



Expires – Upon Issuance of LPP

PRELIMINARY ENGINEERING PHASE OVER 10 YEARS

I. BACKGROUND

Title 23 Code of Federal Regulations ([CFR 630.112\(c\)\(2\)](#)), as well as United States Code ([USC Title 23, Section 102 \(b\)](#)), requires the following for any Federal-aid project: In the event that Right-of-Way (ROW) acquisition for, or actual construction (CON) of, the road for which this preliminary engineering (PE) is undertaken, is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the State Transportation Department (STD) will repay to the Federal Highway Administration (FHWA) the sum or sums of Federal funds paid to the transportation department under the terms of the agreement.

II. POLICY

1. Any project that reaches the status of “PE over 10 years” is out of compliance with 23 [CFR 630.112\(c\)\(2\)](#), as well as Section 102 (b) of USC Title 23, unless the project has an approved time extension. All invoice requests for a project out of compliance will cease to be paid. The project will be reviewed for closure and repayment of Federal funds.
2. Any project in the PE phase that has not moved to either ROW or CON in 8 years, any project that has exceeded the 10-year deadline, and any project that has an approved time extension, will be posted on the [Division of Local Assistance \(DLA\) website](#) shown below:

http://www.dot.ca.gov/hq/LocalPrograms/pe_over_10yrs.html
3. For any project in the PE phase that is within two years of reaching the 10-year deadline, the local agency may either submit a Request for Authorization (E-76) for ROW or CON, request a time extension or withdraw the project. If the time extension is denied, the project will be closed and Federal funds repaid.
4. An approved time extension for projects that are within two years of reaching the 10-year deadline will be in force for three years, beginning on October 1st of the FFY that the project will be out of compliance. All projects with an approved time extension are expected to:
 - a. proceed to the ROW or CON phase prior to expiration of the extension
 - b. submit a status update at the beginning of each FFY the time extension is in place
 - c. invoice against the Federal funds in the timeframes outlined in [23 CFR 630.106 \(5\)](#) and the [Local Assistance Procedures Manual](#) to avoid inactivity.
5. When any project advances to ROW or CON phase without the aid of Federal funds, the local agency will inform the District Local Assistance Engineer (DLAE) and this information will be forwarded on to FHWA, so that the project can be closed and removed from the “PE over 10 years” list.



6. Any local agency having a project with the PE phase already past the 10-year deadline without a current time extension will be given until July 1, 2011 to either:
 - a. submit an E-76 for ROW or CON.
 - b. submit a time extension request.
 - c. submit a letter to withdraw the project.

An E-76 or a request for time extension must be received by the DLAE by the July 1, 2011 deadline. An approved time extension for a project already past the 10-year deadline will be in force for three years from the date of the FHWA approval letter.

7. Any project that surpasses the 10-year deadline as of October 1, 2011, without an approved time extension, will be closed and Federal funds repaid.

III. ROLES AND RESPONSIBILITIES

Office of Project Delivery & Accountability (OPDA)

- Post and maintain a list of projects within two years of reaching PE over 10-year status and any project that has an approved time extension on DLA website.
- Inform DLAE of projects in their districts at risk of becoming out of compliance, of the deadline to submit time extension requests, and the submittal requirements.
- Inform the DLAE and Local Programs Accounting (LPA), when a project is out of compliance, that they are to cease processing any invoices.
- Review and forward time extension requests to the FHWA recommending approval or return incomplete/unacceptable time extension requests to the DLAE.
- Submits a status update of approved projects to FHWA at the beginning of each FFY that the time extensions are in place.
- Inform the DLAE, LPA and Office of Project Implementation (OPI) when the FHWA approves or denies a time extension request .
- Maintain records of FHWA decision letters.

District Local Assistance Engineer (DLAE)

- Monitor the "PE over 10-years" website and inform the agency of this resource.
- Inform agency when a project's PE phase is over 8 years or past the 10-year deadline.
- Inform agency a time extension may be requested for a "PE over 8-years" project.
- Review and forward time extension requests for completeness and sufficiency of justification, or return to local agency if incomplete or unjustified.
- Inform local agency of the OPDA and/or FHWA's decision, either approved or denied, for time extension requests.
- When notified by OPDA that a project is out of compliance, do not process any invoices.
- Coordinate with OPI to initiate close out for any project past the 10-year deadline, without an approved time extension or when the time extension has been denied or expired.
- Notify OPDA of any Federal- aid project that is advancing to the ROW or CON phase using local or state funds only (No Federal funds).
- Submit a status update of approved projects to OPDA at the beginning of each FFY that the time extension is in place.



Local Agency (Agency)

- Monitor projects in the PE phase for compliance.
- Submit Request for Authorization (E-76) for ROW or CON funds, if PE phase is completed.
- Inform the DLAE when the project advances to ROW or CON phase using local or state funds only (No Federal funds).
- Submit a time extension request, if the PE phase cannot be completed before the 10-year deadline.
- Ensure projects progress to either the ROW or CON phase before reaching the 10-year deadline, or before the approved time extension request expires.
- Submit status update of approved projects to the DLAE at the beginning of each FFY that the time extension is in place.
- For denied time extension requests, close project and repay Federal funds.
- Coordinate with the DLAE.

Office of Project Implementation (OPI)

- Process E-76 to authorize ROW or CON or deobligate Federal funds and close project.
- Coordinate with DLAE and LPA on the recovery of funds for closed projects.

Local Programs Accounting (LPA)

- When notified by OPDA, cease payment on any invoices on a project out of compliance.
- Recover Federal funds from agencies with a project out of compliance, upon notification by OPI.

Federal Highway Administration (FHWA)

- The FHWA Director of Local Programs will coordinate the review and approval or denial of time extension requests.
- FHWA will inform OPDA in writing, whether time extension requests are approved or denied.

IV. PROCEDURES

- OPDA: At the start of the Federal Fiscal Year (FFY), submit a request for status updates of projects with approved time extensions to DLAE
- DLAE request status updates from Agencies and submit these to OPDA within 20 working days
- OPDA: Within 10-working days of the start of the Federal Fiscal Year (FFY), prepare and post a list of projects on website, showing “PE over 8-years”, “PE over 10-years”, and new deadlines for projects with approved time extensions. Inform DLAE’s that list has been posted and to inform agencies to either submit an E-76 for CON or ROW, a time extension request or withdraw the project.



- DLAE: Review list and advise agencies with a project on the list of recommended action to be taken. Inform agencies of semi-annual deadlines to submit time extension requests within 5-working days of receipt of the OPDA notice.
- OPDA: Inform DLAE's and LPA to not process invoices for any project that is out of compliance.
- Agency: Submit E-76 for ROW or CON, withdraw the project or submit time extension request to DLAE.
- DLAE: Review time extension requests submitted by agencies. Forward to the OPDA, recommending approval, or return incomplete or unacceptable time extension requests to agency within 10 working days of receipt.
- OPDA: Review time extension requests and forward to the FHWA, recommending approval, by semi-annual deadline, or return time extension requests with insufficient or unacceptable justification, within 20 working days of receipt, to the DLAE.
- FHWA: Review time extension requests and inform the OPDA, in writing within 35-working days of receipt, which time extension requests have been approved or denied.
- OPDA: Inform the DLAE, OPI and LPA within 2 working days of notification when the FHWA approves a time extension request; or, when a time extension request is denied, direct to close project and recover Federal funds paid.
- DLAE: Inform Agency within 5 working days of notification when a time extension request has been approved, or if the request has been denied and that the project be closed and Federal funds be repaid.
- OPDA: Inform the DLAE and OPI within 10 working days of time extension request deadline, when an agency has failed to submitted a time extension request, the extension request was denied or the extension request expired, to close the project and repay Federal funds.
- DLAE: Prepare E-76 to deobligate funds within 10 working days of notification.
- OPI: Deobligate funds, within 10 working days of receipt of E-76 from the DLAE.
- LPA: Invoice local agency within 15 working days for repayment of Federal funds, when directed by OPI.
- LPA: Process closing documentation within 6 months after notification by FHWA.

V. TIME EXTENSION REQUEST PACKAGE

Justifications listed in the time extension package should be unforeseeable and beyond the agency's control. Shifting political priorities, insufficient transportation budgets, additions to the scope of work, and staffing issues will not be considered an acceptable justification for a time extension request. Some examples of acceptable justifications include:

- Litigation resulting in delay or stoppage of preliminary project design,
- Complex project consultations involving Federal, State and local agencies as well as sovereign Nations,
- Certain Congressional Earmarks, which will be reviewed by FHWA on a case by case basis.
- Where the public involvement process has altered the plan for satisfying the project's purpose and need,

- A project that utilizes a unique implementation or funding approach that the Agency is not accustomed to carrying out, such as development of public-private partnerships or other innovative financing strategies to help finance the project.
- Delay caused due to environmental findings or complications with the environmental studies.

Time Extension requests are accepted continually throughout the year. The following submission cycles outline the deadlines for Agencies to submit a Time Extension Request to receive a FHWA decision by a certain date:

- a) July 1, 2011 -For a FHWA decision by October 1, 2011
- b) February 1, 2012 -For a FHWA decision by May 1, 2012

A schedule illustrating the submission cycles can be found in the Appendix.

The FHWA requires submittal of the following items, with a time extension request:

Provided by Local Agency:

- [Time Extension Request Form](#) 
- Applicable backup documentation for reason of delay, along with chronology of events leading to the delay (if litigation, supply a copy of the summary of the actual litigation documents filed with the acceptance date and stamp by the Court system)
- Updated schedule of future Milestones (i.e., PE complete, NEPA approval, Final Design completion, Construction award, etc) helps demonstrate agency's commitment to completing the project,
- Copy of latest signed Finance Letter.
- Copy of previous FHWA decision letters on time extension request, if applicable

Provided by District DLAEs:

- Copy of pending E-76 requesting funds & copy of original (1st) E-76,
- Summary of current environmental documentation and/or status.

Provided by OPDA:

- FMIS printouts showing project authorizations, expenditures and balances
- [Current FTIP printouts for the Project](#) 
- [HBP-Program Listings for FTIP/FSTIP](#)  (compiled if funded by the local HBP)



VI. APPLICABILITY/IMPACTS

This Office Bulletin is applicable to all local agency Federal-aid projects.

Recommended: Original Signed By 3/24/11
Christian P. Jensen Date
Office of Project Delivery and Accountability

Approved: Original Signed By 3/24/11
Barry Leaming, Office Chief Date
Office of Project Delivery and Accountability

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