

Questions & Answers - Fixing America's Surface Transportation (FAST) Act Rescission

Question 1: What is a rescission?

Answer 1: A rescission is legislation enacted by Congress that cancels the availability of budget authority (*e.g.*, contract authority) before that authority would otherwise expire. Note that a rescission of funds (contract authority) does not affect obligation limitation.

Question 2: How much is the FAST Act rescission and when will it take effect?

Answer 2: Section 1438 of the FAST Act contains a \$7.569 billion rescission that will take effect in FY 2020. The actual rescission will take place on July 1, 2020.

Question 3: What funding is subject to the FAST Act rescission?

Answer 3: The FAST Act rescission applies to unobligated balances of contract authority that is apportioned under chapter 1 of title 23, United States Code, with the exceptions described in Question 5. A more detailed breakdown of the contract authority subject to the rescission will be provided in a future update to these Q&As.

Question 4: Will the FAST Act rescission apply to any contract authority that is either exempt from the obligation limitation or associated with special no-year obligation limitation?

Answer 4: Yes, some programs exempt from the obligation limitation or associated with special no-year obligation limitation, such as the portion of the National Highway Performance Program (NHPP) funding that is exempt from the obligation limitation, are subject to the FAST Act rescission. A State may generally obligate these funds without regard to the State's overall obligation limitation for that fiscal year. Please note that any rescission of these special funds will result in an actual reduction to the total amount of funding that a State is able to obligate, which is not the case with funds subject to the formula obligation limitation that are in excess of available formula obligation limitation. A more detailed listing of such programs subject to the rescission will be provided in the future in an update to these Q&As.

Question 5: What funding is not subject to the FAST Act rescission?

Answer 5: The following funding is not subject to the FAST Act rescission:

- Contract authority apportioned under chapter 1 of title 23 that is specifically excluded from the rescission by section 1438 of the FAST Act:
 - Safety programs, such as the Highway Safety Improvement Program (HSIP), High Risk Rural Roads set-aside, section 154 and 164 penalty funding, Railway-Highway Grade Crossing Program, and some older pre-HSIP safety funding.

- Funding sub-allocated by population under the Surface Transportation Program/ Surface Transportation Block Grant Program.
- Programs that were not apportioned under chapter 1 of title 23. This includes several SAFETEA-LU programs such as Safe Routes to School, Coordinated Border Infrastructure Program, and Appalachian Development Highway System Program.
- Any allocated funding (non-apportioned), such as funding for earmarks, Federal Lands programs, research programs, ferry boats, territorial and Puerto Rico highway programs, TIFIA, emergency relief, discretionary freight program awards, and administrative expenses.

Question 6: What data will FHWA use to calculate the FAST Act rescission?

Answer 6: As specified in the FAST Act, the rescission calculations will be based on unobligated balances of contract authority for apportioned programs (excluding those funds not subject to the rescission, as discussed in Question 5) as of September 30, 2019.

Question 7: What is the overall methodology for calculating the State and program rescission amounts?

Answer 7: The total rescission amount will be applied proportionally among the States and then to each program within a State in a two-step process as described in Questions 8 and 9.

Question 8: How will the FAST Act rescission be calculated and applied among the States?

Answer 8: The rescission will be calculated based on each State's overall share of the unobligated balances of contract authority subject to the rescission as of September 30, 2019, relative to all States. This share will determine the proportional amount of the rescission applied to each State.

For example, assume that the total unobligated balances subject to rescission for all States as of September 30, 2019, are \$10,000,000,000 and State X has an unobligated balance subject to rescission of \$500,000,000. State X's share of the unobligated balances is calculated to be 5 percent ($\$500,000,000/\$10,000,000,000$); thus, 5 percent of the rescission ($\$7,569,000,000 \times 5\% = \$378,450,000$) would be applied to State X.

Question 9: How will the FAST Act rescission be calculated and applied among programs within each State?

Answer 9: Each State's total rescission amount will be applied by program by multiplying the State's total rescission amount by the share of that State's unobligated balance for each program as it relates to that State's total unobligated balance for all programs subject to the rescission.

This proportional programmatic calculation will be done at the fund source level of each program. Note that the fund source refers to the Fiscal Management Information System (FMIS) program codes that are grouped together based on similar program components. When a more detailed breakdown of contract authority subject to the rescission is provided under Question 3, it

will show the programs broken down by fund source and the program codes within each fund source.

For example, the Congestion Mitigation & Air Quality Improvement (CMAQ) program consists of the CMAQ Main fund source (program codes 3200, Q400, H400, L400, L40E, L40R, M400, M40E, Z400) and the CMAQ PM 2.5 set-aside fund source (program codes M003, M0E3, Z003). Continuing with the example from Question 8, suppose that of State X's unobligated balances subject to rescission of \$500,000,000, the CMAQ Main fund source and the CMAQ PM 2.5 fund source have unobligated balances of \$50,000,000 and \$15,000,000, respectively. Based on these unobligated balances, the CMAQ Main fund source and the CMAQ PM 2.5 fund source will comprise 10 percent ($\$50,000,000/\$500,000,000$) and 3 percent ($\$15,000,000/\$500,000,000$), respectively, of State X's unobligated balances subject to rescission. Therefore, the rescission amounts for State X would be \$37,845,000 ($\$378,450,000 \times 10\%$) from the CMAQ Main fund source and \$11,353,500 ($\$378,450,000 \times 3\%$) from the CMAQ PM 2.5 set-aside fund source.

Question 10: Do States have any flexibility to determine how the rescission will be implemented at the program level?

Answer 10: No, States do not have the flexibility to determine the programs and amounts by program from which the rescission is taken. Section 1438 of the FAST Act provides specific language as to how the rescission is to be calculated at the State and program levels. This language requires the use of a proportional formula and does not allow for flexibility.

Question 11: How will the FAST Act rescission be applied in the FMIS to the program codes within each fund source?

Answer 11: Each State's rescission amount will be applied within each fund source in a chronological manner by rescinding funds first from the oldest program codes to the newest program codes.

Continuing with the CMAQ example from Questions 8 and 9, suppose that the CMAQ PM 2.5 set-aside fund source program codes M003, M0E3, and Z003 contain unobligated balances of \$4,000,000, \$8,500,000, and \$10,000,000, respectively, for State X. Of the required \$11,353,500 CMAQ PM 2.5 set-aside rescission, \$4,000,000 would be rescinded from M003 since it is the oldest of the three program codes, and the remaining \$7,353,500 would be rescinded from M0E3. Thus, M0E3 would retain an unobligated balance of \$1,146,500 and Z003, the newest of the program codes, would retain its full unobligated balance of \$10,000,000.

Question 12: What is the overall process/timeline for the implementation of the FAST Act rescission?

Answer 12: The process/timeline for implementation is as follows:

- October 2019 – The Office of the Chief Financial Officer (HCF) will calculate the rescission by State and program/fund source once final unobligated balances as of September 30, 2019, are available.

- October 2019 – The FHWA will issue a Notice signed by the FHWA Administrator outlining the FAST Act rescission and including preliminary rescission amounts by State and program/fund source.
- June 2020 – The HCF will provide updated preliminary rescission amounts (note that these amounts still may not be final as the final rescission amounts will be drawn from the unobligated balances available on July 1, 2020).
- July 1, 2020 – The HCF will withdraw funds from FMIS based on the rescission amounts.
- July 1, 2020 – The HCF will rescind apportioned funding equal to the total rescission amount in the Delphi accounting system.
- July 2020 – The HCF provides (via e-mail and web posting) tables showing final rescission amounts.

Question 13: How will the rescission be implemented if one or more States do not have sufficient unobligated balances on July 1, 2020, from which to take the calculated rescission amount?

Answer 13: Although HCF doesn't anticipate that any State will have insufficient unobligated balances to meet the requisite rescission, HCF is currently working with the Office of Chief Counsel and Office of Policy to develop procedures to address a State shortfall should it occur. Further information will be provided as it becomes available in a future update to these Q&As.

Question 14: How will the rescission be implemented if one or more fund sources within a State do not have sufficient unobligated balances on July 1, 2020, from which to take the calculated rescission amount?

Answer 14: HCF is currently working with the Office of Chief Counsel and Office of Policy to develop procedures to address any fund source shortfalls within a State. Further information will be provided as it becomes available in a future update to these Q&As.

Question 15: Is a State required to maintain sufficient unobligated balances in each fund source for the calculated rescission amounts based on unobligated balances as of September 30, 2019, even though the withdrawal of the rescinded funds does not occur until July 1, 2020?

Answer 15: As discussed in Question 14, HCF is currently working with the Office of Chief Counsel and Office of Policy to develop procedures to address any fund source shortfalls within a State. Further information will be provided as it becomes available in a future update to these Q&As.

Question 16: Will the FAST Act rescission have any impact on how States complete their annual responses to August Redistribution for additional obligation limitation?

Answer 16: No. States do not need to consider or factor in the FAST Act rescission when completing their August Redistribution responses.

Question 17: What information will FHWA provide in the future regarding the FAST Act rescission?

Answer 17: At the beginning of each fiscal year, HCF plans to distribute an updated table of unobligated balances subject to the rescission to help States plan for the FAST Act rescission. The table of unobligated balances as of September 30, 2016, subject to the FAST Act rescission is located at: https://www.fhwa.dot.gov/cfo/fastact_rescission_balances_20160930.cfm. In addition, these Q&As will be updated as additional information becomes available, additional questions arise, or additional issues need to be addressed.

Question 18: How does the rescission in the Department of Transportation Appropriations Act, 2017, compare to the FAST Act rescission?

Answer 18: The Department of Transportation Appropriations Act, 2017 (Division K of Public Law 115-31), contains an \$857 million rescission of apportioned contract authority that is effective as of June 30, 2017. This rescission excludes the same programs as the FAST Act rescission, but it also excludes programs subject to special no-year limitation or exempt from the limitation.

The rescission amounts for each State and program are determined proportionally based on unobligated balances as of May 31, 2017. As with the FAST Act rescission, States are not provided any flexibility in the application of this rescission; within each State, the share of the rescission applied to each program will be proportional based on the unobligated balances of funds subject to the rescission as of May 31, 2017.

Question 19: What is the impact of the rescission in the Department of Transportation Appropriations Act, 2017, on the FAST Act rescission?

Answer 19: The rescission in the Department of Transportation Appropriations Act, 2017, will reduce the unobligated balances of excess contract authority available for the FAST Act rescission. However, based on the relatively modest amount of the FY 2017 rescission, it is anticipated that there will remain sufficient unobligated balances to absorb the FAST Act rescission.

Question 20: If any other rescissions are enacted, such as a rescission contained in an appropriations act between FY 2018 and FY 2020, would such rescission of funding be in addition to the funding rescinded in the FAST Act? What impact would any other enacted rescissions have on the FAST Act rescission?

Answer 20: Unless otherwise specified in law, any additional rescissions enacted via an appropriations act or another legislative vehicle would be in addition to the FY 2017 rescission and the FAST Act rescission. Any additional rescissions that are enacted and implemented prior to the FAST Act rescission will affect the amount of States' remaining unobligated balances, resulting in a reduction to the amount of excess contract authority that States have available to absorb the FAST Act rescission. As with the FY 2017 rescission, if any additional rescissions are enacted into law, HCF, along with the Office of the Chief Counsel and the Office of Policy, will assess the rescission and provide Division Offices and States the information necessary to plan accordingly.