

# APPORTIONMENT

Note: Except as indicated, all references in this document are to the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (Nov. 15, 2021).

## Statutory Citations

- §§ 11101, 11104, 11108; 23 U.S.C. 104, 130; MAP-21 (Pub. L. 112-141) § 1519(a)

## Overview

As under the FAST Act, the BIL authorizes a single, combined amount for each fiscal year for all apportioned highway programs combined. That amount is first apportioned among the States, and then each State's apportionment is divided among the individual apportioned programs.

The BIL also appropriates funding from the General Fund for three other formula-based programs separate and apart from the apportioned amount described above (and the formula described below): (1) the Bridge Formula Program, (2) the National Electric Vehicle Infrastructure Formula Program, and (3) the Appalachian Development Highway System Program. (See the "Bridge Formula Program," "National Electric Vehicle Infrastructure Formula Program," and "Appalachian Development Highway System" fact sheets for details on each of these programs.)

## Total Funding for Federal-aid Highway Apportioned Programs

The BIL authorizes a total combined amount (\$52.5 B for fiscal year (FY) 2022, \$53.5 B for FY23, \$54.6 B for FY24, \$55.7 B for FY25, and \$56.8 B for FY26) in Contract Authority from the Highway Account of the Highway Trust Fund to fund 8 highway apportioned programs (including certain set-asides):

- National Highway Performance Program (NHPP);
- Surface Transportation Block Grant Program (STBG);
- Highway Safety Improvement Program (HSIP);
- Congestion Mitigation and Air Quality Improvement Program (CMAQ);
- National Highway Freight Program (NHFP);
- Metropolitan Planning (PL);
- Carbon Reduction Program (CRP) [NEW]; and
- Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT) Formula Program [NEW].

## Determination of Each State's apportionment

### Calculation of a State's Initial Apportionment

For FY22 and each fiscal year thereafter, FHWA determines a State's initial apportionment, calculating for the State a share of the national total equal to the State's share of FY21 apportionments. For example, the initial FY22 apportionment amount for a State that received 2% of FY21 apportionments would be \$1.05 B (2% of the \$52.5 B national total for FY22). [23 U.S.C. 104(c)(1)(A)]

### Adjustments Based on Trust Fund Contributions and Prior Year Apportionments

FHWA then adjusts that initial apportionment amount, if necessary, to ensure that each State's total apportionment for the fiscal year satisfies the following conditions: [23 U.S.C. 104(c)(1)(B)]

- *95 cents-on-the-dollar:* Each State's apportionment must equal at least 95% of the dollar amount of the State's contributions to the Highway Account of the Highway Trust Fund in the most recent fiscal year for which data are available (considering only taxes in effect on July 1, 2019, and only up to the rates of those taxes in effect on that date).
- *Minimum increases from previous year and FY21:* Each State's apportionment must be at least—
  - 1% greater than the State's total apportionment for the previous fiscal year; and
  - 2% greater than the State's total FY21 apportionment.

## Division of a State's Apportionment Among Programs

After determining the State's total apportionment, FHWA divides that amount among the State's individual formula programs in the manner described below.

### 1. Calculate Amounts for NHFP, CMAQ, and PL

Program	Formula	National Total		Specified Ratio
		FY	\$ B	
CMAQ [23 U.S.C. 104(b)(4)]	National total for program  x specified ratio	22	2.54	State's FY20 CMAQ apportionment
		23	2.59	
		24	2.64	All States' FY20 CMAQ apportionments
		25	2.69	
		26	2.75	
NHFP [23 U.S.C. 104(b)(5)]		FY	\$ B	State's total apportionment for FY
		22	1.37	
		23	1.40	All States' total apportionments for FY
		24	1.43	
		25	1.46	
PL [23 U.S.C. 104(b)(6)]		FY	\$ B	State's FY20 PL apportionment
	22	0.44		
	23	0.45	All States' FY20 PL apportionments	
	24	0.46		
	25	0.46		
	26	0.47		

### 2. Distribute remainder among NHPP, STBG, HSIP, CRP, and PROTECT Formula Program

Program	Formula	% Specified for Program
NHPP [23 U.S.C. 104(b)(1)]	Remainder of State's total apportionment (net of NHFP, CMAQ, and PL) divided among these programs based on percentages specified in law (totaling to 100%).	59.0771195921461%
STBG [23 U.S.C. 104(b)(2)]		28.7402203421251%
HSIP [23 U.S.C. 104(b)(3)]		6.70605141316253%
CRP [23 U.S.C. 104(b)(7)]		2.56266964565637%
PROTECT Formula Program [23 U.S.C. 104(b)(8)]		2.91393900690991%

### 3. Before Apportioning HSIP Funding, Set Aside (from HSIP) Certain Amounts

Set-aside from HSIP	Formula
Railway-Highway Grade Crossings set-aside [23 U.S.C. 130(e)(1)(A), (f)(1), and (f)(2)]	<ul style="list-style-type: none"> <li>\$245 M set-aside from States' initial HSIP amounts (pre-apportionment).</li> <li>Distributed among States based on the formula in 23 U.S.C. 130(f): <ul style="list-style-type: none"> <li>50% based on formula for the Surface Transportation Program under SAFETEA-LU. [23 U.S.C. 104(b)(3)(A), as in effect on July 5, 2012].</li> <li>50% based on ratio of public railway-highway crossings in the State to public railway-highway crossings in all States.</li> </ul> </li> <li>Each State receives at least 0.5% of the \$245 M total.</li> </ul>
Safety-related activities set-aside [MAP-21 § 1519(a), as amended]	<ul style="list-style-type: none"> <li>\$3.5 M set-aside from States' initial HSIP amounts (pre-apportionment)</li> <li>Taken proportionally from States' initial HSIP amounts.</li> <li>Funds an allocated program (so not included in apportionment notice).</li> </ul>