



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Updated Toll Credit Guidance

Date: September 14, 2021

From: Martin Knopp 
Associate Administrator for Operations

In Reply Refer To:
HOTM-1

Brian R. Bezio
Chief Financial Officer

To: Division Administrators

This memorandum supersedes the Federal Highway Administration's (FHWA) memorandum dated November 20, 2015 titled "Toll Credits for Non-Federal Share" and provides revised procedures for the division office management of the toll credit program. Toll credit calculations based on expenditures made on or after the date of this revised guidance should be determined in accordance with this guidance.

This memorandum clarifies actions division offices must take to verify and approve a State request to earn toll credits. Specifically, this memorandum:

- Clarifies the role of the division offices;
- Provides clarifying information regarding toll revenues, capital expenditures, and maintenance of effort (MOE) requirements to promote consistent implementation of the toll credit provision in title 23, United States Code (U.S.C.); and
- Implements oversight procedures to provide reasonable assurance of the accuracy of State toll credit balances.

Division offices with existing toll credit balances must complete the Standard Operating Procedure (SOP) template document (available in FHWA's SOP Development Tools) and upload a signed version to the online SOP Library by December 31, 2021. The SOP must define your respective State's policies, procedures, and guidance for the earning, approval, and tracking of toll credits in accordance with title 23, U.S.C.

Background

Federal law permits States with toll facilities to earn credits that can be applied towards the non-Federal share requirement on Federal-aid projects.¹ Toll facilities may include toll roads, bridges, tunnels, and ferries that serve as a link on a public highway. Toll facilities typically operate under a toll authority, which may have statutory authority to operate a facility to collect tolls. A toll authority may be a public, quasi-public, or private

¹ 23 U.S.C. 120(i).

entity, including a chartered multistate agency or State Department of Transportation (SDOT). The private entity may be under contract or concession agreement with the State. A State may apply toll credits towards the non-Federal share requirement for programs authorized under title 23, U.S.C., or chapter 53 of title 49, U.S.C., except for the Emergency Relief program authorized by 23 U.S.C. 125.²

A State may earn toll credits when a toll authority uses toll revenues to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce.³ Toll revenues may include toll receipts, concession sales, right-of-way lease revenues, or interest. Toll revenues may also include bond or loan proceeds supported by toll facility revenue. State grants, funds, or appropriations that are not secured by toll revenues (e.g., SDOT grants, State sales tax, State gas tax, or other State legislative funding) cannot be included when calculating the credit amount.⁴

Toll revenue expenditures are those capital expenditures, derived from toll revenues, to build, improve, or maintain a highway, bridge, or tunnel⁵ or a ferry that serves as a link on a highway.⁶ Expenditures for operational or non-capital maintenance costs (such as toll collection, snow removal, or mowing) may not be included in toll revenue expenditures for purposes of implementing the toll credit program under 23 U.S.C. 120(i), because such costs are not capital expenditures and non-capital maintenance costs are the responsibility of the State under 23 U.S.C. 116. The term “capital transportation improvement project” will be used to refer to projects for which toll revenue expenditures create opportunity to earn toll credits.

Federal law provides a Special Rule for the Use of Federal funds, applicable when Federal funds are used in conjunction with toll revenues for capital transportation improvement projects. Under this Special Rule, the credit earned based on the toll revenue expenditure must be reduced by a percentage equal to the percentage of the total cost of the capital transportation improvement project that was derived from Federal funds.⁷ This calculation would not include Federal financing, such as a loan provided under the Transportation Infrastructure Finance and Innovation Act (TIFIA), which is ultimately repaid to the Federal government.

To earn toll credits, the State must also satisfy the MOE requirement for the fiscal year under evaluation.⁸ The MOE test calculates the State’s non-Federal transportation capital expenditures during a 4-year period (with a 2-year rule exception, discussed below).

² 23 U.S.C. 120(i)(1)(A).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 23 U.S.C. 129(c).

⁷ 23 U.S.C. 120(i)(1)(B) and (C).

⁸ 23 U.S.C. 120(i)(2).

Division Office and Division Administrator Responsibilities

In overseeing toll credits, division offices must ensure:⁹

- Accurate toll facility revenues and associated capital expenditures are calculated using consistent methodologies;
- The validity of expenditures and calculations used in determining whether the State has met the statutory MOE requirement; and
- The validity and accuracy of toll credit balances;

The Division Administrator must provide written acceptance to the State for any toll credits approved by FHWA.

Division offices that have oversight responsibilities for chartered multistate toll agencies should collaborate with other division office(s) and State partners regarding the toll credit process, including earning toll credits, MOE requirements, and interagency agreements to distribute toll credits amongst the different agencies.

FHWA is in the process of updating the Federal-aid Highway Program Delegation of Authority to delegate the authority to approve State submitted certifications pursuant to the toll credit provisions in title 23.

Toll Credit Procedures

Implementing a toll credit program requires a toll facility generating toll revenues that are spent on capital transportation improvement projects, satisfaction of the MOE requirement, and application of the credits to a Federal-aid eligible project. This iterative and multi-step process includes:

1. Earning: Validating Toll Facility Revenues and Capital Expenditures;
2. Approval: Verifying the MOE Data and Calculation; and
3. Tracking: Validating Toll Credit Balances.

1. Earning: Validating Toll Facility Revenues and Capital Expenditures

The first step to earn toll credits involves a toll authority using toll revenues for valid capital transportation improvement projects. The amount of credit earned is based on toll revenues that are expended within the State for eligible activities.¹⁰ Division offices must validate toll revenues and associated capital expenditures and ensure a consistently applied, written methodology is used.¹¹

⁹ 2 CFR 200.306(b)(1).

¹⁰ Eligible activities include building, improving, or maintaining highways, bridges, or tunnels, (or a ferry that serves as a link on a highway), that serve the public purpose of interstate commerce. 23 U.S.C. 120(i)(1)(A) and 23 U.S.C. 129(c).

¹¹ 2 CFR 200.302 and 2 CFR 200.306(b)(1).

Toll Revenue Determination

Valid toll revenues that can be used in the State's toll credit calculation are generated from a toll facility. Toll revenues must be verifiable through detailed accounting records or audited financial statements that indicate the origins of toll revenues and the timeframe in which these revenues were generated.¹²

Capital Expenditures Determination

Expenditures on capital transportation improvement projects must be traceable directly to valid toll revenues.¹³ The toll credit amount earned will be equal to the amount of eligible capital expenditures paid for with toll revenues. However, if any Federal funds were spent on the eligible capital transportation improvement project, the earned credit must be reduced by a percentage equal to the percentage of the total cost of the eligible capital transportation improvement project that was derived from Federal funds.¹⁴ In making this calculation, Federal funds do not include Federal funds or other Federal financial assistance, including credit assistance, that must be repaid to the Federal government.¹⁵

Validation

Division offices should ensure toll credits earned are based on valid toll revenue expenditures from an eligible toll authority in the year requested for approval. These expenditures must be verifiable through detailed accounting records or audited financial statements that clearly identify the expenditure of toll revenues on eligible capital transportation improvement projects and timeframes in which the eligible capital expenditures occurred.¹⁶ Toll revenue expenditures are based on when the actual capital transportation improvement expenditures are made, regardless of when the toll revenue is generated.¹⁷

2. Approval: Verifying the MOE Data and Calculation

To qualify in the fiscal year being evaluated to earn toll credits, the State must meet the statutory MOE requirement for non-Federal transportation capital expenditures.¹⁸ The MOE is an evaluation of the State's non-Federal transportation capital expenditures over a 4-year period. Division offices must ensure only valid non-Federal transportation capital expenditures are included in the MOE.¹⁹

¹² *Id.*

¹³ 23 U.S.C. 120(i)(1)(A).

¹⁴ 23 U.S.C. 120(i)(1)(B) .

¹⁵ 23 U.S.C. 120(i)(1)(C).

¹⁶ 2 CFR 200.302 and 2 CFR 200.306(b)(1).

¹⁷ 23 U.S.C. 120(i)(1)(A).

¹⁸ 23 U.S.C. 120(i)(2).

¹⁹ 2 CFR 200.302 and 2 CFR 200.306(b)(1).

Division offices must ensure the State evaluates its non-Federal transportation capital expenditures during a 12-month period, which can be either on a Federal or State fiscal year basis.²⁰ Division offices must also ensure their State's MOE calculation methodology used for the 4-year period is consistently applied.²¹ This review should entail an understanding of the fiscal year utilized by the State, valid non-Federal transportation capital expenditures included in the calculation, and the process utilized by the State to obtain the expenditure information.

For a State to meet its MOE requirement, and qualify for toll credits, non-Federal transportation capital expenditures in the fourth fiscal year must be greater than or equal to its annual average of such expenditures during the three prior fiscal years.²²

A State may apply a 2-year rule exception to its MOE calculation.²³ If one of the first three fiscal years of the 4-year evaluation period has non-Federal transportation capital expenditures that exceed 130 percent of the average level of such expenditures for any two of the three fiscal years, then that fiscal year may be excluded from the average. Non-Federal transportation capital expenditures in the fourth fiscal year must be greater than or equal to the average of such expenditures for the other two fiscal years to qualify for toll credits.

After completion of the review process for toll revenue expenditures and the MOE requirement, the Division Administrator must respond in writing to the State with a determination of whether toll credits have been approved by FHWA.

3. Tracking: Validating Toll Credit Balances

Division offices are responsible for validating the accuracy of toll credit balances. Division offices should ensure States establish a special account to track toll credits earned and expended.²⁴ When a State has earned a toll credit, it should be added to the balance in this special account, for tracking purposes. When the State submits a request to use toll credits from the special account, it will reduce the account by the amount applied to a project upon entry into the project agreement or modification of the project agreement, as applicable.²⁵

Division offices should work with their State partners to receive, at least annually, balances and reconciliation reports of toll credits earned and expended during the fiscal year. Balances, and other pertinent information regarding toll credits, should be annually reported using the process managed by the Center for Innovative Finance Support. This submission must be reviewed and approved by the Division Administrator.

²⁰ 23 U.S.C. 120(i)(2)(B).

²¹ 2 CFR 200.302 and 2 CFR 200.306(b)(1).

²² 23 U.S.C. 120(i)(2)(B).

²³ *Id.*

²⁴ 23 U.S.C. 106(g).

²⁵ 23 CFR 630.108(c)(1).

Recording Toll Credits on Federal-aid Projects

Once toll credits are earned and approved by FHWA, such toll credits can be applied towards the non-Federal share requirement for eligible projects.²⁶ States must record the use of toll credits in the FHWA approved system (currently the Fiscal Management Information System) by requesting authorization of a project using available and approved toll credits.²⁷ The State can request that all or a portion of the non-Federal share be credited from its toll credit account balance. These projects will be processed and administered in accordance with normal procedures except that the amount of funds authorized on the project and the Federal participation will be increased.

The State decides the amount of Federal share at the time of project authorization, up to the amount of Federal share allowed by law.²⁸ Consistent with Federal requirements, the non-Federal share that is established at the time of project authorization must be used throughout the life of the project, with certain exceptions.²⁹ Therefore, toll credits may be applied towards the non-Federal share for costs for which the State has not received Federal reimbursement (formerly known as “retroactive use of toll credits”).

Memorandum Intent and Points of Contact

Except for the statutes and regulations cited herein, the contents of this guidance do not have the force and effect of law and are not meant to bind the States or the public in any way. This guidance is intended only to provide information and clarity regarding existing requirements under the law or Federal agency policies.

The Office of Operations will be issuing answers to frequently asked questions and hosting office hours with division offices to enhance awareness of the responsibilities described in this memorandum. More information is also available on the toll credit website at

www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/toll_credits.aspx.

If there are any questions related to toll credits, please contact Cynthia Essenmacher in the Office of Transportation Management at cynthia.essenmacher@dot.gov.

cc: Directors of Field Services
Federal-aid Division Financial Managers

²⁶ Eligible projects are projects under title 23, U.S.C., or chapter 53 of title 49, U.S.C., except for Emergency Relief projects under 23 U.S.C. 125. 23 U.S.C. 120(i)(1)(A).

²⁷ 23 CFR 630.106(f) and 23 CFR 630.108.

²⁸ 23 CFR 630.106(f)(1).

²⁹ 23 CFR 630.106(f).