



U.S. DEPARTMENT OF
TRANSPORTATION

Federal Highway
Administration

Order

Subject

Repayment of Preliminary Engineering Costs

Classification Code	Date	OPI
5020.1	April 26, 2011	HIPA-10

Par.

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1. **What is the purpose of this directive?** This directive provides policy direction on the repayment of Federal-aid funds expended on preliminary engineering (PE) projects when reasonable progress has not been made toward right-of-way (ROW) acquisition or construction. This directive also provides additional guidance clarifying when the Federal Highway Administration (FHWA) can grant time extensions.
2. **Is this a new FHWA directive?** Yes. This is a new directive. This directive cancels the [Memorandum](#) on the Repayment of Preliminary Engineering Costs, dated June 26, 2008.
3. **What is the background of this directive?**
 - a. [Section 102\(b\)](#) of Title 23, United States Code (U.S.C.) requires a State to repay all Federal-aid reimbursements for PE costs on a project that has not advanced to ROW acquisition or construction within 10 years after Federal-aid funds were first made available, unless the FHWA has granted a time extension.
 - b. [Part 630.112\(c\)\(2\)](#) of Title 23, Code of Federal Regulations (CFR), provides a State a slightly longer timeframe in that ROW acquisition or construction must be started by the close of the 10th fiscal year following the fiscal year when the project was authorized.

4. **What is the scope of this directive?** The provisions of this directive are only applicable to PE projects funded from the Highway Trust Fund.
5. **What authorities govern this directive?**
 - a. [23 U.S.C. 102\(b\)](#), Engineering Cost Reimbursement.
 - b. [23 CFR 630.112\(c\)\(2\)](#), Preliminary Engineering Project.
 - c. [2 CFR 225, Appendix A\(C\)\(4\)](#), Basic Guidelines – Applicable Credits.
 - d. [23 CFR 450.216](#), Development and Content of the Statewide Transportation Improvement Program (STIP).
 - e. [23 CFR 450.324](#), Development and Content of the Transportation Improvement Program (TIP).
 - f. [23 CFR 1.9\(b\)](#), Limitation on Federal Participation.
6. **What is FHWA's policy for repayment of PE costs?**
 - a. The FHWA must require repayment of all Federal-aid reimbursements for PE projects, including those authorized under the Advance Construction provision, when either ROW acquisition or construction has not started by the close of the 10th fiscal year following the fiscal year when the project was authorized.
 - b. The FHWA cannot grant an outright waiver of [23 U.S.C. 102\(b\)](#). However, the FHWA may approve a State's request for a time extension to complete PE activities on a project that has been delayed for valid reasons.
 - c. The FHWA has a longstanding practice of not mandating repayment of PE funds when project termination is directly related to compliance with another Federal law. For instance, repayment of reimbursed PE costs would not be required if the FHWA and a State determine that a project should not be advanced as a result of findings during the National Environmental Policy Act (NEPA) process. To do otherwise could skew the NEPA process by causing a State to favor a "build" alternative to avoid repaying PE costs incurred during the NEPA review.
 - d. The FHWA Division Administrators may grant time extensions to State requests to postpone repayment if the State submits to the division office sufficient justification that the delay was reasonable

and beyond the State's control. These determinations must be documented by the division office and be a part of the project records. Shifting priorities, insufficient transportation budgets, and staffing issues are not justification for granting time extensions. Examples of factors for the division office to consider for granting time extensions include:

- (1) Litigation resulting in delays to project development;
 - (2) Complex project consultations involving Federal, State, local agencies, or sovereign nations; and
 - (3) Where the public involvement process has altered the State's plan for satisfying the project's purpose and need.
- e. Time extensions should only be approved with a definite schedule, a commitment by the State to follow the schedule, and documentation of recent steps taken to advance the project. The time extension request should include an evaluation of the time needed to advance the project to the next phase and should provide support for a reasonable time extension that reflects the State's commitment to the project.
- f. When repayment is required, the State must reimburse PE costs for the project on the next Federal-aid billing. As a result of repayment, the Federal-aid funding category from which the PE funds originated should be credited and the project should be withdrawn. The funds and obligation authority that are withdrawn are available to the State for use on other Federal-aid projects that meet the eligibility requirements of the original Federal-aid category, provided that the funds are re-obligated within the fiscal year of recovery. In cases where the funding category no longer exists, the division office should contact the Office of the Chief Financial Officer for guidance.
- g. Congressional earmarks funded from a General Fund appropriation are not subject to [23 U.S.C. 102\(b\)](#). Congressional earmarks funded from the HTF are subject to [23 U.S.C. 102\(b\)](#). Recovered budget authority from congressional earmarks funded from the HTF may be re-obligated only for a project that falls within the statutory language of the earmark.
- h. Costs repaid by the State under [23 U.S.C. 102\(b\)](#) are not eligible for subsequent reimbursement. Also, the provisions of [23 CFR 1.9\(b\)](#) are not available to reinstate repaid reimbursements. However, should the project at some time be resumed, States may initiate a new project agreement to conduct further preliminary engineering.

Costs would be eligible from the date the new project agreement is executed.

7. **What are the responsibilities of the Federal-aid divisions?** Federal-aid divisions should do the following:
 - a. Work with the State to set up procedures to regularly identify those PE projects that are nearing or are beyond the 10-year limit;
 - b. Ensure that State accounting systems can accurately identify and accumulate, by project, all applicable PE costs, whether generated by in-house services or via consultant contracts; and
 - c. Consider this issue in the context of the division's overall risk assessment process.

8. **Where can I obtain additional guidance?** For additional guidance, contact FHWA's Office of Infrastructure [Federal-aid Program Team \(HIPA-10\)](#) or [Office of the Chief Financial Officer, Office of Financial Management \(HCFM-10\)](#).



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