U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: GUIDANCE: Funds Availability and Reobligating Expired Funds

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From: Brian R. Bezio
Acting Chief Financial Officer

In Reply Refer to:
HCFB-30
(HCF-2014-001)

To: Associate Administrators
Chief Counsel
Director, Innovative Program Delivery
Director, Technical Services
Directors of Field Services
Division Administrators
Federal Lands Highway Division Engineers

This memorandum transmits guidance to clarify the Federal Highway Administration (FHWA)'s terminology and general procedures related to the availability of Federal funds for obligation and reobligation. It does not apply to general operating expenses and other administrative expenses funding. This guidance supersedes previous Office of the Chief Financial Officer (HCF) guidance on this topic and cancels the HCF memorandum dated April 21, 1989.

When funds are deobligated from another project, FHWA may reobligate Federal-aid apportioned or allocated funds (contract authority) authorized from the Highway Trust Fund (HTF) on new projects or modifications to existing projects for the program's eligible purpose. The reobligation of funds from allocated programs should be coordinated with, and may require additional approvals from, the appropriate headquarters program office. At the end of the fiscal year, if certain conditions are met, unobligated Federal-aid funds have the potential to lapse.

Funds made available from General Fund (GF) appropriations are subject to different rules. Without specific approval from HCF, appropriations from the GF are not typically available for reobligation once the period of availability (POA) for such funds has passed.

If you have any questions concerning this memorandum and the attached guidance, please contact Mr. Tony DeSimone in the Office of Financial and Management Programs (HCFB-30) at (317) 226-5307. If you have questions concerning program code availability in FMIS, please contact the Office of Budget's FMIS team via email at FMISTeam@dot.gov.

Attachment

Attachment 1

Funds Availability and Reobligating Expired Funds Guide

This guide clarifies FHWA's terminology and general procedures related to the availability of Federal funds for obligation. Federal funds are made available for obligation and expenditure by various Federal laws. Sound funds management practices dictate when funds are initially committed (obligated) to a project, when they are no longer needed (deobligated) on such project, and how those funds may be used for other projects (reobligated). This guide does not apply to general operating expenses and other administrative expenses funding.

Key Funds Availability Terms

The following are key terms used by FHWA concerning the availability and use of deobligated funds:

Period of Availability (POA) – The time period established in legislation during which funds must be obligated for a specified purpose.

Expired – Funds for a specific program are no longer available for obligation when the last year of the POA has passed[1]

Lapsed – Funds "lapse" when they are no longer available for obligation. Funds lapse at the end of the applicable fiscal year, unless another date is provided by statute. Lapsing occurs when unobligated funds:

- did not satisfy the criteria of "First-In-First-Out" (FIFO) at the end of the fiscal year, or
- are expired, were deobligated during the fiscal year, and have not been reobligated by the end of the same fiscal year.

Federal-aid funds or program – Funds or a program authorized as contract authority made available from the Highway Trust Fund (HTF) and administered under title 23 of the United States Code (U.S.C.).

Cancelled – Appropriated budget authority, typically made available from the General Fund (GF) with a definite (fixed) POA for obligation is "cancelled" at the end of the 5th fiscal year after the end of the POA, regardless of whether the funds have been obligated. Cancelled funds are no longer available for obligation or expenditure.[2]

Availability Procedures by Source of Funds

The availability of funds is dictated by the type of budget authority authorized: contract authority typically associated with Title 23 programs funded out of the HTF or appropriated authority typically funded from the GF.

FHWA may reobligate Federal-aid funds (contract authority) to new projects (or modifications to existing projects) for the program's eligible purpose when the funds have been deobligated from another project.[3] Funds from allocated programs may require additional approvals from the appropriate headquarters

[1] Timely obligated contract authority that has passed the POA may be reobligated based upon the authority of 23 U.S.C. 118(c). However, GF appropriations that expire have limited availability under 31 U.S.C. 1553 as further discussed below.

[2] 31 U.S.C. 1552

[3] 23 U.S.C. 118(c)

program office. Unobligated Federal-aid funds have the potential to lapse at the end of the fiscal year if certain conditions are met.

Funds made available as appropriated authority, typically from the GF, follow different rules. Absent specific approval from the Office of the Chief Financial Officer (HCF), these funds are not typically available for reobligation once their POA has passed.

Obligation of Federal-aid Contract Authority

Most Federal-aid contract authority (funds) is available for obligation for four fiscal years.[4] Some Federal-aid highway programs have other statutorily defined POA that make funds available for obligation for a different period or indefinitely (until expended).

In general, the Federal government identifies funds by the fiscal year for which they are made available. Due to the nature of Federal-aid contract authority,[5] the Government Accountability Office (GAO) has recognized[6] that Federal-aid funds are obligated using a FIFO method, meaning that oldest program funds are considered to be obligated and used first. This method applies to apportioned programs as shown in Table 1.

Table 1: FIFO Method Applied to Apportioned Programs

If a State's total unobligated balance for an apportioned program at the end of the fiscal year, ...	Then, ...
...is equal to or less than the State's cumulative apportionments for that program in the most recent 3 fiscal years (assuming 4 year POA),	... none of the funds lapse. The unobligated funds may be carried over and obligated in the following fiscal year, regardless of the year for which the funds were originally made available.
...exceeds the State's cumulative apportionments for that program in the most recent 3 fiscal years (assuming 4 year POA),	...the amount in excess of the cumulative apportionments lapses. Funds in oldest program codes lapse first.

If a statutorily defined program (e.g., the Surface Transportation Program) is reauthorized by new legislation, the unobligated balance will encompass the program's funding under both the current and past legislation. The Fiscal Management Information System (FMIS) identifies programs by program codes. When legislation reauthorizes a program, a new program code is assigned for the continued program. The old and new program codes are grouped in FMIS by the "Recode" which is used for the application of FIFO. Therefore, the total unobligated balance considered in FIFO includes old and new program codes grouped by the Recode and old funds that are deobligated will not lapse as long as the requirements in table 1 are met.

When a Federal-aid program has not been reauthorized (i.e., Congress has discontinued it) and its funding reaches the last year of its POA, the Office of Budget (HCFB-10) marks the program as "expired" in the FMIS at the end of the fiscal year. Once marked expired, unobligated funding is no longer available for obligation after the end of the fiscal year, and HCFB-10 removes the unobligated contract authority from FMIS at that time. Properly-obligated funds from an expired program will be available until expended and may be reobligated as discussed under "Reobligation of Federal-aid Contract Authority."

[4] 23 U.S.C. 118(b)
[5] 23 U.S.C. 118(c)(1)
[6] 41 Comp. Gen. 16 (1961)

Any properly-obligated Federal-aid funds (and associated obligation authority (OA)[7]), including expired funds, that are released (deobligated) by a final payment, project modification,[8] or updated project estimate[9] are credited back to the same program for which the funds were originally authorized, and are immediately available for obligation in FMIS.[10] However, properly obligated funds must not be deobligated simply to "free them up" for other purposes.[11] Also, funds should not be deobligated from a project and replaced with funds from another program[12] unless specifically provided in law (e.g., the emergency relief program). Funds from an expired program that FHWA determines to be improperly obligated (e.g., that were obligated without the support of a valid estimate or with incomplete documentation for the purpose to "tie-up" the funds) are at risk of lapsing immediately, may not be reobligated, and will be removed from FMIS. The division administrator may contact HCFB-10 to remove such funds from FMIS if this corrective action is determined to be appropriate.

Reobligation of Federal-aid Contract Authority

Contract authority (and associated OA) deobligated from an expired program will lapse at the end of the fiscal year if the funds are not reobligated within that same fiscal year. The division office may, without further approval, reobligate apportioned funds (and associated OA) from a current or expired Federal-aid program consistent with the eligible purpose of those funds.[13] The division office may apply these funds (and associated OA) to new project authorizations or modifications to existing projects. Table 2 illustrates the relationship between FIFO and the availability of funds using an example of apportioned funds with four year (current+3) POA.

The division office should coordinate the reobligation of funds from an allocated HTF program with the appropriate program office, regardless of whether that program has expired. Discretionary programs often require additional approvals from the program office for changes to the specific project use of those funds.

Most allocated HTF programs also follow the FIFO principles. However, this practice involves division offices coordinating closely with program offices prior to fiscal year-end or during the August redistribution process. HCFB-10 provides guidance to divisions and program offices during the fourth quarter of the fiscal year regarding August redistribution and the process necessary to ensure allocated unobligated funds and obligation authority can be carried over to the following fiscal year.

Program offices should include program-specific variances from this guidance in their applicable implementation guidance after coordination with Office of Financial and Management Programs (HCFB-30). Also, "A Guide to Federal-Aid Programs and Projects" maintained by the Office of Program Administration (HIPA-10) provides information on specific programs to help determine the appropriate treatment of specific fund types.

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[7] Obligation authority may be limited yearly in appropriations legislation which limits the amount of funds that may be obligated each fiscal year.
[8] As permitted under 23 CFR 630.110(a).
[9] 23 CFR 630.106(a)(4)
[10] 23 U.S.C. 118(c)
[11] Principles of Federal Appropriations Law (Red Book) Third Edition, Volume II, Chapter 7, E. Deobligation.
[12] 23 CFR 630.110(a)
[13] Under reobligation authority set forth in 23 U.S.C 118(c).

Table 2: Example of FIFO Relationship to Funds Availability

	Amount Available at the Beginning of the Fiscal Year			Activity Against Amount Available During Fiscal Year		Determination of Carryover and Lapsed Amounts at End of Fiscal Year		
Fiscal Year	Program[a] Code	Amount Apportioned	Total Available for Obligation in Current FY[b]	Amount Deobligated in Current FY	Amount Obligated in Current FY	End of FY Unobligated Balance	Maximum Carryover to next FY[c]	Lapsed
1	L050	$100,000	$100,000	$0	$75,000	$25,000	$100,000	$0
2	L050	$100,000	$125,000	$50,000	$0	$175,000	$200,000	$0
3	L05E	$100,000	$275,000	$0	$50,000	$225,000	$300,000	$0
4	L05E	$100,000	$325,000	$30,000	$80,000	$275,000	$300,000[d]	$0
5	L05E	$100,000	$375,000	$0	$40,000	$335,000	$300,000	$35,000
6			$300,000	$0	$125,000	$175,000	$200,000	$0
7			$175,000	$50,000	$200,000	$25,000	$100,000	$0
8			$25,000	$75,000	$60,000	$40,000	$0[e]	$40,000
9			$0	$50,000	$35,000	$15,000	$0	$15,000
10			$0	$20,000	$20,000	$0	$0	$0
Total Apportioned		$500,000		Total Obligated	$410,000		Total Lapsed	$90,000

Notes: [a] This example assumes that the National Highway System program was authorized at $100,000 for 2 years and reauthorized for 3 more years and then was not continued.
[b]Total includes amount apportioned in current fiscal year plus unobligated balance or maximum carryover, whichever is less, from the previous fiscal year.
[c]At the end of the FY, the maximum carryover equals the apportioned amount made available in the most recent 3 years assuming no funds were obligated. The apportioned amount from 4 years or older is no longer available.
[d] At the end of FY 4, the POA from FY 1 has ended and only apportioned amount from FY 2, 3, and 4 may be carried over to FY 5.
[e] At the end of FY 8, the funds would be identified as "Expired" in FMIS.

Obligation of Appropriated Budget Authority—General Fund

Appropriated budget authority programs typically from the GF are subject to title 31, U.S.C. and may have varying POAs. GF programs with an indefinite POA are available for obligation and reobligation for their eligible purpose until expended. Appropriate coordination with HCFB-10 is required each fiscal year before these funds are obligated.

GF programs that have a definite (fixed) POA have limitations on availability for both obligation and expenditure. Examples of GF programs include:

- Most funds made available in appropriations acts.
- Programs authorized in other legislation, such as supplemental appropriations or other authorization acts.
- Transfers from other agencies' programs, in most cases (the Federal Transit Administration may transfer either GF or HTF funds).

GF programs with a fixed POA are not available for new obligations after the last fiscal year of their POA. When the availability expires, HCFB-10 records these programs as "expired" and also marks them as "cancelled" in FMIS to establish a control to prevent reobligation of these funds. A State may not transfer expired GF program funds within a project (e.g., between detail lines) or to other programs. At the end of the 5th fiscal year after the POA ends, these funds are no longer available to reimburse project costs.[14] HCF will take additional action to end expenditures on such programs.

In limited circumstances, a State may request to adjust funds authorized on a project from an expired GF program that were deobligated from another project.[15] This authority is only available for five fiscal years

[14] 31 U.S.C. 1552(a)

after the POA has ended, and requires prior HCF approval. HCF will provide guidance on a program-by-program basis, in conjunction with the appropriate program office, concerning when these modifications will be considered. The amount of funds that may be obligated under this authority each fiscal year is limited requiring the appropriate program office to monitor the total amount reobligated. A State may only use funds for eligible and authorized adjustments and project changes, and not for new authorizations.

A GF program with a fixed POA may reimburse expenditures for five fiscal years after the end of that POA. If the division office determines that properly obligated funds were properly and timely expended by the State prior to the final cancellation, but were not reimbursed by FHWA, the division office should contact HCFB-30 for resolution.[16]

FMIS Actions Applicable to Both Federal-aid Contract Authority and General Fund Appropriations

HCFB-10 will remove all unobligated balances from FMIS at the end of the fiscal year for each of the following: lapsed funds that did not meet the FIFO requirement; expired program funds; and cancelled program funds.[17] These balances should be identified on the FMIS W10A report as "POSSIBLE LAPSE END OF FISCAL YEAR." If FMIS continues to show the unobligated balance in the following fiscal year, the division office should contact HCFB-10 to ensure the funds should remain available for obligation.

If the division office determines that funds have been deobligated erroneously (including an administrative oversight) and are not available for reobligation (i.e., lapsed), they should contact HCFB-30. In this situation, they should sufficiently describe the facts and internal control weaknesses, corrective actions, and other pertinent information that HCF will need to evaluate whether it may make an accounting adjustment and reinstate the funds for the specified project.

[15] 31 U.S.C. 1553
[16] 23 U.S.C. 1553(b)(1)

[17] In accordance with 31 U.S.C. 1555, the FHWA Administrator, in coordination with the Secretary and the Office of Management and Budget, may cancel any program (whether GF or HTF) with an indefinite POA if the purpose of the program has been completed, and if there has been no expenditure from the program for two consecutive fiscal years. The appropriate program office should consult with HCFB-30 to determine applicability of this provision to a specified program.