

115.00 OVERSIGHT AGREEMENT; FHWA FULL OVERSIGHT; FEDERAL-AID INELIGIBLE COST IDENTIFICATION

This section provides information on:

1. The oversight agreement (available on the Department intranet) between the Department and FHWA for federal-aid projects that are not designated as full oversight;
2. Federal-aid projects that are designated as full oversight; and
3. Federal-aid ineligible cost identification (i.e. FHWA non-participation).

Oversight Agreement

The oversight agreement places full responsibility on the Department for design and construction of the applicable federal-aid projects in conformance with federal rules and regulations. The only required routine involvement by FHWA is: authorization to obligate funding, placing the project under agreement, authorization for federal participation in work by others when not included in the original project agreement; environmental clearance; approval of changes in access (including temporary) on the interstate or national highway system (NHS); approval to changes in contract plans beyond the general scope and intent of the original project (including revisions to project limits); approval of changes which would result in elimination of, or delay to, environmental mitigation measures and commitments on federal-aid and state funded projects covered under an FHWA approved environmental document; and final project inspection.

Any questions regarding the oversight agreement process should be addressed to the Construction Section.

Full Oversight

Each year, the Department and FHWA review the program of scheduled projects to determine which projects will be administered as full oversight projects. Full oversight means that the FHWA participates in complete review and approval of design and construction for the applicable federal-aid projects including final project inspection and project close-out.

Federal - Aid Ineligible Cost Identification

Not all project costs are eligible for Federal-aid participation. The list below identifies types of costs that may be ineligible for Federal-aid participation. Both the District and Headquarters are responsible for identifying ineligible costs. When ineligible costs are identified, the costs will be identified as non-participating and documented in the project records. The ITD-2437 may be used to document non-participating costs. Ineligible costs should be identified throughout the project. Any questions regarding ineligibility should be referred to the Construction Section.

- Costs incurred prior to FHWA prior approval of change orders (full oversight projects only in accordance with Sections 104.02 and 104.03)

- Costs not adequately documented (e.g. a lump sum change order was executed without obtaining a detailed price proposal from the contractor so that costs could be verified as reasonable and justifiable).
- Costs for material that does not meet the requirements of the plans and specifications; the requirements of the Department's Quality Assurance Manual and 23 CFR 637. These costs may be determined throughout construction by both the District and Headquarters and upon project final acceptance and material summary report reviews.
- Costs for materials left on hand.
- Costs for work that does not conform to 23 CFR 635 Subpart D (Subsection 401 through 417; Appendix A). Subpart D prescribes the requirements and procedures relating to product and material selection and use on Federal-aid highway projects including: use of materials made available by a public agency; restrictions on materials, Buy America requirements, and guaranty and warranty clauses.
- Costs for work that is outside the scope of an approved project including outside the approved project limits (a revised ITD-2101 must be prepared and approved and signed by the FHWA prior to beginning work).
- Costs related to contract claims that are not justifiable.
- Costs related to maintenance (both during and after the project is completed).
- Donations (land, services, materials) that are not identified on applicable State/local agreements and/or ITD 2101 forms.
- Federal-aid obligation limits for local projects.

These guidelines should be used to determine if a cost is ineligible. Usually the District makes the initial determination in consultation with the Materials and Construction Sections as appropriate.

Other ineligible federal-aid costs are identified on the project ITD-2101 and in the State/Local agreement, if applicable. All project personnel should be familiar with the provisions of the State/Local agreement and the most current ITD-2101 to assure that non-participating costs are properly documented. Ensure that any local agencies involved are informed ahead of time, if possible, of any Federal-aid ineligible costs.