



U.S. DEPARTMENT OF
TRANSPORTATION

**Federal Highway
Administration**

Order

Subject

Fund Transfers to Other Agencies and Among
Title 23 Programs

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1. **What is the purpose of this directive?** This directive implements the statutory provisions associated with the transfer of highway and transit funds and the transfer of funds among States or to the Federal Highway Administration (FHWA). It also clarifies various authorities and administrative procedures associated with transferring funds to other agencies.
 2. **Is this a new FHWA directive?** Yes. This directive cancels the memorandum, Fund Transfers to Other Agencies and Among Title 23 Programs, dated July 19, 2007.
 3. **What is the background of this directive?** The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) amended sections 104 and 126 of Title 23, United States Code (U.S.C.). The MAP-21 section 1105 amended 23 U.S.C. 104 by renumbering the provisions associated with the transfer of highway and transit funds and the transfer of funds among States or to FHWA. As renumbered, these provisions are described in 23 U.S.C. 104(f)(1)-(4). In addition, section 1509 of MAP-21 amended 23 U.S.C. 126 relating to the transferability of Federal-aid highway program (FAHP) funds among apportioned Federal-aid programs.
 4. **What authorities govern this directive?**
 - a. Title 23, United States Code (U.S.C.), Section 104, Apportionment.

- b. 23 U.S.C. 126, Transferability of Federal-aid highway funds.
- c. 23 U.S.C. 132, Payments on Federal-aid projects undertaken by a Federal agency.
- d. 23 U.S.C. 308, Cooperation with Federal and State agencies and foreign countries.
- e. 31 U.S.C. 1535, Agency agreements.
- f. Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141.
- g. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59.
- h. Title 49, Code of Federal Regulations (CFR), Section 1.48(b), Delegations to Federal Highway Administrator.
- i. OMB Circular A-11, Preparation, Submission, and Execution of the Budget, issued August 2012.

5. What are the general requirements for transferring funds?

- a. Generally, a State is accountable to FHWA for FAHP funds apportioned to it. However, there are limited circumstances where Congress has recognized and provided statutory authority for funds to be transferred to another State or Federal agency. A State may elect to transfer FAHP funds for several reasons: another entity may have greater expertise to administer a project, there may be cost savings associated with a project that has multiple components, or in unique circumstances, a non-Department of Transportation (DOT) entity may be better suited to be accountable for the appropriated funds. Transferring funds to another Federal agency or State does not eliminate applicable Title 23 requirements, including the non-Federal share of the project costs.
- b. When the agency intended to receive the transferred funds (the receiving agency) is ready to obligate the funds for the intended project, a State can submit to the FHWA Division Office in the State a transfer request on the applicable FHWA transfer form (see paragraph 8 of this directive for links to the forms). The request must include appropriate information to process the transfer, such as the fund type, amount, agency receiving the funds, the necessary project detail, and other applicable certifications and requirements.

- c. The State must also comply with the matching share requirements that apply to the funds to be transferred. Under 23 U.S.C. 120(j), any Federal funds other than those made available under Title 23 and Title 49 may be used to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, the Federal share of which is funded under this title or chapter 53 of Title 49. In addition, under 23 U.S.C. 120(k), funds authorized to be appropriated to carry out the Tribal Transportation Program under section 202 and the Federal Lands Transportation Program under section 203 may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of Title 49 that provides access to or within Federal or tribal land.
- d. When a transfer is processed, obligation authority is generally transferred in the same manner and amount as the program funds, per 23 U.S.C. 104(f)(4). To avoid the loss of obligation limitation, funds subject to annual obligation limitation should be fully obligated in the same fiscal year the transfer is made.
- e. The FHWA Division Office is responsible for reviewing and approving the transfer request and ensuring Federal requirements are met for the intended project. This includes ensuring that the State has a written agreement with the receiving agency that defines the framework under which the project will be carried out in compliance with pertinent laws and regulations, including Title 23 requirements. The Division must verify availability of the designated funding and obligation authority and ensure the transfer request form is accurate, complete, and executed by authorized signatories. After approving a transfer request, the Division should send the approved transfer request electronically to the FHWA Office of Budget.
- f. The FHWA Office of Budget will reduce the unobligated balance(s) of the applicable program funds and obligation authority of the State requesting the transfer and provide those funds and obligation authority to the receiving agency. The Office of Budget will notify the Division after completing the transaction.
- g. After final payment has been made on a project liquidating the transferred funds obligation, the Division or program office will coordinate with the Office of Budget to return any unexpended funds and obligation authority to the State that transferred the funds. Returned FAHP funds must be credited back to the original funding category and obligated within the fiscal year of recovery pursuant to 23 U.S.C. 118(c). The Office of Budget will coordinate returning any

obligation authority with the Division Office to mitigate the risk of lapsing obligation authority.

- h. Transferring funds does not relieve any agency from the Single Audit requirements in OMB Circular A-133. The transferred funds maintain their original Catalog of Federal Domestic Assistance (CFDA), or successor catalog, number.

6. **How may funding be transferred?**

- a. **Transfers between FHWA and the Federal Transit Administration (FTA).** The FAHP funds for which transit projects or transportation planning are eligible may be transferred to FTA and administered under chapter 53 of Title 49, per 23 U.S.C. 104(f)(1), except that the Federal share requirements of the original fund category continue to apply. Similarly, FHWA may accept transfers and administer FTA funds for highway projects or transportation planning per 23 U.S.C. 104(f)(2).
- b. **Transfers from a State to FHWA or from a State to another State.**
 - 1) A State may transfer funds apportioned or allocated under Title 23 to another State or to FHWA, per 23 U.S.C. 104(f)(3), provided the receiving agency agrees to undertake a project eligible for those funds. In addition to facilitating funding transfers for pooled-fund planning or research studies, this provision permits transfers between States and, in unique circumstances, to FHWA.
 - 2) In accordance with 23 U.S.C. 104(f)(3)(C), funds apportioned to a State for the Surface Transportation Program (STP) and attributed to an urbanized area with a population of over 200,000 individuals in that State may be transferred to FHWA or to another State only if the metropolitan planning organization designated for the area concurs, in writing, and the acknowledgement is included within or attached to the transfer request form.
- c. **Transfers between Apportioned Programs.**
 - 1) As amended by section 1509 of MAP-21, 23 U.S.C. 126 (Transferability of Federal-aid Highway Funds) provides that an amount not to exceed 50 percent of the amount apportioned under section 104(b) for the fiscal year may be transferred to another apportionment of the State. Consistent

with prior implementation of section 126, transfer limitations are established on a fiscal year-by-fiscal year basis and the sum eligible to be transferred is limited to an amount not to exceed 50 percent of the amount apportioned to a program in each fiscal year. Transfers between the following programs are covered under this provision:

- a) National Highway Performance Program (NHPP);
 - b) STP;
 - c) Highway Safety Improvement Program (HSIP);
 - d) Congestion Mitigation & Air Quality Improvement Program (CMAQ); and
 - e) Transportation Alternatives Program (TAP).
- 2) Some apportioned funding sub-categories are excluded from transfer eligibility (both transfer in and transfer out) in implementing the “not to exceed” requirements of 23 U.S.C. 126. A list of the program codes for apportioned programs under MAP-21 and whether they are eligible for transfer under 23 U.S.C. 126 can be found on the [FHWA MAP-21 website](#).
 - 3) An amount not to exceed 50 percent of the amount apportioned for the program (net of set-asides to fund other programs and penalties) is eligible to be transferred. The calculation is based on the apportioned amount after any set-aside for State Planning & Research (SPR), after any set-aside for TAP, and after the Recreational Trails Program set-aside for TAP. The calculation is also applied after assessing any penalties under sections 154 and 164 (incorporating any penalty shift election by the State) since that assessment reduces the amounts made available for the programs. The maximum amount eligible for transfer for each program is determined as follows:

Program	Not to Exceed Percentage	Amount to Which Percentage is Applied
NHPP	50 percent	NHPP apportionment net of TAP set-aside, SPR set-aside, and section 154/164 penalties
STP	50 percent	STP apportionment net of TAP set-aside, SPR set-aside, and section 154/164 penalties
HSIP	50 percent	HSIP apportionment net of TAP set-aside and SPR set-aside
CMAQ	50 percent	CMAQ apportionment net of TAP set-aside and SPR set-aside
TAP	50 percent	TAP amount net of Recreational Trails Program set-aside to be derived from TAP "any area" funds.

- 4) Examples of the maximum amount eligible for transfer and how that maximum is applied can be found on the [FHWA MAP-21 website](#).
- 5) A list of other apportionments, such as Interstate Maintenance and Bridge programs, and the application of the not to exceed 50 percent amounts can be found on the [Office of the Chief Financial Officer Budget website](#).

d. **Transfers from a State to a Federal agency other than FHWA or FTA.**

- 1) In unique circumstances, a State may request FHWA to transfer funds for the Federal share of a project directly to the Federal agency taking responsibility for the project, per 23 U.S.C. 132(a)(1). This requires that the State have the requisite legal authority and that an agreement be put in place between the State and the Federal agency.
 - a) When a State enters into an agreement with another Federal agency for a Federal-aid project to be "undertaken" by that Federal agency, "undertaken" means that the Federal agency must actually administer the project or carry out an activity necessary to the project, either with its own forces or through a contract with a contractor that provides goods or services to the Federal agency undertaking the project on behalf of the State.
 - b) Under 23 U.S.C. 132, a State should provide sufficient information to the FHWA Division Office to permit processing of the request. The State should provide a

brief description of the project(s) to be funded with the transferred funds, the name of the receiving Federal agency (including a point of contact), and written confirmation that the receiving Federal agency has agreed to undertake the project(s). Upon receipt of the FHWA transfer request form, prior to any concurrence, the Division Office must determine that the project(s) being undertaken meets the applicable Title 23 requirements.

- c) The State must provide the Division with a copy of the agreement executed between the State and the receiving Federal agency accepting the transfer, as required by 23 U.S.C. 132(a). The agreement must indicate that funds transferred to another Federal agency shall be administered in accordance with all applicable Federal requirements. These requirements include, but are not limited to, Title 23, transportation planning, National Environmental Policy Act, prevailing wage rates, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- 1 The 23 U.S.C. 132(a) requires that an agreement be entered into between the State and Federal agency, but does not specify the form of the agreement. A written agreement should sufficiently describe the project actions to contain, but not limited to, the following: scope of work for the Federal funding source, State agreement to provide the non-Federal match, acknowledgment by the Federal agency that is agreeing to undertake the project on behalf of the State, and provisions for record keeping and project close-out procedures.

- 2 Other Federal agencies may utilize their own construction contracting requirements in lieu of those imposed on a State under Title 23.

- 2) Additional information on transfers to the National Highway Traffic Safety Administration under the penalty provisions in sections 154 and 164 of Title 23, U.S.C. is provided separately in the [Penalty Transfer Provisions Interim Guidance](#).

- e. **Transfers between projects.** The flexibility permitted in SAFETEA-LU sections 1935 (Project Flexibility) and 1936 (Advances) will be in accordance with the [High Priority Projects and Transportation Improvements Implementing Guidance](#) issued by the Office of Program Administration.

- f. **Agreements or allocations with Federal agencies other than FHWA.**
 - 1) An Interagency or “Economy Act” agreement will be used to transfer funding to another Federal agency. The Economy Act authorizes FHWA to enter into an agreement with another Federal agency to use the “providing” agency’s services, supplies, and personnel to carry out an eligible activity, for which FHWA has oversight. Interagency agreements are an acquisition of services issued by the Office of Acquisition Management. The Economy Act authorizes transfers of funds and payments on an advance or reimbursement basis. Coordination between the sponsoring FHWA Division or program office and Office of Acquisition Management is required if an office is seeking to enter into an interagency agreement. Additional information can be found in the [Office of Acquisition Management Customer Guide](#).

 - 2) When transfer authority is unclear and an Interagency agreement or 132 agreement is not used, an allocation transfer may be authorized with other Federal agencies. An allocation transfer is authorized pursuant to 23 U.S.C. 308(a) and permits FHWA to cooperate with State and Federal agencies in carrying out Title 23 eligible activities using the provisions of section 20.41 of OMB Circular A-11.
 - a) An allocation transfer permits a receiving agency to obligate and outlay (expend) the amount included in a subsidiary appropriation account on behalf of the agency that has delegated such authority. Funds should not be allocated until the receiving agency is ready to obligate. Funding subject to the annual obligation limitation must be fully obligated in the same fiscal year the allocation transfer is made.

 - b) An allocation transfer is a delegation, authorized in law, by one Federal agency of its authority to obligate budget authority and outlay funds to another Federal agency.

1 When an agency makes such a delegation, the Treasury Department establishes a subsidiary account called a "transfer appropriation account," and the receiving agency may obligate up to the amount included in the account. The budget does not show the transfer appropriation account separately. The budget schedules for the parent account include the obligations by the child agency against the subsidiary account without separate identification, except in the object class schedule (see section 83.15 of OMB Circular A-11).

2 Allocation transfers are appropriate where the receiving agency is acting as the agent for the allocating agency. By maintaining a parent account and establishing a subsidiary account, FHWA retains responsibility for the funding.

a A State should provide sufficient information to the FHWA Division Office to permit processing of the request. The State should provide a brief description of the project(s) to be funded with the transferred funds, the name of the receiving Federal agency (including a point of contact), and written confirmation that the receiving Federal agency has agreed to undertake the project(s). Upon receipt of the FHWA transfer request form, prior to any concurrence, the Division Office must determine that the project(s) being undertaken meets the applicable Title 23 requirements.

b The written agreement should sufficiently describe the project actions to contain, but not limited to, the following: scope of work for the Federal funding source, State agreement to provide the non-Federal match, acknowledgment by the Federal agency that is agreeing to undertake the project on behalf of the State, and provisions for record keeping and project close-out procedures.

3 Title 23 U.S.C. Section 132(b) permits the Secretary to reimburse a State for the estimated Federal share of a project. Under section 132(b), the State must make reimbursements to the Federal agency undertaking the project consistent with the Cash Management Improvement Act.

c) Allocation transfer authority is based upon the Secretary's authority under 23 U.S.C. 308(a) to cooperate with States and Federal agencies in a connection with a project or activity or improvement eligible under Title 23 as delegated to the FHWA Administrator pursuant to 49 CFR 1.48(b)(3). In addition, other DOT OAs are delegated authority from the Secretary to carry out specific activities that those agencies are better suited to oversee than FHWA (e.g., port improvement projects that may qualify for funding as a Title 23 eligible activity).

7. **Where can I obtain additional guidance?** If you have questions concerning this directive, please contact the Office of Financial and Management Programs. If you have questions about FHWA's transfer forms or process, please contact the Office of Budget or visit the following links:

- a. [Instructions for FHWA Transfer Request](#)
- b. [\(Form FHWA-1575\) FHWA Transfer Request within State or to other State](#)
- c. [\(Form FHWA-1576\) FHWA Transfer Request to FHWA or other Agency](#)



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