



Memorandum

Subject: **INFORMATION:** Obligation of Apportioned Funding in Pre-Bipartisan Infrastructure Law (BIL) Program Codes (Updated)

Date: July 11, 2023

From: Brian R. Bezio
Chief Financial Officer

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Date: 2023.07.11 14:34:18 -04'00'

To: Division Administrators

This memorandum outlines temporary guidelines for the obligation of pre-BIL apportioned funding that is subject to the formula obligation limitation (hereinafter referred to as “pre-BIL funding”). This memorandum does not impact the ability of States to obligate BIL funding, which has been and continues to be unrestricted as long as the State has the necessary formula obligation limitation.

This memorandum rescinds and replaces the memorandum with the same subject issued on February 21, 2023, and will remain in effect until rescinded. The memorandum has been updated to increase the percentage of unobligated balances of pre-BIL funding for a program that was continued by BIL that may be obligated from five percent (5%) to seventy percent (70%) based on the partial resolution of the discrepancy between FHWA’s internal Fiscal Management Information System (FMIS) and the Department’s official accounting system, Delphi, and removes the need to provide justification prior to obligating pre-BIL apportioned funding.

Background

At the beginning of FY 2023, the Office of the Chief Financial Officer (HCF) disabled FMIS program codes for pre-BIL funding, preventing States from obligating the funding.

On February 6, 2023, the Federal Highway Administration (FHWA) enabled pre-BIL program codes and made the funding available to States for limited purposes while FHWA engaged with key stakeholders on potential solutions to a funding discrepancy between FMIS and Delphi. During this time period, FHWA and DOT also engaged in a comprehensive review and reconciliation of the funding in both systems. This review and reconciliation resulted in partial resolution of the discrepancy increasing the available unobligated funding in Delphi and thereby allowing for an increase to pre-BIL apportioned funding available for obligation as described below.

Pre-BIL Funding Obligation Guidelines

Making pre-BIL funding available in FMIS remains subject to the States voluntarily adhering to a set of guidelines that are designed to maximize States' ability to resume most transactional activity while ensuring 1) new FMIS obligations of pre-BIL funding do not exceed available funding in Delphi, and 2) pre-BIL funding does not lapse.

Obligation of pre-BIL apportioned funding may occur as follows:

- States may de-obligate and immediately re-obligate an equivalent or lesser amount of pre-BIL funding in the same program code. There is no limitation on the amounts that may be de-obligated and re-obligated; however, we encourage States to re-obligate the funding as soon as possible, ideally within five business days of de-obligation, to assist in tracking. The five-business day timeline is not a requirement.
- In addition, States may obligate pre-BIL funding as follows: (1) in any program that was not continued by BIL and (2) programs where lapsing determinations do not combine BIL and pre-BIL funding and that funding is set to lapse at the end of FY 2023. These programs are listed below. Divisions should reach out to HCF if they believe any other programs should be added to the list.
 - Safe Routes to School (non-continued program) (program codes HU10, LU10, LU1E, LU1R, HU20, LU20, LU2E, LU2R, HU30, LU30, LU3E, and LU3R);
 - Coordinated Border Infrastructure Program (non-continued program) (program codes H1G0, L1G0, L1GE, L1GR);
 - Transportation Enhancements (non-continued program) (program codes 33B0, Q220, H220, L220, L22E, and L22R);
 - Donor State Bonus, including Flexible, Urbanized, and Areas with Population over 200,000 (non-continued program) (program codes 35A0, 35B0, and 35C0);
 - Intoxicated Safety Grants (non-continued program) (program codes Q080 and H080);
 - TIFIA Redistribution (non-continued program) (program code M040);
 - Recreational Trails Program (non-standard lapsing) (program code Z940); and
 - Certain Authorized Funds (non-standard lapsing) (program code Z030).

The obligation of pre-BIL funding for any program that was continued by BIL (e.g., STBG, NHPP, HSIP, etc.) remains restricted under these revised voluntary guidelines. However, given the partial resolution of the discrepancy, substantial additional flexibility is provided in the obligation of pre-BIL funding for such programs as described below.

- States may now obligate up to seventy percent of unobligated balances (using end-of-year FY 2022 as the baseline) of pre-BIL funding for a program that was continued by BIL. See the attachment to this memo for a State-by-State table showing the balances and seventy percent amounts. A justification to make such obligations is no longer necessary prior to such obligations being approved by the Division.
- States may make obligations of pre-BIL funding up to the seventy percent threshold for any reason. This includes—but is not limited to—preventing funds from lapsing. Note that, for programs continued by BIL, States may continue to obligate BIL funding to prevent any funding for such programs (including pre-BIL funding) from lapsing. States can view the amounts of potentially lapsing funds via the FMIS W10A report and take action to obligate sufficient pre-BIL or BIL funding to prevent lapsing per 23 USC 118(c).

Transfers of pre-BIL funding (including transfers to FHWA program offices or other Federal agencies including the Federal Transit Administration, pooled fund, program-to-program, State-to-State, etc.) may be requested and processed using the standard processes. A transfer to another Federal agency or FHWA program office will be treated as an obligation against the requesting State's pre-BIL funding obligation threshold; any such transfers that would put the State above the seventy percent threshold should not be submitted.

Oversight and Review

FHWA Division offices are critical to ensuring that States are voluntarily adhering to the operational guidelines as outlined above.

Division offices must still carefully review any transactions that would obligate pre-BIL apportioned funding (i.e., any non-Y apportioned program codes) requested by a State to understand the requested obligations and assess consistency with the guidelines. This review must be done prior to allowing the funding to be authorized in FMIS. Any deviations should be discussed with HCF before transactions are approved.

Action

Division offices should review internally and share this memorandum with their State departments of transportation.

Points of Contact

If you have any questions or need assistance, please contact the FHWA Budget Division at BudDiv@dot.gov.

cc: Chief Counsel
Directors of Field Services

[Attachments:]

Attachment

State-by-State FY 2022 Applicable Unobligated Balances
and FY 2023 Seventy Percent Obligation Threshold

<u>STATE</u>	<u>Unobligated Balances of Apportioned Programs</u> <u>Continued in BIL as of September 30, 2022</u>	<u>FY 2023</u> <u>70% Increased Obligation Threshold</u>
ALABAMA	130,334,232	91,233,962
ALASKA	22,192,988	15,535,092
ARIZONA	137,627,212	96,339,049
ARKANSAS	67,491,160	47,243,812
CALIFORNIA	255,028,018	178,519,613
COLORADO	2,968,689	2,078,082
CONNECTICUT	4,045,457	2,831,820
DELAWARE	13,015,282	9,110,697
DIST. OF COL.	31,514,294	22,060,006
FLORIDA	89,815,754	62,871,028
GEORGIA	209,891,126	146,923,788
HAWAII	42,181,234	29,526,864
IDAHO	29,423,681	20,596,577
ILLINOIS	183,039,501	128,127,651
INDIANA	55,602,569	38,921,798
IOWA	28,638,470	20,046,929
KANSAS	37,913,880	26,539,716
KENTUCKY	98,748,636	69,124,045
LOUISIANA	137,689,634	96,382,743
MAINE	11,404,186	7,982,930
MARYLAND	87,259,817	61,081,872
MASSACHUSETTS	27,838,402	19,486,882
MICHIGAN	95,947,416	67,163,191
MINNESOTA	33,931,071	23,751,750
MISSISSIPPI	65,404,532	45,783,173
MISSOURI	107,296,732	75,107,712
MONTANA	12,355,894	8,649,126
NEBRASKA	54,472,620	38,130,834
NEVADA	8,820,967	6,174,677
NEW HAMPSHIRE	9,282,061	6,497,443
NEW JERSEY	276,398,883	193,479,218
NEW MEXICO	51,212,179	35,848,525
NEW YORK	170,017,348	119,012,144
NORTH CAROLINA	75,721,363	53,004,954
NORTH DAKOTA	4,776,751	3,343,726
OHIO	8,527,878	5,969,514
OKLAHOMA	18,865,456	13,205,819
OREGON	28,344,753	19,841,327
PENNSYLVANIA	112,896,776	79,027,743
RHODE ISLAND	18,054,633	12,638,243
SOUTH CAROLINA	13,363,496	9,354,447
SOUTH DAKOTA	6,350,982	4,445,687
TENNESSEE	335,688,246	234,981,773
TEXAS	591,149,476	413,804,633
UTAH	19,847,527	13,893,269
VERMONT	17,890,109	12,523,076
VIRGINIA	255,950,361	179,165,252
WASHINGTON	30,506,249	21,354,374
WEST VIRGINIA	33,895,014	23,726,510
WISCONSIN	130,895,339	91,626,737
WYOMING	13,285,773	9,300,041
TOTAL	4,304,814,107	3,013,369,874