

SAFETEA-LU and EISA Surface Transportation Rescissions

The following information gives an overview on transportation funding rescissions as of January 12, 2010, and actions taken by NARC and its association partners. NARC would appreciate continued member feedback and examples of how the rescissions are affecting your organization and community. This information will be updated as events warrant.

The Energy Independence and Security Act of 2007 (EISA) (P.L. 110-140)

Section 1131 – Congestion Mitigation and Air Quality (CMAQ)

This piece of legislation created two problems NARC has sought to correct. The first problem resulted from the legislation mandating that if CMAQ monies are used in a project, that CMAQ monies be used to cover 80% of each project cost. This policy change effectively instituted a “floor” for the amount of CMAQ money that is to be used in any given project. Many of our members expressed concern about reducing the flexibility of the CMAQ program in this way, including the Maricopa Association of Governments in Phoenix, AZ.

Section 1132 – Rescission flexibility:

This change in the CMAQ was balanced in the same legislation by a provision covering the manner in which a state Department of Transportation (DOT) applies transportation funding rescissions. Pursuant to EISA, state DOTs were able to apply transportation funding rescissions to all programs covered under US Code Title 23, Chapter 1 except where specifically excluded by law. Subsequently, the U.S. Department of Transportation Federal Highway Administration (FHWA) determined that metropolitan planning money was a program from which rescissions could be taken. As state level planning funding is not authorized under the same chapter of Title 23, state planning monies were not impacted by this legislation. In addition, because the legislative language is written as “States may” and not “States shall,” application of this provision is not uniform across all states.

NARC actions:

Regarding Section 1131 (CMAQ), NARC successfully worked with House Congressional staff to correct the interpretation by FHWA of Congressional intent.

Regarding Section 1132 (rescissions), NARC continues to work with House and Senate Congressional staff, as well as FHWA, to correct FHWA’s interpretation of the legislative language. In partnership with the National League of Cities (NLC), National Governors Association (NGA), Association of Metropolitan Planning Organizations (AMPO) and other association stakeholders, we have developed a dialogue around the effects of these rescissions, and maintain engagement with our local elected officials to communicate this strategy to Members of Congress.

SAFETEA-LU (P.L. 109-59)

Section 10212 – Rescission of Unobligated Contract Authority:

On September 30, 2009, the authorization law for current federal highway and transit programs expired. In an effort to balance out the authorized levels of funding, Congress wrote into the law Sec. 10212, a rescission of unobligated contract authority in the amount of \$8.078 billion. The \$8.078 transportation funding rescission, combined with a previous \$3.15 billion rescission of highway contract authority balances, reduces the total contract authority apportioned to states via formula in FY 2009 from \$35.8 billion to \$23.9 billion – a 33% reduction.

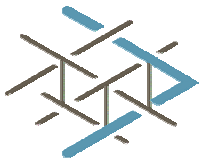
NARC actions:

NARC has worked with members to develop a legislative strategy to advocate a rescissions fix. NARC continues to work with the U.S. Senate Environment and Public Works and U.S. House Transportation and Infrastructure Committees, as well as individual Members of Congress, to communicate the effects of such a rescission on projects funded through the American Recovery and Reinvestment Act (ARRA), as well as to identify and engage association stakeholders as necessary. NARC has been also engaging NLC, NGA and AMPO to carry out these objectives.

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Transportation policy and program



Surface Transportation Authorization Extension

H.R. 3326, the Department of Defense Appropriations Act of 2009:

Contained within the DoD Appropriations Act of 2009 is a two month federal surface transportation authorization extension, which continues to authorize expenditures out of the Highway Trust Fund through 2/28/10. While this short-term authorization extension does fund the surface transportation programs, it takes into consideration the rescission of transportation funds as mandated by Sec. 10212 of SAFETEA-LU. Despite earlier attempts by Members of the Senate to nullify this rescission, no action was ultimately taken to correct it.

Surface Transportation Authorization Extensions:

The House passed a three-month surface transportation authorization extension on September 23, 2009, which did not address either rescission concern contained within EISA or SAFETEA-LU; whereas the extension introduced by the Senate sought to fix the \$8.078 billion rescission contained within SAFETEA-LU (thanks to Senator Bond's (R-MO) persistence). Until recently, several proposed surface transportation authorization extensions have attempted to correct the rescission of transportation funds, yet there continued to be a lack of political support necessary to pass the provision in both the House and the Senate. Currently, the House of Representatives has passed H.R. 2487, the *Jobs for Main Street Act, 2010* which includes \$48.3 billion in infrastructure projects and calls for a 1-year extension of the current federal surface transportation authorization, SAFETEA-LU. This authorization extension would not take into consideration Sec. 10212 when determining apportionment levels. This legislation, however, has yet to be passed by the Senate.

Next Steps

Without Congress acting on an authorization extension, the Federal government's transportation obligations will be funded at FY 2009 levels through the short-term federal surface transportation authorization extension through 2/28/10. However, should the Senate pass H.R. 2487, the *Jobs for Main Street Act, 2010* before 2/28/09, the new authorization extension will take effect and federal transportation dollars will be apportioned without regard to the \$8.07 billion rescission if passed into law in its current form.

NARC continues to look for specific examples of how this transportation rescission is affecting regions. NARC would also appreciate your review of the funding tables released by FHWA to determine if the rescissions were proportionality applied (as codified by EISA) to the unobligated balances in the state DOT federal transportation accounts. This information will assist in the development educational materials to be used in addressing this and other issues. If you are, or will be, affected by this rescission, please contact Erika Young, Transportation Director, at either erika@narc.org or (202) 986-1032, x212.

Thank you for your assistance and we look forward to working with our local elected officials, executive directors, staff and other regional leaders to move this forward.