



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

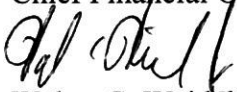
# Memorandum

Subject: **INFORMATION:** Increased Federal Share under  
23 U.S.C. 120(c)(1)

Date: November 25, 2014

From:   
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Chief Financial Officer

In Reply  
Refer to: HIPA-10

  
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To: Division Administrators  
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Directors of Field Services  
Director of Technical Services

This memorandum addresses questions concerning the increased Federal share authorized by Section 120(c)(1) of Title 23, United States Code (U.S.C.).

**To which funding programs does 23 U.S.C. 120(c)(1) apply?**

The provision's applicability to programs administered under Title 23, U.S.C., is as follows:

If...	Then...	Example
Federal law does not set a program-specific Federal share...	...Section 120(c)(1) <i>applies</i> to the program.	<p>Most Federal-aid highway apportioned programs (e.g., the Surface Transportation Program (STP)) lack a program-specific Federal share. Instead, their Federal share is determined under Section 120. Therefore, Section 120(c)(1) <i>applies</i> to STP.</p> <p>Federal law does not set a specific Federal share for the Federal Lands Access Program. However, it says that the Federal share for the program shall be determined under Section 120 (23 U.S.C. 201(b)(7)(B)). Therefore, Section 120(c)(1) <i>applies</i> to the Access Program.</p>

If...	Then...	Example
Federal law sets a program-specific Federal share...	...Section 120(c)(1) <i>does not apply</i> to the program.	Federal law sets a program-specific Federal share of 80 percent for the Construction of Ferry Boats and Ferry Terminal Facilities program (23 U.S.C. 147(b)). Therefore, Section 120(c)(1) <i>does not apply</i> to the ferry program.
Federal law sets a program-specific Federal share, but includes a reference to 23 U.S.C. 120...	...Section 120(c)(1) <i>applies</i> to the program.	Federal law sets the Federal share for the Highway Safety Improvement program (HSIP) at 90 percent “except as provided in sections 120 and 130 [of Title 23, U.S.C.]” Based on that reference to Section 120, Section 120(c)(1) <i>applies</i> to HSIP.

Further information on the Federal share for specific programs is available in *A Guide to Federal-Aid Programs and Projects* (<http://www.fhwa.dot.gov/federalaid/projects.cfm>).

### What purposes does Section 120(c)(1) cover?

The Federal share payable may amount to 100-percent for the purposes specified in Section 120(c)(1). Because the law is subject to amendment, the current statute should always be consulted, but as of the date of the issuance of this guidance, the increased Federal share applies to any project for:

- Traffic control signalization,
- Maintaining minimum levels of retroreflectivity of highway signs or pavement markings,
- Traffic circles/roundabouts,
- Safety rest areas,
- Pavement marking,
- Shoulder and centerline rumble strips and stripes,
- Commuter carpooling and vanpooling,
- Rail-highway crossing closure,
- Installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or
- Priority control systems for emergency vehicles or transit vehicles at signalized intersections.

It is important to keep in mind that in implementing the increased Federal share provision of Section 120(c)(1), the obligation must still meet the fundamental eligibility criteria (purpose) of the specific funding program.

**What is the Federal share when a project scope is broader than just 23 U.S.C. 120(c)(1) purposes?**

Section 120(c)(1) applies to the Federal share only for purposes listed in the statute. Although the purposes specified in Section 120(c)(1) are often incorporated into larger construction projects, we cannot apply the 100-percent Federal share to the entire project. In such cases, the purposes in Section 120(c)(1) are eligible for a Federal share of 100 percent, but the remaining elements of these projects are eligible only for the standard (non-increased) Federal share of the specific program.

Here are two examples of how the increased Federal share can be employed:

- The project consists entirely of one or more of the eligible purposes under 23 U.S.C. 120(c)(1). On a project to replace all signal hardware on a section of highway, all items reasonably needed to complete the project are eligible to be reimbursed at a Federal share of 100 percent.
- The project includes 23 U.S.C. 120(c)(1) eligible purposes as part of a broader project. On a project to reconstruct a section of highway and add signals, the standard Federal share applies to the reconstruction portion of the project. However, all costs directly related to the signal work element of the project are eligible at the 100-percent Federal share, as are other items listed in Section 120(c)(1) that are included in the reconstruction project.

**Are other phases of a project eligible at the increased Federal share?**

Yes. The provision applies to all phases of project development listed in the definition of “construction” at 23 U.S.C. 101(a)(4), including preliminary engineering and right-of-way acquisition associated with the purposes eligible under Section 120(c)(1). As in the second example above, those costs eligible for the increased Federal share must be segregated from costs not eligible for the increased Federal share. The standard (non-increased) Federal share would apply to costs not eligible for the increased Federal share.

**Is the 100-percent Federal share under Section 120(c)(1) applicable to planning activities?**

No. The increased Federal share authorized by Section 120(c)(1) does not apply to feasibility studies, data collection, and other analyses intended for planning and project identification.

**Do limitations apply to the use of increased Federal share under Section 120(c)(1)?**

Yes. States may obligate up to 10 percent of their total Federal-aid apportionments under 23 U.S.C. 104 for any fiscal year at the 100-percent Federal share for the purposes specified under Section 120(c)(1). This is tracked by selecting the Safety 100-percent radio button in

the FMIS project authorization detail and it is automatically recorded against program code GRC0. The FHWA supplementary tables provide the limiting amount for each State under this program code. In addition, the 10-percent limiting amount can be reviewed by: 1) running the FMIS report M58A for program code GRC0; or 2) viewing the “SAFETY” Limitation on the Limitation Data Screen by selecting Limit Code Type “SAFETY.” Once a State reaches the 10-percent limit, funds may be obligated for Section 120(c)(1) purposes only at the standard (non-increased) Federal-State matching ratio.

**Do safety-type projects eligible for 100-percent funding under Section 120(c)(1) need to be part of the HSIP authorized by 23 U.S.C. 148?**

No. Safety-type projects not funded with HSIP funds may take advantage of the increased Federal share under Section 120(c)(1), but do not need to be part of the HSIP or the Strategic Highway Safety Plan and are not subject to other HSIP provisions.

**Where can I get more information?**

Further information is contained in *A Guide to Federal-Aid Programs and Projects* located at <http://www.fhwa.dot.gov/federalaid/projects.pdf#100fedshare>. Further, changes under the Moving Ahead for Progress in the 21<sup>st</sup> Century Act affecting the Federal share can be found at <https://www.fhwa.dot.gov/map21/factsheets/fedshare.cfm>.

If you have any questions please contact David Bartz at 512-536-5906 ([david.bartz@dot.gov](mailto:david.bartz@dot.gov)) or Peter Kleskovic at 202-366-4652 ([peter.kleskovic@dot.gov](mailto:peter.kleskovic@dot.gov)).