U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **ACTION:** Use of Program Funds for Administrative Expenditures

Date: July 25, 2007

From: A. Thomas Park Margo Sheridan
Chief Financial Officer

In Reply Refer To:
HCF-1

To: Associate Administrators
Chief Counsel
Directors of Field Services
Federal Lands Highway
Division Engineers
Resource Center Director
Division Administrators

The purpose of this memorandum is to clarify FHWA policy on the use of Federal-aid funds for administrative purposes by employees. As a general rule, Congress makes funds available for the Agency (FHWA) to carry out the Federal-aid highway program. These funds are commonly referred to as general operating expenses (GOE), and they must be used for FHWA administrative expenses and employee travel costs. Funds appropriated under the authorization acts for program purposes may not be used to pay for travel or other administrative expense unless specific legislative authority exists.

The reasons for this restriction are:

1. Under federal appropriation law principles, a specific appropriation must be used to pay for a particular item, to the exclusion of a more general appropriation which might have otherwise been viewed as available for the particular item.

2. Transfer between appropriations is prohibited without specific statutory authority, even when reimbursement is contemplated.

3. 31 USC 1301(a) provides that appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

Although under appropriations law, the "necessary expense" doctrine permits an agency to incur expenses necessary or incident to its mission, paying for FHWA employee travel out of program funds in order to execute that program does not fall within the type of expenses that may be incurred pursuant to the necessary expense doctrine. The necessary expense doctrine requires that the expenditure sought to be paid for with program funds must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other

appropriation or statutory funding scheme. Since FHWA administrative expenses, including employee travel, is specifically provided for by GOE funds, the necessary expense doctrine prohibits the use of program funds to pay for employee travel, unless otherwise provided for by law.

Currently the only exceptions that authorize use of program funds for administrative expenses within FHWA are listed below:

- **Research & Development Program, 23 USC 502 (b)(5) (B)**: Use of Funds – The secretary shall use funds made available to carry out this section to develop, administer, communicate and promote the use of products of research, development and technology transfer programs under this section.

- **International Highway Transportation Outreach Program, 23 USC 506**: "...Funds available to carry out this section, shall be available to cover the cost of any activity eligible under this section, including the cost of promotional materials, travel, reception and representation expenses, and salaries and benefits."

- **Safe Routes to School Program/SAFETEA-LU section 1404 (c)(3)**: authorizes use for "the administrative expenses of the Secretary" in carrying out this program.

- **Recreational Trails Program 23 USC 104(h)(1) section 1109(a) of SAFETEA-LU:** authorizes funds to be used for "administrative, research, research, technical assistance, and training expenses".

- **Expedited Environmental Reviews for States 23 USC 139(j) :** for a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or Chapter 53 of Title 49, provided the conditions of section 139 have been met to permit the State to provide funds so made available to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

Please be aware that these are limited exceptions to the general rule. Furthermore, program funds may only be used for travel pursuant to the objectives of that particular statutory provision.

I request that you immediately disseminate this information to your staffs, especially those individuals responsible for approving and authorizing the use of Federal funds for official travel purposes. If you are aware of other specific statutory language or changes to existing statutes for other programs please bring this to the attention of Mr. Joe Dailey (HCFM-1), Office of the Chief Financial Officer, at 202-366-1616 or joseph.dailey@dot.gov; and/or Ms. Grace Reidy (HCC), Office of Chief Counsel, at 202-366-6226 or grace.reidy@dot.gov for a sufficiency determination.