

PART 1
Program Development

Chapter 7

Compliance Assessment

Program Requirements

Locally Administered
Projects (LAP) Manual

CHAPTER 7

COMPLIANCE ASSESSMENT PROGRAM REQUIREMENTS FOR LOCALLY ADMINISTERED PROJECTS

7.1 INTRODUCTION

LPAs must deliver their projects in compliance with federal and state laws and regulations, and in accordance with applicable VDOT policies, as outlined in this manual. In order to administer VDOT funded projects, LPAs sign project-specific or programmatic agreements in which they agree to allow VDOT and FHWA to perform periodic evaluations of their programs and/or projects. As part of its oversight responsibilities, VDOT monitors LPA compliance throughout project development and delivery. In addition VDOT Central Office staff evaluates a small percentage of locally administered projects to assess how well localities have met their compliance obligations and to assess the oversight conducted by District Offices.

This chapter outlines processes and procedures used to evaluate locally administered projects. The purpose of this Compliance Assessment Program is not to evaluate every locally administered project or to provide a complete picture of local compliance. Rather, it is to identify issue areas and trends among locally administered projects. The results of these evaluations can be used to target specific actions, such as the development of new guidance or training and outreach programs, which can improve the delivery of the Department's LAP program.

In addition to the compliance assessment processes outlined in this chapter, other audits may be conducted by the Office of the Inspector General, Internal Audit, the Investigation Division, or the External Construction / Audit Division in accordance with paragraph 2d of the Standard Project Administration Agreement.

7.2 ROLES AND RESPONSIBILITIES

7.2.1 Local Assistance Division

The Local Assistance Division (LAD) is responsible for coordinating and overseeing the LPA Compliance Assessment Program. LAD will coordinate with the appropriate Central Office Policy Divisions to identify projects and schedules for assessment, ensure a balanced approach across functions, localities, and project types, and to implement corrective actions, when necessary.

7.2.2 Central Office Policy Divisions

Central Office Policy Divisions, including, but not limited to Environmental, Right-of-Way, Innovative Project Delivery, Scheduling and Contracts, Location and Design, Traffic Engineering, Structure and Bridge, Materials, and Civil Rights, will provide input and recommendations for project selection and scheduling. Representatives for these Divisions make up the Compliance Assessment Team and are responsible for conducting assessments of projects, within their functional disciplines, and recommending follow-up or corrective actions, as necessary. Typically, these individuals are also members of the Local Partnership Team. LAD will provide copies of its annual compliance and assessment plan as well as the results of any assessments performed to Central Office Policy Divisions and Audit divisions.

7.2.3 District Offices

District Office contacts, typically Project Coordinators, are responsible for assisting LAD and Central Office Policy Divisions coordinate with local governments, as necessary throughout the assessment process. District offices are also responsible for providing timely, complete, and accurate responses to inquiries made by the Compliance Assessment Team.

7.2.4 Local Governments

Local governments are responsible for providing timely, complete, and accurate responses to inquiries made by VDOT. In accordance with federal regulations and as stated in Chapter 19.7, project records must be retained and made available to VDOT, on request, for not less than three years after financial closeout of a project, unless a longer retention period is programmatically required. A table of recommended records retention items is also included in Chapter 19.7.

Local governments are also responsible for implementing corrective actions when indicated by VDOT and entering into meaningful discussions with VDOT concerning applicable corrective actions, when appropriate.

7.3 PROJECT AND PROGRAM ASSESSMENTS

Beyond regular project oversight, three levels of project and program assessments are conducted to assess locally administered projects and the LAP Program: functional, project, and programmatic assessments.

7.3.3 Functional Assessments

Functional assessments, which can also be described as discipline-specific evaluations, are generally conducted independently by VDOT Policy Divisions and involve a detailed project-level assessment of compliance with that discipline's requirements. These reviews may also address the programmatic approach used by the locality to ensure compliance with that particular discipline's requirements. Other VDOT divisions may also conduct specific project, program, and financial reviews, as deemed necessary.

7.3.2 Project Specific Assessment

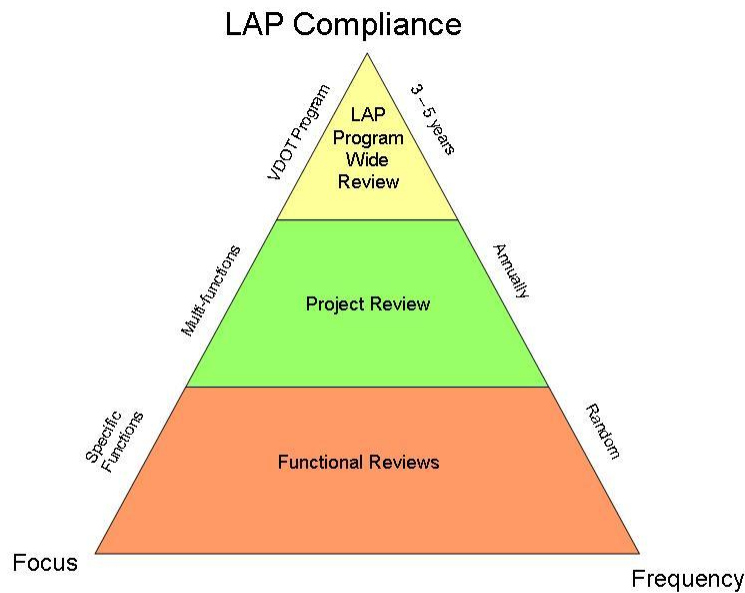
Project specific assessments involve a comprehensive review of a single project

for adherence with all applicable disciplines and are performed in a collaborative approach facilitated by the Local Assistance Division. These assessments are the primary tool for the locally administered projects compliance assessment program and are discussed in detail later in this chapter.

7.3.3 LAP Program Wide Assessments

Program-wide assessments are designed to evaluate VDOT’s entire LAP program to ensure that program requirements are being met and to identify areas for improvement. Program Wide reviews are conducted by the Local Assistance Division’s LAP Compliance Coordinator and FHWA and are performed every 3 – 5 years. Program Wide reviews may be triggered by specific and consistent findings or some other criteria.

The following diagram illustrates the three tiers of LAP compliance:



7.4 ANNUAL ASSESSMENT PROCESS

7.4.1 Functional Assessment Project Selection and Evaluation Process

Functional assessments are scheduled and conducted independently by Central Office Divisions. However, in order to minimize the time spent on reviews at any one locality, VDOT attempts to ensure that multiple, and separate, functional reviews for a single project or in a single locality are not conducted. In order to avoid multiple reviews, Policy Divisions notify the Local Assistance Division when functional reviews are scheduled. LAD then coordinates with other Policy Divisions to determine if they also have a need to review the project. If so, an effort to coordinate reviews will be made. This may involve scheduling the project for a comprehensive project-level review.

When functional assessments are conducted, the results of the findings are documented and shared with the Compliance Assessment Team. These findings are used to identify continuing outreach and training needs, improve program guidance, and to help identify future compliance reviews. Results of functional assessments will be communicated to localities and tracked by LAD.

7.4.2 Project Level Assessment Selection and Evaluation Process

7.4.2.1 Project Selection

Annually, the Local Assistance Division will initiate the selection of candidate projects for multi-functional project-specific reviews. Projects will be selected in August of each year, based on standardized selection criteria and recommendations from Central Office Project Development and Delivery Divisions and District Offices.

Generally, projects will be selected from a query of federally funded projects and may include projects which provide a representative sampling of various fund sources, project complexity, and locality type (urban, rural, county, city, town). Projects may be in any phase of project development and delivery, or may have been completed within the previous three years. After the initial list of candidate projects is considered, LAD will make final selections of projects to ensure the projects selected represent an appropriate distribution based on geography, project type, local government type, and other factors. Recommended projects not selected for comprehensive review may still be evaluated at the functional review level by the individual Division. The final list, along with a tentative schedule will be shared with the Divisions and Districts, for final comment and scheduling recommendations.

The number of projects selected for annual review will vary; however, a minimum sample of four to six projects will be selected for comprehensive project level reviews.

7.4.2.2 Project Level Evaluation Process

After project selection, individual project assessments are scheduled throughout the year, so that major Department activities, such as federal obligation deadlines, are avoided. Evaluations are generally “desk-reviews” where information is reviewed without making a physical visit to the locality or project under review. On occasions the desk-review may indicate a need to perform a more detailed evaluation of locality or project files which requires a site visit.

The following steps outline the typical evaluation process of an individual project.

1. Project selection / coordination with compliance assessment team members and District Office
2. Distribution of initial request to local government and District Office

3. Receipt of information from localities

Recordation of returned information and responses to questions

Distribution of documentation to Policy Divisions for review

4. Report of findings from Policy Divisions

Additional information requested

Recordation of findings

Recommendations for Corrective Actions, if necessary

5. Additional site visit, if required

6. Notification of findings to locality

Inclusion of requested additional information, if necessary

Corrective action requirements and timelines, if necessary

7. Final project report distributed and filed

Project Review Questionnaires

Appendix A identifies the specific areas of review, along with standardized questions and requests for information for each functional area. Some information will be requested from the local government while other information will be requested from the District Office. Where the required data is already retained in a Departmental database, such as iPM or CEDAR, that information may be accessed directly by the Compliance Assessment Team Member.

Project Review Findings

Project reviews may result in the identification of deficiencies. Deficiencies may range from serious violations of federal and state laws or regulations to minor deviations from VDOT policies or industry standards. Depending on the severity,

a finding may require some manner of correction or resolution and, when necessary, the locality may be required to provide a corrective action plan identifying specific actions to be taken and an associated time-table.

Each finding identified will be assigned one of the following four categories:

Class I - A class I finding is the most serious. It is characterized by non-compliance with a federal or state law or regulation, where the non-compliance cannot be corrected and has resulted in significant or serious deviation from the requirements or intent of the law or regulation.

A finding of this type requires formal corrective action by the local government to resolve the finding. They may be required to document new processes to prevent the deviation from occurring again or may be prevented from administering projects in the future. A finding of this type will likely result in withdrawal of federal or state participation in project costs.

Class IIA - A class IIA deviation is characterized by one of the following:

(a) Non-compliance with federal or state law or regulation where the non-compliance cannot be corrected, but did not result in significant or serious deviation from the requirements or intent of the law or regulation (the outcome of the process was not affected); or,

(b) Non-compliance with a required policy or regulation where a waiver can be obtained or the non-compliance can be corrected.

A finding of this type may require formal corrective action from the local government to resolve the finding. They may be required to document new processes to prevent the deviation from occurring again, obtain a waiver, or correct the violation. On rare occasions, repayment of some project costs may be required.

Class IIB – These deviations are characterized by actions or non-actions which are likely to result in a violation of a required policy or non-compliance with a statute or regulation, but the violation has yet to occur.

A finding of this type may require the locality to provide a corrective action plan or provide VDOT with information indicating that the finding has been resolved, prior to proceeding with the project.

Class III - This category is characterized by actions or non-actions taken by the locality which are contrary to or do not fully conform with standard VDOT practices or industry standards; however, they are not requirements of the LAP Program.

A finding of this type does not result in any corrective action or follow-up activities, but is a recommendation for process improvement.

A report, containing a listing of all findings and requests for corrective actions will be provided to the local government after all compliance assessment team members have provided their evaluations. On occasions, particularly when additional information is necessary for specific disciplines, interim reports may be issued to the local government at the discretion of the Local Assistance Division Compliance Manager. A final report will be prepared, entered in project records and provided to the locality which will incorporate necessary corrective actions as well as the locality's response to the findings and observations listed.

Best Practices – This category corresponds to those actions, processes, and procedures which a locality may have in place that are considered to be extraordinary practices. Such findings will be communicated to the locality and District and will be documented and shared with other localities, as appropriate.

Report of Findings

Each locality will be informed in writing of the results of the review. For those reviews that result in findings, the findings will be communicated in person by the Compliance Review Team and in writing. The Local Assistance Division Compliance Coordinator will make necessary contacts to ensure corrective actions are completed in a timely manner.

The Local Assistance Division will provide an Annual Summary of the LAP Compliance Assessment Program. Corrective actions, along with a time-table for resolution, will be listed separately within the final report. This report will be provided to FHWA and published on the Local Assistance Division webpage.

7.4.3 Dispute Resolution

During the compliance review process it is possible that differences of opinion will arise when findings are identified and when corrective actions are requested. It is the goal of this program to resolve such conflicts at the lowest level possible.

When a locality disputes a finding, its representative should begin discussions informally by contacting the Local Assistance Division Compliance Manager. If informal discussions cannot resolve the issue, formal discussions should begin. The locality should provide a written statement to the Local Assistance Division Compliance Manager fully describing the project issues where there is disagreement and include the following information:

- A detailed statement of the Locality's position on the issue.
- Any backup for the position statement, including documents, maps, plans, invoices, agreement(s) (draft and/or executed), pictures, regulatory citations, and other material needed to give a full picture of the disputed issue.

Upon receiving the request, the Local Assistance Division Compliance Manager shall coordinate with the applicable compliance assessment team member(s), and the District Office representative to evaluate the locality's position statement. If a formal meeting is warranted, one will be scheduled, typically at the District Office. After consideration of all the information and in consultation with the appropriate compliance assessment team members, the Local Assistance Division Compliance Manager will prepare a response in the form of a memorandum to include the following:

- A detailed discussion of the items that are in dispute with references to sections in the Locally Administered Project Manual that support VDOT's position.
- An overview of the issue, including any additional maps, plans, invoices, agreement(s) (draft and/or executed), pictures, and other materials needed to give a full picture of the disputed issue that was not included in the Locality's request.

The above exchange of information is to be provided in a timely manner so as not to impede the ongoing delivery of projects by the Locality. .

Should the locality still dispute the finding(s), the matter may be escalated to the LAD Director for resolution. The information described above will be made available to the LAD Director along with minutes of relevant meetings held between the Locality and the compliance review team. The LAD Director will consult with the appropriate Division Directors and District staff to discuss the issues and will render a final decision.

7.4.4 LAP Program-wide Review

This review is similar to the process reviews that FHWA conducts on aspects of VDOT's program each year.

This process is intended to be a wide review and self-assessment of the primary elements of VDOT's entire Locally Administered Projects (LAP) program and the general effectiveness of the program in assuring compliance with federal requirements. LAD will continue to partner with FHWA in the performance of these self-assessments focus on existing policies, guidance, procedures, and training and oversight activities along with the general understanding of federal expectations by both VDOT and local governments.

Objective of this process review:

- Evaluate VDOT's oversight program for locally administered projects;
- Evaluate the effectiveness of the guidance provide to local governments and to all VDOT staff, Central Office and District Offices;
- Assess the general knowledge of VDOT staff and local governments regarding federal requirements for the administration of federal-aid projects;
- Identify potential areas of process and program improvement, to include specific training or guidance needs.
- Identify specific items which may require immediate corrective/action; and,
- Identify good management practices that could be implemented state-wide.

The Program Wide review is intended to provide VDOT and FHWA with random and regular feedback of program performance and success as well as a measure of the quality of guidance provided to LAP participants.

APPENDIX A

DISCIPLINE QUESTIONNAIRES AND DOCUMENTATION NEEDS

Please provide the following selected documents or information associated with the subject project. If not applicable please provide explanation.

- Final Request for Proposal (RFP) for consultant services
- RFP newspaper advertisement, if not available, proof of publications
- Professional Consultant Procurement Selection criteria and final score sheets for all firms submitting proposals
- Negotiation documentation (short list and a copy of letters inviting the firms into negotiations or other documentation of which firms were interviewed)
- Memorandum of Agreement/Consultant Contract
- Supporting documentation for Invoice ##
- Copy of appraisal and appraisal review for parcel ##
- Negotiations Report with property owners including the Offer letter for parcel ##
- General Relocation Notice(s) for parcel ##
- Final IFB
- Materials Notebook
- Inspector certification
- Daily diary – documentation for one day during the week of _____

Please respond, in brief answers, to the following project related questions.

1. Provide the name and title of the local government (not consultant) project manager for this project. If this responsibility transitions between design and construction, please provide both names.
2. Is this individual a full time government employee?
3. If there were right of way acquisitions involved in this project, did you use in-house staff or were consultants procured for any aspects of the right of way process (appraisal, negotiation, relocation, etc.). Please provide a short explanation, if necessary.
4. Provide the name of the responsible charge engineer during design and construction of this project and is the individual a local government employee (not a consultant or contract staff)? If these responsibilities transition between design and construction, please provide both names.
5. Is this individual a licensed engineer in the state of Virginia?
6. Provide the name and title of the person within the locality that conducts the Labor Compliance Reviews.
7. Describe the training this person has undergone that would enable him/her to identify potential problem situations in the area of labor compliance.
8. Identify the party responsible for compiling and maintaining environmental documentation for an administrative record for this project.
9. Describe how the administrative records for the environmental document for this project are being maintained?
10. If there were environmental commitments for this project, how did the locality ensure full implementation of those commitments? How were the commitments communicated to both locality and VDOT coordinators?
11. Were there any changes in project scope that impacted the original project footprint? If so, how were they documented and what communication was made to VDOT regarding the change.