit the amount of conversion, that should be documented in the State remarks section of the authorization.

manner as a regular project authorization.[17] The Federal share, percent or lump sum, is set at the time of the AC conversion or partial conversion to an obligation of Federal funds.

A proper obligation of Federal funds or AC authorization occurs when the project agreement:
- Clearly defines the eligible scope of work;
- Contains the obligation amount necessary for the work authorized (except for an AC authorization) and that amount is supported by a documented and current total project cost estimate;
- Complies in form with the provisions of 23 CFR 630.106 for initial authorizations or 23 CFR 630.110 for modifications, and the FMIS Manual;
- Meets Federal requirements for such authorization, such as 23 CFR 635 subpart C for physical construction authorization; and
- Is signed by an authorized representative of the recipient and a minimum of two FHWA individuals with that delegated authority.[18]

An obligation of funds is a commitment by the Federal Government to reimburse eligible and allowable costs. Appropriations law requires obligations to be recorded within their period of availability. Under 23 U.S.C. 118, certain Federal-aid funds released by modification of the project agreement or final payment after the period of availability has ended may be reobligated within the same fiscal year that the deobligation occurred.[19]

As previously stated, recording an obligation before a project is ready to proceed (considering documentation, project schedule, and funding) is not allowed except under the mentioned conditional approvals. Examples of unallowable practices include:
- Protecting funds from lapsing at year-end;
- Obligating funds only to use all obligation limitation; and
- Authorizing projects for local public agencies solely to reserve Federal funds for a future project.

Deobligating funds from a recorded obligation solely to free them up, replace them with other funds, or use AC (commonly referred to as “reverse AC”) is not allowed unless authorized by statute.[20] Examples of unallowable practices include:
- Deobligating Federal funds solely for the purpose of meeting FHWA’s performance goal for inactive obligations, but with anticipated remaining costs, (which is considered under-recording of an obligation); or
- Deobligating Federal funds from projects with no expenditures but leaving an obligation of $1 of Federal funding (because this does not reflect the current cost estimate to complete the phase of work).

When the project does not reflect the total cost under these conditions, costs incurred are unallowable for reimbursement because funds to cover such costs are not properly authorized.

Project Funds Management and Monitoring

Project funds management integrates monitoring of obligations and project performance schedules.[21] Monitoring is an internal control component used to assess the quality of project performance over time.[22] Ongoing monitoring is a primary component of proactively managing obligations to prevent the

[17] 23 CFR 630.703.
[18] FHWA Order M1100.1A outlines the Agency’s Delegation of Authority. Individual offices should also have a delegation of authority document.
[19] Refer to the HCF guidance, “Funds Availability and Reobligating Expired Funds,” dated January 17, 2014, for more information on the reobligation authority for funds from the Highway Trust Fund.
[20] 23 CFR 630.110(a).

obligation from becoming inactive, and to prevent fraud, waste, and abuse. Project agreements and obligations should reflect the projects in the applicable STIP and other State scheduling references, such as letting schedules and contract terms. Division offices and State DOTs should manage and adjust obligations to reflect the current cost estimate. If the State DOT does not timely adjust obligations to reflect the current cost estimate, the division office, after consultation with and notice to the State DOT, may unilaterally deobligate unsupported funds (discussed below).

Standard operating procedures (SOPs) are an important internal control tool that can assist division offices with implementing effective project funds management, adequate project delivery systems and other aspects of stewardship and oversight agreements. Documented SOPs facilitate consistently applied stewardship and oversight by division offices to ensure appropriate governing policies are in place. Division offices and State DOTs[23] are encouraged to maintain SOPs describing the responsibilities associated with monitoring all federally funded projects and the frequency with which these responsibilities must be carried out. The SOPs that are kept up-to-date and consistently followed, coupled with effective management controls, minimize the risk of regulatory non-compliance and financial irregularities.

Monitoring should include understanding the project's performance requirements and schedule to ensure the project is progressing appropriately.[24] As a general rule, a project should be advertised (or a request for proposals or qualifications issued) within 90 days of authorization.[25] If the project is not progressing promptly (e.g., not being advertised and awarded), the State DOT should withdraw the project or applicable phase. Once a project or phase is withdrawn, any additional costs incurred may not be billed for reimbursement until the project is properly reauthorized in FMIS with a new authorization date.

Effective monitoring practices include periodic reviews to adjust or modify the project authorization by the State DOT to reasonably reflect the current cost estimate. Adjustments to recorded obligations (or the amount authorized as AC) must be supported by documentation of changes in the project cost and must maintain the Federal share as originally authorized[26] or adjusted at bid award.[27] If the precise cost related to a pending obligation is not known, the funding amount must be based on the best available information. As more precise information becomes available, the State DOT is required to adjust the obligation to match the current estimate. If the project is properly authorized, additional eligible costs that occur during progression of the project (e.g., cost overruns, eligible costs identified during audits, within scope cost increases, and changed field conditions) that may not be represented in the total cost in the project authorization are allowable for Federal participation and the project may be modified to include such costs and corresponding Federal share. The project authorization should be modified as soon as practical to reflect such costs.

If a State desires to have the flexibility to adjust the amount of Federal funds on a project, the project should be authorized as an AC project. As noted, the Federal share or the lump sum amount of an actual obligation of Federal funds should not be changed after the agreement is approved except at contract

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[21] 49 CFR 18.40(a).
[22] GAO Standards for Internal Control in the Federal Government, November 1999, p. 20.
[23] State DOTs should have similar SOPs in place to be in compliance with 23 CFR 630.106(a)(4), which requires States to have processes in place to adjust project cost estimates at specific intervals such as when a bid is approved, a project phase is completed, design change is approved, etc.
[24] 49 CFR 18.40(a) requires continual monitoring to ensure performance goals are being achieved, such as adhering to the project schedule and budget.
[25] A project moving within 90 days of authorization is based on the requirement in 23 CFR 630.106 to review projects every 90 days.
[26] 23 CFR 630.106(f)(1).
[27] 23 CFR 630.106(f)(2).

award.[28] An AC authorization is the avenue a State must use to allow flexibility in levels of Federal funding, unless there is provision in law for one fund source to be replaced with another, such as is available for emergency relief funding. An AC authorization should be treated the same as a regular Federal-aid obligation with respect to meeting all Federal regulatory requirements and policies except that there is no commitment of Federal funds and the Federal share has not been set.

Periodic reviews also include managing inactive obligations (no expenditure activity in the previous 12 months or longer)[29] and monitoring the progress of projects to the next phase of work, as appropriate. When managing inactive obligations, division offices should review billing activity to ensure reimbursement requests are proper and are not devices solely to keep a project from becoming inactive. If monitoring indicates potentially unsupported or unallowable costs are being billed, the division office should initiate corrective actions.

Additionally, expenditures for PE[30] or right-of-way[31] are subject to repayment provisions if the project does not progress to the next phase of work. Division offices should monitor PE projects to ensure they progress to the next phase of work within 10 years from the date of authorization. Division offices should monitor right-of-way projects to ensure they progress to construction within 20 years from authorization. For example, division offices may review PE projects that have been authorized for 3 years and 7 years to ensure work is progressing according to schedule. At 10 years, such projects should be reviewed to confirm right-of-way or construction has proceeded and if not, to determine if a time extension is warranted, or if payback of Federal funds is required.

Adjustments culminating in a deobligation of Federal funds must be supported by a documented cost estimate. A deobligation of funds to the level of expenditures should not occur unless supported by a current cost estimate (except as discussed later when a project becomes inactive), as this violates the requirement to have the total project cost of the authorized phase reflected in the project agreement (i.e., in FMIS) at all times. Deobligating Federal funds removes Federal participation for the work supported by the obligation as it is considered a change in the Federal share authorized. Reducing the Federal funds to the expended amount means that any cost incurred after that date may not be reimbursed because the deobligation removes Federal authorization.[32]

Justifications for Inactive Obligations

Project management and monitoring are partially facilitated through the requirement for quarterly testing of inactive projects. Recipients must demonstrate that the obligation for the tested projects remains proper and that the inactivity is beyond the State DOT's control.[33] Causes beyond their control may include delays such as litigation, unforeseen utility relocations, catastrophic events that materially delay the project or unforeseen environmental concerns.

State DOTs are encouraged to include billing requirements in their subrecipient agreements to ensure requests for reimbursement are processed regularly (e.g., monthly). Lack of billing from local public

[28] See HCF memo, "Clarification on Modification of Lump Sum Federal Share – Project Agreement," dated January 3, 2012, for more information.
[29] 23 CFR 630.106(a)(5).
[30] 23 U.S.C. 102(b), Engineering Cost Reimbursement; and FHWA Order 5020.1, Repayment of Preliminary Engineering Costs, dated April 26, 2011.
[31] 23 CFR 630.112(c)(1) explains right-of-way acquisition requirements.
[32] This reduction or removal of authorization does not apply to costs adjusted due to project closeout and audit activities or when adjusted to account for within scope increases and overruns that occurred when the project was properly authorized.
[33] See HCF memo, "Revised Supplemental Internal Procedures for the Review, Validation, and Testing of Inactive Obligations," dated December 30, 2013, prescribes the requirements for monitoring inactive obligations.

agencies, utility companies, and railroads should not be used as a justification that the project obligation is proper.

An inactive obligation is proper if it aligns with the State DOT's documented current cost estimate and the State DOT demonstrates that project activity is occurring that requires the remaining amount of obligated funds. The division office should be satisfied that the State DOT's justification sufficiently explains the facts and circumstances causing project delays beyond the State DOT's control and the obligation aligns with a current cost estimate.

An obligation is improper if the State DOT cannot provide adequate justification to explain why the project is stalled or is not under contract, and the division office believes the project will not proceed within a reasonable schedule. An example of this situation may be a consulting services contract that has been put on hold and is not incurring costs. Improper obligations must be adjusted[34] to align the Federal funds obligated with the phase of work's current cost estimate, which may be the current expended amount. The properly documented expended amount is considered to be the current cost estimate if that is all FHWA has to support the costs. If the project will not be completed, expenditures incurred are to be credited back to FHWA and the project authorization withdrawn from FMIS. An AC authorization should be treated similarly and the authorization withdrawn if the project will not proceed in an acceptable timeframe.

If the State DOT or its subrecipient has an active contract in place (i.e., has not been put on hold) and is incurring costs to be reimbursed and sufficient documentation of such activity is provided, the funding should not be deobligated below the contract cost estimate. Also, the division office should encourage the State DOT to notify its subrecipient that the project obligations will be removed if incurred costs are not billed within a specified and agreed upon timeframe.

Unilateral Deobligations by the FHWA Division Office

If the division office's monitoring discloses improper obligations and the State DOT has not acted within a specified timeframe, the division office has the authority to unilaterally deobligate the project to the current cost estimate.[35] A review for project inactivity should begin when a project has been inactive for 9 months. If reimbursements are not processed within the next quarter, the project will be deemed as inactive at 12 months. The division office should work with the State DOT to remedy the inactive status before the project has 12 months of inactivity (i.e., process a claim for reimbursement, or withdraw or deobligate the project). Before 15 months of inactivity, the division office should initiate remedial action, possibly a unilateral deobligation.[36]

Unilateral deobligation is authorized when the obligation is not supported by a documented cost estimate, not adjusted to reflect the current cost estimate, or is considered improper and the State DOT does not act to deobligate the improper amount. The division office must not deobligate funds that are supported by a current cost estimate (e.g., under contract and incurring costs), or if the project is inactive for reasons beyond the State DOT's or the sub-recipient's control.

The division office is required to notify the State DOT in writing that it intends to unilaterally deobligate funds and provide the State DOT with at least 30 days to respond in writing to the proposed action. If the State DOT does not act or respond within the designated timeframe, FHWA may deobligate unexpended

[34] 23 CFR 630.106(a)(5).
[35] If the State DOT fails to comply with 23 CFR 630.106 (a)(3), (4), or (5), the FHWA division office has the authority to take unilateral action to revise the obligation amount of the project or take other action as authorized by 23 CFR 1.36.
[36] See HCF memo, "Revised Supplemental Internal Procedures for the Review, Validation, and Testing of Inactive Obligations" dated December 30, 2013, for more information.

obligations to align obligated Federal funds with the current cost estimate.   This unilateral deobligation is not permitted from August 1 to September 30.[37]

The division office should provide a clear explanation in the FMIS Division Remarks explaining why it is taking unilateral action and that Federal authorization is removed for the funds being deobligated. Once the action is taken in FMIS, the division administrator or designee should forward the modified project agreement to the State DOT point of contact to ensure all recipients are aware of the removal of Federal participation for future costs incurred until the work activities are re-authorized as described below.

When FHWA deobligates funds due to inactivity or insufficient support for the estimate or failure to meet Federal requirements, all costs incurred after deobligation are unallowable for Federal participation. For example, FHWA deobligates $1,000 in January from the project's unexpended amount. In June, the State DOT requests to obligate the $1,000 and this authorization is approved by FHWA. Any costs incurred by the State DOT (or its subrecipient) between January and June are not eligible for reimbursement because unexpended funds were not under obligation during the period when those costs were incurred. The division offices should review any expenditure on the project that occurred prior to the deobligation, particularly if the deobligation occurred due to inadequate documentation that the project met Federal requirements at the time those costs were incurred.

Closing Federal Projects in FMIS

The State DOT submits a request to FHWA to close a project when it determines that all required work or deliverables on the project and all applicable administrative actions (e.g., reporting, final billings, etc.) have been completed. Effective project management requires coordination of activities among all units and functions. Coordination within the division office and among all appropriate State DOT offices ensures a Federal project does not languish as open and inactive due to barriers preventing the closing of the project.[38]

Project closeout guidance will be further evaluated upon implementation of the requirements contained in 2 CFR 200.   This will include guidance on agreement end dates and expected closeout schedules.

A project is considered complete when the work is accepted and the contractor is released from responsibility on the project (except potentially for warranty provisions). For example, upon final acceptance of a project by the State DOT (e.g., the contractor is released from contractual obligations on the project and retainage is released, except where warranty provisions disallow), final billing of a project and final documentation for project closeout should be completed soon thereafter. Project final acceptance procedures are based on each division and State DOT stewardship and oversight agreement and established SOPs.

Project closeout procedures should be initiated when the project has been completed (e.g., the State DOT has accepted the project from the contractor as complete and final payment has been made). Unexpended Federal funds should be deobligated at that time to reflect the State DOT's current cost estimate (total final payment to the contractor, plus anticipated costs for "trailing costs," such as State DOT final reviews of project documents necessary for closing out the project). Obligations should not be kept on a project while the State DOT is working through the final audit process, pending appeals for denied claims, or other litigation unless there is sufficient reason to believe a denial will be overturned on appeal.

[37] 23 CFR 630.106(a)(6).
[38] Barriers include a "silo effect" due to the lack of communication and notification, missing documentation, uncoordinated audit functions, warranty delays, reobligation challenges, reactive project reporting, and lack of timely funds adjustment. These are discussed further in the Program Management Improvement Team's Final Project Closeout, Phase 2 Report, issued February 2014.

Adjustments to the obligations can be made as necessary if eligible and allowable costs or credits to the project are identified that were incurred before excess Federal funds were deobligated. For example, obligations may be adjusted to include costs from project litigation resolved after project closeout.

Projects can be closed in FMIS once documentation is collected for retention that supports the project's costs and compliance with Federal requirements.[39] It is a good practice for a division office to include in its SOPs a list of documents the State DOT is expected to retain and those items the division office expects to receive for closeout purposes. The closeout process should ensure that all costs incurred and reimbursed by FHWA are documented and any required milestone reports are submitted and/or retained. Attachment 2 includes a list of documents typically necessary to support the financial record and requiring retention after final billing for financial purposes by the State DOT. These records may need to be retained for longer periods depending upon the status of the project in its entirety based on the project definition for NEPA or major project purposes or to support later phases. Typically, the State DOT retains these records, which are to be made available to FHWA upon request. FHWA internal record retention requirements are contained in FHWA Order 1324.1B - FHWA Records Management.

The record retention period for financial purposes is 3 years and begins when the final voucher is submitted in FMIS.[40] For an AC authorization, the 3-year retention period begins only after the final conversion of State expenditures to Federal obligation has occurred and actual costs are reimbursed by FHWA for the project planned to be closed. The closeout process should be executed expeditiously and the FMIS agreement closed as soon as possible after submission of the final voucher. If a project languishes during the closeout process, there is a possibility of loss of documentary evidence of costs incurred. If documentation is not available to support a cost, those costs are improper and must be repaid.

Project agreements may be reopened to increase the obligation amount and provide for subsequent reimbursement if additional eligible costs are identified during an audit process, as a result of an appeal of a contractor claim, litigation, etc. The project may also be reopened if ineligible costs are identified during the audit process for which funds must be credited back to FHWA. The record retention period restarts if the project must be reopened for such purposes unless there is no change in the obligation or expenditure amount. Again it should be noted, records may be required to be retained for longer periods for other purposes.

While most projects should be promptly closed when the work activity is complete, as indicated by the State DOT's final acceptance, or other work completed (e.g., deliverables from a consultant services contract), some scenarios may cause a project to remain open for a longer period, such as when warranty provisions are part of the construction contract that delay final payments. The decision to close a Federal project should include consideration of the likelihood of the State incurring additional eligible and allowable costs on the contract. Those additional allowable costs should remain obligated based on the current estimate (i.e., payment of retainage to the contractor after successful plant establishment requirements). If the costs are independent of the contract (i.e., by State forces or by separate contract), those costs should be accounted for in a separate project, to allow the construction project to close.

Warranty Provisions Associated with Project Closeout

Many types of warranty provisions may need to be considered prior to closing out a project. In most instances, the project should be prepared for closure upon the State DOT's final acceptance and the contractor is provided final payment. There may be instances where final payment may include a delayed payment for retention for items such as plant establishment requirements.

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[39] 49 CFR 18.50(a).

[40] 49 CFR 18.42(c) defines the 3-year record retention requirement starting from the date of final expenditure report submission. In the Federal-aid highway program, this report is the final voucher.

Keeping a project open solely due to the existence of a warranty is not appropriate. Long-term warranties where periodic evaluation is needed do not justify the project to remain open. Eligible periodic evaluations should be accounted for separately, such as through an indirect cost rate or by setting up a separate project, depending upon the recipient's cost accounting policies. If a failure occurs on a warrantied project or contractual performance is not met, and the contractor or surety makes payments to the State, the original project should be reopened to account for the Federal share of any credits. If repairs are needed that the contractor is not required to provide under terms of the contract, and the repairs are eligible for Federal funding, the State DOT should request a new project authorization for such work because it is outside the original scope of work previously authorized.

Division offices can consult the Office of Infrastructure for additional guidance. Additional guidance is intended to be issued on project closeout to implement 2 CFR 200.

Key Terms

The FHWA uses the following key terms concerning sound funds management and monitoring. Many key terms relate to the Office of the Chief Financial Officer's guidance, "Funds Availability and Reobligating Expired Funds," dated January 17, 2014, which can be referenced for more information pertaining to period of availability.

Current Cost Estimate – A current cost estimate should reflect the anticipated cost of the project in sufficient detail to permit an effective review and comparison of the bids or proposals received. The estimate before the project begins may be based on historical data from recently awarded contracts, the actual cost to complete the work, or a combination of both. As the project progresses, the cost should be adjusted to reflect any contract changes.

Deobligation – A deobligation is the downward adjustment or cancellation and removal of a previously recorded Federal funds obligation associated with a project. This action reduces the obligation on the project agreement.

Expenditure – An expenditure is the actual spending of money (an outlay) or reimbursement that liquidates in whole or in part a previously recorded obligation; reimbursements are requested by the State DOT or other direct recipient, and paid by the Federal Government, to a project or program for which a Federal award was received.

Inactive Obligation – An inactive obligation is an eligible transportation project with unexpended Federal obligations for which no expenditures have been charged against the Federal funds within the past 12 months or more.[41]

Ineligible Costs – Ineligible costs are typically, line item costs determined to not be in compliance with Federal law for reimbursement or are specifically excluded by law as ineligible for Federal participation in a specific program. An example of an ineligible cost due to purpose is a project is funded by Highway Safety Improvement Program (HSIP) funding. Highway improvement costs beyond the limits of the safety improvement or not for the HSIP purpose is ineligible. An example of an ineligible cost due Federal requirements is proprietary items that have not received the appropriate approvals to be reimbursed with Federal funding.

[41] 23 CFR 630.106.

Internal Control – An internal control is a process, implemented by an entity, designed to provide reasonable assurance regarding the achievement of objectives in the effectiveness and efficiency of operations, the reliability of reporting for internal and external use, and compliance with applicable laws and regulations.

Non-participating Costs – Non-participating costs are costs that will not or cannot be reimbursed with Federal funds. These costs are still part of the total cost of the project and must be accounted for in the project authorization. Non-participating costs could occur because of ineligibility or because the grant recipient determined that the specified items will not be reimbursed with Federal funding.

Obligation – An obligation is an action that creates a legal liability or definite commitment on the part of the Government, or creates a legal duty that could mature into a legal liability by virtue of an action that is beyond the control of the Federal Government. Payment may be made immediately or in the future.[42]

Proper Obligation – A proper obligation is an amount of Federal funding recorded as an obligation, which is supported by documentary evidence in writing of a binding agreement between an agency and another entity (including an agency) that is in writing, for a purpose authorized by law, and executed before the end of the period of availability (except for re-obligations permitted under 23 USC 118(c)).[43]

Recipient – Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program.

Subrecipient – Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. Subrecipients do not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Unallowable Cost – Unallowable costs are costs that are determined not to meet Federal law, regulation, or policy, or are not allocable to the Federal award and cannot be reimbursed with Federal funds. Such costs may include otherwise eligible costs that did not meet certain process requirements or were determined to be otherwise non-participating by agreement. Examples include costs that are incurred prior to Federal authorization or costs that are incurred after a project is deobligated because of non-compliance with funds management requirements.

Unilateral Deobligation – A unilateral deobligation is the process whereby, after written notice is provided to the State DOT, FHWA may deobligate project obligations that have been determined inactive or otherwise improper without the State DOT's signature when certain criteria have not been met.

Withdrawal – A withdrawal removes all Federal participation on the phase of work and no further costs can be incurred.

[42] GAO Principles of Appropriations Law, Vol II, 7-3.
[43] 31 U.S.C. 1501(a)(5)(B), (C).

Recommended Final Project Records Retention, By Phase

This attachment identifies the primary records typically necessary to support the financial record and requiring retention after the final billing for financial purposes. The list should not be considered exhaustive nor completely applicable to all projects. The record retention period is based on requirements for general project records by the State DOT (49 CFR 18.42) and may be longer for certain records under other laws or regulations. All FHWA documents should be retained by FHWA in accordance with FHWA Order 1324.1B - FHWA Records Management.

Table 1: Documents Needed to Close Planning and Research Projects and Associated Retention

Documents	Retention after final payment
FMIS project agreement/modifications	3 years
Consultant services contract	3 years
University research contract	3 years
Revisions/change orders	3 years
Invoices and billing support documentation (timesheets, travel, etc.)	3 years
Final work products	3 years
Documentation of other costs billed to Federal funds	3 years
MPO UPWP[1]	3 years
Audits (may occur after project close)	3 years or after audit is closed and finding resolved, whichever is later.
Documentation of litigation or claims	3 years or after any claim or litigation is closed and finding resolved, whichever is later.

Note:
[1] The UPWP (Unified Planning Work Program) likely supports multiple FMIS project authorizations and should be retained until all work items under that UPWP have final billing, then 3 years.

Table 2: Documents Needed to Close Preliminary Engineering (Design/Environment) Projects and Associated Retention

Documents	Retention after final payment[1]
FMIS project agreement/modifications	3 years
Consultant services contract	3 years
Project agreements between State DOT and local public agencies, Federal Lands Highway, or other entity	3 years
Revisions/change orders	3 years
Invoices and billing support documentation (timesheets, travel, etc.)	3 years
Final plans/specifications/work products[2]	3 years
Interstate access approval[2]	3 years
Utility agreements[2]	3 years
Value engineering study(ies)[2]	3 years
Design exception documentation[2]	3 years
Design decision documentation[2]	3 years
NEPA documentation[2]	3 years after construction project/mitigation and commitments complete[3]
Final ROD/FEIS/FONSI[2]	Indefinitely[3]
Audits (may occur after project close)	3 years or after audit is closed and finding resolved, whichever is later.
Documentation of litigation or claims	3 years or after any claim or litigation is closed and finding resolved, whichever is later.

Notes:
[1] Documentation of costs for PE should be retained until right-of-way and/or construction proceeds due to pay-back requirements that could occur under the 10-year rule.
[2] Documentation may also be required to be retained to support Federal eligibility of construction costs.
[3] Refer to NEPA retention requirements.

Table 3: Documents Needed to Close Right-of-Way Projects and Associated Retention

Documents	Financial Retention after final payment[1]
FMIS project agreement/modifications	3 years
Consultant services contract	3 years
Revisions/change orders	3 years
Invoices and billing support documentation (timesheets, travel, etc.)	3 years
Right-of-way acquisition documentation[2]	3 years
Real property and equipment records	3 years after disposal, replacement, or transfer at the direction of the awarding agency. [3]
Audits (may occur after project close)	3 years or after audit is closed and finding resolved, whichever is later. [3]
Documentation of litigation or claims	3 years or after any claim or litigation is closed and finding resolved, whichever is later.

Notes:
[1] Documentation of costs for right-of-way acquisition should be retained until construction proceeds due to pay-back requirements that could occur under the 20 year rule.
[2] Documentation may also be required to be retained to support Federal eligibility of construction costs.
[3] Refer to 49 CFR 18.42(c)(2).

Table 4: Documents Needed to Close Construction Projects and Associated Retention

Documents	Retention after final payment
FMIS project agreement/modifications	3 years
Plans, specification and estimate (PS&E)	3 years
Bid/award documentation	3 years
Revisions/change orders	3 years
Invoices and billing support documentation	3 years
As-built plans	3 years[1]
Materials records	3 years[2]
Field books/diaries	3 years
Documentation for construction engineering costs	3 years
Force account documentation	3 years
Utility/railroad agreements	3 years
Environmental permits	3 years[3]
Alternative contracting method approval/public interest finding/SEP-14 or SEP-15 approvals	3 years
Right-of-way clearance	3 years
Final acceptance checklist/supporting documentation/contractor release	3 years[4]
Final estimate voucher/invoice	3 years
Final acceptance of ITS/technology related elements of the project should be based on the test plans initially developed during the design phase of the project where hardware specifications and software requirements have been defined	3 years[5]
Materials certification (23 CFR 637)	3 years
Verify completion and/or status of environmental commitments	3 years
Warranty documentation	3 years or to end of warranty[6]
Final Inspection and Acceptance Report 1446	3 years
Documentation from earlier phases that supports construction cost eligibility/PS&E approval	3 years
Audits (may occur after project close)	3 years or after audit is closed and finding resolved, whichever is later.
Documentation of litigation or claims	3 years or after any claim or litigation is closed and finding resolved, whichever is later.

Notes:
[1] Indefinite retention recommended until reconstruction occurs.
[2] Including material certifications as applicable.
[3] Other regulations may supersede retention period.
[4] See http://www.fhwa.dot.gov/construction/cpmi04.pdf p. G15.
[5] See http://intra.fhwa.dot.gov/aem/aem.pdf, p. 74 of 182.
[6] Adequate project documentation should be retained with extended warranty provisions.

Table 5: Documents Needed to Close Projects with Other Authorizations and Associated Retention

Documents	Financial Retention after final payment
Indirect cost rate approvals (to support costs in projects)	3 years[1]
Toll credits documentation	3 years after credits used[2]
Credits for bridges not on Federal-aid highways	3 years after credits used as match and final payment on project
Documentation pertaining to credits for in-kind contributions or other soft match	3 years after credits used as match and final billing on project
Documentation pertaining to GARVEE bond debt service payments	3 years after retirement of bond
Contractors or subcontractor's records	3 years after grantee (e.g., State DOT) makes final payment to contractor[3]
Reportable income transactions	3 years after the end of the grantee's (State DOT) fiscal year in which the income is earned[4]

Notes:
[1] See 49 CFR 18.42(c)(4) for details.
[2] Including documentation on earning such credits.
[3] Maintained by contractor or subcontractor in accordance with 49 CFR 18.36(i)(11).
[4] See 49 CFR 18.42(c)(3).