Guidance on Payment Available Date

On March 11th the WSDOT Real Estate Services Office (RES) sent out the below information via email to internal WSDOT staff regarding some issues that had been raised about the meaning of "payment available date". RES provided a definitive answer as to what constitutes the "payment available date" and how that relates to the R/W Certification process that is applicable to acquisition work on federal aid projects.

The following is RES's position, which RES will clarify in the R/W Procedures manual:

- Per 6-16.1 of the Manual, "payment available date" is defined as the date when the owner has received and has the opportunity to deposit the payment, or when funds are disbursed through escrow. This is the definition we will follow.
- If the check is hand-delivered to the property owner during business hours in a business week, that is the payment available date.
- If the check is hand-delivered on a weekend, a holiday, or on a business date but after the banks are generally closed, the payment available date should be shown as the next business day. The reason for this is that the definition in 6-16.1 states that the owner must have the opportunity to deposit the payment. That would not typically be the case on a holiday or after hours. The agent is advised to exercise reasonable judgment on this—for example, if the property owner asks the agent to meet him at his bank at 10am on Saturday morning and the property owner's bank is open at that time, common sense and good judgment suggest it is reasonable to consider that date as the "payment available date". However, these will typically be the exception, not the rule. To reiterate—if a check is hand-delivered on a weekend, a holiday, or after business hours during the business week, the payment available date will usually be the next business day.
- If a payment is mailed to the owner, the normal procedure would be to allow 3 business days for delivery. In the case of mailing, while you might use the third day as the payment available date, it is recommended you consider the following business day as the payment available date; that takes into account the situation where

the property owner does not get the mail until after work and the bank may no longer be open. Here again, you should use reasonable judgment—e.g., if the property owner is located in a remote area where mail delivery may take longer than normal, you should add a day or two extra for delivery.

- For payment from escrow, the disbursement of funds will typically be the payment available date.

There have been some previous interpretations of the payment available date as needing to add additional time for the funds to be made available by the bank to the property owner after the deposit of the check has been made. However, for purposes of the R/W Certification, the payment made available date is as stated in the preceding five bullets.

The other question that arises is whether "possession" occurs when the payment is delivered. Federal regulations, in 49 CFR 102(j), state that before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price or deposit funds into the court in an amount not less than the agency's approved appraisal of the fair market value of the property. Our Manual, which has been approved by FHWA, makes it pretty clear that the payment available date is the date of delivery of the check. Consequently, treating that date as the possession date is consistent with current federal regulations.

To summarize: Payment occurs when the check is delivered or funds are disbursed from escrow. There is no procedural requirement to lengthen the time of payment to account for whatever time frame a property owner's bank might require for funds to be available in the owner's account. That is effectively between the owner and the bank. Similarly, possession occurs upon delivery of the check or disbursement of funds from escrow, unless a different possession date is given by the court in a condemnation action.