

FHWA PROGRAMS IMPLEMENTATION FED-AID HIGHWAY PROJECTS- NON-PARTICIPATING COSTS

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What the regulations say

- 23 CFR 1.9(a): Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations in this title, and policies and procedures prescribed by the Administrator



WHAT THE REGULATIONS SAY

23 CFR 1.9(a): continued-
Federal funds shall not be paid on any
cost incurred prior to authorization by
the FHWA Administrator



WHAT IF: THEN SANCTIONS MAY BE APPLIED

- **1. 23 CFR 1.36:** If (FHWA) determines that a State has violated or failed to comply with the Federal laws or the regulations ... (FHWA) may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects ... and take such other action ... appropriate under the circumstances, until compliance ... has been accomplished



What about the locals??

Federal funds go to local agencies via the State DOT. The regulation says this: **23 U.S.C. § 106(g)(4)**

(g) OVERSIGHT PROGRAM.-

(4) RESPONSIBILITY OF THE STATES.-

(A) The States shall be responsible for determining that sub-recipients of Federal funds under this title have-

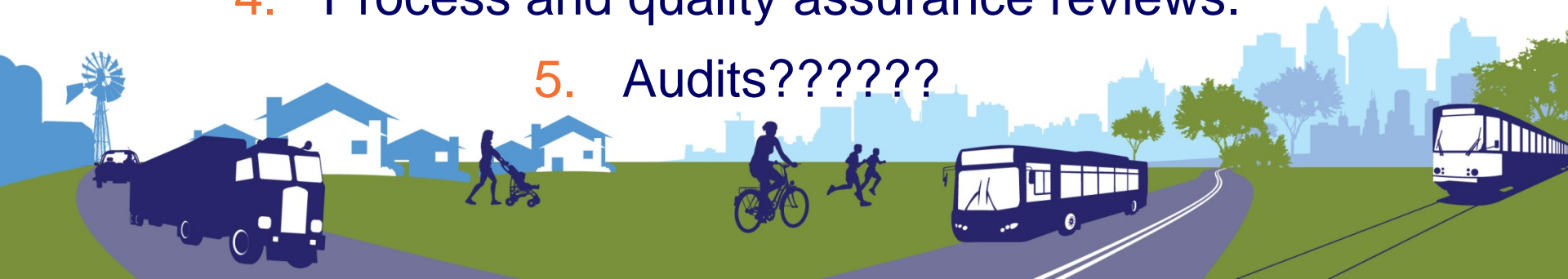
- (i) adequate project delivery systems for projects approved under this section; and**
- (ii) sufficient accounting controls to properly manage such Federal funds**



How does FHWA and ODOT determine if the laws and regulations are being followed?

How does FHWA and ODOT determine if the laws and regulations are being followed?

1. Early involvement.
2. Working closely with ODOT.
3. Providing training and technical assistance.
4. Process and quality assurance reviews.
5. Audits???????



SUMMARY OF NON-PARTICIPATING COSTS

**AUTHORIZATION
REQUIRED FHWA FORMS NOT IN CONTRACT
OUT OF SCOPE
COSTS NOT INCURRED
ROUTINE MAINTENANCE
NON CONFORMING WORK**



NON PARTICIPATING COSTS_ CONT'D

CHANGE ORDER NOT PRIOR AUTHORIZED
TIME EXT- FORCE ACCOUNT-BUY AMERICA-

UTILITY WORK - RR WORK- NOT FOR HIGHWAY PROJECT
PRIVATE PROPERTY IMPROVEMENT
RESPONSIBILITY OF OTHERS



NON PARTICIPATING COSTS _ CONT'D:

- ROW BEYOND PROJECT SCOPE
- PATENTED PROPERTY
- PAYMENT FOR BETTERMENT
- MATERIALS NOT MEETING REQUIREMENTS
- INELIGIBLE COSTG- Adv, sales promotion, interest on borrowing, bad debts
- USE OF PUBLICLY OWNED EQUIPMENT



NON PARTICIPATING COSTS _CONT'D:

ACTS OF
OMISSION, NEGLIGENCE, FRAUD, CARELESSNESS, NON-
COMPETITIVE BIDDING,
& SOME MORE



WHAT IF I'M AUDITED OR REVIEWED?

BUT, if you are subject to a review or audit by FHWA (or others), you should:

1. Have complete and accurate files.
2. Be sure the files give the facts (who, what, where, etc.).
3. Remember “the Almost Golden Rule”:



WHAT IF I'M AUDITED OR REVIEWED?

Remember “the Almost Golden Rule”:

"If it ain't documented, it didn't happen!"



THAT IS THE FHWA OREGON SUMMARY OF NON-PARTICIPATING COSTS

For Questions- Mike Morrow

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