



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

400 Seventh St. S.W.
Washington, D.C. 20590

JAN 3 - 2006

Ms. Gale Ogawa
Acting Chief, Division of Mass Transportation
California Department of Transportation
P.O. Box 942874
Sacramento, CA 94274-0001

Dear Ms. Ogawa:

Thank you for your letter of November 18, 2005, requesting a legal opinion regarding the transferability of Job Access/Reverse Commute and New Freedom funds from the California Department of Transportation to the regional Metropolitan Planning Organizations.

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005), establishes the Job Access and Reverse Commute Program (JARC) and the New Freedom Program (NF) as formula programs under 49 U.S.C. 5316 and 5317, respectively. The Federal Transit Administration (FTA) apportions funds made available to carry out these programs directly to the designated recipients in areas 200,000 or greater in population (large urban) and to the states for areas less than 200,000 in population (small urban) and in areas less than 50,000 in population (other than urbanized).

The transfer provision included in the JARC and NF programs is intended to ease the administrative burden on the states by giving them the option of transferring funds to the section 5307 program and allowing designated recipients in small urban areas to apply directly to FTA for JARC or NF funds that have been awarded to their area through the state's competitive process. This transfer is not intended to allow states to pass the "program administration" function to the designated recipients in small urban areas. SAFETEA-LU does not contain a provision that would allow the competitive process to be designated from the state to another entity.

The relevant portion of the statute relative to New Freedom states as follows: "(B) LIMITED TO ELIGIBLE PROJECTS. – Any funds transferred pursuant to this paragraph shall be made available only for eligible projects selected under this section." 49 U.S.C. § 5317(c)(3)(B). Similar language for the JARC program can be found in 49 U.S.C. § 5316(e)(2). Thus, the plain language of the statute provides that transfer of funds occurs only after the state has completed the competitive application process and

selected the projects. You are correct in noting that neither JARC nor NF allow for the transfer of funds prior to the completion of the competitive process.

FTA previously published on its website estimated apportionments for large and small urbanized areas for fiscal years 2006-2009 under SAFETEA-LU. However, this information was published for informational purposes only; in the 2006 annual apportionment notice, FTA published one amount apportioned to each state for small urban and rural areas in the state. If you need additional information please contact FTA's Region IX Office at (415) 744-3133.

Sincerely,

A handwritten signature in black ink that reads "Susan E. Schruth". The signature is written in a cursive style with a large, sweeping flourish at the end.

Susan E. Schruth
Associate Administrator
for Program Management