



## *Memorandum*

TO: Partnership Technical Advisory Committee (PTAC)

DATE: November 18, 2013

FR: Ross McKeown

RE: Revised Regional Project Delivery Policy for MTC Resolution 3606

### **Background**

The region has maintained an excellent project delivery record during the last several federal transportation authorization periods. This outstanding delivery record is due to the hard work of Caltrans Local Assistance, the Congestion Management Agencies (CMAs), project sponsors and the regional project-funding delivery policies developed by MTC and the Bay Area Partnership. In an effort to maintain this delivery record during the Moving Ahead for Progress in the twenty-first century (MAP-21) and subsequent federal transportation acts, and maximize the amount of federal funds flowing into the region, MTC staff is recommending revisions to the Project delivery policy in MTC Resolution 3606.

The revised policy responds to provisions in the federal transportation act, increased scrutiny of federal funding deadlines, recent Caltrans procedural changes and anticipated future federal and state policies relating to the timely use of federal funds. The revisions are specifically intended to: improve management of the limited Obligation Authority (OA) available each fiscal year, meet pre and post-obligation funding deadlines, align regional deadlines with the natural project implementation timeline and facilitate project delivery. Most importantly, the policy calls for the programming and obligation of funds consistent with the timing and availability of federal Obligation Authority.

MTC staff has worked with the Federal Efficiencies and Streamlining (FES) subcommittee of the Local Streets and Roads Working Group (LSRWG) and Programming and Delivery Working Group (PDWG) over the last several months to develop the revisions to the regional project-funding delivery policy to reflect new state and federal requirements. The task force consisted of representatives of the CMAs, counties, cities, Caltrans, and MTC staff.

### **Benefits of the SAFETEA Regional Project-Funding Delivery Policy:**

The following are key benefits of the revised policy:

- The policy continues to strengthen the region's delivery efforts, which has assisted the region and sponsors in delivering to the full apportionment and OA levels.
- Strengthens the region's ability to meet AB 1012 requirements, and incorporates Caltrans and FHWA post-obligation requirements, thus minimizing the risk of losing federal transportation funding.

- Supports subsequent requests for additional federal funding for the region by demonstrating success in delivery of regional transportation projects.
- Provides flexibility for project sponsors to swap delayed projects with projects ready to use the funding.
- Establishes standard guidance to be applied for all regional discretionary funds and programming cycles and all FHWA-administered funds included in the TIP. A standardized policy makes it easier for project sponsors and to implement project delivery strategies consistently among the programmed projects.
- Keeps the region ahead of other regions in the state, that in recent years have been improving their own delivery rates.

### **Significant New and Revised Regional Project-Funding Delivery Policies:**

The following are the significant changes to the policy:

- Obligation (E-76 authorization) deadline advanced from April 30 to January 31 of the federal fiscal year programmed in the TIP. This revision aligns the deadline with the natural schedule of projects to be constructed in the following summer construction season.
- Obligation Request Submittal deadline advanced from February 1 of the federal fiscal year programmed in the TIP to November 1 in response to the advanced obligation deadline.
- Funds for construction must be awarded within 6 months of obligation. The previous deadline was 9 months after obligation. This new deadline is for consistency with the CTC's 6-month award deadline following CTC allocation, and to ensure there are eligible expenditures to invoice against to meet Caltrans's 6-month invoicing requirement.
- For regional discretionary funds subject to a federal rescission, the rescinded funding will first apply to projects with funds that have missed the regional obligation deadline and to projects with funds that have been de-obligated but not yet re-obligated.
- The policy is expanded to include all regional discretionary FHWA funds, not just STP/CMAQ, and applies some deadlines and requirements to other FHWA-administered funding programmed in the TIP.
- Every Local Public Agency that receives FHWA-administered funds and includes these funds in the federal TIP will need to identify and maintain a staff position that serves as the single point of contact for the implementation of all FHWA-administered funds within that agency.
- Project sponsors that miss delivery milestones and funding deadlines for FHWA-administered funds are required to prepare and update a delivery status report on major delivery milestones for all active projects with FHWA-administered funds and participate, if requested, in a consultation meeting with the county CMA, MTC and Caltrans to discuss the local agency's ability to deliver current and future federal-aid

transportation projects, and efforts, practices and procedures to be implemented by the local agency to ensure delivery deadlines and requirements are met in the future.

- Local Public Agencies must be qualified in the federal-aid process. By requesting the programming of federal funds in the federal TIP, the agency is self-certifying they are qualified to deliver federal-funding transportation projects. This regional qualification is to help confirm the jurisdiction has the appropriate knowledge and expertise to deliver the project.

Once FHWA-administered funds are transferred to FTA, non-applicable provisions of this policy guidance no longer apply. The project sponsor must then follow FTA guidance and requirements.

The intent of the revisions to the regional project-funding delivery policy is to ensure implementing agencies do not lose any funds due to missing a federal or state funding deadline, while providing maximum flexibility in delivering transportation projects. MTC has attempted to establish regional deadlines, to the extent possible, in advance of federal deadlines, to provide the opportunity for implementing agencies, the CMAs, Caltrans, and MTC to solve potential problems and bring the project back on-line in advance of losing funds.

This revised policy is scheduled to be presented at the December Programming and Allocations Committee (PAC) for consideration and recommendation for approval, and will take effect once approved, with the exception of the Obligation and Obligation Submittal deadlines, which will take effect with new funding programmed after adoption of this revised policy and for all funds programmed in FY 2015-2016 and later in the TIP. Fiscal Year 2015-16 will serve as a transition year for OBAG funds, with sponsors encouraged to meet the new delivery deadlines, but with no consequences if they miss the advanced deadlines as long as they meet the existing obligation deadlines for OBAG funding.

**Attachment:** Proposed revised regional project-funding delivery policy for regional discretionary federal funding during MAP-21 and beyond

**Regional Project Funding Delivery Policy for SAFETEA  
STP and CMAQ FHWA-administered Federal Funds**  
**In the San Francisco Bay Area**  
**DRAFT**

**Regional Project Funding Delivery Policy Intent**

The intent of this regional funding delivery policy is to ensure implementing agencies do not lose any funds due to missing a federal or state funding deadline, while providing maximum flexibility in delivering transportation projects. It is also intended to assist the region in managing Obligation Authority, and meeting federal financial constraint requirements. MTC has purposefully established regional deadlines ~~in addition to~~ **in advance of** state and federal funding deadlines to provide the opportunity for implementing agencies, the CMAs, Caltrans, and MTC to solve potential project delivery issues and bring projects back in-line in advance of losing funds due to a missed funding deadline. The policy is also intended to assist in project delivery, and ensure funds are used in a timely manner.

Although the policy specifically addresses the Regional ~~STP and CMAQ~~ **Discretionary** Funding managed by MTC, the state and federal deadlines cited apply to all federal-aid funds administered by the state (with few exceptions such as Congressionally mandated projects including Earmarks **which come with their own assigned OA**). Implementing agencies should pay close attention to the deadlines of other state and federal funds on their projects so as not to miss any other applicable funding deadlines, **such as those imposed by the CTC on funds it manages and allocates.**

This regional project delivery policy was developed by the San Francisco Bay Area's Partnership, through the ~~Project Delivery Task Force~~ **working groups** of the Bay Area Partnership's ~~Finance~~ **Technical Advisory Committee's (PTAC) Working Groups (FWG)**, consisting of representatives of Caltrans, the county Congestion Management Agencies (CMAs), transit operators, counties, **cities** and MTC staff.

**General Policy Guidance**

**As the federally designated Metropolitan Planning Organization (MPO) and the agency serving as the Regional Transportation Planning Agency (RTPA) for the nine-counties of the San Francisco Bay Area, the Metropolitan Transportation Commission (MTC) is responsible for various funding and programming requirements, including, but not limited to: development and submittal of the Regional Transportation Improvement Program (RTIP); managing and administering the federal Transportation Improvement Program (TIP); and project selection for designated federal funds (referred collectively as 'Regional Discretionary Funding');**

**As a result of the responsibility to administer these funding programs,** the region has established various deadlines for the delivery of ~~the~~ **regional discretionary** funds **including** the regional Surface Transportation Program (STP), ~~and~~ Congestion Mitigation and Air Quality Improvement (CMAQ) Program, regional Transportation Alternatives Program (TAP) Program, and Regional Transportation Improvement Program (RTIP) to ensure timely project delivery against state and federal funding deadlines. This resolution establishes a standard policy for enforcing project funding deadlines ~~and project substitutions~~ for these **and other FHWA-administered federal** funds during the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), **the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP 21)** and any subsequent extensions **and federal transportation acts.**

**Once FHWA-administered funds are transferred to FTA, non-applicable provisions of this policy guidance no longer apply. The project sponsor must then follow FTA guidance and requirements.**

~~STP and CMAQ~~ **FHWA-administered federal** funds are to be programmed in the **federal** Transportation Improvement Program (TIP), up to the apportionment level for that fiscal year, in the fiscal year in which the funds are to be obligated by the Federal Highway Administration (FHWA) or transferred to the Federal Transit Administration (FTA), similar to the programming of the State Transportation Improvement Program (STIP) **by the California Transportation Commission (CTC).**

The regional **discretionary funds such as the RTIP, STP, CMAQ and regional-TAP funds** are project specific. Projects are chosen for the program based on eligibility, project merit, and deliverability within the established deadlines. ~~The programmed STP and /CMAQ~~ **regional discretionary funds** are for those projects alone, ~~STP/CMAQ funds~~ **and** may be used for any phase of the project, **unless otherwise specified at the time of programming,** in accordance with Caltrans procedures and federal regulations.

It is the responsibility of the implementing agency at the time of project application and programming to ensure the regional deadlines and provisions of the regional project funding delivery policy can be met. Agencies with difficulty in delivering existing FHWA federal-aid projects will have future programming and Obligation Authority (OA) restricted for additional projects until the troubled projects are brought back on schedule, and the agency has demonstrated it can deliver new projects within the ~~required~~ **funding** deadlines **and can meet all federal-aid project requirements.**

MTC staff will actively monitor and report the obligation status of projects to the Working Groups of the Bay Area Partnership. The Working Groups will monitor project funding delivery issues as they arise and make recommendations to the Partnership Technical Advisory Committee (PTAC) as necessary.

The implementing agency or MTC may determine that circumstances may justify changes to the ~~STP and /CMAQ~~ **regional discretionary fund** programming. These changes, or ~~amendments~~ **revisions** to these regional programs, are not routine. Proposed changes will be reviewed by MTC staff before any formal actions on program amendments are considered by the MTC Commission. ~~STP/CMAQ~~ **Regional discretionary** funds may be shifted among any phase of the project without the concurrence or involvement of MTC if allowed under Caltrans procedures and federal regulations. All changes must follow MTC policies on the Public Involvement Process and Federal Air Quality Procedures and Conformity Protocol. Changes must be consistent with the Regional Transportation Plan (RTP), must not adversely affect the expeditious implementation of Transportation Control Measures (TCMs), must comply with the provisions of Title VI, must not negatively impact the deliverability of other projects in the regional programs, and must not affect the conformity finding in the TIP. **Additionally, any changes involving funding managed by the California Transportation Commission (CTC), such as RTIP and TAP, must also follow the CTC's processes for amendments and fund management.**

### **Regional Discretionary Funding:**

**Regional Discretionary Funding is revenue assigned to MTC for programming and project selection, including but not limited to funding in the Regional Transportation Improvement Program (RTIP), Surface Transportation Program (STP) funding, Congestion Mitigation and Air Quality Improvement (CMAQ) funding, regional Transportation Alternatives Program (TAP) funding and any subsequent federal funding programs at MTC's discretion. The funds are referred collectively as Regional Discretionary Funding.**

### **Programming to Apportionment in the year of Obligation/Authorization**

Federal funds are to be programmed in the TIP, up to the apportionment level available, in the fiscal year in which the funds are to be obligated by FHWA or transferred to FTA. The implementing agency is committed to obligate/transfer the funds by the required obligation deadline once the program year in the TIP becomes the current year, and the **regional** annual Obligation Plan has been developed for that year. This will improve the overall management of federal apportionment and Obligation Authority (OA) within the region and help ensure apportionment and OA are available for projects that are programmed in a particular year. It will also assist the region in meeting federal financial constraint requirements. At the end of the federal authorization act, MTC will reconcile any differences between final apportionments, programmed amounts, obligations and actual OA received **for the funds it manages.**

### **Advanced Project Selection Process**

Obligations for funds advanced from future years of the TIP will be permitted only upon the availability of surplus OA, with Advance Construction Authorization (ACA) projects in the annual obligation plan having first priority for OA in a given year, and current programmed projects that have met the delivery deadlines having second priority for OA in a given year. Advanced obligations will be based on the availability of OA and generally will only be considered after ~~February 1~~ **January 31** of each fiscal year. In some years OA may not be available for advancements until after April 30, but the funds must be identified in the annual obligation plan, and the obligation request for the advanced OA should be received by Caltrans prior to April 30.

Agencies requesting advanced funding should be in good standing in meeting deadlines for other **FHWA** federal-aid projects. Restrictions may be placed on the advancement of funds for agencies that continue to have difficulty delivering projects within required deadlines or have current projects that are not in compliance with funding deadlines **and federal-aid requirements.** MTC may consult with **FHWA**, Caltrans and/or the appropriate Congestion Management Agency (CMA) to determine whether the advancement of funds is warranted and will not impact the delivery of other projects.

Implementing agencies wishing to advance projects may request Advance Construction Authorization from FHWA, or pre-award authority from FTA, to proceed with the project using local funds until OA becomes available. ACA does not satisfy the obligation deadline requirement.

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**Important Tip:** Caltrans releases unused local OA ~~on~~ **by** May 1 of each year. Projects that do not access their OA through obligation or transfer to FTA by that date are subject to having their funds taken by other regions. This provision allows the advancement of projects after April 30, by using unclaimed OA from other regions.

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### **Advance Construction Authorization (ACA)**

Agencies that cannot meet the regional, state or federal requirements **deadlines subsequent to the obligation deadline (such as award and invoicing deadlines)** have the option to use Advance Construction Authorization (ACA) rather than seeking an obligation of funds and risk losing the funds due to missing these subsequent deadlines. For example if the expenditure of project development funds or award of a construction contract, **or project invoicing** cannot easily be met within the required deadlines, the agency may consider using ACA until the project phase is underway **and the agency is ready to invoice and the agency is able to meet the deadlines.** **The use of** ACA may also be considered by agencies that prefer to invoice once – at the end of the project, rather than invoice on the required semi-annual basis. **When seeking this option, the project sponsor must program the local funds supporting the ACA in the same year of the TIP as the ACA, and program an equal amount of federal funds in the TIP in the year the ACA will be converted to a funding authorization.**

ACA conversion to full obligation receives priority in the annual obligation plan. MTC will monitor the availability of OA to ensure delivery of other projects is not impacted by ACA conversions. At the end of the federal authorization Act, ACA may be the only option available should the region's OA be fully used.

### **Project Cost Savings/Changes in Scope/Project Failures – For FHWA-Administered Funds Managed By MTC (Regional Discretionary Funding)**

Projects may be completed at a lower cost than anticipated, or have a minor change in scope resulting in a lower project cost, or may not proceed to implementation. In such circumstances, the implementing agency must inform MTC, Caltrans and the appropriate county Congestion Management Agency (CMA) within a timely manner that the funds resulting from these project **funding** reductions will not be used. Federal regulations require that the project proceed to construction within ten years of initial federal authorization of any phase of the project. Furthermore, if a project is canceled, or fails to proceed to construction **or right of way acquisition** in ten years, FHWA will de-obligate any remaining funds, and the agency is required to repay any reimbursed funds.

Project funding reductions accrued prior to the established obligation deadline are available for redirection within the program of origin. Savings within the CMA administered programs (~~such as Local Streets and Roads Rehabilitation~~) are available for redirection within the program by the respective CMA, subject to Commission approval. Project funding reductions within regional competitive programs, ~~such as the Transportation for Livable Communities (TLC) program, or for regional operations projects such as 511,~~ are available for redirection by the Commission. For all programs, projects using the redirected funding reductions prior to the obligation deadline must still obligate the funds within the original deadline.

Minor adjustments in project scope may be made to accommodate final costs, in accordance with Caltrans **(and if applicable, CTC)** procedures and federal regulation. However, **STP/CMAQ Regional Discretionary Funding managed by MTC and assigned to** for the project is limited to the amount approved by MTC **for that specific project**. Once funds are de-obligated, there is no guarantee the funds **replacement funding** will be available for the project. **However, in rare instances, such as when a project becomes inactive, funds de-obligated from a project may be made available for that project once again, as long as the de-obligated funds are not rescinded and are re-obligated within the same federal fiscal year.**

**For federal regional discretionary funds managed by MTC, any** project funding reductions or unused funds realized after the obligation deadline return to MTC. Any **Regional Discretionary Funding such as** STP/CMAQ funds that have been obligated but remain unused **unexpended at the time of project close-out** will be de-obligated and returned to the Commission for reprogramming. **However, for funding managed by the CTC, such as STIP funds, any unexpended funds at the time of project close-out are returned to the state rather than the region.**

In selecting projects to receive redirected funding, the Commission may use existing lists of projects that did not receive funding in past programming exercises, or direct the funds to agencies with proven on-time project delivery, or could identify other projects with merit to receive the funding, or retain the funding for future programming cycles. Final decisions regarding the reprogramming of available funds will be made by the Commission.

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**Important Tip:** ~~If a project is canceled as a result of the environmental process, the agency does not have to repay reimbursed costs for the environmental activities. However, If a project is canceled after the environmental process is complete, or a project does not proceed to construction~~ **or right of way acquisition** within 10 years, the agency is **may be** required to repay all reimbursed federal funds.

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### **Federal Rescissions**

**FHWA regularly rescinds unused federal funds, either annually as part of the annual federal appropriations or at the end or beginning of a federal transportation act or extension. Therefore, local public agencies must obligate the funds assigned to them within the deadlines established in this policy. Should regional discretionary funds be subject to a federal rescission, the rescinded funding will first apply to projects with funds that have missed the regional obligation deadline and to projects with funds that have been de-obligated but not yet re-obligated, unless otherwise directed by the Commission.**

### **Annual Obligation Plan**

California Streets and Highway Code 182.6(f) requires the regions to notify Caltrans of the expected use of OA each year. Any local OA, and corresponding apportionment that is not used by the end of the fiscal year will be redistributed by Caltrans to other projects in a manner that ensures the state continues to receive increased obligation authority during the annual OA redistribution **from other states**. There is no provision in state statute that the local apportionment and OA used by the state will be returned.

MTC will prepare an annual Obligation Plan at the ~~beginning~~ **end** of each federal **state** fiscal year based on the funding programmed in the TIP, and the apportionment and OA expected to be available. This plan will be the basis upon which obligations will be made for the **following federal fiscal** year. It is expected that the CMAAs and project sponsors with funds programmed in the TIP will assist in the development of the plan by ensuring the TIP is kept up to date, and ~~if necessary,~~ review the plan prior to submittal to Caltrans. Projects listed in the plan that do not receive an obligation **by the deadline** are subject to de-programming. Projects to be advanced from future years, or converted from ACA must be included in the plan to receive priority for obligations against available OA.

If a project or project phase will not be ready for obligation in the year programmed, the agency responsible for the project should request to delay the project prior to entering the program **federal** fiscal year. The agency shall be considered committed to delivering the project **by the funding deadline** (obligating/**authorizing** the funds **in an E-76** or transferring to FTA) ~~once the program year becomes the current fiscal year, and the annual Obligation Plan has been developed for that year.~~ **at the beginning of the federal fiscal year (October 1), for funding programmed in that year of the TIP**

In the event that OA is severely limited, such as at the end of a federal authorization act, and there is insufficient OA to obligate all of the projects in the annual obligation plan, restrictions may be placed on funds for agencies that continue to have difficulty delivering projects within required deadlines or have current projects that are in violation of funding deadlines **and federal-aid requirements.**

#### **Local Public Agency (LPA) Single Point of Contact**

**To further facilitate project delivery and ensure all federal funds in the region are meeting federal and state regulations, requirements and deadlines, every Local Public Agency (LPA) that receives FHWA-administered funds and includes these funds in the federal TIP will need to identify and maintain a staff position that serves as the single point of contact for the implementation of all FHWA-administered funds within that agency. The person in this position must have sufficient knowledge and expertise in the federal-aid delivery process to coordinate issues and questions that may arise from project inception to project close-out. The local public agency is required to identify, maintain and update the contact information for this position at the time of programming changes in the federal TIP. This person will be expected to work closely with FHWA, Caltrans, MTC and the respective CMA on all issues related to federal funding for all FHWA-funded projects implemented by the recipient.**

**By applying for and accepting FHWA funds that must be included in the federal TIP, the project sponsor is acknowledging that it has and will maintain the expertise and staff resources necessary to deliver the federal-aid project within the funding timeframe, and meet all federal-aid project requirements.**

## FHWA-Administered Project Milestones Status

Project sponsors that miss delivery milestones and funding deadlines for FHWA-administered funds are required to prepare and update a delivery status report on major delivery milestones for all active projects with FHWA-administered funds and participate if requested in a consultation meeting with the county CMA, MTC and Caltrans to discuss the local agency's ability to deliver current and future federal-aid transportation projects, and efforts, practices and procedures to be implemented by the local agency to ensure delivery deadlines and requirements are met in the future. The purpose of the status report and consultation is to ensure the local public agency has the resources and technical capacity to deliver FHWA federal-aid projects, is fully aware of the required delivery deadlines, and has developed a delivery timeline that takes into consideration the requirements and lead-time of the federal-aid process within available resources. For purposes of the delivery status report, 'Active' projects are projects programmed in the current federal TIP with FHWA-administered funds (including those in grouped TIP listings), and projects with FHWA-administered funds that remain active (have received an authorization/obligation but have not been withdrawn or closed out by FHWA). The local public agency is to use the status report format provided by MTC, or use a report agreeable by the respective CMA and MTC staff.

## Local Public Agency (LPA) Qualification

In an effort to facilitate project delivery and address federal-aid process requirements, Local Public Agencies (LPA) applying for and accepting FHWA administered funds must be qualified in the federal-aid process. By requesting the programming of federal funds in the federal TIP, the LPA is self-certifying they are qualified to deliver federal-funding transportation projects. This regional LPA qualification is to help confirm the jurisdiction has the appropriate knowledge and expertise to deliver the project. The regional LPA self-qualification is not a substitute for any state or federal certification requirements and is simply to acknowledge a minimum requirement by which a local agency can demonstrate to the respective CMA, MTC and Caltrans a basic level of readiness for delivering federal-aid projects. The purpose of the regional LPA qualification is to allow the LPA to program the funds in the federal TIP and has no other standing, implied or otherwise. The regional LPA qualification does not apply to transit operators that transfer all of their FHWA-administered funds to FTA.

To be 'regionally qualified', for regional discretionary funds, and for programming federal funds in the federal TIP, the LPA must comply with the following, in addition to any other state and federal requirements:

- Assign and maintain a single point of contact for all FHWA-administered projects implemented by the agency.
- Maintain a project tracking status of major delivery milestones for all programmed and active FHWA-administered projects implemented by the agency
- Have staff and/or consultant(s) on board who have delivered FHWA-administered projects within the past five years and/or attended the federal-aid process training class held by Caltrans Local Assistance within the past 5 years, and have the knowledge and expertise to deliver federal-aid projects.

- **Maintain all active FHWA-administered projects in good standing with respect to regional, state and federal delivery deadlines, and federal-aid requirements**
- **Maintain the expertise and staff resources necessary to deliver federal-aid projects within the funding timeframe, and meet all federal-aid project requirements**
- **Has a financial/accounting system in place that meets state and federal invoicing and auditing requirements;**
- **Has demonstrated a good delivery record and delivery practices with past and current projects.**

### **Maximizing Federal Funds on Local Projects**

**To facilitate project delivery and make the most efficient use of federal funds, project sponsors are encouraged to concentrate federal funds on fewer, larger projects and maximize the federal share on federalized project so as to reduce the overall number of federal-aid projects. Sponsors may also want to consider using local funds for the Preliminary Engineering (PE) and Right of Way (ROW) phases and target the federal funds on the Construction (CON) phase, thus further reducing the number of authorizations processed by Caltrans and FHWA. Under the regional toll credit policy (MTC Resolution 4008) sponsors that demonstrate they have met or exceeded the total required non-federal project match in the earlier phases, may use toll credits in lieu of a non-federal match for the construction phase. However, sponsors must still comply with NEPA and other federal requirements for the PE and ROW phases. Such an approach can provide the sponsor with greater flexibility in delivering federal projects and avoiding invoicing requirements for the earlier phases. Sponsors pursuing this strategy should ensure that federal funds are programmed to the construction phase in the federal TIP so that Caltrans will prioritize field reviews and NEPA review and approval.**

### **Specific Project-Level Policy Provisions**

Projects selected to receive STP or CMAQ **Regional Discretionary** Funding must have a demonstrated ability to use the funds within the established regional, state and federal deadlines. This criterion will be used for selecting projects for funding, and for placement of funding in a particular year of the TIP. Agencies with a continued history of being delivery-challenged and continue to miss funding delivery deadlines will have restrictions placed on future obligations and programming **and are required to develop major milestone delivery schedules for each of their federal-aid projects.**

It is the responsibility of the implementing agency to ensure the funds can be used within the established regional, state and federal deadlines and that the provisions of the regional funding delivery policy can be met. It is also the responsibility of the implementing agency to continuously monitor the progress of the programmed funds against regional, state and federal deadlines, and to report any potential difficulties in meeting these deadlines to MTC, Caltrans and the appropriate county CMA within a timely manner, to seek solutions to potential problems well in advance of potential delivery failure or loss of funding.

Specific project-level provisions of the Regional Project Funding-Delivery Policy are as follow:

- **Field Reviews**

Implementing agencies ~~are required to~~ **are to** request a field review from Caltrans Local Assistance within twelve months of approval of the project in the TIP, but no less than twelve months prior to the obligation deadline of construction funds. This policy also applies to federal-aid projects in the STIP. The requirement does not apply to projects for which a field review would not be applicable, such as FTA transfers, regional operations projects and planning activities, **or if a field review is otherwise not required by Caltrans. It is expected that Caltrans will conduct the review within 60 calendar days of the request.**

Failure for an implementing agency to make a good-faith effort in requesting and scheduling a field review from Caltrans Local Assistance within twelve months of programming into the TIP (but no less than twelve months prior to the obligation deadline) could result in the funding being reprogrammed and restrictions on future programming and obligations. Completed field review forms (**if required**) must be submitted to Caltrans in accordance with Caltrans Local Assistance procedures.

- **Environmental Submittal Deadline**

Implementing agencies are required to submit a complete ~~environmental package~~ **Preliminary Environmental Study (PES) form and attachments** to Caltrans for all projects (~~except those determined Programmatic Categorical Exclusion as determined by Caltrans at the field review~~), twelve months prior to the obligation deadline for right of way or construction funds. This policy creates a more realistic time frame for projects to progress from the field review through the environmental and design process, to the right of way and construction phase. If the environmental process, as determined at the field review, will take longer than 12 months before obligation, the implementing agency is responsible for delivering the complete environmental submittal in a timely manner. Failure to comply with this provision could result in the funding being reprogrammed. The requirement does not apply to FTA transfers, regional operations projects or planning activities.

- ~~**Disadvantaged Business Enterprise (DBE)**~~

~~Obligation of federal funds may not occur for contracted activities (any combination of environmental/ design/ construction/ procurement activities performed outside the agency) until and unless an agency has an approved DBE program and methodology for the current federal fiscal year. Therefore, agencies with federal funds programmed in the TIP must have a current approved DBE Program and annual methodology (if applicable) in place prior to the fiscal year the federal funds are programmed in the TIP.~~

~~STP/CMAQ funding for agencies without approved DBE methodology for the current year are subject to redirection to other projects after February 1. Agencies should begin the DBE process as early as possible to meet the Caltrans DBE submittal deadline of June 1 the preceding fiscal year. Projects advanced under the Expedited Project Selection Process (EPSP) must have an approved DBE program and annual methodology for the current year (if applicable) prior to the advancement of funds.~~

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**Important Tip:** ~~An agency DBE plan is required before the obligation of federal funds. Furthermore, an annual DBE methodology must be approved prior to the obligation of federal funds for services to be contracted out (such as environmental/ design/ construction/ procurement activities performed outside the agency). An annual DBE methodology may not be required if the activities (such as environmental or design) are to be performed in house using internal staff resources. It generally takes a minimum of 90 days (including a minimum 45 day public comment period) to have an annual DBE methodology approved. Due to the complexities of the DBE requirements, agencies should contact Caltrans Local Assistance to determine whether an annual DBE methodology is required. If a DBE methodology is required, agencies are encouraged to begin the process by March of the preceding federal fiscal year so the process may be complete by the Caltrans due date of June 1 of the preceding fiscal year. This will ensure the DBE requirement has been met by the beginning of the federal fiscal year in October.~~

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- **Obligation/Request For Authorization (RFA) Submittal Deadline**

Projects selected to receive ~~STP and CMAQ~~ **Regional Discretionary** funding must demonstrate the ability to obligate programmed funds by the established ~~obligation~~ deadlines. This criterion will be used for selecting projects for funding, and for placement in a particular year of the TIP. It is the responsibility of the implementing agency to ensure the **funding** deadlines ~~and federal aid requirements~~ can be met.

In order to ensure funds are obligated or transferred to FTA in a timely manner, the implementing agency is required to deliver a complete, funding obligation / FTA Transfer Request for Authorization (RFA) package to Caltrans Local Assistance by ~~February 1~~ **November 1** of the **fiscal year** the funds are listed in the TIP. **The RFA package includes the CTC allocation request documentation for CTC managed funds such as STIP and State-TAP funded projects as applicable.** Projects with complete packages delivered by ~~February 1~~ **November 1** of the **TIP** program year will have priority for available OA, after ACA conversions that are included in the Obligation Plan. If the project is delivered after ~~February 1~~ **November 1** of the **TIP** program year, the funds will not be the highest priority for obligation in the event of OA limitations, and will compete for limited OA with projects advanced from future years. Funding for which an obligation/ FTA transfer request is submitted after the ~~February 1~~ **November 1** deadline will lose its priority for OA, and be viewed as subject to reprogramming.

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**Important Tip:** Once a federal fiscal year (October 1 through September 30) has begun, and the Obligation Plan for that year developed, the agency is committed to obligating/transferring the funds by the required obligation deadline for that fiscal year. Funds that do not meet the obligation deadline are subject to de-programming by MTC.

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Within the CMA administered programs, ~~such as the Local Streets and Roads Rehabilitation program,~~ the CMAs may adjust delivery, consistent with the program eligibility requirements, up until ~~February 1 of the programmed year~~ **the start of federal fiscal year in which the funds are programmed in the TIP,** swapping funds to ready-to-go projects in

order to utilize all of the programming capacity. The substituted project(s) must still obligate the funds within the original funding deadline.

For funds programmed through regional ~~competitive~~ programs, such as the regional Transportation for Livable Communities (TLC) program, or for regional operations projects, such as 511, or for planning activities, such as the CMA planning activities, the Commission has discretion to redirect funds from delayed or failed projects.

~~STP and CMAQ~~ **MTC Regional Discretionary Funding** funds are **is** subject to a **regional** obligation/**authorization**/FTA transfer deadline of ~~April 30~~ **January 31** of the fiscal year the funds are programmed in the TIP. Implementing agencies are required to submit the completed request for obligation/**authorization** or FTA transfer to Caltrans Local Assistance by ~~February 1~~ **November 1** of the fiscal year the funds are programmed in the TIP, and receive an obligation/**authorization**/ FTA transfer of the funds by ~~April 30~~ **January 31** of the fiscal year programmed in the TIP. For example, projects programmed in ~~FY 2007-08~~ **FY 2014-15** of the TIP have a **request for authorization**/obligation/FTA transfer request submittal deadline (to Caltrans Local Assistance) of ~~February 1, 2008~~ **November 1, 2014** and an obligation/ **authorization**/FTA transfer deadline of ~~April 30, 2008~~ **January 31, 2015**. Projects programmed in ~~FY 2008-09~~ have an obligation request submittal deadline (to Caltrans) of ~~February 1, 2009~~ and an obligation/FTA transfer deadline of ~~April 30, 2009~~. No extensions will be granted to the obligation deadline.

**In Summary:**

- **Request For Authorization (RFA) Submittal Deadline:** ~~February 1~~ **November 1** of the fiscal year **the funds are** programmed in the **federal** TIP. The Implementing Agency is required to submit a complete **Request for Authorization (RFA)/** obligation/transfer package to Caltrans (3 months prior to the Obligation Deadline). **For projects with federal funds managed by the CTC, such as STIP and State-TAP, the required CTC allocation request documentation must also be submitted by November 1 in order to meet the January 31 obligation deadline.**
- **Obligation /Authorization Deadline:** ~~April 30~~ **January 31** of the fiscal year **the funds are** programmed in the TIP, **including funds managed by the CTC, such as STIP and state-TAP.** No extensions will be granted to the obligation deadline.

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**Important Tip: If an agency must coordinate delivery with other delivery timelines and other fund sources, it should program the Regional Discretionary Funding in a later year of the TIP and advance the funds after April 30 using the Expedited Project Selection Process (EPSP) when additional OA is made available by Caltrans. Projects with federal funds managed by the CTC, such as STIP and state-TAP, should receive a CTC allocation in sufficient time to receive the federal obligation by the obligation deadline.**

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~~February 1~~ **November 1** - Regional **Request For Authorization (RFA)** submittal deadline. Complete **and accurate Request for Authorization** package submittals, and ACA conversion requests for projects in the annual obligation plan received by ~~February~~

† **November 1** of the fiscal year the funds are programmed in the TIP will receive priority for obligations against available OA. **The RFA should include CTC allocation request documentation for federal STIP and state-TAP funded projects as applicable.**

**February 1—April 30 November 1 – January 31** – Projects **programmed in the current year of the TIP and** submitted during this timeframe are subject to deprogramming. If OA is still available, these projects may receive OA if obligated by ~~April 30~~ **January 31**. If OA is limited, these projects will compete for OA with projects advanced from future years on a first come-first serve basis. Projects with funds to be advanced from future years ~~must~~ **should** request the advance prior to ~~April 30~~ **January 31**, in order to secure the funds within that federal fiscal year. **This rule does not apply to federal funds managed by the CTC such as STIP or state-TAP funds.**

**April 30 January 31** - Regional obligation/**Authorization** deadline. **Regional Discretionary Funding** not obligated (or transferred to FTA) by ~~April 30~~ **January 31** of the fiscal year **the funds are** programmed in the TIP ~~will be returned to MTC for reprogramming~~ **are subject to reprogramming by MTC.** No extensions of this deadline will be granted. Projects seeking advanced obligations against funds from future years should request the advance prior to ~~April 30~~ **January 31** in order to secure the funds within that federal fiscal year. **For funding managed by the CTC, the CTC allocation should occur in sufficient time to meet the January 31 federal obligation deadline.**

The obligation deadline may not be extended. The funds must be obligated by the established deadline or they ~~will be de-programmed~~ are subject to de-programming from the project and redirected by the Commission to a project that can use the funds in a timely manner.

Note: Advance Construction Authorization does not satisfy the regional obligation deadline requirement, ~~except under certain circumstances such as when Caltrans uses ACA for state projects.~~

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**Important Tip:** In some years, OA for the region may be severely limited, especially toward the end of the **such as when the state has run out of OA, or Congress has only provided a partial year's appropriation or during short-term extensions of a** federal Authorization Act. When OA is limited, ACA conversions identified in the annual obligation plan and submitted before the **RFA** deadline of ~~February 1~~ **November 1** have priority, followed by other projects in the annual obligation plan submitted before the **RFA Submittal** deadline of ~~February 1~~ **November 1**. Projects in the obligation plan but submitted after ~~February 1~~ **November 1** may have OA (and thus the obligation of funds) restricted and may have to wait until OA becomes available – either after ~~June 1~~ **May 1**, when unused OA is released from other regions, or in the following federal fiscal year when Congress approves additional OA. ~~Obligation requests~~ **RFAs** submitted after the ~~February 1~~ **November 1** deadline have no priority for OA for that year. Agencies with projects not in good standing with regards to the deadlines of this policy ~~may have OA restricted~~ **or not complying with federal-aid requirements, are subject to restrictions in future Regional Discretionary Funding and the programming of funds in the federal TIP.**

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- **Coordination with CTC allocations**

**The CTC has its own delivery deadlines that must be met in addition to the regional deadlines. Regional deadlines are always in advance of both state and federal deadlines to ensure all deadlines can be met and funds are not jeopardized. To further ensure that CTC deadlines are met, allocation requests to the CTC for federal funds, must be accompanied with a complete and accurate E-76 RFA package, so that the authorization/ obligation may be processed immediately following CTC action. MTC will not sign off on allocation concurrences unless the E-76 RFA package is also submitted.**

- **Program Supplement Agreement (PSA) Deadline**

The implementing agency must execute and return the Program Supplement Agreement (PSA) to Caltrans in accordance with Caltrans Local Assistance procedures. **It is expected that Caltrans will initiate the PSA within 30 days of obligation.** The agency must **should** contact Caltrans if the PSA is not received from Caltrans within 30 days of the obligation. This requirement does not apply to FTA transfers.

Agencies that do not execute and return the PSA to Caltrans within the required Caltrans deadline will be unable to obtain future approvals for any projects, including obligation and payments, until all PSAs for that agency, regardless of fund source, meet the PSA execution requirement. Funds for projects that do not have an executed PSA within the required Caltrans deadline are subject to de-obligation by Caltrans.

- **Construction Advertisement / Award Deadline**

For the Construction (CON) phase, the construction/equipment purchase contract must be advertised ~~within 6 months of obligation and awarded within 9~~ **6** months of obligation (**or within 6 months of allocation by the CTC for funds managed by the CTC**). However, regardless of the ~~advertisement and award~~ deadline, agencies must still meet the invoicing deadline for construction funds. Failure to advertise and award a contract in a timely manner could result in missing the subsequent invoicing and reimbursement deadline, resulting in the loss of funding.

Agencies must submit the ~~notice of award~~ **complete award package immediately after contract award and prior to submitting the first invoice** to Caltrans in accordance with Caltrans Local Assistance procedures, ~~with a copy also submitted to the applicable CMA.~~ Agencies with projects that do not meet these award deadlines will have future programming and OA restricted until their projects are brought into compliance.

For FTA projects, funds must be approved/awarded in an FTA Grant within one federal fiscal year following the federal fiscal year in which the funds were transferred to FTA.

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**Important Tip:** Agencies may want to use the flexibility provided through Advance Construction Authorization (ACA) if it will be difficult meeting the deadlines. Agencies may consider proceeding with ACA and converting to a full obligation at time of award when project costs and schedules are more defined or when the agency is ready to invoice.

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- **Regional Invoicing and Reimbursement Deadlines – Inactive Projects**

Funds for each federally funded phase and for each federal program code must be invoiced against at least once every six months.

Funds for each federally funded (Environmental (ENV/ PA&ED), Preliminary Engineering (PE), Final Design (PS&E) and Right of Way (R/W) phase and for each federal program code within these phases, must be invoiced against at least once every six months following obligation. Funds that are not invoiced at least once every 12 months are subject to de-obligation. There is no guarantee that funds will be available to the project once de-obligated.

Funds for the Construction (CON) phase, and for each federal program code within the construction phase, must be invoiced and reimbursed against at least once within 12 months of the obligation, and then invoiced at least once every 6 months there after. Funds that are not invoiced and reimbursed at least once every 12 months are subject to de-obligation by FHWA. There is no guarantee that funds will be available to the project once de-obligated.

Agencies with projects that have not been invoiced against and reimbursed within a 12 month period, regardless of federal fund source, will have restrictions placed on future programming and OA until the project is properly invoiced. Funds that are not invoiced and reimbursed against at least once every 12 months are subject to de-obligation by FHWA.

**Caltrans requires administering agencies to submit invoices at least once every 6 months from the time of obligation (E-76 authorization). Projects that have not received a reimbursement of federal funds in the previous 12 months are considered inactive with the remaining un-reimbursed funds subject to de-obligation by FHWA with no guarantee the funds are available to the project sponsor.**

**To ensure funds are not lost in the region, regional deadlines have been established in advance of federal deadlines. Project Sponsors must submit a valid invoice to Caltrans Local Assistance at least once every 6 months and receive a reimbursement at least once every 9 months, but should not submit an invoice more than quarterly.**

**Agencies with projects that have not been invoiced against at least once in the previous 6 months or have not received a reimbursement within the previous 9 months have missed the invoicing/reimbursement deadlines and are subject to restrictions placed on future regional discretionary funds and the programming of additional federal funds in the federal TIP until the project receives a reimbursement.**

If a project does not have eligible expenses within a 6-month period, the agency must provide a written explanation to Caltrans Local Assistance for that six-month period and submit an invoice as soon as practicable to avoid missing the 12-month invoicing and reimbursement deadline.

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**Important Tip:** In accordance with Caltrans procedures, federal funds must be invoiced against for each obligated phase and each federal program code at least once every six months. Funds that are not invoiced and reimbursed **against** at least once every 12 months

are subject to de-obligation by FHWA. There is no guarantee the funds will be available to the project once de-obligated. Agencies that prefer to submit one final billing rather than semi-annual progress billings, **or anticipate a longer project-award process or anticipate having difficulty in meeting these deadlines** can use Advance Construction Authority (ACA) to proceed with the project, then convert to a full obligation prior to project completion. ~~ACA does not meet the obligation deadline, but ACA conversions do receive priority in the annual obligation plan.~~

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- **Inactive Projects**

~~Most projects can be completed well within the state's deadline for funding liquidation or FHWA's ten-year proceed to construction requirement. Yet it is viewed negatively by both FHWA and the California Department of Finance for projects to remain inactive for more than twelve months. It is expected that funds for completed phases will be invoiced immediately for the phase, and projects will be closed out within six months of the final project invoice. Funds that are not invoiced and reimbursed at least once every 12 months are subject to de-obligation by FHWA. There is no guarantee the funds will be available to the project once de-obligated.~~

- **State Liquidation/Reimbursement Deadline**

California Government Codes 16304.1 and 16304.3 places additional restrictions on the liquidation of federal funds. Generally, federal funds must be liquidated (fully expended, invoiced and reimbursed) within ~~6~~ **5** state fiscal years following the fiscal year in which the funds were appropriated. Funds that miss the state's liquidation/ reimbursement deadline will lose State Budget Authority and will be de-obligated if not reappropriated by the State Legislature, or extended (for one year) in a Cooperative Work Agreement (CWA) with the California Department of Finance. This requirement does not apply to FTA transfers.

- **Project Completion /Close-Out Deadline**

Implementing Agencies must fully expend federal funds on a phase one year prior to the estimated completion date provided to Caltrans.

At the time of obligation (E-76 authorization) the implementing agency must provide Caltrans with an estimated completion date for that project phase. Any unreimbursed federal funding remaining on the phase after the estimated completion date has passed, is subject to project funding adjustments by FHWA.

~~Projects must be properly closed out~~ **Implementing agencies must submit to Caltrans the Final Report of Expenditures** within six months of ~~final project invoice~~ **project completion**. Projects must proceed to **right of way acquisition or** construction within 10 years of federal authorization of the initial phase.

Federal regulations require that federally funded projects proceed to construction **or right of way acquisition** within 10 years of initial federal authorization of any phase of the project. Furthermore, if a project is canceled, or fails to proceed to construction **or right of way**

**acquisition** in 10 years, FHWA will de-obligate any remaining funds, and the agency may be required to repay any reimbursed funds. If a project is canceled as a result of the environmental process, the agency may not be required to repay reimbursed costs for the environmental activities. However, if a project is canceled after the environmental process is complete, or a project does not proceed to right of way acquisition or construction within 10 years, the agency is required to repay all reimbursed federal funds.

Agencies with projects that have not been closed out within 6 months of final invoice will have future programming and OA restricted until the project is closed out or brought back to good standing by providing written explanation to Caltrans Local Assistance, the applicable CMA and MTC.

**Note that funds managed and allocated by the CTC may have different and more stringent funding deadlines. A CTC allocated-project must fully expend those funds within 36 months of the CTC funding allocation.**

### **Consequences of Missed Deadlines**

It is the responsibility of the implementing agency to ensure the funds can be used within the established regional, state and federal deadlines and that the provisions of the regional project-funding delivery policy, and all other state and federal requirements can be met. It is also the responsibility of the implementing agency to continuously monitor the progress of ~~the~~ **all their FHWA federal-aid** projects against these regional, state and federal funding deadlines **and milestones** and report any potential difficulties in meeting these deadlines to MTC, Caltrans and the appropriate county CMA within a timely manner. MTC, Caltrans and the CMAs are available to assist the implementing agencies in meeting the funding deadlines, and ~~may be able~~ **will work with the agency** to find solutions that avoid the loss of funds.

Agencies that do not meet these funding deadlines risk the loss of federal funds. To minimize such losses to the region, and encourage timely project delivery, agencies that continue to be delivery-challenged and/or have current projects that have missed the funding deadlines, **or are out of compliance with federal-aid requirements and deadlines** will have future obligations, programming or requests for advancement of funds restricted until their projects are brought back into good standing. Projects are selected to receive ~~STP or CMAQ~~ **Regional Discretionary Funding** based on the implementing agency's demonstrated ability to deliver the projects within the funding deadlines. An agency's proven delivery record will be used for selecting projects for funding and placement in a particular year of the TIP, and for receipt of OA.