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TECHNICAL MEMORANDUM

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SUBJECT: *The Use of Federal Toll Credits and Transportation Development Credits by States and Regional Planning Entities*

SUMMARY

Toll or transportation development credits are a federal transportation funding tool that can be utilized by states as a means of meeting local and state matching requirements for federal funding. State credits are accrued when capital investments are made in federally-approved tolled facilities including toll roads and bridges. These credits can then be used as a "soft match," meaning that they do not represent an actual source of funding. Essentially, these credits reduce the amount of funding a state or local entity has to contribute and allow many programs to be funded with 100 percent federal funds as opposed to the traditional 80/20 percent split between federal and state/local funding sources. One major advantage of this is that it frees local matching funds for other projects. In most cases state departments of transportation manage the state's pool of credits and allocate them to metropolitan planning organizations (MPO). In Texas, 75 percent of credits are allocated to the MPO of the region they were generated in and the remaining 25 percent is allocated on a competitive statewide basis. The use of toll credits is generally documented in State Transportation Improvement Plans (STIP.) It is most common for MPOs to use toll credits on one-time capital expenditures, often as part of federal transit funding programs. The increasing use of credits as part of transit programs may be a result of stagnant or, in some cases, declining state funding for such programs that has reduced the available pool of actual funding that may be used for matching purposes. Credits may also be used to meet any matching requirements for programs funding transit operations, but this is generally not done because toll credits are not an actual source of funding. They are viewed more as a short term tool for managing limited existing funds. There are very few publications that discuss the use of these credits and the Federal Highway Administration does not maintain any sort of centralized database as a resource for practitioners. Assessing best practices is thus problematic.

INTRODUCTION

In order for federal funding to be awarded to a particular project or funding program, a matching amount has to be provided by the state/local entity or from some other non-federal source. While the specific rules and requirements for these matching amounts varies between funding categories, in general, a state and/or local entity must provide $1 in match for every $4 dollars in federal funding. Thus, federally funded projects and programs at the state and local level are generally composed of 80 percent federal funds and 20 percent non-federal funding.

For various reasons, transportation funding levels at the state and local level have remained unchanged or have declined in recent years. This has reduced the pool of available funding for meeting federal matching requirements. To address this, numerous innovative financing and funding management strategies have been developed in order to increase the flexibility of states in meeting their match requirements. For example, in many cases, state and local entities are not required to match federal funds with actual funding and can instead provide a "soft" match (as opposed to the "hard" match of actual money). A soft match can take many forms including:

- Insurance
- Purchasing of equipment
- Engineering services
- Office space / rent
- Site hosting
- Staff payroll / salaries
- Staff benefits
- Utilities

The value of the good(s) or service(s) being provided determines the value of the soft match. Thus, soft matches do not increase the overall amount of funding available but rather represent a contribution by the state or local entity towards some other aspect of the project or program. The motivation to utilize a soft match versus a hard match is different for states and MPOs. It is generally thought that states prefer to utilize soft matches, while MPOs prefer hard matches. A soft match enables states to avoid cash payments to its MPOs and thus retain that funding for state uses. This, in turn, limits MPOs' available cash and limits their capacity to plan at their own discretion.

Toll Credits and Transportation Development Credits

Toll credits, or in Texas, transportation development credits, are another form of soft match. States are awarded and accrue these credits through the Federal Highway Administration (FHWA) based on the amount of capital investments made in federally-approved toll facilities such as toll roads and tolled bridges. Essentially, the federal government credits states for such investments and allows them to use these credits as a match on other federal funding programs.

Statutory authority for the use of toll credits was originally established in Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the mechanism was further developed in 1998 under the Transportation Equity Act for the 21st Century (TEA-21). Initially, the calculation of toll credits for a particular state was based on capital investments made on toll facilities that were built, improved, or maintained *without the use of Federal funds*. However, that requirement was eliminated under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005.

Toll credits can be applied at any time during the development and implementation of a project. The project agreement or modification should show the federal share of funding and indicate that toll credits will be used for all or part of the required non-federal match. Credits may be applied toward the non-federal share of programs authorized by title 23, of the United States Code (U.S.C.) with the exception of FHWA emergency relief funds or Appalachian Development Highway System (ADHS) program funds. Toll credits may also be applied to transit programs authorized by chapter 53 of title 49, U.S.C. and can be used for the non-federal match in any number of funding categories including operations and capital purchases.

States accruing credits must meet federal maintenance of effort (MOE) requirements in order to use toll credits. This ensures that the state does not use federal funds as a replacement for state and local funds. An MOE is essentially an assessment of the state's non-federal transportation capital expenditures. And although capital investments in *private* toll facilities can be used in the calculation of state toll credits, only the state (as opposed to the private owner/operator of the tolled facility) is required to meet the federal MOE requirements.

Another requirement for FHWA to approve the use of toll credits is that their use cannot reduce the state's non-federal transportation expenditures. This means that project sponsors may not redirect state or local transportation funds that were originally intended as non-federal match to non-transportation related uses.

As noted earlier, states find the use of soft match more desirable than MPOs do, and the use of toll credits by state entities in meeting federal match requirements is even less desirable from an MPO perspective. This is due to the fact that the use of toll credits can reduce funding from sources such as FHWA Metropolitan Planning Funds and Federal Transit Administration Metropolitan Planning Program / Section 5303 funds by 20 percent without the benefit of in-kind services often provided under other soft match options. In fact, the use of toll credits to replace a state's cash or in-kind match to MPOs is viewed as potentially limiting metropolitan areas' transportation planning capacity. However, one advantage of using toll credits is that it allows projects to be programmed with 100 percent federal funding, which frees local matching funds for other projects. Transit agencies appear to be much more open to the use of tolling credits for meeting federal matching requirements, particularly with regard to capital purchases.

Toll and transportation development credits do not represent actual available funding, but they are often reported in local, regional and state planning documents as a source of funding. Thus, an entity utilizing such credits will often report that it has $X in transportation credits available. However, there is no one-to-one conversion of credits to dollars, as the actual "value" of a credit depends in numerous factors. Therefore, in this document, toll and transportation development credits will not be expressed in terms of a dollar value, even though many entities report them as such.

USE OF TRANSPORTATION DEVELOPMENT CREDITS IN TEXAS

The use of Transportation Development Credits (TDC) in Texas is defined in Title 43 of the Texas Transportation Code, Part 1 Chapter 5. In general, this legislation directs TxDOT to "make it a priority to utilize transportation development credits as the required match in a manner that would maximize the utilization of federal funds on eligible projects." Specific rules include:

- **§5.102** – Requires MPOs and the Texas Transportation Commission (TTC) to consider the goal of maximizing the utilization of federal funding in awarding TDCs to eligible projects.
- **§5.105** – Requires the TTC to allocate 75 percent of locally earned credits to the MPO planning area in which those credits were earned.
- **§5.106** – Establishes a basic framework for determining how credits allocated to MPOs are to be awarded. A specific process is not prescribed, but each MPO receiving TDCs is responsible for developing guidelines pertaining to the awarding and management of its credit allocation and must consider how the award of credits will expand the availability of funding for transportation projects. This section also requires each MPO receiving TDC allocations to incorporate TDC award information into its Transportation Improvement Program and submit annual reports to TxDOT documenting the management of its TDC allocations. Additionally, this section requires public transit agencies located within MPO planning areas to first seek TDC awards from their respective MPO unless the TDC would apply to a program that is administered by TxDOT on a statewide basis.
- **§5.107** - Authorizes the TTC to award non-local TDCs through either a competitive process or in its sole discretion and creates a specific allocation for public transit projects. This local allocation is "equal to the lesser of 15 million credits or fifty percent of the total number of credits available for award by the commission on the first day of the fiscal year." This section establishes TxDOT's commitment to utilizing TDCs in support of public transit projects.

Many of these rules and policies, and specifically sections 5.105 and 5.106, are meant to strengthen the authority of local entities in the allocation of TDC awards.

MPOs and local tolling entities send information regarding investments made on eligible toll facilities to the Texas Department of Transportation's (TxDOT) Finance Division. TxDOT then completes the toll credit calculations which are, in turn, submitted to FHWA for approval. Once the toll credits are approved, FHWA notifies TxDOT, which then notifies each MPO and local/regional tolling authority about its available TDC balance. Furthermore, because TxDOT is the operator and maintainer for several state toll roads, the entity itself is eligible to accrue and utilize toll credits.

Current TxDOT policy directs 75 percent of toll credits to the metropolitan area in which they were produced with the remaining 25 percent being allocated on a statewide basis. The allocation of the statewide pool of TDCs is managed by the TxDOT's financial division. This division allocates toll credits primarily to meet non-federal match requirements tied to capital purchases such as bus purchases and transit facility development. This allows local transit districts to use as much non-federal funding as possible for operating costs. One of the biggest issues facing rural areas is that there has been no increase in state funding for such operations since 2000, although the level of funding has not declined. However, state funds are a large part of the required 20 percent non-federal match for these local entities, accounting for between 30 to 90 percent of the non-federal match. TxDOT thus operates under the assumption that state and local funds that might be used or non-federal match are a scarce commodity and should actually be reserved for operational costs as much as possible. This practice is not a formal policy but is, instead, considered more of a best practice.

TDCs may be used in Texas for matching requirements for programs related to operating costs, but that is not considered a desirable practice because it implies an ongoing, year after year commitment. TDS are most often applied to capital investments, which are one-time investments. In fact, the TxDOT Finance Division indicated that the statewide pool of TDCs has only been allocated for operational uses once, and it was an emergency stop gap measure to prevent a drop in service.

TDCs have been allocated to Texas transit providers to meet non-federal matching requirements for numerous federal funding programs including: Section 5307 Urbanized Area Public Transportation, Section 5311 Other Than Urbanized Area Public Transportation, Section 5310 Special Needs of Elderly Individuals and Individuals with Disabilities, and Section 5316 Job Access Reverse Commute (JARC) FTA funding programs. TDCs are also used extensively to fund replacement of depreciated rolling stock and to expand fleets, operate ongoing JARC projects, build new transit facilities, make investments in information technology, invest in preventive maintenance, purchase various services from vendors, and for fuel and other equipment purchases.

North Central Texas Council of Governments

The North Central Texas Council of Governments (NCTCOG) is currently developing and refining its policies for valuing and allocating TDCs in the Dallas / Fort Worth region. As of March 28, 2013 the region has 465,486,222 in available credits.

NCTCOG views the TDC program as having three core purposes:

- To provide access to federal funds in situations where a local provider does not have access to local matching funds, thus jeopardizing loss of federal funds;
- To aggregate local and state funds to expedite project delivery on non-federal projects; and
- To advance public transit, goals of the Texas Transportation Commission, and goals of the Regional Transportation Council.

To that end, NCTCOG has proposed the following types of TDC awards:

1. Strategic awards to small transit providers within region
2. competitive process/program call within region
3. sale or transfer to another MPO
4. Sale or transfer to the Texas Transportation Commission
5. Restructure regionally funded RTC regional programs and
6. Projects within the MPO.

Currently, strategic awards to transit providers have a higher priority simply because there is an established program for the allocation of TDCs to these entities. In actuality, the highest priority for NCTCOG in the future will be selling TDCs back to TxDOT or the Texas Transportation

Commission (TTC). NCTCOG expects to use proceeds from these TDC sales to capitalize a revolving fund, to serve as an additional, local funding source. It is unknown what sort of exchange rate NCTCOG will get for its TDCs, but the entity is working with TxDOT to establish a system for determining such. However, NCTCOG does not expect to receive a dollar for dollar exchange. The proposed plan for selling available TDCs will leave NCTCOG with 250 million in available TDCs.

NCTCOG's competitive processes for the allocation of TDCs within the region are also under development. The entity anticipates that there will be two types of awards under this category: Type 1, where the RTC issues a program call, and Type 2, where another entity within the region approaches the RTC and requests TDCs. NCTCOG's policies are currently unclear with regard to Type 2 awards, as it is unclear whether awards will be made on a "first come, first serve" basis or whether NCTCOG will declare a period wherein proposals can be made. NCTCOG is also unclear at this time how competing proposals will be evaluated against each other.

Houston – Galveston Area Council

The Houston-Galveston Area Council (H-GAC) is also in the process developing policies for the awarding of TDCs. H-GAC has no existing policies for awarding TDCs because the entity has never had authority to do so until recently. At the December 12, 2012 meeting of the Technical Advisory Committee (TAC), a two-step process was approved for facilitating a transition of TDC management from TxDOT to H-GAC management. The first step involved the development of a framework for considering requests from local entities for the awarding of TDCs. This resulted in the development of a TDC application to be completed and submitted by sponsors. As of January 9, 2013, H-GAC had received six completed applications from five sponsors totaling 2.57 million, as shown in the table below:

Agency	Project	TDC Award
Harris County Transit	Bus shelters, capital cost of contracting and operating assistance	299,154
METRO	Construct and improve three streets to provide bus and vehicular access to Burnett Transit Center	1,663,107
City of Galveston	Striping of bicycle lanes and purchase of bike racks to be used at bus terminals and bus stops	71,605
City of Galveston	Transit-related improvements along Seawall Blvd. including construction of bus stops and shelters, sidewalks with ADA ramps and expanded bus shelter/terminal with passenger/operator bathroom.	372,884
Greater Southeast Management District	Improve pedestrian accessibility to Metro routes along OST/Griggs corridor and in the Museum District (sidewalks, ADA ramps, pedestrian signalization, transit shelter enhancements, pedestrian furniture)	101,575
Midtown	Improve pedestrian accessibility to Metro routes along Elgin (sidewalks, ADA ramps, pedestrian signalization, transit shelter enhancements, pedestrian furniture)	16,252

These applications and TxDOT TDC policies were submitted to the Transportation Policy Council (TPC) at its January 25, 2013 meeting. A decision on the adoption of further policies and the awarding of TDCs is expected at the July 26th meeting. H-GAC expects to initially award

TDCs to local entities without the need for a competitive process, as the entity currently has 40.8 million in available credits.

H-GAC is currently unsure as to how valuation of TDCs will occur and is working with TxDOT and local partners to establish a process. One of H-GAC's primary concerns is how funding that was originally targeted as a state or local match is used after the awarding of a TDC. H-GAC does not want the use of TDCs in meeting federal matching requirements to diminish transportation investment in the region. This is very similar to federal MOE requirements on the use of toll credits. H-GAC expects that negotiating the use of previously programmed local and state funding will have to occur on a project-by-project basis.

USE OF TOLL AND TRANSPORTATION DEVELOPMENT CREDITS IN OTHER STATES

It is difficult to ascertain any specific "best practices" in the utilization of TDCs and toll credits by regional entities. There is simply not a lot of data on the effectiveness of one strategy/policy over another given that toll credits and TDCs are often used as a mechanism to free funds for other uses. Thus, the use of toll credits and TDCs is often determined by the best use of some other source of funding. Furthermore, there is no comprehensive FHWA database with information on entities that are approved to accrue toll credits.

California

An initial Caltrans two-year demonstration toll credit program limited the use of toll credits on local projects to Regional Surface Transportation Program (RSTP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and Off-Federal-aid System bridge projects that were funded by the Highway Bridge Program (HBP). Safety-related projects were not included in this initial policy because safety program funds were fully programmed. Much of this initial policy has been codified into formal toll credit usage policies, which in turn inform toll credit usage by regional entities.

The Sacramento Area Council of Governments (SACOG) recently noted that while a reliance on toll credits frees local funding for other uses, it also reduces local flexibility in programming federal funds. SACOG has developed several toll credit use scenarios. These include:

- **Same Scope, Less Money** – Under this scenario, toll credits are utilized for a project where the cost of the project is less than the federal programmed amount. The advantage of this is that toll credits can be used to account for the local match, freeing the actual local funds for other uses.
- **Old Formula Regional Surface Transportation Program (RSTP) Rehabilitation** – Under this scenario, toll credits may be used by local jurisdictions for road rehabilitation projects when SACOG has distributed federal funds to those jurisdictions. The advantage of this is that local agencies can use their formula RSTP funds to build a 100 percent federally-funded project, reserving local funds for other uses.

- **Swapping Federal and Local Funds between Phases** – In this scenario, the early phase of a project is fully funded with federal sources with the expectation that later phases will be overmatched. These later phases would use toll credits if no additional federal funding is required. This allows for better cash flow planning.
- **Swapping Federal and Local Funds between Projects** – In this scenario, jurisdictions may consolidate federal funds onto a fewer number of projects and utilize toll credits for the non-match portion, freeing non-federal matching funds for other uses. This can reduce the overall number of federal projects requiring NEPA clearance.
- **Matching Funds for New Programs not currently used** – under this scenario new or currently unused funding sources, such as earmarks or FTA 5311 funds, are used in place of toll credits when no local funding source is available.

The Metropolitan Transportation Commission (MTC), responsible for transportation planning in the San Francisco Bay region, utilizes the following principles in allocating toll credits:

- **Maximize Efficient Use of Federal Funds** – Toll credits should be applied on large federal projects as a substitute for non-federal funding that would otherwise be used as local match. This frees local funds for use on other transportation projects and allows federal funding to be focused on a smaller number of larger projects while more flexible funding is directed to transportation projects that may have difficulty obtaining federal funding.
- **Facilitate Funding Exchanges** - Toll credits should be considered as a means of facilitating the exchange of non-federal funds by expanding the pool of available non-federal funds for use in a broader array of regional strategies. (The MTC currently manages a regional funding exchange program.)
- **Target Federal Funds to Specific Phase(s)** – The use of toll credits may be more or less appropriate for a given project depending on the phase of the project for which toll credits will be applied. For example, the MTC notes that “it is often advantageous to use non-federal funds for specific phases, such as preliminary engineering, and use federal funds for other phases such as construction.”

Florida

The State of Florida makes extensive use of toll credits in meeting federal matching requirements, particularly for use in transit programs. The official policy of the Florida Department of Transportation reads as follows:

> *It is the policy of the Department to make available the option to use toll revenue credits, authorized by Title 23 U.S.C. 120(j)(1), to Florida transit systems for use as soft match on eligible federal transit capital projects. On an annual basis, the State Public Transportation and Modal Administrator will be responsible for notifying Florida's transit systems of the availability of toll revenue credits and for approving the use of toll revenue credits on proposed transit capital projects.*

Michigan

The State of Michigan's toll facility credit program was established in 1994. At that time the state generated toll credits based on capital expenditures from three toll bridges, but because there was adequate revenue to match federal funds the credits were not used until 2005 in response to a shortfall in state funding. When the accrued toll credits were used they were allocated to meet federal matching requirements tied to grants for local transit agencies. In FY 2010-2011 the state designated 11 million in toll credits for highway construction projects.

In a 2012 report, the Michigan Department of Transportation noted that toll credits should be considered a short term or one-time financing mechanism and are not a solution to ongoing structural transportation funding issues. One primary reason for this is that there is no assurance that the state will continue to be able to meet federal MOE requirements and thus continue to acquire toll credits. Furthermore, toll credits earned by the state have generally been insufficient to cover ongoing shortfalls in matching funds and the state continues to evaluate other options for meeting matching requirements, often reserving toll credits when other options are simply unavailable.

New Jersey

The State of New Jersey, with its numerous tolled facilities, is authorized to accumulate toll credits. New Jersey currently accumulates annually more toll credits than it uses. The state expects this trend will continue over the course of its current 10-year STIP. An examination of the New Jersey STIP reveals that toll credits are utilized to meet federal match requirements under the following programs:

- **Bus Acquisition Program** - This program provides funding for the replacement of transit, commuter, and suburban buses for the state's public transportation corporation (NJ TRANSIT) and the purchase of additional buses to meet service demands.
- **Light Rail Infrastructure Improvements** – This program provides funding for NJ TRANSIT Light Rail improvements such as communication systems upgrades, accessibility improvements and other infrastructure rehabilitation improvements.
- **Light Rail Rolling Vehicle Stock** – This program funding for NJ TRANSIT to make annual lease payments for Hudson Bergen Light Rail, Newark City Subway and Newark City Subway Extension vehicles.
- **New Freedom Program** - This program provides funding to encourage service provision and facilities improvements that address the transportation needs of persons with disabilities and provides for associated capital and operating costs.
- **Bus Preventative Maintenance** - This program provides funding for the overhaul of buses and includes preventive maintenance costs.
- **Rail Preventative Maintenance** - This program provides funding for the overhaul of rail cars and locomotives and other preventive maintenance costs.
- **Rail Rolling Stock Procurement** - This program provide funding for the replacement of rail rolling stock, including engineering assistance and project management, to replace aged equipment including rail cars, revenue service locomotives, and expansion of NJ TRANSIT rolling stock fleet (cars and locomotives) to accommodate projected ridership growth and other system enhancements. Funding is provided to support vehicles and equipment utilized in rail operations including Comet V single-level car lease payments, Electric Locomotive lease payments, Diesel Locomotive lease payments, Dual Power

Locomotives and Multi-Level rail car lease payments and other upcoming rolling stock lease payments.

- **Small / Special Services Program** – This program funds NJ TRANSIT efforts to promote transit solutions to reduce congestion, manage transportation demand and improve air quality. These include the Vanpool Sponsorship Program, Transportation Management Association Program, and federal funds for East Windsor Community Shuttle operating support. Funding is also provided for capital acquisition and operating expenses for the Community Shuttle Program, Bike/Transit facilitation, and other similar air quality improvement and congestion reduction activities.
- **Track Program** – This program funds track rehabilitation programs that include system-wide replacement of life-expired ties and other rail improvements, right-of-way fencing, equipment necessary to maintain a state of good and safe repair, purchase of long lead-time materials for next construction season, maintenance-of-way work equipment, interlocking improvements, passing sidings and other improvements. This program also provides funding to allow NJ TRANSIT to meet capital cost-sharing obligations related to use of Amtrak and Conrail facilities.
- **Transit Enhancements** – This program provides funding for projects or project elements that are designed to enhance mass transportation service such as Statewide Bus Signs and Shelter Maintenance Upgrade Program and historic restoration of NJ TRANSIT facilities.

Toll credits are also being utilized as a non-federal match for the state's Access to the Region's Core (ARC) program, which expands "one seat" ride services to Manhattan by doubling the capacity of the Trans-Hudson commuter rail system. This project includes the construction on the Trans-Hudson Express Tunnel project (THE Tunnel) which involves the construction of new connections, tracks and stations under 34th Street in Manhattan.

Virginia

The State of Virginia has recently seen a decline in available state funds relative to available federal funds. Thus, the state has increasingly relied on the use of toll credits in conjunction with Capital Project Revenue (CPR) bonds in order to meet federal matching requirements. The original purpose of CPR bonds was to ensure that the Virginia Department of Transportation had sufficient funding in order to meet federal matching requirements. A 2010 performance audit of VDOT identified a balance of 112 million in approved toll credits with another 338 million waiting to be approved. However, that report noted that FHWA had not permitted VDOT to apply any toll credits due to its failure to:

- Establish a database to record soft-match credits by project and by phase; and
- Perform a comprehensive review of all years (federal fiscal years 1995 through 2006) that compares VDOT financial system records with FHWA financial system records.

The audit noted that utilizing the 450 million in potential federal toll credits would provide an alternative to using CPR bonds or other state funds as a means of meeting match requirements on high priority projects. The report recommended that VDOT comply with the FHWA requirements in order to access these credits. However, a review of the most recent Virginia STIP does not show toll credits as being a source of matching funds for any state project or funding program.

CONCLUSIONS

Toll credits and transportation development credits are increasingly used by transit agencies to meet non-federal matching requirements associated with capital costs. These capital costs include bus/train purchases and facility development but credits may also be used for operations related costs. However, such credits are not seen as a long term solution to systemic funding shortfalls in that they do not represent an actual source of funding. They merely reduce the amount of non-federal matching funds a state or local entity has to contribute towards a particular project or program and frees funding for other uses.

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