FREQUENTLY ASKED QUESTIONS REGARDING THE RESCISSION OF UNOBLIGATED BALANCES OF CONTRACT AUTHORITY

As Required by Section 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law (Pub. L.) 109-59, as amended by Section 1302 of the Pension Protection Act of 2006, Pub. L. 109-280 and Section 112 of the SAFETEA-LU Technical Corrections Act of 2008, Pub. L. 110-244, as Affected by Title IX, Subtitle D, Section 1132(a) of the Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-140

1. **Why is the Federal Highway Administration (FHWA) rescinding $8.708 billion in un-obligated contract authority?**

   The FHWA is required, pursuant to section 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law (Pub. L.) 109-59, as amended[1], to rescind $8.708 billion.

2. **In FY 2008, the Energy Independence Security Act of 2007 (EISA), Pub. L. 110-140, was enacted. What, if any, effect do the EISA provisions have on the SAFETEA-LU rescission?**

   The SAFETEA-LU rescission language applies to a specific list of apportioned programs, both codified and non-codified. The EISA language provides instructions as to how a rescission should be implemented in both fiscal years 2008 and 2009 and limits the programs subject to be rescinded to those apportioned under chapter 1 of title 23, United States Code (U.S.C.). It is important to note that the provisions for distributing rescissions under Section 1132 of EISA are, at times, in contradiction of the provisions for determining the amounts to be rescinded under Section 10212 of SAFETEA-LU. A side-by-side comparison of the conflicting provisos is shown below:

Side-by-Side Comparison of Conflicting Provisos in the SAFETEA-LU and EISA Rescission Language		
	SAFETEA-LU	**ENERGY ACT (EISA)**
Coverage of Provision	Applies to programs apportioned under chapter 1 of title 23, United States Code and some programs that are not codified.	Addresses rescissions only of funds apportioned under chapter 1 of title 23, United States Code
Distribution Among States	Distributes the "pain" of the rescission among the states based on the amount apportioned for FYs 2004-2009 for the programs subject to the rescission.	The EISA provision is silent on how the rescission is to be distributed among the States, so the SAFETEA-LU methodology will be used
Distribution Among Programs	SAFETEA-LU determines the amount based on un-obligated balances.	EISA determines the amount based on the amount apportioned for the current fiscal year.
Flexibility Proviso	None	A State may adjust the rescission distribution among eligible programs so long as no program's rescission increases by more than 10%.

Table 1

3. How was the total amount to be rescinded by State[2] determined?

Section 10212(b) of SAFETEA-LU, as amended[1], provides specific instructions as to how the total amount to be rescinded by State is to be determined. The total amount to be rescinded by State was determined using the following formula:

$$\text{Amount to Rescind By State} = \$8{,}708{,}000{,}000 \times \frac{\sum \text{Amount Apportioned to a State for FYs 2004 - 2009}}{\sum \text{Amount Apportioned to all States for FYs 2004 - 2009}}$$

Figure 1

4. Which programs are subject to the EISA provisions and which programs are subject to the SAFETEA-LU provisions?

EISA Rescission Provisions (Programs Apportioned under Chapter 1 of Title 23, U.S.C.)	▪ Highway Bridge Program
	▪ Highway Bridge Replacement & Rehabilitation Program
	▪ Congestion Mitigation and Air Quality Improvement
	▪ Surface Transportation Program
	  ▪ Mandatory Safety Set-asides (Pre-SAFETEA-LU)
	    ▪ Railway-Highway Crossings (RHX)
	      ▪ Protective Devices at RHX
	      ▪ Elimination of Hazards at RHX
	    ▪ Hazard Elimination of Railway-Highway Crossings
	    ▪ Optional Safety
	  ▪ Transportation Enhancements
	  ▪ Distribution to Areas by Population:
	    ▪ Areas with a Population $\geq$ 200K
	    ▪ Areas with a Population $\leq$ 200K
	    ▪ Areas with a Population $<$ 5K
	    ▪ Funds Available For Use In Any Area
		▪ Interstate Maintenance
		▪ National Highway System
		▪ Metropolitan Planning
		▪ Minimum Guarantee
		▪ Equity Bonus
		▪ Recreational Trails
		▪ Railway-Highway Crossings
		▪ Highway Safety Improvement Program
		▪ High Risk Rural Roads Program

SAFETEA-LU Rescission Provisions	▪ Appalachian Development Highway System ▪ Safe Routes to School ▪ Coordinated Border Infrastructure	

Table 2

5. By State, how was the amount to be rescinded based on the EISA and SAFETEA-LU provisions determined?

Section 1132(a) of EISA only addresses the rescission of funds apportioned under chapter 1 of title 23, U.S.C. The total amount to be rescinded from chapter 1 programs within a State was determined by:

a. First, determining the ratio that the total amount apportioned to the State under chapter 1 of title 23 U.S.C. for FYs 2004 through 2009 bears to the total amount apportioned to the State for FYs 2004 through 2009;

$$\text{Chapter 1 Ratio} = \frac{\sum \text{Amount Apportioned to a State Under chapter 1 of title 23 U.S.C. for FYs 2004 - 2009}}{\sum \text{Amount Apportioned to a State for FYs 2004 - 2009}}$$

Chapter 1 Ratio for the State of Alabama	=	$\frac{\$3{,}653{,}212{,}387}{\$3{,}950{,}979{,}004}$	=	92.46%

Figure 2

b. Second, determining the amount to be rescinded from EISA programs by multiplying each State's share of the rescission (see Figure 1) by each State's chapter 1 ratio (see Figure 2);

EISA Share of Total Amount to be Rescinded for the State of Alabama	=	$175,661,481	x	92.46%	=	$162,422,705

Figure 3

c. Lastly, determining the amount to be rescinded from that State based on the provisions outlined in section 10212(c) of SAFETEA-LU, as amended[1], by subtracting a State's EISA share of the total amount to be rescinded (see Figure 3) from the total amount to be rescinded from that State (see Figure 1);.

SAFETEA-LU Share of Total Amount to be Rescinded for the State of Alabama	=	$175,661,481	-	$162,422,705	=	$13,238,776

Figure 4

6. **Paragraph 5(a) of FHWA Notice N4510.710 states that information on how the SAFETEA-LU share of the total amount to be rescinded from a State will be provided in a future Notice. When does FHWA anticipate issuing the Notice?**

   FHWA plans to issue the Notice providing information on how the SAFETEA-LU share of the total amount to be rescinded from a State on September 27, 2009.

7. **Why is the FHWA waiting until September 27, 2009 to inform the States of how their SAFETEA-LU share of the total amount to be rescinded from their State will be spread among the non-Chapter 1 programs?**

   The amounts to be rescinded by program under the SAFETEA-LU provisions are based on the un-obligated balances for those programs as of September 30, 2009. Administratively, it is implausible to wait until the last day of the fiscal year to implement the language of the rescission.

   In order to allow ample time to implement the rescission and close out the fiscal year, FHWA will close the accounting systems to obligations on September 25, 2009. The un-obligated balance reports required to make the final calculations to determine the amounts to be rescinded by program cannot be made until the systems are closed.

8. **Must FHWA rescind funds from each of the EISA programs subject to the rescission?**

   Yes. The EISA language provides specific instructions as to how the amount to be rescinded from a State is to be distributed among the programs subject to the rescission.

9. **In previous rescissions, States have had discretion as to which program funds can be used to cover the amounts being rescinded from their State. Do the States have that same discretion for the SAFETEA-LU rescission? If not, why?**

   Both EISA and SAFETEA-LU provide specific instructions as to what program funds are subject to be rescinded and how the amount to be rescinded by State is spread among those programs.

   For Chapter 1 programs, States must rescind the amounts by program as reflected in Table 2[3]. However, a State may choose to rescind up to 110% of the amounts to be rescinded from any individual program (see Table 3)[3].

   For non-Chapter 1 programs, the amount to be rescinded by program will be detailed in a September 27, 2009 Notice.

10. **What options does a State have to cover the total amount required to be rescinded from a program if upon calculating the amounts to be rescinded by program under Section 1132(a) of EISA, it is determined that they have insufficient un-obligated balances in a particular program to cover the total amount to be rescinded from said program?**

    Option 1: A State may choose to invoke the 110% adjustment/flexibility provision in Section 1132(b) of EISA. In doing so, a State may submit Table 4[3] instructing the Fiscal Management Information System (FMIS) Team from which program codes un-obligated balances may be withdrawn/rescinded to cover the amounts remaining to be rescinded. Should a State choose to follow Option 1, Table 4[3] must be submitted to the official mailbox for the Office of Budget, “FHWA, BudgetDivision” no later than September 4, 2009.

    Option 2: A State may choose to use the uniform transferability provision in section 126(a) of title 23 U.S.C. Should a State choose to follow Option 2, the standard FHWA Transfer Request form used to transfer funds between apportioned programs and other Federal Agencies must be submitted to mailbox “HCF-10” no later than September 17, 2009.

    Option 3: A State may choose to de-obligate funding within a program in order to free-up funds to cover the remaining amounts to be rescinded.

11. What is the 110% flexibility provision and how does it work?

Section 1132(b) of EISA provides that a State may adjust the distribution of the rescission within the State so long as the final amount rescinded from an EISA program does not exceed 110% of the original rescission amount. The total amount that a State can rescind from any one program is reflected in Table 3[3].

12. What procedures will FHWA follow to rescind funds from a State if it is determined after September 25, 2009 that a State has insufficient un-obligated balances within a particular EISA program to cover the calculated rescission amount?

Step 1: To the extent that balances remain available, FHWA will programmatically distribute the remaining rescission balance to the State's other EISA programs.

Step 2: To the extent that balances remain available, FHWA will distribute the remaining rescission balance among the State's other Chapter 1 programs that were listed in SAFETEA-LU but did not receive an apportionment in FY2009.

Step 3: FHWA will proportionately distribute the State's remaining rescission balance to the States' non-EISA programs.

13. What procedures will FHWA follow to ensure that the total amount to be rescinded from a State is covered if it is determined that the total amount to be rescinded from a State exceeds its total un-obligated balances in both the SAFETEA-LU and EISA categories?

FHWA will proportionately distribute the amount to be rescinded from the State with insufficient un-obligated balances among the other States. If distributed in this manner, the amount to be rescinded will be distributed among the applicable EISA or non-EISA category.

14. Can a State choose not to transfer funds based on the "covered programs" provision in section 10212(d) of SAFETEA-LU?

No. The language in section 10212(d) of SAFETEA-LU specifically requires that a State immediately restore funds to the covered program from the un-obligated balances of the other programs that are subject to the rescission, so long as the restoration is not being made from the un-obligated balances of another covered program.

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[1] Since the enactment of SAFETEA-LU, the total amount of un-obligated contract authority to be rescinded as been amended twice. The original amount to be rescinded pursuant to section 10212 was $8.573 billion. Section 1302 of the Pension Protection Act of 2006 (Pub. L. 109-280) increased the amount to be rescinded to $8.593 billion. Section 112 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244) later increased the amount to be rescinded to the current level of $8.708 billion.

[2] As reflected in Table 1 of FHWA Notice N4510.710

[3] FHWA Notice N4510.710