

**Guidance for Use of Federal-aid Formula Program Funds for  
Training, Education and Workforce Development  
Title 23, United States Code, Section 504(e)  
December 5, 2022**

These Q&As provide guidance for the use of certain Federal-aid formula program funds for training, education and workforce development activities authorized under 23 U.S.C. 504(e). Except for the statutes and regulations cited, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This guidance is intended only to provide clarity to States and territories regarding existing requirements under the law or agency policies. These Q&As update the previous Q&As titled, *Guidance for Use of Federal-aid State Core Program Funds for Training, Education and Workforce Development, Title 23, United States Code, Section 504(e)*, issued after passage of the Fixing America’s Surface Transportation (FAST) Act (Public Law 114-94).

Section 504(e) of title 23, U.S.C., authorizes State Departments of Transportation (State DOTs) to use certain Federal-aid highway program funds for surface transportation workforce development, training, and education activities. The program funds available for these activities are the National Highway Performance Program (NHPP), the Surface Transportation Block Grant (STBG) Program, the Highway Safety Improvement Program (HSIP), and the Congestion Mitigation and Air Quality (CMAQ) Program.

The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58), also known as the Bipartisan Infrastructure Law (BIL), made amendments to Section 504(e) that highlight eligible activities that include pre-apprenticeships, apprenticeships, and career opportunities for on-the-job training. Activities associated with workforce training and employment services, partnerships with industry, economic development organizations, workforce development boards, and labor organizations are also now eligible. BIL also expanded the definition of “surface transportation workforce development, training, and education” to include activities for women and minorities; activities to address current workforce gaps, such as work on construction projects of State and local transportation agencies; activities to develop a robust surface transportation workforce with new skills resulting from emerging transportation technologies; and activities to attract new sources of job-creating investment.

As explained in the guidance issued for specific Federal-aid programs, Federal-aid funds may provide opportunities to support the creation of good-paying jobs, including jobs with the free and fair choice to join a union, and the incorporation of strong labor standards, such as the use of project labor agreements; employer neutrality with respect to union organizing; the use of an appropriately trained workforce (in particular registered apprenticeships and other joint labor-management training programs); and the use of an appropriately credentialed workforce in project planning stages and program delivery. Under BIL Section 25019, projects using Federal-aid highway program funds may be awarded with a local or other geographic or economic hiring preference, including any such preference that may be included in a pre-hire agreement, without the need for any prior approval from FHWA, subject to any applicable State and local laws, policies, and procedures.

FHWA is aware that many States and others have identified the need to expand and diversify the highway construction workforce as a priority in implementing the Federal-aid program. FHWA encourages all recipients to consider making use of the opportunities provided by Section 504(e), as amended by the Bipartisan Infrastructure Law, to adopt and fund workforce strategies and training opportunities targeted at expanding workforce training opportunities for people to get the skills they need to compete for these jobs, especially underrepresented populations such as women, people of color, and groups with other systemic barriers to employment including people with disabilities and the formerly incarcerated. FHWA will also work with recipients to identify opportunities for Federal-aid highway investments to advance high-quality job creation through the use of local or other geographic or economic hire provisions authorized under section 25019 in the BIL, and Indian employment preference for projects that are located on or near Tribal reservations authorized under 23 U.S.C. 140(d).

### **1. What can a State DOT do under Section 504(e)?**

Section 504(e) authorizes a State DOT to obligate funds from four Federal-aid highway formula programs—NHPP, STBG, HSIP, and CMAQ—for surface transportation workforce development, training, and education, which is defined in 23 U.S.C 504(e)(3) as activities associated with surface transportation career awareness, student transportation career preparation, and training and professional development for surface transportation workers. This includes:

- Activities for women and minorities;
- Activities that address current workforce gaps, such as work on construction projects, of State and local transportation agencies;
- Activities to develop a robust surface transportation workforce with new skills resulting from emerging transportation technologies; and
- Activities to attract new sources of job-creating investment.

A State DOT must obtain approval from the State’s FHWA Division Office before obligating program funds under Section 504(e) (23 U.S.C. 504(e)(1)).

### **2. What is the federal cost share for activities funded under section 504(e)?**

The Federal share of the cost of activities carried out under Section 504(e) shall be 100 percent, except for activities carried out under local technical assistance programs authorized under 23 U.S.C. 504(b), for which the Federal share is 50 percent (23 U.S.C. 504(e)(2)).

### **3. How can program funds be used for employee education, training, and professional development?**

Funds obligated under Section 504(e) may be used for surface transportation workforce development, training, and education including –

- (A) Tuition and direct educational expenses, excluding salaries, in connection with the education and training of employees of State and local transportation agencies;
- (B) Employee professional development (e.g. training programs);
- (C) Student internships;
- (D) Pre-apprenticeships, apprenticeships, and career opportunities for on-the-job training;

- (E) University, college, community college, or vocational school support (e.g. curriculum development and experiential learning programs);
- (F) Education activities, including outreach, to develop interest and promote participation in surface transportation careers;
- (G) Activities associated with workforce training and employment services, such as targeted outreach and partnerships with industry, economic development organizations, workforce development boards, and labor organizations;
- (H) Activities carried out by the National Highway Institute (NHI) under 23 U.S.C. 504(a) and;
- (I) Support for the Local Technical Assistance Program (LTAP) under subsection 23 U.S.C. 504(b).

Examples of eligible expenses may include:

- Supportive services programs in connection with workforce development, training, and education activities, such as recruiting, counseling, transportation, physical examinations, remedial training, personal protective equipment, tools, childcare, and temporary lodging.
- Programs to provide for a continuation of training during periods of seasonal shutdowns.
- Career pathways outreach programs for middle- and high-school students focused on surface transportation.
- Surface transportation-related curriculum, teacher education and training, cooperative education programs, work-study programs scholarships, internships, and skills development training programs.
- Participant support costs, such as stipends.
- Short-term work details or “rotational” assignments for employee development.

This is not an exhaustive list of activities potentially eligible under Section 504(e), and eligibility will ultimately be a fact specific determination. Expenses must be necessary and reasonable for the performance of surface transportation workforce development, training, and education activities and must comply with relevant statutory authority and cost principles for Federal awards (see 2 CFR 200.101(d) and 200.403). FHWA divisions will work with States to help determine whether proposed workforce development, training and education activities are eligible under Section 504(e).

#### **4. Can program funds be used for travel, equipment, or materials purchases?**

Yes, provided these costs comply with relevant cost principles for Federal awards contained in 2 CFR part 200, subpart E. Each of these costs are discussed in greater detail below.

##### Travel

Travel costs, including expenses for transportation, lodging, subsistence, and related items incurred while in travel status, are allowable if they are reasonable and consistent with the non-Federal entity’s travel policy. See 2 CFR 200.475. For example, travel costs would be allowable if they are related to a defined employee training or professional development need, program, or activity, or directly associated with student transportation career awareness or preparation. In addition, employee travel to and from a training or professional development program would be allowable if the program would improve the employee’s skill, knowledge, or abilities in surface transportation management or a technical discipline. Travel costs should be supported with a clear, programmatic rationale for the employee’s participation with relevance

to professional responsibilities and benefit to the employee's professional development or technical knowledge. Activities that issue Professional Development Hours (PDH) or Continuing Education Units (CEU) would be eligible for support under Section 504(e).

Fees and other costs associated with purely social activities (i.e. golf tournaments or sightseeing excursions), including the cost of additional lodging and per diem incurred to participate in the social event(s) are not eligible for core funds support. See 2 CFR 200.438.

#### Materials

Costs for materials and supplies that benefit, and are dedicated to, the Federal award activity (training, education, and workforce development) are allowable in accordance with 2 CFR 200.453.

#### Equipment

Costs for equipment (tangible property) that has a useful life in excess of a year and a per-unit cost which equals or exceeds the lesser of (a) the capitalization value of the non-Federal entity for financial statement purposes, or (b) \$5,000) are generally unallowable as a direct charge to the Federal award without prior written approval from FHWA (or the State DOT, if acting as a pass-through entity). See 2 CFR 200.439. Participation in these costs may be charged back to a Federal award on a depreciation basis in accordance with 2 CFR 200.436.

### **5. Is it necessary for workforce development, training, and education activities to align with a formula program's purpose?**

No. Funds can be used to support surface transportation workforce development, training, and education activities eligible under Section 504(e) without regard to the focus of the core program that is the source of the funds. For example, HSIP funds are not restricted to workforce development activities specifically related to the HSIP goal of reducing fatalities and serious injuries on public roads. This extends to career awareness and outreach activities, which due to the general broader nature of transportation education cannot be easily aligned with the program funding areas.

### **6. Can funds eligible under 504(e) be used to develop State "human capital plans" described in 23 U.S.C. 174?**

Yes. Section 11203 of the BIL added a new section 174 to 23 U.S.C., which encourages States to develop "human capital plans" that address their immediate and long-term workforce needs for the States to deliver transportation and public infrastructure. The required contents of a voluntary State human capital plan are described in 23 U.S.C. 174(b).

Section 504(e)(3)(C) provides for "activities to develop a robust surface transportation workforce with new skills resulting from emerging transportation technologies." These provisions and the broader goal of Section 504(e) to enhance workforce development support the use of Section 504(e) funds to develop State human capital plans as described in 23 U.S.C. 174. Eligible activities may include consultant assistance, university research, or other third-party services to support development of the State Human Capital Plans.

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