



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

# Notice

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Subject:

**APPORTIONMENT OF FEDERAL-AID HIGHWAY PROGRAM  
FUNDS FOR FISCAL YEAR (FY) 2022**

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Classification Code	Date	Office of Primary Interest
N4510.858	December 14, 2021	HCFB-10

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1. **What is the purpose of this Notice?** This Notice transmits the certificate of apportionment for apportioned Federal-aid highway program funds authorized for FY 2022 pursuant to the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Public Law (Pub. L.) 117-58. The apportionments made available by this Notice are for the following programs: National Highway Performance Program (NHPP), Surface Transportation Block Grant (STBG) Program, Highway Safety Improvement Program (HSIP), Railway-Highway Crossings Program, Congestion Mitigation and Air Quality Improvement (CMAQ) Program, National Highway Freight Program (NHFP), Metropolitan Planning Program, Carbon Reduction Program (CRP), and Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program.
2. **Does this Notice cancel FHWA Notice 4510.856?** Yes, this Notice cancels FHWA Notice N4510.856, apportionment of Federal-aid highway program funds for the period beginning on October 1, 2021, and ending on October 31, 2021, dated October 20, 2021. The revision to the apportionment is required due to the enactment of the Bipartisan Infrastructure Law, which provides full-year Federal-aid highway program apportioned funding for FY 2022 and amends the apportionment calculation methodology.
3. **What is the availability of these funds?**
  - a. The funds resulting from this apportionment are available for obligation until September 30, 2025. Any amounts not obligated by the State on or before September 30, 2025, shall lapse.
  - b. The funds resulting from this apportionment are available for obligation immediately, except as outlined under subparagraph (g) below, and shall be subject to obligation controls in force at the time of obligation.
  - c. For FY 2022, an amount of NHPP funds equal to \$639,000,000 prior to sequestration (\$602,577,000 after sequestration) that is exempt from obligation controls is provided. See FHWA Notice N4510.859 for additional information on sequestration.

- d. The Federal share payable shall be in accordance with section 120 of title 23, United States Code (U.S.C.), except as specifically provided by another provision of law.
- e. The program codes to be used when obligating these funds will be provided in a separate memorandum.
- f. The Catalog of Federal Domestic Assistance (CFDA) number for these funds is 20.205, with the exception that the CFDA number for the Recreational Trails Program is 20.219.
- g. Pursuant to section 104 of the Continuing Appropriations Act, 2022, Pub. L. 117-43, no appropriation or funds made available or authority granted pursuant to section 101 of such Act shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during FY 2021.

(1) Section 101 of the Continuing Appropriations Act, 2022, provides the continuation of liquidating cash for Federal-aid highway program expenditures. Section 104 of the Continuing Appropriations Act, 2022, prohibits the use of that liquidating cash for expenditures from Federal-aid highway programs that were not authorized and funded in FY 2021. This includes the CRP and PROTECT Formula Program.

(2) The expenditure of Federal-aid highway program funds is controlled at the point of obligation within the Fiscal Management Information System (FMIS). Therefore, pursuant to section 104 of the Continuing Appropriations Act, 2022, funds apportioned under this Notice for the CRP and PROTECT Formula Program are not available for obligation and expenditure at this time. Such funds will be made available for obligation and expenditure at the time that the limits in section 104 of such Act are no longer in effect.

**4. What amounts are authorized and available for apportionment?**

- a. Section 11101(a)(1)(A) of the Bipartisan Infrastructure Law authorizes a total of \$52,488,065,375 for the Federal-aid apportioned programs for FY 2022. This total amount is referred to as the base apportionment.

**5. How are the State-by-State amounts determined?**

- a. Pursuant to section 104(c)(1)(A) of title 23, U.S.C., the initial amount of the FY 2022 base apportionment for a State is calculated by multiplying the total amount available by the ratio of that State's FY 2021 combined amount of apportionments to the total FY 2021 combined amount of apportionments for all States.

- b. Pursuant to section 104(c)(1)(B) of title 23, U.S.C., the initial amounts are then adjusted to ensure that each State's aggregate amount of apportionments of the base apportionment is:
- (1) not less than 95 percent of the estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data is available and associated with taxes in effect on July 1, 2019 (and only up to the rate those taxes were in effect on that date);
  - (2) at least 2 percent greater than the apportionment that the State received for fiscal year 2021; and
  - (3) at least 1 percent greater than the apportionment that the State received for the previous fiscal year.

6. **How are the program-by-program amounts determined?**

- a. From each State's total base apportionment determined under section 104(c)(1) of title 23, U.S.C., an amount is set aside for the CMAQ Program. Pursuant to section 104(b)(4) of title 23, U.S.C., the set-aside amount for each State is calculated by multiplying the total FY 2022 set-aside amount of \$2,536,490,803 for all States by the ratio of that State's FY 2020 apportionment for the CMAQ Program to the total FY 2020 CMAQ Program apportionments for all States.
- b. From each State's total base apportionment determined under section 104(c)(1) of title 23, U.S.C., an amount is set aside for the NHFP. Pursuant to section 104(b)(5) of title 23, U.S.C., the set-aside amount for each State is calculated by multiplying the total FY 2022 set-aside amount of \$1,373,932,519 for all States by the ratio of that State's total base apportionment to the total base apportionments for all States.
- c. From each State's total base apportionment determined under section 104(c)(1) of title 23, U.S.C., an amount is set aside for the Metropolitan Planning Program. Pursuant to section 104(b)(6) of title 23, U.S.C., the set-aside amount for each State is calculated by multiplying the total FY 2022 set-aside amount of \$438,121,139 for all States by the ratio of that State's FY 2020 apportionment for the Metropolitan Planning Program to the total FY 2020 Metropolitan Planning Program apportionments for all States.
- d. After distributing the amounts for the CMAQ Program, the NHFP, and the Metropolitan Planning Program, pursuant to paragraphs (1) through (3) and paragraphs (7) and (8) of section 104(b) of title 23, U.S.C., the remainder of the base apportionment to a State is distributed in the following proportions: 59.0771195921461 percent for the NHFP, 28.7402203421251 percent for the



STBG Program, 6.70605141316253 percent for the HSIP, 2.56266964565637 percent for the CRP, and 2.91393900690991 percent for the PROTECT Formula Program.

- e. Section 130(e)(1) of title 23, U.S.C., instructs that not less than a total of \$245,000,000 for FY 2022 shall be set aside from the HSIP prior to the apportionment of that program for the Railway-Highway Crossings Program. The Railway-Highway Crossings Program amount for each State is determined by distributing the \$245,000,000 total amount according to the formula in section 130(f) of title 23, U.S.C. The resulting Railway-Highway Crossings Program amount for a State is then set aside from that State's initial HSIP amount.
  - f. Pursuant to section 1519(a) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), as amended by the Bipartisan Infrastructure Law , a total of \$3,500,000 for FY 2022 is set aside from the HSIP prior to the apportionment of that program to carry out safety-related activities and operate authorized safety-related clearinghouses under such section. The set-aside is made on a proportional basis from each State's initial HSIP amount.
  - g. A State's official HSIP apportionment is the initial HSIP amount net of the Railway-Highway Crossings Program set-aside amount and the set-aside amount under section 1519(a) of MAP-21. In addition, the \$3,500,000 amount set aside under section 1519(a) of MAP-21 is classified as allocated funding for safety-related activities and clearinghouses and, therefore, does not appear in the table of State-by-State apportionments.
  - h. Table 1 shows the State-by-State, program-by-program FY 2022 apportionment amounts (before post-apportionment set-asides, before penalties, and before sequestration) available under the Bipartisan Infrastructure Law.
7. **Are certain States subject to transfer or withholding penalties?** Yes. Currently, the States that are listed under the following requirements are subject to transfer or withholding penalties.

a. **Open Container Requirements – 23 U.S.C. 154 – 2.5 percent**

Funds subject to transfer penalty: NHPP and STBG Program.

**Alaska, Connecticut, Delaware, Hawaii, Louisiana, Maine, Mississippi, Missouri, Tennessee, Virginia, and Wyoming**

The funds subject to transfer for a State in noncompliance with section 154 of title 23, U.S.C., are reserved and then, in the proportions elected by the State, released for use on eligible HSIP activities under section 148 of title 23, U.S.C., or

transferred to the State’s Highway Safety Program under section 402 of title 23, U.S.C.

Table 2 shows the transfer penalty amounts under section 154 of title 23, U.S.C., subject to section 154(c)(5), which authorizes a State to designate how the total transfer penalty amount is to be derived from the NHPP and the STBG Program.

**b. Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence – 23 U.S.C. 164 – 2.5 percent**

Funds subject to transfer penalty: NHPP and STBG Program.

**Alaska, California, Colorado, Hawaii, Indiana, Louisiana, Minnesota, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Vermont, Washington, and Wyoming**

The funds subject to transfer for a State in noncompliance with section 164 of title 23, U.S.C., are reserved and then, in the proportions elected by the State, released for use on eligible HSIP activities under section 148 of title 23, U.S.C., or transferred to the State’s Highway Safety Program under section 402 of title 23, U.S.C.

Table 3 shows the transfer penalty amounts under section 164 of title 23, U.S.C., subject to section 164(b)(5), which authorizes a State to designate how the total transfer penalty amount is to be derived from the NHPP and the STBG Program.

**8. How do the Federal-aid highway program apportionments authorized under the Surface Transportation Extension Act of 2021, Pub. L. 117-44, as amended by the Further Surface Transportation Extension Act of 2021, Pub. L. 117-52, (“Extension Act, as amended”), reconcile with the apportionments authorized under this Notice?**

- a. Section 301 of the Extension Act, as amended, requires that, upon enactment of the Bipartisan Infrastructure Law, there is permanently rescinded an amount of contract authority equal to the contract authority made available under section 101 of the Extension Act, as amended, for a program to which the rescission applies. Such rescission shall be implemented no later than September 30, 2022.
- b. The rescission applies to each program for which contract authority was made available for FY 2022 under both section 101 of the Extension Act, as amended, and the Bipartisan Infrastructure Law.
- c. The amount of contract authority rescinded shall be applied among States for apportioned programs in the same amounts that contract authority was apportioned to such States and distributed for such apportioned programs

under section 101 of Pub. L. 117-44 (amounts distributed in FHWA Notice 4510.856).

- d. Section 301(c)(2) of the Extension Act, as amended, allows the Secretary to implement the rescission in a manner that accommodates a circumstance in which section 101 of the Extension Act, as amended, provides contract authority for FY 2022 for a program and the Bipartisan Infrastructure Law provides contract authority for FY 2022 for a program that is, in the judgment of the Secretary, substantially similar or a successor to such program.
9. **What other amounts are related to these apportionments?** Supplementary tables showing other amounts related to these apportionments will be issued at a later date via a separate notice. The amounts shown in the supplementary tables will include set-asides (e.g., State Planning & Research, Transportation Alternatives, etc.), suballocations for the STBG Program and the Transportation Alternatives set-aside, and various limiting amounts.
  10. **What action is required?** Division Administrators should ensure that copies of this Notice are provided to the State departments of transportation.



Stephanie Pollack  
Deputy Administrator

Attachments



**CERTIFICATE OF APPORTIONMENT FROM THE SUM OF \$52,488,065,375  
AUTHORIZED TO BE APPROPRIATED FOR APPORTIONED FEDERAL-AID  
HIGHWAY PROGRAMS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2022**

TO—

The Secretary of the Treasury of the United States and the State departments of transportation:

Pursuant to section 9503 of the Internal Revenue Code of 1986, the Infrastructure Investment and Jobs Act, and title 23 of the United States Code (U.S.C.), I certify—

First, that the Secretary of the Treasury has made the estimate required by section 9503(d) of the Internal Revenue Code of 1986 and, based on that estimate, I have determined that the amount that can be apportioned for the Federal-aid highway program under the Infrastructure Investment and Jobs Act, Public Law 117-58, is \$52,488,065,375, which is 100 percent of the amount authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for Fiscal Year 2022.

Second, that I have computed the apportionment to each State and the District of Columbia of the amounts authorized to be appropriated for the apportioned Federal-aid highway programs and further computed the distribution among the programs within each State and the District of Columbia in the manner provided by law.

Third, pursuant to section 1519(a) of the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141, as amended by the Infrastructure Investment and Jobs Act, I have set aside \$3,500,000 to carry out safety-related activities and operate authorized safety-related clearinghouses under such section. Such amount is set aside from the Highway Safety Improvement Program (HSIP) prior to the apportionment of that program under section 104(b)(3) of title 23, U.S.C. The resulting amount for all apportioned Federal-aid highway programs after such set-aside is \$52,484,565,375.

Fourth, that in compliance with section 154 of title 23, U.S.C., the Open Container Requirements, 2.5 percent of the National Highway Performance Program (NHPP) and Surface Transportation Block Grant (STBG) Program apportionments for the States of Alaska, Connecticut, Delaware, Hawaii, Louisiana, Maine, Mississippi, Missouri, Tennessee, Virginia, and Wyoming are reserved for release for use on eligible HSIP activities or transfer to the States' 402 Safety programs.

Fifth, that in compliance with section 164 of title 23, U.S.C., the Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence, 2.5 percent of the NHPP and the STBG Program apportionments for the States of Alaska, California, Colorado, Hawaii, Indiana, Louisiana, Minnesota, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Vermont, Washington, and Wyoming are

reserved for release for use on eligible HSIP activities or transfer to the States' 402 Safety programs.

Sixth, subject to the above-mentioned penalties, that the sums that are hereby apportioned to each State and the District of Columbia, effective immediately, are respectively as follows:





U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

N4510.858 - TABLE 2

FY 2022 PENALTIES ASSESSED PURSUANT TO 23 U.S.C. 154  
(before election of penalty shifts by States)

23 U.S.C. 154 Penalty Amounts (Open Container Requirements)			
<u>State</u>	<u>National Highway Performance Program</u>	<u>Surface Transportation Block Grant Program</u>	<u>Total</u>
Alabama	0	0	0
Alaska	9,067,684	4,411,306	13,478,990
Arizona	0	0	0
Arkansas	0	0	0
California	0	0	0
Colorado	0	0	0
Connecticut	8,768,978	4,265,989	13,034,967
Delaware	3,001,017	1,459,954	4,460,971
Dist. of Col.	0	0	0
Florida	0	0	0
Georgia	0	0	0
Hawaii	3,022,159	1,470,239	4,492,398
Idaho	0	0	0
Illinois	0	0	0
Indiana	0	0	0
Iowa	0	0	0
Kansas	0	0	0
Kentucky	0	0	0
Louisiana	13,106,138	6,375,959	19,482,097
Maine	3,315,923	1,613,152	4,929,075
Maryland	0	0	0
Massachusetts	0	0	0
Michigan	0	0	0
Minnesota	0	0	0
Mississippi	9,002,395	4,379,543	13,381,938
Missouri	17,558,906	8,542,170	26,101,076
Montana	0	0	0
Nebraska	0	0	0
Nevada	0	0	0
New Hampshire	0	0	0
New Jersey	0	0	0
New Mexico	0	0	0
New York	0	0	0
North Carolina	0	0	0
North Dakota	0	0	0
Ohio	0	0	0
Oklahoma	0	0	0
Oregon	0	0	0
Pennsylvania	0	0	0
Rhode Island	0	0	0
South Carolina	0	0	0
South Dakota	0	0	0
Tennessee	15,412,702	7,498,071	22,910,773
Texas	0	0	0
Utah	0	0	0
Vermont	0	0	0
Virginia	18,360,074	8,931,928	27,292,002
Washington	0	0	0
West Virginia	0	0	0
Wisconsin	0	0	0
Wyoming	4,683,203	2,278,315	6,961,518
<b>Total</b>	105,299,179	51,226,626	156,525,805

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

N4510.858 - TABLE 3

FY 2022 PENALTIES ASSESSED PURSUANT TO 23 U.S.C. 164  
(before election of penalty shifts by States)

State	23 U.S.C. 164 Penalty Amounts (Minimum Penalties for DWI or DUI Repeat Offenders)		Total
	National Highway Performance Program	Surface Transportation Block Grant Program	
Alabama	0	0	0
Alaska	9,067,684	4,411,306	13,478,990
Arizona	0	0	0
Arkansas	0	0	0
California	61,496,451	29,917,192	91,413,643
Colorado	9,522,312	4,632,476	14,154,788
Connecticut	0	0	0
Delaware	0	0	0
Dist. of Col.	0	0	0
Florida	0	0	0
Georgia	0	0	0
Hawaii	3,022,159	1,470,239	4,492,398
Idaho	0	0	0
Illinois	0	0	0
Indiana	17,296,812	8,414,665	25,711,477
Iowa	0	0	0
Kansas	0	0	0
Kentucky	0	0	0
Louisiana	13,106,138	6,375,959	19,482,097
Maine	0	0	0
Maryland	0	0	0
Massachusetts	0	0	0
Michigan	0	0	0
Minnesota	11,818,011	5,749,302	17,567,313
Mississippi	0	0	0
Missouri	0	0	0
Montana	7,543,752	3,669,933	11,213,685
Nebraska	0	0	0
Nevada	6,331,315	3,080,099	9,411,414
New Hampshire	0	0	0
New Jersey	0	0	0
New Mexico	6,782,652	3,299,669	10,082,321
New York	0	0	0
North Carolina	0	0	0
North Dakota	4,528,833	2,203,216	6,732,049
Ohio	23,775,645	11,566,530	35,342,175
Oklahoma	0	0	0
Oregon	9,141,734	4,447,330	13,589,064
Pennsylvania	0	0	0
Rhode Island	3,963,353	1,928,117	5,891,470
South Carolina	12,487,803	6,075,147	18,562,950
South Dakota	5,142,017	2,501,522	7,643,539
Tennessee	0	0	0
Texas	0	0	0
Utah	0	0	0
Vermont	3,635,918	1,768,825	5,404,743
Virginia	0	0	0
Washington	12,180,617	5,925,705	18,106,322
West Virginia	0	0	0
Wisconsin	0	0	0
Wyoming	4,683,203	2,278,315	6,961,518
<b>Total</b>	<b>225,526,409</b>	<b>109,715,547</b>	<b>335,241,956</b>