

## HSIP Funds 10 Percent Flexibility Implementation Guidance

### Introduction

On August 8, 2006 the Office of Safety issued a memorandum providing guidance on initiating the 10 percent flexibility provisions allowed within the Highway Safety Improvement Program (HSIP) under section 148(e) of title 23, United States Code (U.S.C.). At that time, we indicated that further guidance on the implementation of this flexibility provision would be developed. This guidance expands on the previous memorandum and provides details on the process that should be followed for flexible funds eligibility, implementation and project eligibility, financing, reporting, and subsequent fiscal year approvals.

### Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) represents a new era in highway safety with dramatically increased funding in the HSIP and required development of Strategic Highway Safety Plans (SHSPs) that address the critical “4Es” of highway safety (engineering, enforcement, education, and emergency medical services) in a State. The SHSP is an important step toward encouraging States to take a multidisciplinary and multi-agency look at highway safety problems and solutions on all public roads, and to share resources to implement countermeasures that will be most effective in terms of reducing deaths and serious injuries. Through the process of developing an SHSP, a State analyzes safety data and establishes strategies to address these problems with a comprehensive set of actions incorporating the “4Es” of safety. States are required to adopt strategic and performance goals in their SHSPs that “focus resources on areas of greatest need.”

The HSIP, codified by SAFETEA-LU as section 148 of title 23 U.S.C., is a newly-created “core funding” program administered by FHWA, which apportions funds to States under section 104(b)(5) for a range of eligible activities focused primarily on infrastructure-related safety improvements. Section 148(e) specifically addresses the opportunity to use these financial resources where they can make the greatest impact, as provided in a State’s SHSP. This provision allows a State to annually use up to 10 percent of its HSIP funds to fund other safety projects under title 23, as long as the State meets certain specific conditions. This provision reads:

*“(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.-*

*(1) IN GENERAL -- To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under section 104(b)(5) for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that –*

*(A) the State has met needs in the State relating to railway-highway crossings;  
and*

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*(B) the State has met the State's infrastructure safety needs relating to highway safety improvement projects."*

### **Eligibility**

In order for a State to be eligible to use the 10 percent flexibility provision in a fiscal year the State must have an approved SHSP, certify that the State has met its railway-highway crossings and infrastructure safety needs, and submit a written request to flex up to 10 percent of HSIP funds. The FHWA Division Administrator will determine the extent and formality of the documentation for the eligibility and approval process. However, a written request should be submitted for each year that a state certifies that the requirements have been met.

#### *Approval of the SHSP Process:*

As part of FHWA's oversight and stewardship responsibilities, the FHWA Division Administrator will ensure that the State has followed a process that is consistent with the requirements outlined in 23 U.S.C. § 148. If the Division determines all section 148 SHSP requirements have been met to an acceptable level, the Division may accept the process by which the Plan was developed. Ultimately, the FHWA Division Administrator will make a formal declaration to the State as to whether the process the State used to develop an SHSP is in compliance with section 148. This formal declaration should be in the form of a letter. Divisions are encouraged to document any significant improvement opportunities for the Plan as part of their transmittal accepting the process. Divisions may elect to revisit these improvement areas as part of their stewardship of the overall safety program through periodic assessments of the process to assure the necessary improvements are achieved.

#### *Certification:*

After the FHWA Division Administrator approves the State's SHSP development process, a state wishing to take advantage of the 10 percent flexibility provision must also certify that it has met the requirements stated in section 148(e) relating to railway-highway crossings and to its safety infrastructure needs. Meeting these needs is directly related to how the projects in the State Transportation Improvement Program (STIP) are linked to the strategies described in the SHSP. The intent of this provision is that such flexibility be exercised for a particular fiscal year within the context of an SHSP. For example, a State with a multiyear SHSP, one that includes or that has produced a list of specific projects and activities programmed on an annual basis, will have the ability to determine if "railway-highway crossings and infrastructure safety needs are met" for a particular fiscal year. If the infrastructure and railway-highway crossings activities in the SHSP have been programmed in the STIP on an annual basis, then the State could certify that these programs have been sufficiently advanced and needs "have been met" for that fiscal year. Because of this, project level information will need to be documented, preferably through linkage to the STIP, but potentially through other documentation with

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proper linkage to the SHSP and the STIP. The FHWA Division Administrator has the flexibility to determine what the acceptable documentation should be and its level of detail.

### *Written Request to Flex Up to 10 Percent of HSIP Funds:*

After the State certifies that it has met the requirements relating to its railway-highway crossings and infrastructure needs for that fiscal year, the State should submit a letter to the FHWA Division Administrator describing how the certification was made and formally request to flex up to 10 percent of that year's HSIP funds. In describing how the certification was made, this letter should cross-reference the strategies from the SHSP with resulting projects. The request to flex up to 10 percent of HSIP funds should describe how the funds are going to be used and how these other safety projects are consistent with the SHSP. The request should also include an estimated dollar amount that the State wishes to use for these activities. This dollar amount cannot exceed 10 percent of the State's HSIP apportionment for the year, including the portion of the State's Equity Bonus that is programmatically distributed to the HSIP. This net figure is shown in the FMIS "Status of Federal-Aid Highway Funds Report" M60A and is accessible in FHWA division offices. Funds set aside from the HSIP authorization for the Railway Highway Crossing Program and apportioned under section 130(f) are not affected by this flexibility provision. Section 130 funds are reserved for the purposes outlined in that section, and cannot be used for other safety purposes.

### *Approval for a Fiscal Year:*

The FHWA Division Administrator will review the State's letter describing the certification and the request to flex up to 10 percent of that year's HSIP funds. The Division Administrator should determine whether the HSIP funds for that fiscal year have been programmed at reasonable levels to sufficiently advance the SHSP, how well the projects funded meet the intent of the HSIP, and whether the projects support the goals of the SHSP. Once the request is approved, the FHWA Division Administrator should send a confirmation letter to the State. This letter will be the formal authorization for the State to flex the funds, and will include the maximum flex amount in dollars and any applicable considerations or conditions. A copy of this letter should be forwarded to the Associate Administrator for the Office of Safety.

## **Implementation and Project Eligibility**

Once the State receives an approval letter from the FHWA Division Administrator, the State may administer the safety projects or allocate the funds to the agencies and organizations as described in the original request. The States should follow the system that currently is in place for administering funds internally or for allocating funds to other agencies and organizations.

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Only safety projects carried out under title 23 U.S.C. are eligible for the 10 percent flexible funding. This would include “safety projects under any other section”, which includes projects to promote the awareness of the public and educate the public concerning highway safety matters (including motorcyclist safety) and projects to enforce highway safety laws. As with typical HSIP infrastructure improvement projects, all funds including “flex” projects funds such as educational, or enforcement projects should be accounted for in the STIP.

The division office should track whether the funds are being used as agreed and whether the activities are consistent with the SHSP. This can be done through project authorizations. The division office should not authorize any flex projects if the State has not been made eligible for the 10 percent flexibility of funds.

### **Financing**

A separate code (LS10) is set up in the Fiscal Management Information System (FMIS) for the flexible funding. It is important to note that FMIS will always show a limiting amount equal to 10 percent of the HSIP funds, even for states that do not qualify for the flexible funding provision. The flexible funding code is set up as a draw down from the general HSIP funding code (LS30). The draw down is limited to the pre determined 10 percent maximum amount for each State, which is based on 10 percent of the amount of funds apportioned to the State under section 104(b)(5). This means that any funds transferred into the HSIP under the transferability of apportionments provision in section 104 (c) will not affect the pre determined 10 percent maximum funding amount.

The purpose of this separate code (LS10) in FMIS is to prevent flexible funding from exceeding the 10 percent maximum amount and for activity identification. The division office should not authorize any projects under the FMIS code LS10 if the State has not been made eligible. It is important to note that even if a state has been approved to use the LS10 code, there is no actual transfer of the 10 percent flexible funds from one account to another. This means that if a state does not use all of its flexible funding in a year the balance would appear in FMIS under general HSIP funding (LS30) and will continue to be available for general HSIP purposes.

The State should track how the flexible funding is being obligated among the “4E’s”. Because entering new improvement types into the FMIS system is not possible, existing improvement types have been assigned to each of the 4E’s that will represent obligations in engineering, education, enforcement, and EMS. This tracking will simplify running queries in the FMIS system and will make it easy for States to provide detailed information on their flexible spending in their annual HSIP report. To further track obligations States may also include remarks in the “State Remarks” field or assign a project prefix. Multi-disciplinary projects should be identified with the code that best identifies the project. The following table outlines how these activities should be entered by project in the FMIS system and includes a naming convention for the project prefixes that could be associated with the various activity categories.

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Activity	FMIS Code	Assigned Improvement Type	Improvement Type that will appear in FMIS	Project Prefix
Engineering	LS30	21	Safety	SENG
Education	LS10	42	Training	SEDN
Enforcement	LS10	27	Administration	SENF
EMS	LS10	44	Other	SEMS

### Reporting

In accordance with the HSIP reporting requirements that were issued on April 4, 2006 titled “Guidance Highway Safety Improvement Program Report 23 U.S.C. 148(g)”; the State should describe annually what the flex funds were used for over the previous year, and evaluate these projects.

### Subsequent Fiscal Year Approvals

States may wish to continue to flex funds in the following fiscal years. The same process must be followed annually where the State certifies that they have met their railway-highway crossings and infrastructure safety needs, and once again submit a written request to flex up to 10 percent of HSIP funds.

### Summary

Safety funds should be spent where they will have the highest payoff in terms of saving lives and reducing serious injuries. Flexibility in the use of funds is an important tool in the delivery of an overall safety strategy. States should have access to every available tool to ensure success in advancing safety.

We believe this guidance reflects the best of SAFETEA-LU – it promotes safety, encourages accountability for good use of limited safety funds, provides maximum flexibility to States, and provides an efficient mechanism to get important safety activities underway. States must make internal decisions based on their own needs and circumstances in terms of flexing safety funds from one use to another. As noted, implementation of this flexibility provision has broad implications for the safety program at the National and State level, use of the guidance outlined above will be important to ensuring consistency in how this flexibility is implemented.

### HSIP Funds 10 Percent Flexibility Implementation Process Flowchart

