



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

HIPA-1100-R92-0010

Subject: **ACTION:** Allocation of FY 2000 Funding to
Federal Lands Highway for High Priority Projects,
Section 1602 of TEA-

Date: November 18, 1999

From: Henry H. Rentz
Director of Program Administration

Reply to
Attn. of: HIPA-10

To: Mr. Arthur E. Hamilton
Program Manager, Federal Lands Highway

Section 1101(a)(13) of the Transportation Equity Act for the 21st Century (TEA-21, P.L. 105-178), as amended by the TEA-21 Restoration Act (Title IX of P.L. 105-206), authorized \$9,359,850,000 from the Highway Trust Fund over a 6-year period for the 1851 high priority projects listed in Section 1602, as amended by the FY 2000 Department of Transportation (DOT) Appropriations Act (Public Law 106-69). Of these funds, \$1,684,773,000, or 18 percent, is authorized for FY 2000. In addition, the FY 2000 DOT Appropriations Act provides \$90,000,000 in revenue aligned budget authority (RABA) for the high priority projects. This RABA is proportionally shared by the 1851 high priority projects based upon the authorized amount for each project in Section 1602 of TEA-21.

We are hereby allocating \$6,029,775 of program code R92 funds to Federal Lands Highway (FLH) for the high priority projects as shown on Attachment 1. This allocation is based upon requests from the involved States for these projects that are being administered through FLH. Projects 320 and 1020 are being administered by FLH divisions, Project 779 is being administered by the National Park Service, and Project 1303 is being administered by the Eastern Band of Cherokee Indians through the Bureau of Indian Affairs. The Departmental Accounting and Financial Information System (DAFIS) accounting string for each project is provided in the attachment.

We are also distributing the FY 2000 obligation authority for these high priority projects as shown in the attachment. These high priority project funds and obligation authority are available only for the project listed and are available until used. The Federal share for these funds is 80 percent, and the 20 percent match must come from non-Federal sources. As previously determined, funds provided to a tribal organization under an Indian Self-Determination and Education Assistance Act (ISDEAA) contract or compact may be used as the non-Federal match for Project 1303. In addition, Section 1212(h) of TEA-21 provides for a 100 percent Federal share for Project 1020.

These high priority projects should be administered in accordance with the implementing guidance included as Attachment 2 to this memorandum. This guidance has been updated to clarify questions that have arisen since the passage of TEA-21, and to reflect changes made to the program in the FY 2000 DOT Appropriations Act.

By copy of this memorandum, the Finance Division of the Office of Budget and Finance is requested to process these allocations.

If you have any questions, please call Mr. Larry Beidel (202-366-1564) of my staff.

2 Attachments

TEA-21 HIGH PRIORITY PROJECTS - FEDERAL LANDS HIGHWAY FY 2000 ALLOCATIONS

DEMO ID	DAFIS ACCOUNTING STRING	TEA-21 SECT. 1602 PROJ. NO.	STATE	PROJECT DESCRIPTION	FY 2000 ALLOCATION DUE TO TEA-21 AUTHORIZATION	FY 2000 RABA (FY 2000 DOT APPS. ACT)	TOTAL FY 2000 ALLOCATION	OBLIGATION AUTHORITY
CA093	XR92-L50-14-0-R9A050	320	California	Improve and widen Forest Hill Road in Placer County	486,000	25,962	511,962	511,962
CA128	XR92-L50-14-0-R9B050	779	California	Create recreational trails in Santa Monica Mountains National Recreation Area	1,080,000	57,693	1,137,693	1,137,693
MD001	XR92-L50-14-0-R9C050	1020	Maryland	Reconstruct Baltimore Washington Parkway at Route 197, Prince Georges Co.	1,763,775	108,175	1,871,950	1,871,950
NC028	XR92-L50-14-0-R9D050	1303	North Carolina	Upgrade and improve US-19 from Maggie Valley to Cherokee	2,700,000	144,233	2,844,233	2,844,233
				TOTALS	6,029,775	336,063	6,365,838	6,365,838

**High Priority Projects Program
23 U.S.C. 117**

**Implementing Guidance
(November 1999)**

AUTHORIZING LEGISLATION

Section 1601(a) of the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178) established the High Priority Projects (HPPs) Program in section 117 of title 23, United States Code. Section 1602 of TEA-21, as amended by title IX of Public Law 105-206 and by the FY 2000 DOT Appropriations Act (Public Law 106-69), lists the 1851 HPPs and the authorized amount of funding for each. Section 1101(a)(13) of TEA-21, as amended, authorizes the funding for the HPPs program for fiscal years 1998 through 2003.

FUNDING

Section 1101(a)(13) of TEA-21, as amended, authorizes \$9,359,850,000 from the Highway Trust Fund over a 6-year period for the 1851 HPPs listed in amended section 1602. The amounts authorized each fiscal year (FY) are as follows: \$1,029,583,500 for FY 1998, \$1,403,977,500 for FY 1999, \$1,684,773,000 each for FY 2000 and FY 2001, and \$1,778,371,500 each for FY 2002 and FY 2003.

In accordance with 23 U.S.C. 117(b), the amount authorized for each of these HPPs in section 1602 of TEA-21 is to be allocated to each project as follows: 11 percent in FY 1998, 15 percent in FY 1999, 18 percent each in FY 2000 and FY 2001, and 19 percent each in FY 2002 and FY 2003.

In addition, 23 U.S.C. 110, Revenue Aligned Budget Authority (RABA), provides that the authorized amounts of Federal-aid highway and highway safety construction programs shall be increased or decreased beginning in FY 2000 in accordance with the increase or decrease in estimated revenue to the Highway Trust Fund (HTF). For FY 2000, the RABA results in an increase in the authorized amounts. The FY 2000 DOT Appropriations Act specified that \$90 million of this FY 2000 RABA shall be set aside for the HPPs authorized in Section 1602 of TEA-21, as amended. This \$90 million is distributed proportionally among the 1851 HPPs, and is accompanied by an equal amount of obligation limitation.

The appropriation code for these HPP funds is XR92. The program code for the HPP funds that are allocated to the States is Q92. For HPP funds that are allocated to Federal Lands Highway, the program code is R9#, where the # is a letter assigned for each project.

The authorized amounts for these HPPs are used for calculating the minimum guarantee (MG) apportionment under section 105 of title 23. Under section 1603 of TEA-21, the authorized amounts for HPPs 1818 through 1849 are excluded from the calculation of the MG apportionment.

DEMO ID NUMBERS

Demo ID numbers have been assigned to each HPP based on the information provided by the division offices regarding their new and existing demonstration projects. The program code and the Demo IDs are used to track the expenditure of funds in the Fiscal Management Information System (FMIS) for these projects. The Demo ID, therefore, must be reported on the FHWA-37 for each project.

Federal project numbers or prefixes are not assigned by Headquarters. Federal project numbers should be assigned by the divisions and States. Many of the HPPs have more than one listing in section 1602 of TEA-21. All of the multiple listings for the same project have been assigned the same Demo ID; therefore, FMIS will not track the funding by TEA-21 section 1602 line item. In essence, the Demo ID identifies the project. For States that have a desire to track funding by each section 1602 line item, they should assign Federal project numbers as they see fit to accomplish this.

PERIOD OF AVAILABILITY

In accordance with 23 U.S.C. 117(f), these HPP funds shall be available until expended. The special HPP obligation authority is also available until used.

FEDERAL SHARE

In accordance with 23 U.S.C. 117(c), the Federal share for these HPP funds is 80 percent.¹ The sliding scale provisions of 23 U.S.C. 120 do not apply to the HPPs, since the Federal share for the HPPs is provided in section 117(c) of title 23.

The 20 percent match must come from non-Federal sources, unless the source of Federal funds has specific legislative authority to match other Federal funds, including Federal-aid highway funds.

Under the provisions of 23 U.S.C. 120(j), toll credits may be used toward the 20 percent non-Federal share for these HPPs. The use of toll credits is initiated at the time Federal funds are authorized for the project, and a State may use amounts of approved toll credits to cover all or a portion of the non-Federal share of the project. The result is that the effective Federal share of an eligible project would be increased, and may be as much as 100 percent. The implementing guidance for the toll credit program can be found in our August 7, 1998, memorandum.

¹ There are two exceptions. Section 1212(h) of TEA-21, as re-designated by title IX of Public Law 105-206, provides a Federal share of 100 percent for any HPP for renovation and construction of the Baltimore Washington Parkway in Prince Georges County, Maryland. Therefore, the funds for Project 1020, "Reconstruct Baltimore Washington Parkway at Route 197, Prince Georges Co.," are provided at a 100 percent Federal share. Also, 23 U.S.C. 120(h) provides that the Federal share for any project under title 23 in the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands shall be 100 percent. Accordingly, the funds for the HPPs in American Samoa and the Virgin Islands are provided at a 100 percent Federal share.

In accordance with 23 U.S.C. 323, private donations of right-of-way, funds, materials, or services may be used toward the non-Federal share on any title 23 project including the HPPs. Local government contributions of right-of-way, funds or materials may also be used as credit toward the non-Federal share, but services of a public entity may not be used as credit.² Right-of-way that is donated at any time during the development of a project in accordance with the requirements of 23 U.S.C. 323 may be applied to the matching share, but costs, including eligible donated services and materials, incurred prior to FHWA authorization of the project, cannot be applied to the non-Federal matching share of the project.

Based upon the authority provided in the Indian Self-Determination and Education Assistance Act (ISDEAA, Public Law 93-638), Indian Reservation Road (IRR) funds provided to a tribal organization under an ISDEAA contract or compact may be used as the non-Federal match for all title 23 projects, including the HPPs. The HPP must be on a road that meets the definition of an IRR found in 23 U.S.C. 101.

OBLIGATION AUTHORITY

Unlike most previous demonstration projects, the HPPs are subject to obligation limitation. In accordance with 23 U.S.C. 117(g), the special obligation authority provided for the HPPs is only available for these HPPs, and it shall remain available until obligated. This obligation authority is distributed by State, not by project, and it is the State's decision on which projects it may be used in accordance with the provisions of 23 U.S.C. 117.

This special obligation authority is less than 100 percent of the allocated amounts. To fully utilize the allocated amounts for the HPPs, States may use their regular obligation authority available for the Federal-aid highway program. To use the regular obligation authority, the funds must be transferred from program code Q92 to program code Q93 to distinguish it from the special HPPs obligation authority. These transfers should be requested through the Finance Division of the Office of Budget and Finance.

ADVANCE CONSTRUCTION

As indicated above, these HPP funds are allocated to each project over a 6-year period as follows: 11 percent in FY 1998, 15 percent in FY 1999, 18 percent in each of FY 2000 and FY 2001, and 19 percent in each of FY 2002 and FY 2003. Under 23 U.S.C. 117(e), Advance Construction, a State may construct a HPP **without the aid of Federal funds** and be reimbursed with the Federal HPP funds as they become available. The authorization of an advance construction project does not constitute a commitment of Federal funds until the project is

² Section 369 of the FY 2000 DOT Appropriations Act (Public Law 106-69) provides that funds previously expended by the City of Moorhead and Moorhead Township on studies related to the 34th Street corridor project in Moorhead, Minnesota shall be considered as the non-Federal match for Project 1404, "Reconstruct SE Main Ave. and related improvements, completing 34th Street Corridor project, Moorhead."

converted to a regular Federal-aid project. The advance construction code **0AG** has been assigned to identify funds used by the States for costs incurred for HPPs in advance of allocations. (Please note, the first character in the code is a numeric 0 (zero)).

In addition, if a Federal-aid project was previously authorized under 23 U.S.C. 115, Advance Construction, and was also provided funding as a HPP in section 1602 of TEA-21, the HPP funds for the project could be used to convert the advance construction project to a regular Federal-aid project. Of course, this would only apply to those projects that meet the requirements of 23 U.S.C. 115.

POOLING OF FUNDS

The HPP funds are allocated to each project and can only be used for the particular project for which they are provided. There are five States, however, that may pool their funds provided that no individual project's authorized amount (provided in section 1602 of TEA-21) is reduced. This authorized amount would include any increase or decrease resulting from RABA.

Section 1212(g) of TEA-21, as re-designated by title IX of Public Law 105-206, granted this flexibility to Minnesota. Section 356 of the Department of Transportation and Related Agencies Appropriation Act, 1999 (section 101(g) of Public Law 105-277) gave this flexibility also to Alaska, Idaho and West Virginia. Section 348 of the FY 2000 DOT Appropriations Act (Public Law 106-69) granted this flexibility also to New Jersey.

These five States may use any of their allocated HPP funds for any of their HPPs provided that no project's TEA-21 authorized amount (as modified by any RABA) is reduced. This flexibility allows these five States to fully obligate the HPP funds for some of their HPPs in the early years of TEA-21, as long as the obligated amounts do not exceed the total funds allocated to the State to date, and the obligated amount for any particular project does not exceed the TEA-21 authorized amount (as modified by any RABA) in section 1602 for that project. Other States may only obligate the HPP funds on a particular project that have been allocated to date for that project.

Beginning with FY 2000, the HPP funds for these five States will be allocated on a State basis under Demo ID XX000, where the XX represents the State abbreviation. When a State obligates funds for a specific HPP, the obligation of funds in FMIS should be assigned to the Demo ID designated for that project, and the demo tracking system will move those funds from the Demo ID XX000 to the individual project Demo ID. As the States obligate funds, the demo tracking system will also check that obligations for an individual project do not exceed the TEA-21 authorized amount for that project (as modified by any RABA).

PROJECT DESCRIPTIONS / ELIGIBLE WORK

The project descriptions, as shown in section 1602 of TEA-21, define the project on which the funds may be legally expended. Funding for a project can only be used for the activities within the scope and the physical limits defined by the project description.

If a project description includes an obvious typographical or technical error, this matter should be coordinated with staff of the Office of Program Administration (HIPA-10). Agreement may be reached to accept the intended project description without further coordination with the Congressional sponsor.

The legislative history accompanying TEA-21 has provided few additional details of these projects beyond the project descriptions listed in section 1602. There have been instances, however, where the project description in section 1602 apparently does not properly define the project as intended by the sponsoring member of Congress. When there is a discrepancy between what is described in section 1602 of TEA-21 and what was intended, and the sponsoring member of Congress can provide information relating to such intent, and all parties are agreeable, then the FHWA division office may accept this documented intent as the eligible scope of work for the project. The division office should document its files to indicate this, and insure that there is no controversy regarding the change in scope or limits from the description in section 1602. Coordination is not necessary with Headquarters, unless there is controversy, in which case the description in the TEA-21 legislation would likely prevail.

Many States have high priority projects with descriptions of "State priority projects" or "High priority highway and bridge projects." We refer to these as generic HPPs, since the description does not specify a particular project. These descriptions allow the State to expend these funds on any eligible title 23 project, including any of the other designated high priority projects within the State. For "High priority highway and bridge projects," the project for which these funds are used would have to be a highway or bridge project.

In order to use these generic HPP funds on one of the other HPPs in the State, the State must request that the funds be transferred from the generic project Demo ID to the Demo ID of the project on which they wish to use the funds. The amount of funds to be transferred can not exceed the amount allocated to date for the generic HPP. The State should submit this request to the FHWA division office, which will then submit the request via E-mail to the Office of Program Administration (HIPA-10) in Headquarters. HIPA-10 will coordinate the request with the Finance Division (HABF-20), who will process the transfer of funds in the demo tracking system. HABF-20 will send a confirmation E-mail to the FHWA division office and to HIPA-10 when the transaction has been completed. The funds will then be available for obligation by the State under the receiving Demo ID.

If the State wishes to use the generic HPP funds on another project in the State that is not a previously funded demo project (it does not have a Demo ID), the Demo ID assigned to the generic HPP shall be used. In this case there is no need to transfer the funds from this Demo ID.

USE OF FUNDS

These HPP funds cannot be used for costs incurred prior to June 9, 1998, the date TEA-21 was enacted, unless the project was previously authorized under 23 U.S.C. 115, Advance Construction.

These funds cannot be used to replace other Federal-aid funds previously obligated on a project. The only exception may be when it can be demonstrated that, for a project advanced prior to June 9, 1998, unless a waiver is approved, the HPP funds could not otherwise be utilized. This exception can only be approved by the Office of Program Administration.

These projects cannot be financed with a section 129 loan under 23 U.S.C. 129(a)(7) when the source of repayment is the future allocation of these HPP funds. Dedicated revenue sources required by the section 129 loan provisions are self-imposed State or local revenue generating financing mechanisms. These HPP funds are not considered a dedicated revenue source, because the purpose of a section 129 loan is to attract additional funding resources for transportation projects that over time will support other title 23 projects. The use of HPP funds to repay a section 129 loan does not accomplish this purpose.

Since repayments to a State Infrastructure Bank (SIB) may be derived from a Federal source, including future apportionments and allocations of Federal-aid highway funds, a State may use a SIB loan to advance a HPP and repay the loan with future annual HPP allocations.

PROJECT OVERSIGHT

HHPs are to be administered, as any other Federal-aid highway project, in accordance with the oversight agreement required by 23 U.S.C. 106(c) between the FHWA division office and the State DOT.

MULTIPLE STATE PROJECTS

The HPP funds are allocated for each project to the State that is listed for that project in section 1602 of TEA-21. There is only one multi-State project listed, Project 436 in Kentucky and Indiana. The authorized amount listed in TEA-21 for that project is considered equally divided between those two States.

Subsequent to passage of TEA-21, Kentucky and Indiana requested to have the funding distributed differently than authorized in TEA-21 for Project 436. There have been several other joint projects where States have also requested that funding be distributed differently than authorized in TEA-21. Allocations have therefore been made based upon these written agreements between the involved States. If there are other projects that are a multi-State effort, and the States desire distribution of funding different from the 100 percent allocation to the State listed in TEA-21, a written agreement from the involved States indicating the desired distribution between the States will be necessary before we can reallocate the funds. The agreement should specify how the funds and special obligation authority are to be distributed over the life of TEA-21.

Please note that these changes in the way the funds are allocated does not affect the authorized amounts in TEA-21, therefore, they will not affect the apportionment of minimum guarantee (MG) funds to the involved States. Since Congress developed the MG provisions in 23 U.S.C. 105

based upon the authorizations (including the HPPs) and apportionments established in TEA-21, it is assumed that this distribution of funding was intended. These requested changes in allocations by the States are only for the convenience of administering the projects, and will not alter the distribution of MG funds.

TRANSFER OF HPP FUNDS TO FEDERAL AGENCIES

The HPP funds for these projects are allocated to the States. Many of these projects, however, are being administered by a Federal agency. For States that wish to transfer their allocated HPP funds to the Federal agency that is administering the project, there are four possible scenarios.

1. 23 U.S.C. 132 agreement

The State can enter into an agreement with the Federal agency in accordance with the provisions of 23 U.S.C. 132, "Payments on Federal-aid projects undertaken by a Federal agency." Under the provisions of section 132, the HPP funds would continue to be allocated to the State and the State would be reimbursed through the Federal-aid project for the Federal share of any payments made by the State to the Federal agency. Even if the procedures of section 132 are followed, the 20 percent match for these funds must still come from a non-Federal source. The Federal agency, therefore, cannot provide this match, unless specifically authorized to do so.

For non-highway type improvements, the Federal agency can administer the project in accordance with their own appropriate Federal requirements. For highway improvements, title 23 requirements would apply.

Under section 132, final acceptance of the project by the Secretary of Transportation is required. This final acceptance should be accomplished in accordance with the oversight agreement between the FHWA division office and the State under 23 U.S.C. 106(c).

2. FHWA funds flexed to Federal Transit Administration (FTA)

Under the flex funding provisions of 23 U.S.C. 134(k) or 104(k)(1), funds for transit projects that are being administered by FTA can be transferred to FTA. The procedures for accomplishing these transfers under the new TEA-21 provisions were established in the October 26, 1999, joint FHWA/FTA memorandum. Questions regarding these procedures should be addressed to the Finance Division of the Office of Budget and Finance.

Under the provisions of 23 U.S.C. 134(k) or 104(k)(1), these projects shall be administered by the FTA in accordance with their procedures in chapter 53 of title 49, except that the Federal share provisions of title 23 apply, which, for the HPP projects, requires a 20 percent non-Federal matching share. In accordance with the established

procedures, the FTA will certify annually that the transferred funds are being used for the intended purpose, which, for an HPP project, is the project description in section 1602 of TEA-21.

3. Request transfer of funds to Federal DOT Agency other than FTA

For projects that are to be administered by a Federal DOT agency other than the FTA, such as the Federal Railroad Administration or the Maritime Administration, the State should request that the funds and an equal amount of obligation authority (OA) be transferred to the Federal DOT agency. The funds and OA will then be withdrawn from the State (for those funds that have already been allocated) and the Office of Program Administration will request the Finance Division to transfer the funds and OA to the DOT agency. For subsequent fiscal years, the Office of Program Administration will request that the Finance Division transfer the funds and OA to the DOT agency.

The Finance Division will transfer the funds and OA to the DOT agency with the following stipulations:

- The funds may only be used for the purposes specified in the project description in section 1602 of TEA-21.
- The funds may not be used for the DOT agency's administrative expenses.
- The funds require a 20 percent match that must come from non-Federal sources.
- The DOT agency will be required to certify annually to the FHWA Finance Division that the funds are being used for the intended purpose.

In general, it is expected that the Federal DOT agency will administer the project in accordance with their own appropriate Federal requirements. This is consistent with the administration of FTA projects using Federal-aid highway funds.

4. Request transfer of funds to Federal Lands Highway (FLH) or other Federal agency with ongoing agreement with FLH

For projects that are to be administered by a FLH division office or by a Federal agency with whom FLH has an ongoing agreement, the State should request that the funds and an equal amount of OA be transferred to FLH. The funds and OA will then be withdrawn from the State (for those funds that have already been allocated) and allocated to FLH. For subsequent fiscal years, the funds and OA will be allocated directly to FLH. FLH will distribute the funds and OA either to one of their division offices or to the Federal agency. Project oversight will be accomplished as it is for any other FLH project.

The following are the Federal agencies with whom FLH has ongoing agreements:

Department of Agriculture
U.S. Forest Service

Department of the Interior
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Reclamation
U.S. Fish and Wildlife Service
National Park Service

Department of Defense
U.S. Air Force
U.S. Army Corps of Engineers
Military Traffic Management Command
U.S. Navy
Pentagon

For scenarios 3 and 4 above, the State should submit a written request to the FHWA division office, which then submits the request to the Office of Program Administration. In the State's request, the following three items need to be addressed.

- ! The amount of HPP funds to be transferred - The State's request should address the full 6-year funding for the project, including any RABA funds provided for the project. For any funds that have already been allocated to the State, those funds would be withdrawn from the State, along with an equal amount of OA and allocated to the Federal agency. For the fiscal years for which funds have not yet been allocated, those funds and an equal amount of OA would be allocated directly to the Federal agency each fiscal year. The amount of funds and OA allocated to the State in those fiscal years would be reduced accordingly. Because these funds are subject to the allocation schedule specified in TEA-21 (11 percent in FY 98, 15 percent in FY 99, etc.), the State would have to wait until FY 2003 if it wanted to transfer the full amount at one time (except for a State allowed to pool funds).
- ! Obligation authority - For whatever amount of funds the State wishes to transfer to the Federal agency, an equal amount of OA must also be transferred. Since the funds have not been covered with 100 percent OA to date (except for any RABA funds), and most likely will not be in any fiscal year, the State must decide whether to transfer only the amount of funds for which they were or will be provided the special OA for the HPPs, or to make up the additional OA needed from their other HPPs OA or their regular Federal-aid program OA. It should be remembered that the special OA for the HPPs is different than the regular OA, because it can only be used for the HPPs and is available until expended.
- ! 20 percent non-Federal match - The State must specify in their request how the 20 percent match for these funds will be provided. This must come from non-Federal sources, therefore, the Federal agency can not provide the matching funds, unless specifically authorized to do so.