



Memorandum

Subject: **INFORMATION**: Implementation
Guidance for the Surface Transportation
Block Grant Program (STBG) as Revised by
the Bipartisan Infrastructure Law

Date: June 1, 2022

From: Hari Kalla
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In Reply Refer To:
HISM-40

To: Division Administrators
Directors of Field Services

On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”) (BIL) into law. The BIL amended the Surface Transportation Block Grant Program (STBG) authorized in section 133 of title 23, United States Code (23 U.S.C.). The attached STBG Implementation Guidance provides information on funding, eligible activities, and requirements of the STBG. Separate guidance has been developed for the Transportation Alternatives (TA) Set-Aside program authorized in 23 U.S.C. 133(h).

STBG requirements within the BIL took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new STBG authorizations or STBG and Surface Transportation Program (STP) funds authorized in previous years. This guidance replaces the “Surface Transportation Block Grant Program (STBG) Implementation Guidance (Revised by the FAST Act),” dated March 7, 2016.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

This document will be accessible on the BIL Website ([FHWA Bipartisan Infrastructure Law Website](#)) and through the Federal Highway Administration’s Policy and Guidance Center ([FHWA Policy and Guidance Center](#)).

For questions about the STBG, except for 23 U.S.C. 133(h), please contact David Bartz (512-417-5191) or Moises Marrero (717-649-5418) of the Office of Stewardship, Oversight, and Program Management. For questions about the Transportation Alternatives Set-Aside under 23 U.S.C. 133(h), please contact Christopher Douwes (202-366-5013) of the Office of Human Environment.

Attachment

Surface Transportation Block Grant Program (STBG) Implementation Guidance
(June 1, 2022)

TABLE OF CONTENTS

- A. [OVERVIEW OF THE SURFACE TRANSPORTATION BLOCK GRANT PROGRAM](#)
- B. [GUIDANCE ON STRATEGIC PRIORITIES AND USE OF THE FEDERAL-AID HIGHWAY FORMULA FUNDING](#)
- C. [GOVERNING AUTHORITIES](#)
- D. [FUNDING](#)
- E. [ELIGIBILITY](#)
- F. [SUBALLOCATION](#) (23 U.S.C. 133(d))
- G. [SPECIAL RULE FOR AREAS OF 5,000 OR LESS POPULATION](#) (23 U.S.C. 133(g))
- H. [BRIDGES NOT ON FEDERAL-AID HIGHWAYS](#) (23 U.S.C. 133(f))
- I. [BUNDLING OF BRIDGE PROJECTS](#) (23 U.S.C. 144(j))
- J. [BORDER STATE INFRASTRUCTURE](#) (Fixing America’s Surface Transportation Act (FAST Act) § 1437)
- K. [RURAL BARGE LANDING, DOCK, AND WATERFRONT INFRASTRUCTURE PROJECTS](#) (23 U.S.C. 133(j))
- L. [PROJECTS IN RURAL AREAS](#) (23 U.S.C. 133(k))
- M. [TREATMENT OF PROJECTS](#) (23 U.S.C. 133(i))
- N. [TRANSPORTATION ALTERNATIVES SET-ASIDE](#) (23 U.S.C. 133(h))

A. OVERVIEW OF THE SURFACE TRANSPORTATION BLOCK GRANT PROGRAM

The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “[Bipartisan Infrastructure Law](#)” (BIL)) continues the Surface Transportation Block Grant Program (STBG). The STBG promotes flexibility in State and local transportation decisions and provides flexible funding to best address State and local transportation needs (See BIL § 11109(a)). This document provides background and guidance to clarify eligibility requirements for the STBG under the BIL.

B. GUIDANCE ON STRATEGIC PRIORITIES AND USE OF THE FEDERAL-AID HIGHWAY FORMULA FUNDING

1. Overview:

On December 16, 2021, FHWA issued guidance, [Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#), that serves as an overarching framework to encourage the use of BIL resources for projects that advance USDOT strategic priorities and will Build a Better America. That policy is available on FHWA’s BIL resources implementation website at the following URL: [Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#).

2. Safety:

Prioritizing Safety in All Investments and Projects

The National Roadway Safety Strategy (NRSS) (issued January 27, 2022) commits the United States Department of Transportation (USDOT) and FHWA to respond to the current crisis in traffic fatalities by “taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation’s roadways,” in pursuit of the goal of achieving zero highway deaths. FHWA recognizes that zero is the only acceptable number of deaths on our roads and achieving that is our safety goal. FHWA therefore encourages States and other funding recipients to prioritize safety in all Federal highway investments and in all appropriate projects, using relevant Federal-aid funding, including funds from STBG.

The Safe System approach addresses the safety of all road users, including those who walk, bike, drive, ride transit, and travel by other modes. It involves a paradigm shift to improve safety culture, increase collaboration across all safety stakeholders, and refocus transportation system design and operation on anticipating human mistakes and lessening impact forces to reduce crash severity and save lives. To achieve the vision of zero fatalities, safety should be fully reflected in a State’s transportation investment decisions, from planning and programming, environmental analysis, project design, and construction, to maintenance and operations. States should use data-driven safety analyses to ensure that safety is a key input in any decision made in the project development process and fully consider the safety of all road users in project development.

FHWA encourages State and local agencies to consider the use of funds from STBG to address roadway safety and implement the Safe System approach wherever possible. Improvements to safety features, including traffic signs, pavement markings, and multimodal accommodations that are routinely provided as part of a broader Federal-aid highway project can and should be funded from the same source as the broader project as long as the use is eligible under that funding source.

Because of the role of speed in fatal crashes, FHWA is also providing new resources on the setting of speed limits and on re-engineering roadways to help “self-enforce” speed limits. To achieve the vision of zero fatalities on the Nation’s roads, FHWA encourages States to assess safety outcomes for all project types and promote and improve safety for all road users, particularly vulnerable users. FHWA recommends that streets be designed and operated to maximize the existing right-of-way for accommodation of nonmotorized modes and transit options that increase safety and connectivity. Pedestrian facilities in the public right-of-way must comply with the Americans with Disabilities Act.

Complete Streets

As one approach to ensuring the safety of all roadway users, FHWA encourages States and communities to adopt and implement Complete Streets policies that prioritize the safety of all users in transportation network planning, design, construction and operations. Section 11206 of the BIL defines Complete Streets standards or policies as those which “ensure the safe and adequate accommodation of all users of the transportation system, including pedestrians, bicyclists, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles.” A complete street includes but is not limited to, sidewalks, bike lanes (or wide paved shoulders), special bus lanes, accessible public transportation stops, safe and accommodating crossing options, median islands, pedestrian signals, curb extensions, narrower travel lanes, and roundabouts. A Complete Street is safe, and feels safe, for everyone using the street.

- 3. Transit Flex:** FHWA, working with FTA, seeks to help Federal-aid recipients plan, develop, and implement infrastructure investments that prioritize safety, mobility, and accessibility for all transportation network users, including pedestrians, bicyclists, transit riders, micromobility users, freight and delivery services providers, and motorists. This includes the incorporation of data sharing principles and data management.

Funds from STBG can be “flexed” to FTA to fund transit capital projects eligible for assistance under chapter 53 of title 49, United States Code (49 U.S.C.) (*See* 23 U.S.C. 133(b)(1)(C)). For title 23 funds that are flexed to FTA, section 104(f) of title 23, U.S.C., allows funds made available for transit projects or transportation planning to be transferred to FTA and administered in accordance with chapter 53 of title 49, U.S.C., except that the Federal share requirements of the original fund category continue to apply (*See* 23 U.S.C. 104(f)(1)).

The use of Federal-aid funding on transit and transit-related projects can provide an equitable and safe transportation network for travelers of all ages and abilities, including

those from marginalized communities facing historic disinvestment. FHWA encourages recipients to consider using funding flexibility for transit or multimodal-related projects and to consider strategies that: (1) improve infrastructure for nonmotorized travel, public transportation access, and increased public transportation service in underserved communities; (2) plan for the safety of all road users, particularly those on arterials, through infrastructure improvements and advanced speed management; (3) reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors; (4) offer reduced public transportation fares as appropriate; (5) target demand-response service towards communities with higher concentrations of older adults and those with poor access to essential services; and (6) use equitable and sustainable practices while developing transit-oriented development.

- 4. Transferability Between FHWA Programs:** Section 126 of title 23, U.S.C., provides that a State may transfer up to 50 percent of the amount apportioned for the fiscal year for certain highway programs, including STBG, to other eligible apportioned highway programs. *See also* FHWA Order 4551.1, [Fund Transfers to Other Agencies and Among Title 23 Programs](#). Historically States have used this flexibility to address unmet needs in areas where apportioned funding was insufficient.

The BIL made historic investments in highway programs including more than \$300 billion in Contract Authority from the Highway Trust Fund. This represents an average annual increase of 29 percent in Federal-aid funding over the amount of Contract Authority for FHWA programs compared to fiscal year 2021. Congress also established more than a dozen new highway programs to help address urgent surface transportation needs.

States have the flexibility to transfer funds out of STBG to other apportioned programs, but we encourage States to first consider the need to transfer in light of the significant increase in apportioned funding and the considerable funding for new programs. States, working with FHWA, should determine the need for STBG funds – including the ability to apply STBG funds to eligible assets owned by local governments, counties, and Tribes – and identify and prioritize projects that maximize the STBG funding before deciding to transfer funds out of the STBG.

See Section D.5 for additional STBG specific transfer information.

- 5. ADA:** The Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination against people with disabilities and ensure equal opportunity and access for persons with disabilities. The Department of Transportation's Section 504 regulations apply to recipients of the Department's financial assistance (*See* 49 CFR 27.3(a)). Title II of the ADA applies to public entities regardless of whether they receive Federal financial assistance (*See* 28 CFR 35.102(a)). The ADA requires that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity (*See* 28 CFR 35.149).

A public entity's pedestrian facilities are considered a "service, program, or activity" of the public entity. As a result, public entities and recipients of Federal financial assistance are required to ensure the accessibility of pedestrian facilities in the public right-of-way, such as curb ramps, sidewalks, crosswalks, pedestrian signals, and transit stops in accordance with applicable regulations.

Funds from STBG are available to improve accessibility and to implement recipients' ADA transition plans and upgrade their facilities to eliminate physical obstacles and provide for accessibility for individuals with disabilities. FHWA will provide oversight to recipients of STBG funds to ensure that each public agency's project planning, design, and construction programs comply with ADA and Section 504 accessibility requirements.

- 6. Equity:** The BIL provides considerable resources to help States and other funding recipients advance projects that consider the unique circumstances affecting community members' mobility needs and allocate resources consistently with those needs, enabling the transportation network to effectively serve all community members. FHWA will work with States to ensure consideration of using STBG funds for projects and inclusion of project elements that proactively address racial equity, workforce development, economic development, and remove barriers to opportunity, including automobile dependence in both rural and urban communities as a barrier to opportunity or to redress prior inequities and barriers to opportunity.

Federal-aid recipients, including recipients of STBG funds, are responsible for involving the public, including traditionally underserved and underrepresented populations in transportation planning and complying with participation and consultation requirements in 23 CFR 450.210 and 23 CFR 450.316, as applicable. "Underserved populations" include minority and low-income populations but may also include many other demographic categories that face challenges engaging with the transportation process and receiving equitable benefits (See [FHWA's Environmental Justice Reference Guide](#) for additional information). In addition, STBG projects can support the Justice40 Initiative, which establishes a goal that at least 40 percent of the benefits of federal investments in climate and clean energy infrastructure are distributed to disadvantaged communities. (See [OMB's Interim Implementation Guidance for the Justice40 Initiative](#) or its successor for additional information).

To assist with these public engagement efforts, FHWA expects recipients of STBG funds to engage with all impacted communities and community leaders to determine which forms of communication are most effective. Recipients should gain insight on the unique circumstances impacting various disadvantaged and underrepresented groups so that new channels for communication may be developed. And, the recipients should use this information to inform decisions across all aspects of project delivery including planning, project selection, and the design process.

Among other things, recipients of STBG funds are also required to assure equitable treatment of workers and trainees on highway projects through compliance with Equal Employment Opportunity requirements under 23 CFR Part 230, Subpart A, as well as

ensuring nondiscrimination in all of their operations on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964. Recipients of STBG funds should ensure that they have the capacity and expertise to address Federal civil rights protections that accompany grant awards.

- 7. Climate Change and Sustainability:** The United States is committed to a whole-of-government approach to reducing economy-wide net greenhouse gas pollution by 2030. The BIL provides considerable resources—including new programs and funding—to help States and other funding recipients advance this goal in the transportation sector. In addition, the BIL makes historic investments to improve the resilience of transportation infrastructure, helping States and communities prepare for hazards such as wildfires, floods, storms, and droughts exacerbated by climate change.

FHWA encourages the advancement of projects that address climate change and sustainability. To enable this, FHWA encourages recipients to consider climate change and sustainability throughout the planning and project development process, including the extent to which projects under STBG align with the President’s greenhouse gas reduction, climate resilience, and environmental justice commitments. In particular, consistent with the statute and guidance below, recipients should fund projects that reduce carbon dioxide emissions. FHWA encourages recipients to fund projects that support fiscally responsible land use and transportation efficient design, or incorporate electrification or zero emission vehicle infrastructure. In addition, FHWA encourages recipients to consider projects under STBG that support climate change resilience, including consideration of the risks associated with wildfires, drought, extreme heat, and flooding, in line with guidance for projects in floodplains. FHWA also encourages recipients to consider projects under STBG that address environmental justice concerns.

- 8. Labor and Workforce:** Highway programs, including STBG, may provide opportunities to support the creation of good-paying jobs, including jobs with the free and fair choice to join a union, and the incorporation of strong labor standards, such as the use of project labor agreements; employer neutrality with respect to union organizing; the use of an appropriately trained workforce (in particular registered apprenticeships and other joint labor-management training programs); and the use of an appropriately credentialed workforce in project planning stages and program delivery. Under BIL section 25019, projects using STBG and other Federal-aid highway program funds may be awarded with a local or other geographic or economic hiring preference, including any such preference that may be included in a prehire agreement, without the need for any prior approval from FHWA, subject to any applicable State and local laws, policies, and procedures.

Recipients should work with FHWA, to the extent possible, to identify opportunities for Federal-aid highway investments to advance high-quality job creation through the use of local or other geographic or economic hire provisions authorized under section 25019 in the BIL, and Indian employment preference for projects that are located on or near Tribal reservations authorized under 23 U.S.C. 140(d), or other workforce strategies targeted at expanding workforce training opportunities for people to get the skills they need to compete for these jobs, especially underrepresented populations: women, people of color,

and groups with other systemic barriers to employment (people with disabilities, formerly incarcerated, etc.).

- 9. Truck Parking:** Truck parking shortages are a national concern affecting the efficiency of U.S. supply chains and safety for truck drivers and other roadway users. Jason’s Law, which was passed in 2012, established a national priority on addressing the shortage of long-term parking for commercial motor vehicles on the National Highway System (NHS).

Many Federal-aid highway funding programs have eligibility for truck parking projects, including the STBG. FHWA anticipates that such projects may support progress toward the achievement of national performance goals for improving infrastructure condition, safety, congestion reduction, system reliability, or freight movement on the NHS. STBG provides specific eligibility for the construction of truck parking facilities on Federal-aid highways (*See* 23 U.S.C. 133(b)(1)(E)).

States should consider working with private sector truck stop operators and the trucking community in the siting and development of specific truck parking projects. States also are encouraged to offer opportunities for input from commercial motor vehicle drivers and truck stop operators through their State Freight Advisory Committees established under 49 U.S.C. 70201.

C. GOVERNING AUTHORITIES

1. Section 11101 of the BIL authorizes contract authority for the STBG.
2. Section 11104 of the BIL provides for apportionment of funds under 23 U.S.C. 104.
3. Section 11109 of the BIL amends 23 U.S.C. 133.
4. Section 1437 of the FAST Act (Public Law 114-94) allows certain STBG funds to be used for Border State infrastructure.

D. FUNDING

- 1. Authorization Levels:** Estimated annual STBG funding under the BIL is:

Estimated Annual STBG Funding	
Fiscal Year (FY) 2022	\$13.835 B
FY 2023	\$14.112 B
FY 2024	\$14.394 B
FY 2025	\$14.682 B
FY 2026	\$14.976 B

Section 133(h) of title 23, U.S.C., sets aside funding for the Transportation Alternatives (TA) Set-Aside. TA Set-Aside guidance is accessible on the BIL Website ([FHWA Bipartisan Infrastructure Law Website](#)) and through the Policy and Guidance Center ([FHWA Policy and Guidance Center](#)).

The BIL sets each State’s initial share of Federal-aid highway program apportioned (formula) funds annually based on the share of formula funds each State received in FY 2021. The methodology for calculating the apportionments for FY 2022 under 23 U.S.C. 104 is discussed in FHWA Notice N4510.858 ([FHWA Notice N4510.858](#)). For FY 2023 through 2026 funds, please revisit FHWA’s Notice website at the appropriate future time ([FHWA Notice Website](#)).

The following programs or projects receive set-asides from the State’s STBG apportionment:

- a. Two percent for State Planning and Research (SPR) (*See* 23 U.S.C. 505).
- b. Bridges not on Federal-aid highways (“off-system bridges”) (*See* 23 U.S.C. 133(f)(2)) (*See* [Section H](#) of this memorandum).
- c. Border State Infrastructure projects (FAST Act § 1437) (*See* [Section J](#) of this memorandum).
- d. TA Set-Aside under 23 U.S.C. 133(h) (*See* [Section N](#) of this memorandum).

The Fiscal Management Information System Program Codes for these STBG funds are as follows:

Program Code	Program Description	Title 23 Reference
Y240	Surface Transportation Block Grant Program (STBG) Flex	23 U.S.C. 133(d)(1)(B)
Y230	STBG – Urbanized Areas With Population Over 200K	23 U.S.C. 133(d)(1)(A)(i)
Y236	STBG - Urbanized areas of the State with population of 50K to 200K	23 U.S.C. 133(d)(1)(A)(ii)
Y237	STBG – Areas with Population of 5K to 49,999	23 U.S.C. 133(d)(1)(A)(iii)
Y238	STBG – Areas with Population less than 5K	23 U.S.C. 133(d)(1)(A)(iv)
Y233	STBG Off-System Bridge	23 U.S.C. 133(f)(2)
Y234	Special Rule for Areas of less than 5,000 Population	23 U.S.C. 133(g)(1)
Y235	Special Rule for Areas of 5,000 to less than 50,000 Population	23 U.S.C. 133(g)(1)
Y239	Projects in Rural Areas	23 U.S.C. 133(k)
Y251	Rural Barge Landing, Dock, and Waterfront Infrastructure Projects	23 U.S.C. 133(j)
Y500	STBG – Border State Infrastructure	N/A (Section 1437(a) of Public Law 114-94)
Y300	TA Set-Aside – Flex	23 U.S.C. 133(h)(2)
Y301	TA Set-Aside – Urbanized Areas With Population Over 200K	23 U.S.C. 133(h)(2)

Y306	TA Set-Aside - Urbanized areas of the State with Population of 50K to 200K	23 U.S.C. 133(h)(2)
Y307	TA Set-Aside – Areas with Population of 5K to 49,999	23 U.S.C. 133(h)(2)
Y308	TA Set-Aside – Areas with Population less than 5K	23 U.S.C. 133(h)(2)
Y100	Improving Accessibility and Efficiency- Any Area Flex	23 U.S.C. 133(h)(6)(C)
Y101	Improving Accessibility and Efficiency- Urbanized Areas With Population Over 200K	23 U.S.C. 133(h)(6)(C)
Y106	Improving Accessibility and Efficiency - Areas with Population of 50K to 200K	23 U.S.C. 133(h)(6)(C)
Y107	Improving Accessibility and Efficiency - Areas with Population of 5K to 49,999	23 U.S.C. 133(h)(6)(C)
Y108	Improving Accessibility and Efficiency - Areas with Population less than 5K	23 U.S.C. 133(h)(6)(C)
Y304	TA Set-Aside – Large Urbanized areas 50% for any STBG purpose	23 U.S.C. 133(h)(6)(B)
Y940	Recreational Trails Program (RTP)	23 U.S.C. 133(h)(5)
Y941	Return of 1% for RTP Administration	23 U.S.C. 133(h)(5)(B)
YR10	State RTP Administration	23 U.S.C. 206(d)(2)(H)
YR20	RTP Educational Programs	23 U.S.C. 206(d)(2)(G)
YT30	Highway Use Tax Evasion Projects	23 U.S.C. 143(b)(8)
Y290	Skills Training (On-the-Job Training)	23 U.S.C. 140(b)

- 2. Period of Availability:** STBG funds are contract authority. STBG obligations are reimbursed from the Highway Account of the Highway Trust Fund. STBG funds are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Thus, funds are available for obligation for up to 4 years (*See* 23 U.S.C. 118(b)).

Surface Transportation Program (STP)-and TA Set-Aside funds from previous authorizations continue to be available for their original period of availability, but new obligations of STP, STBG, and TA Set-Aside funds must follow the requirements and eligibilities of 23 U.S.C. 133, as amended by the BIL.

- 3. Obligation Limitation:** STBG funds are subject to the annual obligation limitation imposed on the Federal-aid highway program.
- 4. Federal Share:** The Federal share for STBG-funded projects is governed by 23 U.S.C. 120, as amended by the BIL. It is generally 80 percent (*See* 23 U.S.C. 120(b)). The Federal share for projects on the Interstate System is 90 percent unless the project adds lanes that are not high-occupancy-vehicle or auxiliary lanes (*See* 23 U.S.C. 120(a)). For projects that add single occupancy vehicle capacity, that portion of the project will revert to an 80 percent Federal share. An upward sliding scale adjustment is available to States

having public lands ([Sliding Scale Rates In Public Land States](#)). States may use a lower Federal share on Federal-aid projects as provided in 23 U.S.C. 120(h).

Certain types of improvements, predominantly safety improvements, listed in 23 U.S.C. 120(c)(1), as amended by the BIL, may have a Federal share of 100 percent. States are encouraged to consider the use of STBG funds for such safety improvements that would increase the Federal share to 100 percent. Use of this provision is limited to 10 percent of the total funds apportioned to a State under 23 U.S.C. 104. *See* FHWA Memo, “Increased Federal Share under 23 U.S.C. 120(c)(1),” dated November 25, 2014 ([Increased Federal Share under 23 U.S.C. 120\(c\)\(1\)](#)).

In accordance with 23 U.S.C. 120(f), funds apportioned under 23 U.S.C. 104 may be used at 100 percent Federal share for Federal-aid highways within Indian reservations, national parks, and monuments.

STBG funds may be used for workforce development, training, and education activities and the Federal share for such activities carried out with STBG funds under 23 U.S.C. 504(e)(1)(A) through (H) is 100 percent (*See* 23 U.S.C. 504(e) as amended by the BIL). Under 23 U.S.C. 504(b)(3)(A)(ii), STBG funds can be used as the non-Federal share to match the 50 percent Federal share for projects funded by the Local Technical Assistance Program under 23 U.S.C. 504(b)(1) and (2).

Projects located on toll roads are generally subject to a Federal share that is specified in the applicable tolling statute. In the case of a project to replace or retrofit a diesel fuel ferry vessel that provides substantial emissions reductions, the Federal share of the cost of the project may be up to 85 percent, as determined by the State (*See* BIL § 11117(b)(1)). The provision for increased Federal share to replace or retrofit a diesel fuel ferry vessel terminates on September 30, 2025 (*See* BIL § 11117(b)(2)).

Section 1435 of the FAST Act amended Section 1528 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141) concerning the Federal share for Appalachian Development Highway System (ADHS) projects as provided in 40 U.S.C. 14501. For FYs 2012 through 2050, the Federal share for local access roads and ADHS projects that contribute to the completion of the ADHS and are included in the latest approved Cost to Complete Estimate, may be up to 100 percent, as determined by the State. Work on completed segments of the ADHS or a section that was listed as ineligible in the latest approved Cost to Complete Estimate could be eligible for the National Highway Performance Program (NHPP) or STBG funds, but only at a Federal share specified in 23 U.S.C. 120.

Projects incorporating Innovative Project Delivery as described in 23 U.S.C. 120(c)(3), as amended by the BIL, may be increased by up to 5 percent of the total project cost not to exceed a 100 percent Federal share, subject to limitations in 23 U.S.C. 120(c)(3).

- 5. Transferability of STBG Funds:** As discussed in section B.4, section 126 of title 23, U.S.C., as amended by the BIL, provides for and places conditions on the transfer of

funds apportioned under 23 U.S.C. 104(b). *See also* FHWA Order 4551.1, “Fund Transfers to Other Agencies and Among Title 23 Programs,” dated August 12, 2013 ([Fund Transfers to Other Agencies and Among Title 23 Programs](#)).

The following STBG funds have transferability restrictions:

- a. Funds suballocated under 23 U.S.C. 133(d)(1)(A) may not be transferred (*See* 23 U.S.C. 126(b)(1) and [Section F](#) of this memorandum).
- b. Funds suballocated under 23 U.S.C. 133(h) have transfer restrictions (*See* 23 U.S.C. 126(b)(2), as amended by the BIL, and [Section N](#) of this memorandum).

- 6. Deobligations of Other Title 23 Obligated Funds:** Project Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute (*See* 23 CFR 630.110(a)).

E. ELIGIBILITY

1. Eligible Projects and Activities:

- a. Location of Projects (*See* 23 U.S.C. 133(c)):** STBG projects may not be undertaken on a road functionally classified as a local road or a rural minor collector unless the road was on a Federal-aid highway system on January 1, 1991, except—

- (1) For a bridge or tunnel project (other than the construction of a new bridge or tunnel at a new location);
- (2) For a project described in 23 U.S.C. 133(b)(5)-(15) and (b)(23), and described below under “Eligible Activities” (b)(5) through (15) and (b)(23);
- (3) For transportation alternatives projects described in 23 U.S.C. 101(a)(29) before enactment of the FAST Act (these are described in 23 U.S.C. 133(h), *see* [Section N](#) of this memorandum);
- (4) For a bridge for the replacement of a low water crossing; and
- (5) As approved by the Secretary.

The definition of low water crossing is contained in 23 CFR part 650, subpart D supplementary guidance at: [Additional Guidance on 23 CFR \[part\] 650 \[subpart\] D](#) (*See* paragraph 3.b. of the supplementary guidance).

- b. Eligible Activities (*See* 23 U.S.C. 133(b)):** Subject to the location of projects requirements in paragraph a above, the following eligible activities are listed in 23 U.S.C. 133(b):

- (1) Construction, as defined in 23 U.S.C. 101(a)(4) as amended by the BIL, of the following:
 - (A) Highways, bridges, and tunnels, including designated routes of the Appalachian Development Highway System and local access roads under 40 U.S.C. 14501;

- (B) Ferry boats and terminal facilities:
 - That are eligible under 23 U.S.C. 129(c) as amended by the BIL, or
 - That are privately or majority-privately owned, that the Secretary determines provide a substantial public transportation benefit or otherwise meet the foremost needs of the surface transportation system described in 23 U.S.C. 101(b)(3)(D). This eligibility was added by BIL.
 - (C) Transit capital projects eligible under chapter 53 of title 49, U.S.C.;
 - (D) Infrastructure-based intelligent transportation systems capital improvements, including the installation of vehicle-to-infrastructure communication equipment;
 - (E) Truck parking facilities eligible under Section 1401 of MAP-21 (*See* 23 U.S.C. 137 note);
 - (F) Border infrastructure projects eligible under Section 1303 of SAFETEA-LU (*See* 23 U.S.C. 101 note); and
 - (G) Wildlife crossing structures. This eligibility was added by BIL.
- (2) Operational improvements and capital and operating costs for traffic monitoring, management, and control facilities and programs. Operational improvement is defined in 23 U.S.C. 101(a)(19).
 - (3) Environmental measures eligible under 23 U.S.C. 119(g), 148(a)(4)(B)(xvii), 328, and 329, and transportation control measures listed in Section 108(f)(1)(A) (other than clause (xvi) of that section) of the Clean Air Act (*See* 42 U.S.C. 7408(f)(1)(A)).
 - (4) There is no longer a paragraph (4) in subsection (b).
 - (5) Highway and transit safety infrastructure improvements and programs, including projects eligible under 23 U.S.C. 130 and installation of safety barriers and nets on bridges. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
 - (6) Fringe and corridor parking facilities and programs in accordance with 23 U.S.C. 137 and carpool projects in accordance with 23 U.S.C. 146. Carpool project is defined in 23 U.S.C. 101(a)(3). Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
 - (7) Recreational trails projects eligible under 23 U.S.C. 206 as amended by the BIL, including maintenance and restoration of existing recreational trails, pedestrian and bicycle projects in accordance with 23 U.S.C. 217 as amended by the BIL (including modifications to comply with accessibility requirements under the Americans with Disabilities Act of 1990 (*See* 42 U.S.C. 12101 et seq.)), and the Safe Routes to School Program under 23 U.S.C. 208 as amended by the BIL. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
 - (8) Planning, design, or construction of boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
 - (9) Development and implementation of a State asset management plan for the National Highway System (NHS) and a performance-based management program for other public roads. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).

- (10) Protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) for bridges (including approaches to bridges and other elevated structures) and tunnels on public roads, and inspection and evaluation of bridges and tunnels and other highway assets. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- (11) Surface transportation planning programs, highway and transit research and development and technology transfer programs, and workforce development, training, and education under chapter 5 of title 23, United States Code. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- (12) Surface transportation infrastructure modifications to facilitate direct intermodal interchange, transfer, and access into and out of a port terminal. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- (13) Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- (14) Projects and strategies designed to reduce the number of wildlife-vehicle collisions, including project-related planning, design, construction, monitoring, and preventative maintenance. Preventive maintenance is defined in 23 U.S.C. 116(a). Not subject to the Location of Project requirement in 23 U.S.C. 133(c). This eligibility was added by the BIL.
- (15) The installation of electric vehicle charging infrastructure and vehicle-to-grid infrastructure. Not subject to the Location of Project requirement in 23 U.S.C. 133(c). This eligibility was added by the BIL.
- (16) The installation and deployment of current and emerging intelligent transportation technologies, including the ability of vehicles to communicate with infrastructure, buildings, and other road users. This eligibility was added by the BIL.
- (17) Planning and construction of projects that facilitate intermodal connections between emerging transportation technologies, such as magnetic levitation and hyperloop. This eligibility was added by the BIL.
- (18) Protective features, including natural infrastructure, to enhance the resilience of a transportation facility otherwise eligible for assistance under STBG. Natural infrastructure is defined in 23 U.S.C. 101(a)(17). This eligibility was added by the BIL.
- (19) Measures to protect a transportation facility otherwise eligible for assistance under STBG from cybersecurity threats. This eligibility was added by the BIL.
- (20) Upon request of a State and subject to the approval of the Secretary, if Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance is approved for a STBG-eligible project, then the State may use STBG funds to pay the subsidy and administrative costs associated with providing Federal credit assistance for the projects.
- (21) The creation and operation by a State of an office to assist in the design, implementation, and oversight including conducting value for money analyses or similar comparative analyses, of public-private partnerships eligible to receive

funding under title 23 and chapter 53 of title 49, United States Code, and the payment of a stipend to unsuccessful private bidders to offset their proposal development costs, if necessary to encourage robust competition in public-private partnership procurements.

- (22) Any type of project eligible under 23 U.S.C. 133 as in effect on the day before the FAST Act was enacted (i.e., in effect on December 3, 2015). Among these are:
- i. Replacement of bridges with fill material;
 - ii. Training of bridge and tunnel inspectors;
 - iii. Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels;
 - iv. Projects to accommodate other transportation modes continue to be eligible pursuant to 23 U.S.C. 142(c) if such accommodation does not adversely affect traffic safety;
 - v. Transit capital projects eligible for assistance under chapter 53 of title 49, United States Code, including vehicles and facilities (publicly or privately owned) that are used to provide intercity passenger bus service;
 - vi. Approach roadways to ferry terminals to provide access into and out of the ports;
 - vii. Transportation alternatives previously described in 23 U.S.C. 101(a)(29) and in 23 U.S.C. 213 (as in effect on the day before enactment of the FAST Act);
 - viii. Projects relating to intersections having disproportionately high accident rates, high levels of congestion (as evidenced by interrupted traffic flow at the intersection and a level of service rating of “F” during peak travel hours, calculated in accordance with the Highway Capacity Manual), and are located on a Federal-aid highway;
 - ix. Construction and operational improvements for any minor collector if the minor collector and the project to be carried out are in the same corridor and in proximity to an NHS route; the construction or improvements will enhance the level of service on the NHS route and improve regional traffic flow; and the construction or improvements are more cost-effective, as determined by a benefit-cost analysis, than an improvement to the NHS route;
 - x. Workforce development, training, and education activities discussed in 23 U.S.C. 504(e);
 - xi. Advanced truck stop electrification systems. Truck stop electrification system is defined in 23 U.S.C. 101(a)(34);
 - xii. Installation of safety barriers and nets on bridges, hazard eliminations, and projects to mitigate hazards caused by wildlife;
 - xiii. Electric vehicle and natural gas vehicle infrastructure in accordance with 23 U.S.C. 137;
 - xiv. Data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance based management, and for similar

- activities related to the development and implementation of a performance based management program for other public roads;
- xv. Construction of any bridge in accordance with 23 U.S.C. 144(f) that replaces any low water crossing (regardless of the length of the low water crossing); any bridge that was destroyed prior to January 1, 1965; any ferry that was in existence on January 1, 1984; or any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers. Not subject to the Location of Project requirement in 23 U.S.C. 133(c); and
 - xvi. Actions in accordance with the definition and conditions in 23 U.S.C. 144(g) to preserve or reduce the impact of a project on the historic integrity of a historic bridge if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- (23) Rural barge landing, dock, and waterfront infrastructure projects in accordance with 23 U.S.C. 133(j) (*See Section K* of this memorandum). Not subject to the Location of Project requirement in 23 U.S.C. 133(c). This eligibility was added by the BIL.
- (24) Projects to enhance travel and tourism. This eligibility was added by the BIL.

The following activities are made eligible by other sections of 23 U.S.C.:

- (25) Public transportation projects: (i) as described in 23 U.S.C. 142(a)(1), (a)(2), (a)(3), and (c); and (ii) meeting the requirements contained in 23 U.S.C. 142.
 - (26) Initiatives to halt the evasion of payment of motor fuel taxes as provided for under 23 U.S.C. 143(b)(8), including expenditure limitations.
 - (27) Workforce development, training, and education activities under 23 U.S.C. 504(e).
- 2. Applicability of Planning Requirements (*See 23 U.S.C. 133(d)(5)*):** Programming and expenditure of funds for projects shall be consistent with 23 U.S.C. 134 and 135, as amended by the BIL. Projects must be identified in the Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP) and be consistent with the Long-Range Statewide Transportation Plan and the Metropolitan Transportation Plan(s) (*See 23 U.S.C. 133(d)(5)*). When obligating suballocated funding (discussed below), the State must coordinate with relevant metropolitan planning organizations (MPO) or rural planning organizations (*See 23 U.S.C. 133(d)(3)*).
- STBG projects for eligible planning purposes must be reflected in the statewide SPR work program or Metropolitan Unified Planning Work Program (*See 23 CFR 420.111*). Further, these projects must be in the STIP/TIP unless the State DOT or MPO agree that they may be excluded (*See 23 CFR 420.119(e)*).
- 3. Applicability of 23 U.S.C. 217(i) for Bicycle Projects:** 23 U.S.C. 217(i) requires that bicycle facilities be principally for transportation, rather than recreation, purposes. However, 23 U.S.C. 133(b)(7) and 133(h) list “recreational trails projects” as eligible

activities under STBG. Therefore, the requirement in 23 U.S.C. 217(i) does not apply to recreational trails projects (including for bicycle use) using STBG funds. Section 217(i) continues to apply to bicycle facilities other than trail-related projects, and Section 217(i) continues to apply to bicycle facilities using other Federal-aid highway program funds (e.g., NHPP, Highway Safety Improvement Program, and Congestion Mitigation and Air Quality Improvement Program). The transportation requirement under Section 217(i) is applicable only to bicycle projects; it does not apply to any other trail use or transportation mode.

F. SUBALLOCATION (*See* 23 U.S.C. 133(d))

1. After setting aside funds for the TA Set-Aside, a percentage of a State's STBG apportionment is suballocated to areas of the State based on their relative share of the State's population. This suballocated percentage is 55 percent in FYs 2022 through 2026 (*See* 23 U.S.C. 133(d)(1)(A)). The remainder of STBG funds may be used anywhere in the State.
2. The suballocated funds are divided into four categories:
 - a. Urbanized areas of the State with a population over 200,000. These funds are distributed among the individual areas based on their relative share of the population (*See* 23 U.S.C. 133(d)(4)(A)). The State and the relevant MPOs may jointly apply to the FHWA division office for permission to base the distribution on other factors (*See* 23 U.S.C. 133(d)(4)(B)). These funds may be obligated in the metropolitan area established under 23 U.S.C. 134 that encompasses the urbanized area (*See* 23 U.S.C. 133(d)(2)).

Over the period of FYs 2022 through 2026, each State must provide obligation limitation to the urbanized areas with a population over 200,000 for use with their suballocated STBG funds. Over that period, the amount of obligation limitation provided to each urbanized area must be equal to the amount obtained by multiplying the total amount of contract authority suballocated to the area by the ratio of the total amount of obligation authority distributed to the State for the 5-year period to the total of apportionments to the State for that period (excluding amount exempt from the limitation). Each State, each affected MPO, and the FHWA must jointly ensure compliance with this requirement (*See* 23 U.S.C. 133(e)).

- b. Areas of the State with population of not less than 50,000 and not more than 200,000. Prior to obligating funds attributed to an area of this type, the State must consult with the metropolitan planning organizations that represent the areas, and describe how funds allocated for the areas will be allocated equitably among the applicable urbanized areas during the period of FYs 2022 through 2026 (*See* 23 U.S.C. 133(d)(3)(A)).
 - c. Areas of the State with population of not less than 5,000 and not more than 49,999. Prior to obligating funds attributed to an area of this type, the State must consult with

the regional transportation planning organizations that represent the area, if there are any (*See* 23 U.S.C. 133(d)(3)(B)). Also see [Section G](#) of this memorandum.

- d. Areas of the State with a population less than 5,000. Prior to obligating funds attributed to an area of this type, the State must consult with the regional transportation planning organizations that represent the area, if there are any (*See* 23 U.S.C. 133(d)(3)(B)). Also see [Section G](#) of this memorandum.

G. SPECIAL RULE FOR AREAS OF LESS THAN 50,000 POPULATION (*See* 23 U.S.C. 133(g))

A State may obligate: (1) up to 15 percent of the STBG amounts suballocated for a fiscal year for use in areas with a population not less than 5,000 and not more than 49,999; and (2) up to 15 percent of the STBG amounts suballocated for a fiscal year for use in areas with a population of less than 5,000 on:

1. roads functionally classified as rural minor collectors or local roads; or
2. critical rural freight corridors designated under 23 U.S.C. 167(e).

This provision is specific to funds made available to areas with a population of not more than 49,999 as described in 23 U.S.C. 133(d)(1)(A)(iii) and (iv), and subject to the overall 15 percent limit for each subparagraph. The Secretary may suspend this special rule with respect to a State if the FHWA division office determines that this authority is being used excessively by the State.

H. BRIDGES NOT ON FEDERAL-AID HIGHWAYS (*See* 23 U.S.C. 133(f))

1. An off-system bridge is a highway bridge or low water crossing located on a public road that is not a Federal-aid highway. Section 133(f)(2)(A) of 23 U.S.C. sets aside from the STBG an amount not less than 20 percent of Highway Bridge Program funds apportioned to the State for FY 2009 for projects and activities for off-system bridges. Funding pursuant to this provision is provided to the States with a specific program code, as shown in the program code table in this guidance. Eligible activities for the set aside for off-system bridges are as follows:
 - a. Construction, as defined in 23 U.S.C. 101(a)(4), of off-system bridges (other than the construction of a new bridge at a new location) (*See* 23 U.S.C. 133(c)(1)).
 - b. Replacement of low water crossings with bridges.
 - c. Protection for bridges and low water crossings located on public roads, and inspection and evaluation of bridges and low water crossings.

A State may choose to expend funds in excess of the off-system set-aside.

The FHWA Administrator may reduce the requirement for expenditures for off-system bridges if the FHWA Administrator, after consultation with State and local officials, determines that the State has inadequate needs to justify the expenditure (*See* 23 U.S.C. 133(f)(2)(B)). This will be addressed in more detail in future FHWA guidance.

2. The credit for bridges not on Federal-aid highways is continued under 23 U.S.C. 133(f)(3). Up to 80 percent of the construction costs: 1) incurred for a project not on Federal-aid highways for replacement of a bridge, rehabilitation of a bridge, or replacement of a low water crossing with a bridge; and 2) wholly funded from State and local sources; 3) may be credited to the non-Federal share of Federal-aid bridge projects. Credits may be earned if the “source” bridge project is:
 - a. Non-controversial;
 - b. Certified by the State to have been carried out in accordance with all standards applicable to such projects under 23 U.S.C. 133; and
 - c. Determined by the Secretary upon completion to be no longer a deficient bridge, or, in the case of a replacement of a low water crossing with a bridge, is determined by the Secretary on completion to have improved the safety of the location.

The “source” bridge project is not required to satisfy typical Federal-aid requirements, such as National Environmental Policy Act clearance and the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Additionally, the phrase “applicable standards” refers to State laws, regulations, directives, safety standards, and construction standards.

I. BUNDLING OF BRIDGE PROJECTS (*See* 23 U.S.C. 144(j))

This provision encourages States to save costs and time by bundling multiple eligible bridges into one project using STBG or NHPP funds under one project agreement.

As required under 23 U.S.C. 144(j) as amended by BIL, each bridge project to be included in a bundle to be funded from STBG or NHPP funds must:

1. Have the same financial characteristics, such as the same funding category or subcategory and the same Federal share;
2. Be eligible under 23 U.S.C. 133 or 23 U.S.C. 119 as amended by BIL;
3. Be included as a single bundled project in the applicable TIP or STIP; and
4. Be awarded to a single consultant or contractor pursuant to a contract for engineering and design or construction between the contractor and an eligible entity.

The requirements contained in 23 U.S.C. 144(j) only apply to activities funded by the project agreement for the bundled project (*See* 23 U.S.C. 144(j)(3)(C)). For example, preliminary engineering from multiple sources (in-house and consultant) may subsequently be bundled into a single bridge bundling construction contract project agreement. The provision does not preclude the use of other FHWA acceptable alternative contracting methods, including design-build, if the 23 U.S.C. 144(j) requirements are satisfied.

J. BORDER STATE INFRASTRUCTURE (*See* FAST Act § 1437, 23 U.S.C. 101 note)

Section 1437 of the FAST Act allows the Governor of a State that shares a land border with Canada or Mexico to designate for each fiscal year not more than 5 percent of STBG funds made available for any area of the State under 23 U.S.C. 133(d)(1)(B), for border infrastructure projects eligible under Section 1303 of SAFETEA-LU (*See* 23 U.S.C. 101 note) (Coordinated Border Infrastructure Program). Projects must meet the requirements of Section 1303. Before making such designation, the Governor must certify that the designation is consistent with transportation planning requirements under title 23, U.S.C. (*See* FAST Act § 1437(c)). Funding pursuant to this provision is provided to applicable States with a specific program code, as shown in the program code table in this guidance. Note that border infrastructure projects may be funded with any STBG funds, not just from the set-aside designated by the Governor. *See* the FAST Act's Questions and Answers on Border State Infrastructure ([Section 1437 - Border State Infrastructure Q&As](#)).

K. RURAL BARGE LANDING, DOCK, AND WATERFRONT INFRASTRUCTURE PROJECTS (*See* 23 U.S.C. 133(j))

A State may use not more than 5 percent of STBG funds for projects involving the planning, designing, engineering, or construction of a barge landing, dock, or other waterfront infrastructure in a rural community or a Native village (as defined in Section 3 of the Alaska Native Claims Settlement Act (*See* 43 U.S.C. 1602)) that is off the road system. Rural Areas are defined in 23 U.S.C. 101(a)(25) as amended by the BIL, as all areas of the State not included in urban areas. Urban Area is defined in 23 U.S.C. 101(a)(35) as amended by the BIL.

L. PROJECTS IN RURAL AREAS (*See* 23 U.S.C. 133(k))

A State may obligate not more than 15 percent of STBG funds for:

1. Eligible projects under 23 U.S.C. 133(b) (as described in [Section E](#) of the memorandum) or maintenance activities on roads functionally classified as rural minor collectors or local roads, ice roads, or seasonal roads; or
2. Transfer to the Appalachian Highway System Program under 14501 of title 40, U.S.C.; or
3. Transfer to the Denali access system program under Section 309 of the Denali Commission Act of 1998 (*See* 42 U.S.C. 3121 note; Public Law 105–277).

Suballocated funds shall not be used to carry out this provision, except at the request of the applicable metropolitan planning organization (*See* 23 U.S.C. 133(k)(2)).

M. TREATMENT OF PROJECTS (*See* 23 U.S.C. 133(i))

Projects funded under 23 U.S.C. 133, including projects carried out under the TA Set-Aside under 23 U.S.C. 133(h), but excluding [Recreational Trails Program](#) (RTP) projects carried out under 23 U.S.C.133(h)(5), shall be treated as projects on a Federal-aid highway (*See* 23 U.S.C. 133(i)). This subjects all STBG projects (excluding those funded from the RTP set-aside) to, among other things, [Davis-Bacon Act prevailing wage requirements](#) and other Federal-aid requirements (e.g., [Buy America](#), planning, environmental review, letting, etc.).

Note that the BIL amended 23 U.S.C. 206 to add subsection (j), which states:

(j) Use of Other Apportioned Funds.—Funds apportioned to a State under section 104(b) that are obligated for a recreational trail or a related project shall be administered as if the funds were made available to carry out this section.

This means that TA Set-Aside and STBG funds that are obligated for RTP projects are to be administered as if they were made available to carry out 23 U.S.C. 206. Therefore, the treatment of projects provision in 23 U.S.C. 133(i) would not apply to such RTP projects.

In addition, Section 1524 of MAP-21 (*See* 23 U.S.C. 206 note) provides exceptions to certain requirements regarding pay rates and contracting requirements for projects using qualified youth service or conservation corps. This provision requires the DOT to “encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps...to perform appropriate projects eligible under Sections 162, 206, [former] 213, and 217 of title 23, U.S.C., and under Section 1404 of the SAFETEA-LU [now codified as 23 U.S.C. 208].” These projects include scenic byways, recreational trails, transportation alternatives, bicycle and pedestrian, and safe routes to school. Section 1524 of MAP-21 applies to any projects eligible under these sections, including projects funded with other Federal-aid Highway Program funds. *See the [MAP-21 Section 1524 Questions and Answers](#) and [Youth Workforce Development Resources](#).* To the extent the requirements of 23 U.S.C. 133(i) relating to treatment of projects conflict with the express provisions in Section 1524, the provisions in Section 1524 prevail because they are more specific than the general provision of 23 U.S.C. 133(i).

N. TRANSPORTATION ALTERNATIVES SET-ASIDE (*See* 23 U.S.C. 133(h))

See the Transportation Alternatives Set-Aside guidance on the BIL Website [FHWA Bipartisan Infrastructure Law Website](#) and through the Federal Highway Administration’s Policy and Guidance Center [FHWA Policy and Guidance Center](#).

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.