U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: INFORMATION: Guidance Regarding Use of Funding Flexibility in Highway Safety Improvement Program (HSIP)

Date: August 8, 2006

From: Jeffrey A. Lindley
Associate Administrator for Safety

Reply to
Attn. of: HSA-30

To: Division Administrators

This memorandum provides guidance for your use in working with your State should they wish to exercise the flexibility provisions allowed within the HSIP under Section 148(e) of title 23 United States Code. This provision allows a State to annually transfer up to 10 percent of its HSIP funds to other safety projects under title 23, as long as it meets certain specific conditions. Because this provision is multiagency and multidisciplinary in nature (like the Strategic Highway Safety Plan), the Office of Safety has consulted with the National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, Federal Transit Administration, and the Federal Railroad Administration during the development of this guidance.

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 multiagency 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 reads:

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"(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[1] 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

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

The requirement that a State certify that they have "met ...needs" relating to railway-highway crossings and infrastructure safety may create a challenge for States who wish to exercise this funding flexibility. Establishment of criteria regarding how a State may meet this test is a key part of this guidance.

GUIDANCE ON EXERCISING FLEXIBILITY

States should have access to every available tool to ensure success in advancing safety. 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 for the States and the intent of this guidance is to maximize the availability of this tool.

SAFETEA-LU requires that States desiring to use the 10 percent flexibility in a fiscal year meet two conditions: (1) have an approved SHSP and (2) certify they have met their railway-highway crossings and infrastructure safety needs. 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[2] 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 State Transportation Improvement Program (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. As a result, the State would be eligible to use up to 10 percent of the HSIP funds for other title 23 safety projects in the SHSP, beyond railway-highway crossings and infrastructure safety projects, for that year.

The State certification process should involve the submission of a written document from the State DOT to the FHWA division office describing the strategies from the SHSP cross referenced with resulting projects in the approved STIP. The State should certify that the railway-highway crossings and infrastructure safety needs as identified on the annual programming documents used to implement the SHSP for the fiscal year have been met, and that

[1] Section 148(a)(4) defines "safety project under any other section" as a project carried out for the purpose of safety under any other section of this title [title 23], including projects related to public awareness and education on safety matters (including motorcyclist safety), and enforcement of highway safety laws.

[2] Consistent with section 135 (g) of title 23 U.S.C; State Transportation Improvement Program (STIP)

the State would like to flex a percentage of HSIP funds (up to 10 percent) for that fiscal year into other safety projects authorized by title 23 U.S.C. The FHWA division office would review the certification and inform the Headquarters Office of Safety that the requirements for the flexibility have been met and indicate the dollar amount of funds that will be flexed. Please note that set aside funds within the HSIP for Railway Highway grade crossing improvements under section 130 are not affected by this flexibility provision. These funds cannot be flexed out of the overall HSIP, because they have their own apportionment requirements specified by Section 130(f). Section 130 funds are reserved for the purposes outlined in that section, and cannot be used for other safety infrastructure purposes.

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 program to another. As noted, implementation of this flexibility provision has broad implications for the safety program at the National and State level, and care must be taken that the guidance outlined above is followed by a State and FHWA division office.

Additional, specific information on implementing the flexibility provision, including scheduling, necessary coordination with Headquarters offices (Office of Safety, Office of the Chief Financial Officer, etc.) will be distributed shortly.

For further information, please contact Ms. Beth Alicandri (202) 366-6409.

cc: Director of Field Services
Associate Administrators

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