

## Federal-Aid Guidance Non-Federal Matching Requirements

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## **BACKGROUND AND PURPOSE OF GUIDANCE**

Guidance on matching requirements for Federal Highway Administration (FHWA) funded grants and subgrants has been issued by several offices of the FHWA. To provide more comprehensive guidance that reflects current statutory and regulatory requirements set forth in 23 United States Code (U.S.C.), Highways, other highway program legislation, and implementing regulations, this memorandum establishes uniform Federal-aid policy guidance for matching Federal-aid highway program (FAHP) projects.

It should be noted that agencies other than State Departments of Transportation (State DOTs) can be direct grant recipients of FHWA funds, including other State agencies, local governments, Indian Tribal Governments, universities, and nonprofit organizations. These agencies may also receive subgrants of FHWA funds from a direct grantee (e.g., metropolitan planning funds passed-through a State DOT to a metropolitan planning organization).

The criteria for matching Federal-aid funds are generally specified in 23 U.S.C. 120. Matching provisions may also be set forth in specific program legislation, such as for Transportation Enhancement projects [see 23 U.S.C. 133(e)(5)(C)] or Recreational Trails projects [23 U.S.C. 206(f)], and in chapter 5 of title 23 for research activities; or in program legislation not incorporated into title 23. Additional guidance on application of cost sharing requirements is also set forth in government-wide grant regulations.<sup>1</sup>

This memorandum incorporates guidance issued by other FHWA offices. Where there is a conflict in guidance, the information contained in this memorandum is considered final, and references to non-Federal matching requirements contained in any independent program office guidance will be amended, as necessary.

## **TERMINOLOGY**

**The definitions in 23 U.S.C., 31 U.S.C., 23 CFR, 49 CFR, 2 CFR, etc., apply unless stated otherwise.**

**Cost Sharing or matching** – means *the value of third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal government [49 CFR 18.3] provided during the grant period.*

**Donations** – “Donations” and “contributions” are considered synonymous, and represent eligible project costs provided by a third party to a grantee or subgrantee for satisfying the non-Federal share requirements of a Federal-aid project. For purposes of this guidance document, the term “donations” is used.

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<sup>1</sup> 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. See 49 CFR 18.24 and 19.23, respectively.

**Grantee or Recipient** – means the *government (agency) to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.* [49 CFR 18.3] 49 CFR 19.2 refers to the term “recipient” for Institutions of Higher Education, Hospitals, and Other Non-Profit organizations for Federal awards. In most instances, the State DOT is the grantee of Federal-aid funds in each State.

**Grant Period** – when a specified period of time for performance is incorporated into a grant or award as authorized, costs incurred outside of the beginning or ending dates of the grant period are ineligible [23 CFR 1.9(a) and unallowable [2 CFR and 49 CFR 18.23].

**Project Cost** – All allowable costs, as set forth in the applicable Federal cost principles [see 49 CFR 18.22(b) or 19.27 and 2 CFR 220, 225, and 230, and 48 CFR 31], incurred by a grantee/recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

**Soft Match** – A term often associated specifically with Toll Credits [23 U.S.C. 120(j)] and the Program for Bridges Not on Federal-Aid Highways [23 U.S.C. 144(m)]. Note: no project costs are incorporated into the project as part of the non-Federal share. Rather, use of these credits meets the matching requirements required under law, but effectively increases the Federal cash outlay up to 100% of project costs.

**Third party** – A third party is an entity (other than a grantee/recipient, subgrantee/subrecipient, or Federal agency) that is not party to a Federal-aid project agreement, but who may have an interest in the project. As a grantee, a State cannot be considered a third party.

### **STATUTORY AND REGULATORY BASES FOR TREATMENT OF NON-FEDERAL SOURCE OF PROJECT FUNDS**

In accordance with 23 U.S.C. 106(a) and (b), a project agreement formalizing the conditions of project approval must be executed for projects where Federal funds are anticipated [see procedures relating to advance construction, 23 CFR 630 Subpart G] or will be used to reimburse the Federal share of costs incurred and the conditions or terms of the agreement are formalized. The Federal share and basis for matching requirements for the FAHP are provided in 23 U.S.C. 120, or other enacted legislation as noted above.

When the State DOT or other grantee enters into a Federal-aid project agreement [23 CFR 630.108], as a recipient of FHWA funds, it agrees to properly account for all project costs in compliance with Federal-aid eligibility requirements [23 CFR 630.112]. Included in these requirements are the matching requirements in the grant administration regulations [49 CFR Part 18.24 or Part 19.23] and in the Federal cost principles [2 CFR Part 220 for Educational Institutions, Part 225 for State, Local, and Indian Tribal Governments, and Part 230 for Non-Profit Organizations and 48 CFR Part 31 for For-Profit Organizations].

Any use of special statutory or regulatory provisions to satisfy all or part of the non-Federal share of project costs must be noted on the Federal-aid project agreement: *“The project agreement should also document, by comment, instances where: (1) The State is applying amounts of credits from special accounts (such as the 23 U.S.C. 120(j) toll credits, 23 U.S.C. 144(m) Program for Bridges Not on Federal-Aid Highways, and 23 U.S.C. 323 land value credits) to cover all or a portion of the normal percent non-Federal share of the project (normally borne by the State or other eligible recipient); (2) The project involves other arrangements affecting Federal funding or non-Federal matching provisions, including tapered match, donations, or use of other Federal agency funds (as specifically authorized in statute to bear the non-Federal matching share), if known at the time the project agreement is executed.”* [23 CFR 630.108(c)(1) and(2)].

Changes in statutes affecting matching requirements on Federal-aid projects have occurred under the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the National Highway System Designation Act (NHS) of 1995, Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) of 1998, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: Legacy for Users (SAFETEA-LU). While these statutory changes have not yet been reflected in the DOT grant requirements, they are discussed further in this guidance document in “Exceptions to General Matching Provisions”.

## **MATCHING RULES AND REQUIREMENTS: NON-FEDERAL SHARE OF PROJECT FUNDING**

### **General Requirement for Non-Federal Share**

State funds, as well as donations of cash from non-Federal third parties, may be used to satisfy the non-Federal match requirements for a project under the FAHP. Provision for proper recognition of and accounting treatment for all costs used to satisfy the non-Federal share shall be set forth within the agreement. In-kind donations may be incorporated into a Federal-aid project through amendment, but retroactive approval of costs incurred prior to authorization is prohibited consistent with 23 CFR 630.106(b).

Total contributions of cash from all non-Federal sources plus the Federal funds may not exceed the total cost of the project [23 CFR 630.106(h)(2)]. Just as with non-cash donations, each dollar of excess cash donations shall reduce a like amount of Federal share. This rule is consistent with statute, which provides for increased non-Federal share of project cost: *“Notwithstanding any other provision of this title and subject to such criteria as the Secretary may establish, a State may contribute an amount in excess of the non-Federal share of a project under this title so as to decrease the Federal share payable on such project”* [23 U.S.C. 120(i)].

### **Third Party Donations**

Section 1902 of SAFETEA-LU amended 23 U.S.C. 323(c) to recognize in-kind donations of services by a local government, when acting as a third party, to satisfy Federal-aid

matching requirements. As a grantee of Federal-aid, a State DOT cannot be considered a “third party” to the Federal-aid project agreement, and as such, cannot donate services to a project, (however, the costs associated with the services provided and borne by the State are allowable costs provided they are incurred consistent with 2 CFR 225 – see next section: “Costs Incurred and Use of Tapered match Provisions”). With exceptions for certain programs, as noted in this guidance, the donation of services, materials, equipment, and funds from an eligible third party, including local governments, may be credited as a project cost, in a uniform manner consistent with the matching requirements of 49 CFR Part 18.24(a)(2) or 49 CFR 19.23, depending on the entity receiving Federal funds. However, just as with the Federal share of project costs, such donations must be eligible and necessary for the implementation of the project [23 CFR 630.112] and must meet the cost allowability requirements of the Federal cost principles applicable to the entity receiving the donation or undertaking the project. There are exceptions to the grant period requirement for certain real property donations (see references noted below), as well as for certain types of donations to Recreational Trails Program (RTP) projects, discussed later in this guidance.

The Federal share of the project may not exceed limits established by statute and the project agreement or amendment to the agreement. For most types of donations, amounts in excess of the non-Federal share requirement may be used to reduce the Federal share of the project cost. One notable exception to the general treatment of donations pertains to real property. Per 23 U.S.C. 323(b)(4), the total credit for such donations cannot exceed the State's pro-rata share under the project agreement to which it is applied, and as such, any excess fair market value (FMV) over the amount needed to satisfy the non-Federal share requirement may not be applied against the Federal share of project costs. [See 23 CFR 710.505 and 710.507, as well as [www.fhwa.dot.gov/tea21/qanda/1301\\_qa.htm](http://www.fhwa.dot.gov/tea21/qanda/1301_qa.htm)].

The grantee or subgrantee must assure that the cost of donations received by a third party is adequately documented for verification, treated consistently, and that adequate accounting controls exist and are in effect to meet Federal grant administration and financial management requirements. The valuation of donations of real property, services, materials, equipment, and use of facilities must be established at fair market value (FMV), as determined by the applicable Federal grant administration regulations [49 CFR 18 or 19] and Federal cost principles. FMV is established at the earlier of the time the donation becomes effective or at the time title to the property vests in the State (reference also 23 CFR 710.203, 710.505, and 710.507). The costs or value of third party donations counting towards satisfying the non-Federal match requirement must be verifiable from the records of the grantee or subgrantee [reference 49 CFR 18.24 and 2 CFR 225]. The grantee retains responsibility for the proper oversight of services donated by third parties and/or performed by its subgrantees [reference 23 U.S.C. 106(g)(4) and 49 CFR 18.37 and 18.40, and 49 CFR 19.51].

## **Costs Incurred and Use of Tapered match Provisions**

As noted in 49 CFR 18.24(a)(1), grantees and subgrantees, including States and local agencies, have the option to treat eligible costs they incur on a project as either project costs subject to reimbursement, or apply them to the non-Federal match requirement. Where such use would result in progress billings outside the typical 80/20 Federal/State match ratio, FHWA approval under the tapered match provisions will be necessary, as discussed in more detail below.

Section 1302 of TEA-21 amended 23 U.S.C. 121, by removing the longstanding requirement for a payment-by-payment match of Federal funds on individual projects. In certain circumstances on individual projects, grantees and subgrantees may seek FHWA approval to exercise the tapered match provisions. Under this approach, the non-Federal matching ratio is imposed on the project, rather than individual progress payments associated with the project. Thus, Federal reimbursement of project expenditures can range from zero to one hundred percent in the early phases of a project, provided that by the time the project is complete, the overall Federal contribution does not exceed the statutory Federal-aid limit for the project in question.

As stated in the tapered match guidance document: The FHWA Division Administrator may approve a tapered match on any project authorized under the provisions of title 23 (except advance construction, STP program approval, and bond projects authorized under section 122) when the approval would result in one or more of the following:

- The use of tapered match, when compared to the use of traditional match procedures, would result in an earlier project completion.
- The project costs would be reduced by using a tapered match
- Tapered match would provide for additional non-Federal funds to be leveraged for the project.

For purposes of application of costs incurred to the non-Federal share requirement of the project, a fourth condition is added:

- When costs for services are donated by a local public agency acting as a third party, incurred by a local public agency acting as a subgrantee, or in limited circumstances, a State agency acting as a grantee. Advance construction procedures (23 U.S.C. 115) may be used in conjunction with this fourth tapered match condition only. Authorization for this option may be granted by the FHWA Division Administrator, case-by-case, dependent upon assurance of the existence and effectiveness of necessary procedures and related internal controls.

More information about tapered match may be found at the following web site: ([www.fhwa.dot.gov/innovativefinance/tapered.htm](http://www.fhwa.dot.gov/innovativefinance/tapered.htm)).

## **SPECIAL PROVISIONS**

### **Planning Activities**

Requirements for in-kind donations related to the Planning and Research Programs (23 CFR 420) may be applied on either a total planning work program basis or for specific line items or projects. Work performed by a third party must be an eligible transportation planning related activity that benefits the Federal element of the work program, during the grant award period (i.e., planning or research work program period). In-kind contributions must be identified in the original planning work program/scope of work and the grant/subgrant agreement or amendment(s) thereto.

### **Toll Credits (“Soft Match”)**

The provision in 23 U.S.C. 120(j) allows a State to use toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce, as a credit toward the non-Federal share for any funds made available to carry out projects under title 23 (other than the Emergency Relief program and the Appalachian Development Highway System Programs) or chapter 53 of title 49, U.S.C. Program office guidance is found at [www.fhwa.dot.gov/specialfunding/020807.cfm](http://www.fhwa.dot.gov/specialfunding/020807.cfm).

### **Program for Bridges not on Federal-aid Highways (“Soft Match”)**

Section 144(m) of title 23, U.S.C. allows any amount in excess of 20 percent of the cost expended from State and local sources for any project not on a Federal-aid highway for the replacement or rehabilitation of a bridge which is wholly funded from State and local sources to be credited to the non-Federal share of the cost of the projects eligible for Federal funds under 23 U.S.C. 144. Program office guidance is found at <http://www.fhwa.dot.gov/legsregs/directives/fapg/0650dsup.htm>.

## **EXCEPTIONS TO GENERAL MATCHING PROVISIONS**

**Transportation Enhancement (TE) Projects:** 23 U.S.C. 133(e)(5)(C) allows funds from any other Federal agency (except U.S. DOT funds) and the value of other contributions (as determined by the Secretary of Transportation) to be credited toward the non-Federal share of the costs of a project to carry out a transportation enhancement activity funded from the ten percent set-aside of Surface Transportation Program funds under 23 U.S.C. 133(d)(2). The non-Federal share for such a project may be calculated on a project, multiple-project, or program basis; and the Federal share of the cost of an individual project may be up to 100 percent. However, the non-Federal share of the total cost of all transportation enhancement activities in a State for a fiscal year must not be less than the non-Federal share authorized for the State under 23 U.S.C. 120(b). See the TE guidance at <http://www.fhwa.dot.gov/environment/te/1999guidance.htm#summa>.

**Note:** Although §120(k) and §120(l) state “Notwithstanding any other provision of law”, §133(e)(5)(C)(ii) states “notwithstanding section 120”. Therefore, if a State allows Federal land management agency funds or Federal lands highways program funds to be used toward the match for an individual TE project, the State still must maintain a programmatic Federal share for its statewide TE program under §120(b). Note that §133(e)(5)(C) applies to funds from any Federal agency, and not only from Federal land management agencies.

The donation provisions for TE projects are the same as the provisions for the overall Federal-aid highway program. Program guidance may be found at:  
[www.fhwa.dot.gov/environment/te/1999guidance.htm#donations](http://www.fhwa.dot.gov/environment/te/1999guidance.htm#donations).

**Federal Land Management Agency Funds for Scenic Byways:** 23 U.S.C. 162(f) allows a Federal land management agency to use funds authorized for use by the agency as the non-Federal share in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land.

**Use of Federal Land Management Agency Funds in General:** 23 U.S.C. 120(k) provides that funds appropriated to any Federal land management agency may be used to pay the non-Federal share of the cost of any project the Federal share of which is funded under this title or chapter 53 of title 49.

**Use of Federal Lands Highways Program Funds:** 23 U.S.C. 120(l) provides that funds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of title 49 and that provides access to or within Federal or Indian lands.

**Recreational Trails Program (RTP):** 23 U.S.C. 206 (program guidance at [www.fhwa.dot.gov/environment/rectrails/news/dec2005/matchingfunds.htm](http://www.fhwa.dot.gov/environment/rectrails/news/dec2005/matchingfunds.htm))

(A) Section 206(f)(2) allows a Federal agency that sponsors an RTP project to provide additional Federal funds toward the cost of a project, provided the U.S. DOT share does not exceed the Federal share under 23 U.S.C. 120(b), and provided that the total Federal share from the U.S. DOT and the Federal agency sponsoring the project, together, does not exceed 95 percent. In addition, 23 U.S.C. 206(h)(1)(B), allows any funds or the fair market value of any materials or services provided by a Federal project sponsor to be credited toward the Federal agency's share of the project.

(B) Section 206(f)(3) allows the non-Federal share of the cost of an RTP project to include funds made available by the Federal Government under any Federal program (including other U.S. DOT programs), provided the project also would be eligible under that Federal program.

(C) Section 206(f)(4) allows RTP funds to match other Federal funds (including other U.S. DOT funds) used for eligible RTP projects, provided the project also would be eligible under that Federal program.

(D) Section 206(f)(5) allows a State to adjust the non-Federal share of an individual RTP project in a fiscal year if the Federal share of the cost of all projects carried out by the State under the RTP (excluding projects funded under 23 U.S.C. 206(f)(2) or (3)) using funds apportioned to the State for the fiscal year does not exceed the Federal share as determined in accordance with 23 U.S.C. 120(b).

(E) Section 206(h)(1) allows project planning costs, environmental compliance costs, and the value of new right-of-way incorporated into the project to be credited toward the non-Federal share of the cost of an eligible RTP project, if the costs were incurred less than 18 months prior to project approval. For the RTP, the legislative intent of “project approval” is “prior to FHWA’s project approval” and not “prior to NEPA approval”. [This is in contrast to the definition in previous TE guidance, as noted above.]

**Transportation Infrastructure Finance and Innovation Act (TIFIA) Program:**

TIFIA may be used as the non-Federal share for Federal funds: *(8) Non-federal share.—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.* [23 U.S.C. 603(b)(8)]

## Attachment A

### EXAMPLES OF PROPER RECOGNITION OF DONATIONS AND COSTS INCURRED AND TREATED AS NON-FEDERAL SHARE

**Example 1: Third Party Donations – Less than non-Federal Share Requirement of  
Project Costs – 80/20 ratio**

Actual Cash Outlay for Costs Incurred on Project	\$ 1,000,000
Value of Third Party In-kind Donations	+ <u>100,000</u>
Total Cost of Project	\$ 1,100,000
Federal Share (\$1,100,000 X 80%)	\$ 880,000
Non-Federal Share (\$1,100,000 X 20%)	220,000
Non-Federal Share	\$ 220,000
Value of Third Party In-kind Donations	- <u>100,000</u>
Cash Outlay by State for Non-Federal Share	\$ 120,000
Example 1	

**Example 2: Third Party Donations –Greater than Non-Federal Share Requirement of  
Project Costs – 80/20 ratio**

Actual Cash Outlay for Costs Incurred on Project	\$ 1,000,000
Value of Third Party In-kind Donations	+ <u>500,000</u>
Total Cost of Project	\$ 1,500,000
Federal Share (\$1,500,000 X 80%)	\$ 1,200,000
Non-Federal Share (\$1,500,000 X 20%)	300,000
Non-Federal Share	\$ 300,000
Value of Third Party In-kind Donations	- <u>500,000</u>
Cash Outlay by State for non-Federal Share	- 0
Cash Outlay by Grantee or Subgrantee	\$ 0
Total Cost of Project	\$ 1,500,000
Less non-Federal Share	- 300,000
Less Excess In-kind Donations	- <u>200,000</u>
Federal Share of Project Cost	\$ 1,000,000
Example 2	

**Example 3: Third Party Donations of Cash – Greater than the Non-Federal Share Requirement – 80/20 ratio**

Actual Cash Outlay for Costs Incurred on Project	\$ 5,000,000
Third Party Donation of Cash	1,250,000
Federal Share of Project Costs (\$5,000,000 X 80%)	\$ 4,000,000
Non-Federal Share (\$5,000,000 X 20%)	1,000,000
Non-Federal Share	\$ 1,000,000
Third Party Donations of Cash	- <u>1,250,000</u>
Cash Outlay by State for non-Federal Share	\$ 0
Total Cost of Project	\$ 5,000,000
Less non-Federal Share	- 1,000,000
Less Excess Third Party Donations of Cash	- <u>250,000</u>
Federal Share of Project Cost	\$ 3,750,000
Example 3	

**Example 4: Costs of Services Incurred by a Local Public Agency as Subgrantee – 80/20 ratio – Includes Costs Incurred Prior to Date of Project Authorization**

Actual Cash Outlay for Costs Incurred – Construction Contract Amount	\$ 5,000,000
Design Service performed by Local Public Agency as Subgrantee prior to date of Project Authorization – Non-Participating	<u>500,000</u>
Total Project Costs	\$ 5,500,000
Total Eligible Project Costs (\$5,500,000 – 500,000 NP Amount)	\$ 5,000,000
Federal Share of Eligible Project Costs (\$5,000,000 X 80%)	\$ 4,000,000
Non-Federal Share (\$5,000,000 X 20%)	+1,000,000
Cash Outlay by Local Public Agency	\$ 1,000,000
Federal Share of Project Cost	\$ 4,000,000
Example 4	

**Example 5: Costs of Services Incurred by a Local Public Agency as Subgrantee – Less than Non-Federal Share Requirement – 80/20 ratio**

Actual Cash Outlay for Costs Incurred – Construction Contract Amount	\$ 5,000,000
Design Service performed by Local Public Agency as Subgrantee – Tapered match Agreement approved by FHWA Division Office – Project Authorized in Advance of Costs being Incurred	500,000
Total Eligible Project Costs	\$ 5,500,000
Federal Share of Project Costs (\$5,500,000 X 80%)	\$ 4,400,000
Non-Federal Share (\$5,500,000 X 20%)	<u>+1,100,000</u>
Total Project Value	\$ 5,500,000
Total non-Federal Share	\$ 1,100,000
Costs Incurred by Local Public Agency and Treated as non-Federal Share	<u>- 500,000</u>
Cash Outlay by Local Public Agency	\$ 600,000
Federal Share of Project Cost	\$4,400,000
Example 5	