Tolling and Pricing Program

U.S. Department of Transportation
Federal Highway Administration

MEMORANDUM

Subject: **INFORMATION:** Toll Credit for Non-Federal Share, Section 1905 of SAFETEA-LU

Date: February 8, 2007

From: */s/ Original signed by*
Dwight Horne,
Director Office of Program Administration

In Reply Refer to: HIPA-10

To: Division Administrators

Arthur E. Hamilton
Associate Administrator
Federal Lands Highway

This memorandum provides information with regard to implementing section 120(j) of title 23, United States Code (U.S.C.), as amended by section 1905 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144, §1108, amending 23 U.S.C. §104(k)(1) (2006)). This memorandum supplements our previous memorandum "Toll Credit for Non-Federal Share, section 1111(c) of TEA-21, Implementing Guidance," dated August 7, 1998.

Toll credit calculations based on expenditures prior to enactment of SAFETEA-LU (August 10, 2005), will follow our August 7, 1998 memorandum. Toll credit calculations based on expenditures on or after the date of enactment of SAFETEA-LU will be determined in accordance with this memorandum. The Maintenance of Effort (MOE) determination remains the same as pre-SAFETEA-LU.

Any State that has received approval for toll credits based on expenditures made on or after enactment of SAFETEA-LU using our August 7, 1998 memorandum, can recalculate their toll credits earned according to this memorandum.

Approval Authority for Toll Credits

As of the date of this memorandum, each State's Toll Credit Application and Maintenance of Effort (MOE) determination are to be approved by the FHWA Division Administrator (DA). **Each DA will now be responsible for reviewing and approving toll credit applications received from the State.** The DA will reply directly to the State concerning acceptance of its toll credit application. Additional information is provided below under "Request and Approval of Credit."

Highlights of Revisions to the Toll Credit Provisions

SAFETEA-LU revisions to 23 U.S.C. § 120(j)

determination but instead will be a request to use either MOE Alternate 2 or 3. Since both of these alternates rely on determining actual expenditures at a future point in time, the MOE certification will subsequently be made by the State once the time period involved has transpired and the actual expenditures are known.

General Requirements

- Credits earned may be applied toward the non-Federal matching share of programs authorized by title 23, U.S.C, except the credit may not be applied to projects funded with FHWA's emergency relief funds or ADHS program funds. Additionally, the credit may be applied to transit programs authorized by chapter 53 of title 49, U.S.C.

- Use of the toll credit provision can begin with FFY 1992. As discussed above, certain MOE alternates were only available beginning with FFY 1995. Additionally, the flexibility concerning use of the two-year rule in determining the average expenditures for the MOE determination is only available beginning with the FFY 1998 credit determination.

- The MOE determination only needs to be satisfied for the FFY for which a State earns the credit amount. Once a credit amount is appropriately established, it can be applied whether or not the State satisfies the MOE determination in later years. Additionally, any established credit does not lapse after a period of time but remains available until used by the State.

- A request to use toll credits on a specific Federally funded project should be submitted to the appropriate Federal agency (FHWA, FTA, or NHTSA) administering the project.

- Toll credits can be applied at any time during the development and implementation of the project, including after execution of the initial project agreement. A State has the option of using toll credit amounts to cover all or a portion of the non-Federal share of a project. The project agreement or modification should indicate what the Federal share is and that toll credits are being used in lieu of all or part of the required State match, resulting in up to 100 percent Federal funds being used on the project.

- Where the toll credit is applied on a project, whatever Federal share is established at the time of project authorization must be used throughout the life of the project. Subsequent underruns, or overruns if a balance of unused credit is available, should be processed at the initially authorized Federal share.

- The State must establish a special account to track appropriate toll credits. The State will place into the special account the amount of credit that the FHWA has approved. When the State requests authorization of a project using the toll credit, it shall request that all or a portion of the non-Federal share be credited from the special account. These projects will be processed and administered in accordance with normal procedures except that the amount of funds authorized on the project and the Federal participation will be increased. When the State submits a request to use credits from the special account, it will reduce the account by the amount applied to a project. The amount of non-Federal share credited will be deducted from the unobligated balance of Federal-aid funds available and charged to the State's obligation limitation.

- The toll credits can be applied to projects retroactively, i.e., after project authorization. In general, a State may begin use of toll credits once a credit amount has been approved by the FHWA. However, it is acceptable on a Federal-aid project to conditionally authorize use