

FREQUENTLY ASKED QUESTIONS:

Implementation of the \$8,708,000,000 Rescission of Unobligated Balances of Contract Authority on September 30, 2009 as Required by Section 10212 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, as amended, as Affected by Title XI, Subtitle D, Section 1132 of the Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-140.

- 1. What is the final amount that will be rescinded from each program and each urbanized area with a population greater than 200,000?**
 - The initial rescission calculations and distribution among states and programs were previously issued on August 31, 2009 and September 28, 2009 (FHWA Notices 4510.711 and 4510.712, respectively).
 - Further adjustments to the amounts shown for your State in those Notices may be made based on the year-end unobligated balances.
 - The final rescission amount for each program and each urbanized area with a population greater than 200,000 will be provided after the rescission is complete on September 30.
 - A preliminary table showing the estimated final rescission distribution will be distributed.
- 2. What further adjustments were made based on the year-end unobligated balances and are reflected in the preliminary table?**
 - Adjustments were made if the unobligated balances of funds were not sufficient to meet the rescission amount for the program or urbanized area with population greater than 200,000, as adjusted for the flexibility allowed pursuant to Section 1132(b) of EISA. If a program or urbanized area had insufficient unobligated balances, the shortfall was proportionally distributed based on FY 2009 apportionments among programs or urbanized areas with remaining unobligated balances.
 - Adjustments were also made if the unobligated balances of funds of a State were not sufficient to meet its total rescission amount administered under Section 1132 of EISA. If a State had insufficient unobligated balances for programs for which the rescission is being administered under Section 1132 of EISA, the shortfall was first distributed within that State among any other programs subject to rescission (both apportioned under chapter 1 of title 23, United States Code (U.S.C.), and not apportioned under chapter 1 of title 23, U.S.C.) with remaining unobligated balances.
 - Any remaining shortfall was distributed among the other States based on the aggregate FY 2004 through 2009 apportionments for programs for which the rescission is being administered under Section 1132 of EISA; these rescission amounts distributed to the other States administered under Section 1132 of EISA.
- 3. Was any shortfall for a State distributed among the other States?**
 - One State (Nevada) had insufficient overall balances to cover their entire share of the rescission. Nevada's rescission was calculated to be \$61 million, but as of September

25, 2009 the State had only \$39 million in remaining balances among all apportioned programs.

- Table Y shows the distribution of the \$22 million shortfall for Nevada among the other States.

4. Why are other States absorbing the shortfall?

- The law requires that a specified amount of contract authority, \$8.7 billion, be rescinded from unobligated balances of specific programs in the States.
- However, the law did not address a situation where a State had insufficient unobligated balances to bear its proportional share of the rescission.
- Given that an amount certain had to be rescinded, FHWA is compelled to allocate the balance of the rescission that Nevada could not cover to all the States to rescind the amount required by Congress.
- FHWA has no discretion in the implementation of this rescission.

5. In what manner will the amount for each program be rescinded?

- The FMIS Team will use the first-in, first-out (FIFO) method. In other words, for the FIFO method, the FMIS Team will start with rescinding the oldest unobligated balances for a program and then methodically move toward rescinding newer unobligated balances until the final rescission amount for the program is reached.

6. When will the amounts be rescinded?

- The amounts will be rescinded from FMIS beginning on September 29 through September 30.
- If there is last-minute legislative action to repeal the rescission before October 1, the amounts can be restored in FMIS.

7. Will this rescission affect State highway projects?

- Most of the contract authority rescinded by this SAFETEA-LU provision would have been unavailable for obligation because of statutory obligation limitations. Only a small portion of the funds rescinded could have been obligated had they not been rescinded so there should be a limited impact on highway projects underway.
- Depending on the programming process in each State, the rescission could have varying impacts on the State's highway projects.