



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Guidance on Bonus
Act Repayments

Date: November 30, 2004

From: Susan Lauffer *Susan Lauffer*
Director, Office of Real Estate Services

Reply to
Attn. of: HEPR

To: Directors of Field Services
Division Administrators
Attn: Division Realty Professionals

The purpose of this memorandum is to provide guidance for implementing existing policy under Title 23 Section 131 on the question of the process for State repayment of amounts received under the Bonus Act for control of outdoor advertising.

The Bonus Program is almost 40 years old, having originated in the Federal-aid Highway Act of 1958. Twenty-three States participate in the program, and their Federal-State Bonus Agreements remain in effect under the provisions of Title 23 USC Section 131(j). A considerable amount of sentiment has been expressed over the years about the difficulties States experience administering the Bonus Program. Many States have expressed support for rescission of the Bonus Program, a step that would require an act of Congress.

In recognition of the problems faced by the various States in controlling outdoor advertising under both the Bonus Program and the Highway Beautification Act of 1965 (HBA), FHWA proposed several modifications as part of the 1991 reauthorization process and in subsequent legislative cycles. Repeal of the Bonus Act was one such modification. Congress chose instead to emphasize the removal of illegal signs and provide Federal-aid funding for States to continue removal of non-conforming signs. Therefore, the Bonus Act and the binding requirements of the Federal-State Bonus Agreements remain in full force and effect.

Unless and until a statutory change is made, the only recourse available to a State that wishes to extinguish the control provisions imposed by the Bonus Act and its Federal-State Bonus Agreement is created by the terms of the Federal-State Bonus Agreement. That option is to repay funds received under the Bonus Program. The repayment of funds, although not popular, is the only course of action FHWA can offer at this time.

The scope of this repayment is addressed in each Federal-State Bonus Agreement in the section governing the failure of the State to perform its obligations under the Agreement. In some cases, like Iowa, repayment by segments is permitted by the terms of the Agreement. In other States, like Kentucky, the Agreement permits only a one-time, 100 percent repayment of all amounts received by the State under the Bonus Act. For States that elect not to enforce the Bonus Act, the action that triggers the repayment requirement is the act of allowing a sign to be erected or maintained in a location that is prohibited under the Bonus Act.



Three caveats are in order for States contemplating repayment. The first is that the money for Bonus payments originally was supplied from the General Fund, not from Title 23 entitlements [see 23 USC Sections 131(j) and (m)]. As a result, it appears that the Bonus monies received will have to be returned to the General Fund and may not be retained for Title 23 purposes. This repayment process will require coordination with FHWA fiscal personnel to assure that proper administrative controls are utilized.

The second caveat is that termination of control pursuant to the contractual repayment provisions of the Federal-State Bonus Act agreement does not affect the status of any easement acquired by a State to control outdoor advertising. If a State acquired such easements, then further guidance is required to address whether and how disposal of the easement rights can be accomplished.

The third caveat is that the repayment funds must come from the State, as the party required to enforce the Bonus Act and the Federal-State Bonus Agreement. Direct payment to FHWA from third parties, such as sign owners, is not permitted.

Where a State has authority to repay by project segment, it will be necessary for the FHWA Division to work with the State to determine whether the available Bonus payment records adequately define the project segment and the Bonus Program payments attributable to the segment. Where records are adequate to identify the amount paid for a particular segment, the calculation of the repayment amount should be based on the concept of returning the funds received for the affected segment. If adequate records are not available to define a segment or the amount paid under the Bonus Program, alternative methods must be used to calculate the repayment. In such cases, we encourage the Divisions to work with the Office of Real Estate Services on the best method for establishing logical termini for the repayment area. The goal will be to approximate the original project segment and related payments, keeping in mind the need to avoid arbitrary "carve-outs." In all cases, the provisions of the HBA of 1965 will remain in effect.

Because the repayment provisions are contained in the existing Federal-State Bonus Agreements, there is no decision to be made by FHWA and the repayment action does not require analysis or review under the National Environmental Policy Act. However, there often are high levels of local governmental, community and interest group, and industry concern about outdoor advertising signs and the administration of the outdoor advertising control program. We recommend that Divisions encourage States to include some type of public involvement in their decision-making process if termination of Bonus Act controls is considered.

Questions on this guidance may be directed to Janis Gramatins at (202) 366-2030 or (e-mail Janis.Gramatins@fhwa.dot.gov), or Janet Myers at (202) 366-2019 or (e-mail Janet.Myers@fhwa.dot.gov).

Distribution:

HEP-1

HCC-2

HCC-Black

DFS-W