



U.S. Department
of Transportation

**Federal Highway
Administration**

Notice

Subject:
**FEDERAL-AID HIGHWAY PROGRAM OBLIGATIONS – FISCAL
YEAR (FY) 2009 REDISTRIBUTION AFTER AUGUST 1, 2009**

Classification Code	Date	Office of Primary Interest
N4520.203	July 24, 2009	HCFB-1

1. **What is the purpose of this Notice?** This Notice provides procedures governing the determination and redistribution of unneeded balances of Fiscal Year (FY) 2009 obligation authority subject to lapse on September 30, 2009, pursuant to Section 1102(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law (Pub. L. No.) 109-59 and Division I, Title I, Section 120(c) of the Omnibus Appropriations Act, 2009, Pub. L. No. 111-8.

2. **What is the background information?**
 - a. Section 1102(d) of SAFETEA-LU and Division I, Title I, Section 120(c) of the Omnibus Appropriations Act, 2009, provide for the redistribution, after August 1, 2009, of any obligation authority distributed to a State for FY 2009 that is subject to lapse on September 30, 2009, if the State cannot obligate the authority during the fiscal year (effectively September 25, 2009, the last day to obligate Federal-aid Highway Program funding through the Fiscal Management Information System (FMIS)).

 - b. Section 1102(e) of SAFETEA-LU and Division I, Title I, Section 120(d) of the Omnibus Appropriations Act, 2009, provide that the obligation authority made available for transportation research programs carried out under Chapter 5 of title 23, United States Code (U.S.C.), and title V of SAFETEA-LU, shall remain available for three fiscal years, and it shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years. As a result, amounts appropriated in FY 2009 for transportation research programs are not subject to redistribution. **However, FY 2007 research obligation authority is subject to lapse if the obligation authority for transportation research programs is not obligated by September 25, 2009.**

 - c. When determining unneeded balances of obligation authority for FY 2009, authority initially distributed by formula and authority initially reserved from the distribution to support the allocation of non-formula (allocated)



programs, the Federal Lands Highway Program and administrative funds will be identified separately. States should not report on special limitation provided for the Equity Bonus Program, the Appalachian Development Highway System Program, High Priority Projects, Projects of National and Regional Significance, the National Corridor Infrastructure Improvement Program, Transportation Improvements, the Discretionary Bridge Program, and the Highway Bridge Program for purposes under 23 U.S.C. 144(e), as such amounts of obligation authority are not subject to lapse (with the exception of the special limitation for the Highway Bridge Program, which is scheduled to lapse on September 30, 2010).

3. How was the FY 2009 obligation authority distributed?

- a. A total of \$40.7 billion in annual obligation authority was distributed for FY 2009.
- b. The majority of the obligation authority, totaling \$30.3 billion, was distributed by formula to the States in FY 2009. This obligation authority is available for FY 2009 only and is subject to lapse on September 30, 2009.
- c. An additional \$3.7 billion was reserved from the distribution and used to support the allocation of non-formula (allocated) programs, the Federal Lands Highway Program, Transportation Research, and administrative funds.
- d. Also, \$6.5 billion was reserved for distribution as a special (multi-year) limitation for the Equity Bonus Program, the Appalachian Development Highway System Program, High Priority Projects, Projects of National and Regional Significance, the National Corridor Infrastructure Improvement Program, Transportation Improvements, and the Discretionary Bridge Program. These amounts are not subject to redistribution and will remain available until expended.
- e. The remaining \$241 million was reserved for transfer to meet the provisions of Section 154 of 23 U.S.C. (Open Container Requirements) and Section 164 of 23 U.S.C. (Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence).

4. What response is required regarding unobligated FY 2009 obligation authority distributed by formula?

- a. Each State department of transportation must devise a plan, in consultation with the Division Office, and send that plan to the State Federal Highway Administration (FHWA) Division Administrator **by August 5, 2009**. When formulating the plan, the State must check in FMIS to confirm the unobligated balances. The plan from the State must include the following information:
 - (1) The amount of formula obligation authority that has not been obligated;

- (2) The projects and/or Federal funds that will be obligated by the State no later than September 25, 2009.
 - (3) The formula obligation authority in excess of amounts that can be obligated this fiscal year and that is released by the State for redistribution among the other States after August 1, 2009; and
 - (4) Any additional formula obligation authority that the State could obligate by September 25, 2009, if additional limitation were provided.
- b. The Division Administrator must review the plan submitted by the State and reach an agreement with the State on those projects that can be approved and authorized by the Division Office on or before September 25, 2009. The State and Division Office must ensure that the amounts to be returned for August Redistribution are not obligated prior to being released for redistribution.
 - c. **By August 12, 2009**, the Division Administrator must submit a report **via e-mail to the official electronic mailbox of the Federal Highway Administration's (FHWA's) Office of Budget (HCFB-1), "FHWA, BudgetDivision,"** based on the review of the plan submitted by the State and the agreement reached with the State. **See Attachment 1 for the required report template.** The Division Administrator should also copy the report to Dedra.Goodman@dot.gov. When submitting the report, please include in the e-mail subject line the following: "Response to Call for August Redistribution (N4520.203)_[insert name of State]."
5. **What response is required regarding unobligated FY 2009 obligation authority distributed to support obligation of non-formula (allocated) funds?**
- a. Each State department of transportation must devise a plan, in consultation with the Division Office, and send that plan to the State FHWA Division Administrator **by August 5, 2009**. When formulating the plan, the State must check in FMIS to confirm the unobligated balances. The plan from the State must include the following information:
 - (1) By program, the amounts of non-formula (allocated) funds and associated obligation authority that have not been obligated;
 - (2) By program, the amounts of non-formula (allocated) funds and associated obligation authority that could be obligated by September 25, 2009;
 - (3) By program, the amounts of non-formula (allocated) authority in excess of amounts that can be obligated this fiscal year and that are to be released by the State for redistribution among other States after August 1, 2009.

- b. The Division Administrator must review the plan submitted by the State. The Division Administrator and the State shall reach an agreement on which non-formula (allocated) funds and associated obligation authority will be obligated no later than September 25, 2009. The Division Administrator, in consultation with the State, shall determine the amounts of FY 2009 obligation authority initially distributed to support the obligation of non-formula (allocated) funds that cannot be obligated by September 25, 2009 and will be released by the State for redistribution among other States after August 1, 2009. The State and Division Office must ensure that the amounts to be returned for August Redistribution are not obligated prior to being released for redistribution.
 - c. **By August 12, 2009**, the Division Administrator must submit a report **via e-mail to the HCFB-1 official mailbox** based on the review of the plan submitted by the State and the agreement reached with the State. **See Attachment 2 for the required report template.** The Division Administrator should also copy the report to Dedra.Goodman@dot.gov. When submitting the report, please include in the e-mail subject line the following: "Response to Call for August Redistribution (N4520.203)_[insert name of State]."
 - d. The non-formula (allocated) funds that the States and the Division Administrators agree to release will result in the release of both obligation limitation and contract authority.
 - e. HCFB-1 will not redistribute obligation authority that has been allocated to a State unless the FHWA Headquarters Program Office officially releases the non-formula (allocated) funds and the obligation limitation associated with such program. The FHWA Headquarters Program Offices will issue de-allocation/withdrawal memos requesting that the funds and associated obligation limitation be deallocated/withdrawn in FMIS based on the compiled responses that HCFB-1 sends to the Program Offices (if the de-allocation/withdrawal has not been previously requested). FHWA Headquarters Program Offices must make all August Redistribution de-allocation/withdrawal requests and release associated obligation limitation by **August 17, 2009**.
6. **What response is required regarding unobligated FY 2009 obligation authority that was reserved for the Federal Lands Highway Program or programs controlled by FHWA Headquarters?**
- a. Any non-formula (allocated) funds and the associated obligation authority that is not obligated by August 1, 2009, must be withdrawn and made available for redistribution, unless Federal Lands Highway and FHWA Headquarters Program Offices have firm commitments that the unobligated amounts will be obligated by September 25, 2009. Federal Lands Highway and the Program Offices must ensure that the amounts to

be returned for August Redistribution are not obligated prior to being released for redistribution.

- b. **No later than August 12, 2009**, each Director and Program Manager shall submit a report **via e-mail to the official HCFB-1 mailbox, "FHWA, BudgetDivision"** showing the amounts that will not be obligated by September 25, 2009, and for which the obligation limitation is being released for redistribution. **See Attachment 2 for the required report template.** The Director or Program Manager should also copy the report to Dedra.Goodman@dot.gov. When submitting the report, please include in the e-mail subject line the following: "Response to Call for August Redistribution (N4520.203)_[insert name of Program Office or Federal Lands Highway]."

7. **What response is required regarding unobligated FY 2009 obligation authority that was reserved for other Federal Agencies?**

- a. Other Federal Agencies, such as the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Internal Revenue Service, the Denali Commission, etc., that received non-formula (allocated) funds and the obligation limitation associated with such funds, must determine the amounts of obligation limitation that will not be obligated by September 25, 2009, and which are therefore being released for redistribution. Other Federal Agencies must ensure that the amounts to be returned for August Redistribution are not obligated prior to being released for redistribution.
- b. **No later than August 12, 2009**, other Federal Agencies shall submit a report showing what amounts are being returned for August Redistribution **via e-mail to the HCFB-1 official mailbox, "FHWA, BudgetDivision."** **See Attachment 2 for the required report template.** The agency should also copy the report to Dedra.Goodman@dot.gov. When submitting the report, please include in the subject line the following: "Response to Call for August Redistribution (N4520.203)_[insert name of Federal Agency]."

8. **What procedure will be followed once HCFB-1 has received the required reports?** Once HCFB-1 has received the reports, it will compile the responses and forward them to the appropriate FHWA Headquarters Program Offices and other Federal Agencies. The Program Offices and other Federal Agencies will then review the compiled responses, with the Program Offices consulting any relevant States (via the Division Offices) or other Federal Agencies as needed. In addition, the Program Offices will issue any necessary withdrawal/de-allocation memos. Once the Program Offices and other Federal Agencies have finalized the responses, HCFB-1 and the FMIS team will complete the steps needed to redistribute the obligation authority that has been returned for August Redistribution.

9. **How will the released obligation authority be redistributed?** Consistent with Section 1102(d) of SAFETEA-LU and Division I, Title I, Section 120(c) of the Omnibus Appropriations Act, 2009, priority in distribution will be provided to those States having large unobligated balances of funds apportioned under sections 104 and 144 of title 23, U.S.C.
10. **When will the excess FY 2009 obligation authority be redistributed?** The target to complete redistribution of released obligation authority will be August 19, 2009.
11. **Is there program monitoring?** Yes. FHWA Headquarters will monitor the program on a national basis to ensure that all available authority subject to lapse on September 30, 2009, is fully used.
12. **What action is required?** Division Administrators must ensure (1) that the redistributed funds are obligated by September 25, 2009, and (2) that copies of this Notice are provided to State departments of transportation. In addition, States/Division Offices, FHWA Headquarters Program Offices, and other Federal Agencies must provide their responses to this Notice. The timeline for responses is as follows:
 - a. **August 5:** States must provide their plans for formula and non-formula (allocated) funds to the Division Administrators.
 - b. **August 12:** Division Offices, FHWA Headquarters Program Offices, and other Federal Agencies must provide reports **via e-mail to "FHWA, BudgetDivision."**
 - c. **August 17:** FHWA Headquarters Program Offices must make all August Redistribution de-allocation/withdrawal requests and release associated obligation limitation.



Victor M. Mendez
Administrator

Attachment 1
Attachment 2

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

**FISCAL YEAR (FY) 2009 REDISTRIBUTION AFTER AUGUST 1, 2009
Report to HCFB-1 on FY 2009 Obligation Limitation Initially Distributed by Formula**

State: _____

Unobligated Balance of Formula Obligation Limitation	Amount of Formula Obligation Limitation that could be Obligated by Sept. 25, 2009	Formula Obligation Limitation Released for Redistribution Among Other States	Additional Formula Obligation Limitation that could be used by Sept. 25, 2009
\$0.00	\$0.00	\$0.00	\$0.00

* Note: shaded cells contain formulas

