

# FHWA Risk-based Project Involvement Guidance

The target audience for this guidance is staff in the FHWA division office<sup>1</sup>.

This guidance replaces prior guidance issued May 4, 2015 on Projects of Division Interest and Projects of Corporate Interest. The purpose of this guidance is to describe the new approach for identifying, monitoring, and reporting on the division office's risk-based project involvement. Risk-based project involvement addresses program and project-level risks beyond the actions and approvals retained by the division office through the State/Division Stewardship and Oversight (S&O) Agreement.

In short, under this guidance, division offices will utilize a three-step process in identifying their risk-based project involvement. First, division offices will identify a list of projects by screening the State's program of projects. Second, division offices will conduct a risk-based assessment of the list of projects identified through screening. Based on the results of the risk-based assessment, the division office will have a final list of projects as well as activities of those projects that will have risk-based project involvement. Third, after final selection of the projects and associated activities for risk-based project involvement, division offices will document their chosen projects and activities in a S&O plan for the project.

## Background

The FHWA uses a risk-based stewardship and oversight (RBSO) approach to determine, consistent with statutes, regulations, Executive orders, and administrative and financial controls, how and when the FHWA is involved in programs and projects. RBSO integrates risk management into the FHWA performance planning process to identify agency-wide S&O initiatives. S&O initiatives span both the national and unit (division) level. RBSO initiatives include:

- FHWA Division/State S&O Agreements, which document the extent to which a State assumes the responsibilities of FHWA under Title 23 to carry out project responsibilities traditionally handled by FHWA, and describe FHWA oversight activities;
- Required project and program actions administered by FHWA, including project-level actions that FHWA determines cannot, or should not, be assumed by States;
- Risk-based project and program involvement, which is a FHWA response to elevated risks or meaningful opportunities to inform and improve programs and meet FHWA objectives. This risk-based involvement includes program and project reviews, situations where FHWA elects to retain a specific project-level decision due to

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<sup>1</sup> This document does not create or impose any new requirements on State DOTs or other external entities, and is not guidance to external entities. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity regarding existing requirements under the law or agency policies.

conditions in the State, and instances where FHWA takes on project involvement due to a risk assessment for the particular project; and

- Data-driven compliance assurance checks, through the compliance assessment program and the financial integrity review and evaluation program, are used by FHWA to sample projects and inform program compliance.

Section 106 of title 23 of the United States Code (U.S.C.) provides statutory requirements for certain project approval actions and establishes minimum oversight requirements for the Federal-aid highway program (FAHP). Attachment A, project action responsibility matrix, of the FHWA Division/State S&O Agreement includes project approvals that are within the scope of the assumption provisions in 23 U.S.C. 106(c). Attachment A is used, in part, to document whether assumable actions are retained by FHWA or assumed by the State DOT.

Section 1316(a) the Fixing America’s Surface Transportation (FAST) Act (P.L. 114-94, December 4, 2015) provides:

In General.--The Secretary shall use the authority under section 106(c) of title 23, United States Code, to the maximum extent practicable, to allow a State to assume the responsibilities of the Secretary for project design, plans, specifications, estimates, contract awards, and inspection of projects, on both a project-specific and programmatic basis.

Figure 1 illustrates the relationship between program and project involvement, risk management and performance planning. This relationship is useful to consider when planning project activities that respond to project threats or opportunities, and when evaluating the results of those activities.



Figure 1- Relationship between project and program involvement, risk management, and performance planning.

## Risk-based Project Involvement

Risk-based project involvement is a response to elevated risks or meaningful opportunities for FHWA to inform, enhance, and meet program, project, unit, or FHWA objectives. Under the risk-based project involvement process, each division office identifies specific projects where FHWA can assert leadership and technical assistance, considering available resources, to help ensure an acceptable level of compliance and the effective and efficient administration of FAHP projects and programs.

Some projects (e.g., major projects (23 U.S.C. 106(h)) and discretionary grants) may have additional specific statutory, regulatory, or contractual requirements compared to other FAHP programs and projects, that warrant increased FHWA involvement. There are no mandatory categories of projects requiring a heightened risk-based approach, with one exception for Appalachian Development Highway Projects (ADHP).<sup>2</sup>

Determining, documenting, and reporting on risk-based project involvement adds value to FHWA by:

- informing performance planning efforts;
- demonstrating accountability in fulfilling the FHWA's S&O requirements;
- contributing to a national perspective on FHWA's project involvement through an annual summary available in the Integrated National Planning and Updating Tool (INPUT); and
- communicating the need for and selection of projects for FHWA involvement to division office staff.

## Identifying Risk-based Project Involvement

Each division office must document the procedures used to select projects for risk-based project involvement, including the project-specific, program-based activities performed in response to identified risks (i.e., threats and opportunities). Selecting risk-based projects for involvement, and deciding on the level of involvement in the selected projects, is one part of the larger unit planning process. To establish the involvement levels for the annual unit performance plan, division offices will consider:

- statutory and regulatory requirements;
- Departmental and agency guidance and policy;
- available resources;
- relevant information from Washington Headquarters program offices pertaining to program or project risks;

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<sup>2</sup> Division offices are responsible for complying with the full oversight responsibilities for ADHP projects. The reason for this responsibility is that Congress directed increased involvement in those projects (23 U.S.C. 106(g)(5)(B) – “the Secretary shall retain full oversight responsibilities for the design and construction of all Appalachian development highways...”).

- input from subject matter experts (as appropriate); and
- program and project activities.

FHWA may select a project for risk-based project involvement due to various factors at any stage of project delivery.

Division offices should identify projects annually when developing the office's annual unit performance plan. However, a division office may also need to consider the timing of the State's obligation of projects. Project awards for discretionary grant programs may occur at any time during a year, requiring the division office to assess the discretionary grant project outside of the annual cycle.

For major projects, division offices respond to an annual major project call for information. Division offices update or add new projects to the major projects Resource Deployment Tool (RDT). Division offices will inform decisions on risk-based project involvement using their response to the annual call for major projects.

Identifying risk-based project involvement follows the three steps described below: (1) screening; (2) the risk-based project assessment; and (3) documenting project involvement in the S&O plan.

#### *Step One: Screening*

The first step in the risk-based project involvement identification process is project screening. Division offices must screen the State's program of projects receiving Federal financial assistance and projects that involve a Federal approval to develop a short-list of potential projects to advance to step 2.

At a minimum, division offices must use the criteria shown in the table below to identify the projects that will advance to step 2 to determine whether risk-based project involvement is needed.

Required Criteria	Condition for Project to Advance to Step 2
Discretionary Grants and Financing	<p>Any projects that were funded or financed through discretionary programs or by statutory direction. These include, but are not limited to, sources such as:</p> <ul style="list-style-type: none"> <li>• Infrastructure for Rebuilding America (INFRA) Grants (formerly Fostering Advancements in Shipping and Transportation for the Long-Term Achievement of National Efficiencies (FASTLANE) Grants)<sup>3</sup>;</li> <li>• Better Utilizing Investments to Leverage Development, or BUILD Transportation Discretionary Grant Program (formerly Transportation Investment Generating Economic Recovery (TIGER) projects)<sup>4</sup>;</li> <li>• Surface Transportation System Funding Alternatives Program<sup>5</sup>;</li> <li>• Advanced Transportation and Congestion Management Technologies Deployment programs<sup>6</sup>; or</li> <li>• Transportation Infrastructure Finance and Innovation Act (TIFIA)<sup>7</sup>.</li> </ul>
Major Projects	All major projects as defined by 23 U.S.C. 106(h)
Public Private Partnerships (PPP) <sup>8</sup>	Any project that includes private financing.
Unusual Bridges and Structures <sup>9</sup>	All projects that meet the criteria described in the 1998 memorandum on Project Oversight Unusual Bridges and Structures

<sup>3</sup> The FAST Act establishes the Nationally Significant Freight and Highway Projects (NSFHP) program to provide financial assistance—competitive grants, known as INFRA grants, or credit assistance—to nationally and regionally significant freight and highway projects. The FAST Act authorized five years of funding for this purpose.

<sup>4</sup> Funding for TIGER/BUILD has historically been provided through annual Appropriations as “National Infrastructure Investments.” Each year of TIGER/BUILD funding has specific obligation and expenditure deadlines. This program does not have a multi-year authorization.

<sup>5</sup> Funds for the program are set aside from the Highway Research and Development Program (23 U.S.C. 503(b)).

<sup>6</sup> The FAST Act funds the program through a set-aside from the Highway Research and Development, Technology and Innovation Deployment, and Intelligent Transportation System Research Programs.

<sup>7</sup> The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for qualified projects of regional and national significance.

<sup>8</sup> The [FHWA provides information on Public Private Partnerships](#), including expertise in the use of different P3 approaches, and assistance in using tools including the SEP-15 program, private activity bonds (PABs), and the TIFIA Federal credit program to facilitate P3 projects.

<sup>9</sup> The FHWA's [memo on Unusual Bridges and Structures](#).

Required Criteria	Condition for Project to Advance to Step 2
Program Involvement Findings	Any project that aligns with the top risk(s) identified by the division office from their program involvement findings.

In addition to the minimum criteria listed above, division offices may use additional screening criteria to tailor and document the screening step to be based on program-level information and conditions in their State. Additional screening criteria should consider the potential for risk specific to the State’s transportation program. Projects that pass the division office screening criteria are carried forward for a risk-based assessment.

Examples of additional risk-based screening criteria and sample screening questions include, but are not limited to:

- 1) **Cost:** Is this an unusually costly project for the administering agency (i.e., among the largest construction contracts ever awarded)?
- 2) **Schedule:** Does the project include an unusual delivery schedule such as accelerated completion requirements or phasing that is unique or unusual for the administering agency?
- 3) **Scope:** Does the project scope include work that is either unusual or considerable in extent for the administering agency (i.e numerous or extensive project scope changes)?
- 4) **Location:** Is the project located on the National Highway System or Interstate Highway System? Is the highway segment a higher volume route or one with operational deficiencies compared to other segments on the State’s NHS?
- 5) **Significance:** Is the project nationally or regionally significant? Are there other States relying upon the delivery of this project? Does the project affect an international border crossing or major trade port? What is the project’s potential for significant impacts?
- 6) **Interest:** Is there unusual or heightened interest in the development and delivery of the project from organizations or individuals (e.g. congressional members, State officials, local community leaders/organizations)?
- 7) **Innovation or unusual features:** Does the project include innovative or experimental features or contracting methods (e.g. Special Experimental Project 14, 15, 16) that are new, or nearly so, to the administering agency? Does the project include unusual structures, operations, or design elements?
- 8) **Administration:** Is the project being delivered by an entity other than the State DOT? How experienced is the project owner with delivering a federally-funded project? What is the capacity of the delivering agency to administer the project?

The projects that are not screened out are carried forward to step two for a risk-based assessment. The division office should consider whether the collection of projects moving to step two should include projects that are distributed across the State for adequate coverage for project oversight activities.

*Step Two: Risk-based Project Assessment*

The second step in the risk-based project involvement identification process is risk-based assessment. After screening, division offices will conduct a risk-based assessment on the short-list of potential projects for risk-based project involvement. A risk-based project assessment identifies elevated program or project risks (threats or opportunities – see [FHWA Risk Management Process User Manual](#) in the risk library) to support the risk-based project involvement nomination and/or designation. The risk-based S&O activities (documented in Step 3) are determined by the division office considering the results of the assessment.

Each division office must document its risk-based project assessment. Further, its risk-based project assessment must consider the following six risk areas, for all short-listed projects:

- 1) project delivery systems (e.g. management, administration, scheduling, experience),
- 2) financial management considerations (e.g. cost thresholds, cost controls, funding source, a competitive grant award, PPP, TIFIA<sup>10</sup>, major projects),
- 3) complexity (e.g. design/construction features, unusual structure, urgency of restoring a critical facility, etc.),
- 4) environmental considerations (e.g. public involvement and interest, significance, impacts, stakeholders involved),
- 5) national or regional significance, (e.g. serves regional/national transportation needs, expected corporate involvement, high-level of interest), and
- 6) other State-specific considerations (e.g. geographic coverage, State DOT elevated risks).

Division offices may tailor their risk-based assessment process by adding to, or further defining the risk areas identified above.

In addition to the consideration of the results of the risk-based assessment, division offices may consider the following additional factors in making decisions about risk-based project involvement:

- program involvement findings and program risks;
- consultations with subject-matter experts and technical specialists;
- availability of resources;
- consistency with FHWA objectives and risk policies;
- consistency with the division office's S&O objectives; and
- unit performance planning activities.

This guidance does not require a set minimum or maximum number of projects for risk-based project involvement.

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<sup>10</sup> The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides credit assistance for qualified projects of regional and national significance.

### *Step Three: Risk-based Project Involvement S&O Plan (S&O plan)*

The third and final step in the risk-based project involvement process is the development of the S&O plan. Once a division office completes its screening and assessment, it will define the FHWA involvement in selected projects through the development of S&O plans for the projects.

The S&O plan concisely describes the reason(s) for risk-based project S&O, based on the assessment, and the responses to identified risks or opportunities. The S&O plan identifies and documents actions that a division office will undertake to respond to risks or opportunities, such as project inspections, compliance reviews, opportunities for innovation, technical assistance and guidance, or post-approval reviews (e.g. spot checks or process reviews). The S&O plan should clearly describe the scope of planned activities and the relationship of the risks (threat or opportunities) to the planned activities.

Division offices shall document the project's S&O plan in a manner consistent with the division office's internal control documents. Division offices must monitor, evaluate, adjust, list results, and closeout S&O plans throughout the year. As a minimum, the division offices must review and update the S&O plan each year. Project involvement requires resource planning so updating and closing plans naturally aligns to the performance planning cycle.

Refer to this is an [example of a S&O plan](#) that the division offices can use and/or modify. This example S&O plan contains the minimum types of information about risks and associated response activities. The example emphasizes documenting the reasons for the identified risks and the scope of the planned response activities.

A division office tailors their administration of the Federal highway program and project S&O activities to the level of risk relative to the unique needs of each State's transportation program. The S&O plan should be consistent with the State/Division S&O Agreement, which defines the roles for project-level actions and program oversight, and specifies assumption of project authorities by the State DOT. The S&O plan should clearly describe the scope of planned activities and the relationship of the risks (threat or opportunities) to the planned activities.

In the S&O plan, a division office will not reassume project approval actions that the State assumed under the State/Division S&O Agreement unless there are elevated risks and the Division Administrator approves the resumption of the project approval action. The Division Administrator may not delegate this determination within the division office.

Discretionary grants and major projects may require additional processes (e.g., prior approval from OST to authorize a project to proceed under 23 U.S.C. 115 Advance Construction, execution of a term sheet or grant agreement prior to obligation of title 23, U.S.C. funds, reviewing payments of direct recipients, and post-completion performance measurement and reporting, etc.) to deliver the project. The S&O plan must explain additional S&O plan actions needed on major or discretionary grant projects.

While ADHP projects are not included in the division office identification process for risk-based project involvement, they may have a separate S&O plan that details the scope of the division office's project-level involvement in providing full oversight.

Complex projects, or major projects as defined by 23 U.S.C. 106(h), that are also determined to have elevated risk will likely need a more-involved S&O plan as compared to the plan for other risk-based project involvement. The Major Projects Team (HISM-50) will make this determination for major projects, in consultation with the division offices, including the format for these more-involved major project S&O plans. Major projects with elevated risks should develop S&O plans conforming to major project program guidance.

### **Monitoring and Reporting**

Division offices are expected to develop one or more activities for selected risk-based project involvement in the annual unit performance plan in INPUT to document, monitor, evaluate and adjust their activities. Division offices need to summarize the value-added and risk response activities (result statements) executed in accordance with the project S&O plans. Division offices may use and refer to program assessment reports, risk assessment reports, or project reports for detailed information.