

Ferry Boat Program Implementation Guidance

A. PROGRAM PURPOSE

The purpose of the Ferry Boat Program (FBP) is to provide Federal assistance to construct ferry boats and ferry terminal facilities in accordance with Title 23, United States Code (U.S.C.), Sections 129(c) and 147. The program makes Federal-aid highway funds available to eligible entities, through State and territorial¹ transportation agencies, for designing and constructing ferry boats and for designing, acquiring right-of-way, and constructing ferry terminal facilities.

B. GOVERNING AUTHORITIES

1. Section 1112 of the Fixing America's Surface Transportation Act (FAST Act) authorizes funds for the FBP and amends 23 U.S.C. 129(c) and 147; and
2. Section 1801(e)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the FAST Act (Section 1112), provides for the National Census of Ferry Operators (NCFO) database.

C. FUNDING²

1. **Authorization Levels:** Authorized annual FBP funding under the FAST Act is:

FY 2016	\$80,000,000
FY 2017	\$80,000,000
FY 2018	\$80,000,000
FY 2019	\$80,000,000
FY 2020	\$80,000,000
TOTAL	\$400,000,000

Each fiscal year, these amounts will be reduced according to Section 1102(f) of the FAST Act and the corresponding provision in the annual appropriations act.³ The excess FBP contract authority will be distributed to the States, without Obligation Limitation (OL),

¹The States, Puerto Rico, the District of Columbia and the four U.S. territories (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands) are eligible to receive FBP funding if they meet all program requirements (23 U.S.C. 165(c)(6)(A)). The Federal share for FBP funds made available to the four territories is 100 percent, per 23 U.S.C. 120(g).

² The distribution formula, ownership conditions, and the list of eligible operators in the MAP-21 FBP Implementation Guidance dated November 1, 2012 still remain applicable for the FBP funds that were allocated in accordance with requirements set forth under MAP-21 and its extensions, (i.e. FY 2013-FY 2015 FBP funds).

³For example, see Section 120(e) ("Redistribution of Certain Authorized Funds") of the Department of Transportation Appropriations Act, 2016 (Division L of Public Law 114-113).

for use on projects eligible under the Surface Transportation Block Grant Program (STBG).

The Fiscal Management Information System program code for these FAST Act FBP funds is:

Program Code	Program Description	Statutory Reference
Z950	Construction of Ferry Boats and Ferry Terminal Facilities (FBP)	Section 1112

2. **Obligation Limitation:** The FBP obligation authority is subject to the annual OL imposed on the Federal-aid highway program and to August redistribution of OL per Section 1102(d) of the FAST Act and the corresponding provision in the annual appropriations act.⁴

When FBP funds are allocated, they are accompanied by an equal amount of special OL, separate from a State's formula OL. When FBP funds are obligated, an equal amount of OL is used. The FBP funds and related OL that will not be obligated by the end of the fiscal year will be withdrawn after August 1 and the OL will be redistributed among the States. These carryover FBP funds and an equal amount of new OL will be returned to the States or territories in the next fiscal year.

3. **Funds Distribution:** The FBP funds authorized by the FAST Act (FY 2016 and subsequent years) will be distributed according to 23 U.S.C. 147(d), as amended by the FAST Act. Of the amounts available each year:
 - a) 35 percent shall be allocated among eligible entities in the proportion that (A) the number of ferry passengers, including passengers in vehicles, carried by each ferry system in the most recent calendar year for which data is available; bears to (B) the number of ferry passengers, including passengers in vehicles, carried by all ferry systems in the most recent calendar year for which data is available;
 - b) 35 percent shall be allocated among eligible entities in the proportion that (A) the number of vehicles carried by each ferry system in the most recent calendar year for which data is available; bears to (B) the number of vehicles carried by all ferry systems in the most recent calendar year for which data is available; and
 - c) 30 percent shall be allocated among eligible entities in the proportion that (A) the total route nautical miles serviced by each ferry system in the most recent calendar year for which data is available; bears to (B) the total route nautical miles serviced by all ferry systems in the most recent calendar year for which data is available.

⁴ For example, see Section 120(c) ("Redistribution of Unused Obligation Authority") of the Department of Transportation Appropriations Act, 2016 (Division L of Public Law 114-113).

In accordance with 23 U.S.C. 147(g), FBP funds are made available to eligible entities in the State or territory using the data in the most recent NCFO database produced by the Bureau of Transportation Statistics (BTS). The Secretary may adjust the data to correct misreported or inconsistent data. The 2014 NCFO database can be found at https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/ncfo/index.html.

A State with at least one eligible entity that meets program requirements will receive at least \$100,000 for the fiscal year, per 23 U.S.C. 147(f). This minimum amount will be allocated to the State department of transportation (SDOT). The SDOT will determine the distribution of this funding among the eligible entities in the State. This provision does not apply to the four territories.

4. **Period of Availability:** The FBP funds are contract authority and remain available until expended (23 U.S.C. 147(i)), but are subject to redistribution as described below.
5. **Redistribution of Unobligated Amounts:** While FBP funds remain available until expended, individual eligible entities lose the ability to use FBP funds that remain unobligated three fiscal years after the fiscal year in which those funds were first authorized. Those unobligated FBP funds will be withdrawn and redistributed nationally to eligible entities from which no funds were withdrawn in the subsequent fiscal year, per 23 U.S.C. 147(e). This applies to FBP funds from FY 2013 and beyond.

The following schedule shows the dates that funds must be obligated and the fiscal year that funds will be redistributed:

Fiscal Year of Funds	Funds Must Be Obligated By	Redistribution Occurs After October 1 of Fiscal Year
2013, 2014, 2015, 2016	September, 30, 2019	2020
2017	September, 30, 2020	2021
2018	September, 30, 2021	2022
2019	September, 30, 2022	2023
2020	September, 30, 2023	2024

6. **Federal Share:** The Federal share for FBP funds made available to States is 80 percent, per 23 U.S.C. 147(b).⁵
7. **Other Federal-aid Funds:** Ferry boat and terminal facilities may also be eligible for apportioned STBG funds and National Highway Performance Program (NHPP) funds. Additional information can be found in implementation guidance for these programs at <http://www.fhwa.dot.gov/fastact/guidance.cfm>. These apportioned funds may also be used for approach roads to ferry terminal facilities as defined in 23 U.S.C. 129(b).

⁵ As noted in Footnote 1, the Federal share for FBP funds made available to the four territories is 100 percent.

8. **Ferry Boat Discretionary Program (FBD) Funds:** Although the FBD program was repealed, funds for some awarded projects remain available and can be reallocated at an SDOT's request.

New obligations of these FBD funds must follow the requirements and eligibilities contained in 23 U.S.C. 147, 129(b) and 129(c) that existed prior to MAP-21. A listing of unallocated FBD funds can be found at

<http://www.fhwa.dot.gov/discretionary/fbavailable.cfm>.

D. DEFINITIONS FOR THE PURPOSE OF THIS IMPLEMENTATION GUIDANCE

1. **Approach Road.** An approach road is a public road that connects the ferry terminal passenger parking, vehicle ramp, or transfer bridge to a Federal-aid highway as defined in 23 U.S.C. 101 or a National Highway System (NHS) Intermodal Connector. Approach roads do not include access roads to maintenance facilities.
2. **Control.** Control means that a public entity has an interest in the continued operation of the route and oversees the schedules, fares, and operation. This control can include a service on a public route that is operated by a private entity under a contract, permit, or other agreement with a public entity.
3. **Disposal.** A disposal is any ending of service, use for other purposes, or significant change of service that is not consistent with the eligible operation of a vessel or facility purchased or leased, according to 23 U.S.C. 129(c)(7).
4. **Ferry Boat.** A ferry boat is any water transportation vessel, including ships, barges, and hovercraft, that transports pedestrians and/or automobiles with passengers (roll-on/roll-off) for public transportation purposes on a fixed route where it is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of a ferry.
5. **Terminal Facility.** A ferry terminal facility includes the structures and amenities that directly serve the ferry boat operation. These include passenger parking, ticketing, waiting area, boarding and disembarking facilities, docks, slips, dolphins and shore improvements necessary for docking, administrative space specifically for on-site ferry administration and vessel crew, and ferry vessel maintenance facilities. It does not include approach roads to the terminal facility.
6. **Public Entity.** A public entity includes Federal, State, or local governmental agencies, Tribal governments, and organizations established by Federal, State, or local law with control of ferry boat services, including routes and fares. A public entity does not include any other "not for profit" organization.
7. **Operating Authority.** The operating authority is a public or private entity responsible for operating the ferry service.

8. **Ownership.** Under the FAST Act, eligible ferry boats or terminal facilities shall be publicly owned and publicly operated. The Secretary may determine if majority publicly owned ferry boat or terminal facilities provide substantial public benefits to qualify under the definition of ownership (23 U.S.C. 129(c)(3)(A)). These categories of ownership are defined as follows:

- a) Publicly owned - Ferry boat or terminal facility is titled to a public entity.
- b) Majority publicly owned - Ferry boat or terminal facility is more than 50 percent owned by a public entity and the Secretary determines that such ferry boat or terminal facility provides substantial public benefits.
- c) Publicly operated - A publicly operated ferry boat or terminal facility shall be operated either with public employees or by a public entity paying others to do so. If the public entity has entered into a contract for private persons to operate the boat or terminal, the public entity is responsible for complying with all applicable Federal-aid requirements. When a public entity leases a ferry boat or terminal facility from a private entity, only the capital portion of the cost of leasing the ferry boat will be eligible for reimbursement under the FBP (see Eligible Activities below).

E. ELIGIBILITY REQUIREMENTS

1. As a result of FAST Act changes to 23 U.S.C. 129(c)(3)(B), the construction or purchase of ferry boats, ferry terminal facilities, or other eligible Section 129 projects for private ownership are not eligible for FBP or other Federal-aid funds, except for FBD program funds.

Ferry systems operate under a variety of ownership structures that affect their eligibility for FBP funds as shown in the following table. Therefore, each FHWA division office should work with the appropriate SDOT to verify the eligibility of each ferry service and project proposed for FBP funding:

Ownership Structure	Eligibility
Ferry boats and landside facilities are owned by a public entity.	Ferry boats and landside facilities are eligible for FBP funding.
Ferry boats and landside facilities are owned by a private entity.	Ferry boats and landside facilities are <u>not</u> eligible for FBP funding.
Ferry boats are owned by a private entity. Landside facilities are owned by a public entity.	Only the landside facilities are eligible.
Ferry boats are owned by a public entity. Landside facilities are owned by a private entity.	Only the ferry boats are eligible.

2. The following conditions of 23 U.S.C. 129(c) and 147(g) apply to the use of FBP funds for FY 2016 and beyond:

- a) It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry (23 U.S.C. 129(c)(1)).
 - b) The operation of the ferry shall be on a route classified as a public road within the State and which has not been designated as a route on the Interstate System or on a public transit ferry eligible under chapter 53 of title 49. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only (23 U.S.C. 129(c)(2)).
 - c) The ferry boat or ferry terminal facility shall be publicly owned or operated or majority publicly owned if the Secretary determines with respect to a majority publicly owned ferry or ferry terminal facility that such ferry boat or ferry terminal facility provides substantial public benefits. Any Federal participation shall not involve the construction or purchase, for private ownership, of a ferry boat, ferry terminal facility, or other eligible project under this section.
 - d) The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return (23 U.S.C. 129(c)(4)).
 - e) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise any territory of the United States) or between adjoining States or between a point in a State and a point in the Dominion of Canada. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise any territory of the United States, operations between a point in a State and a point in the Dominion of Canada, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters (23 U.S.C. 129(c)(5)).
 - f) The ferry service shall be maintained in accordance with 23 U.S.C. 116 (23 U.S.C. 129(c)(6)).
 - g) Data contained in the most recent NCFO database will be used to determine eligibility and to make allocations. No funds will be provided to a ferry system not included in the database.
3. **Location of Projects:** The FBP funds may only be used for eligible entities identified in the distribution of funds.

See Section I below for information on transferring FBP funds among States if a ferry service operates between two or more States.

4. **Eligible Activities:**

- a) Construction, as defined in 23 U.S.C. 101(a)(4), of ferry boat and ferry terminal facilities, including ferry maintenance facilities.

- b) The capital portion of the cost of leasing a vessel or facility by an eligible entity. The costs of participation should equal the annual lease costs and Federal-aid may not pay for the entire lease period costs up front. Such lease cannot include the cost of operating such ferry.
- c) Temporary ferry operations are not eligible under the FBP. Temporary ferry operations used for maintenance of traffic for a bridge replacement project, for example, would be an eligible activity for the same funds as used for the bridge replacement. Temporary ferry operations may also be eligible for emergency relief purposes in accordance with 23 U.S.C. 125(d)(2) and Title 23, Code of Federal Regulations (CFR), Part 668.

F. DISPOSAL: In accordance with 23 U.S.C. 129(c)(7), no ferry for which Federal-aid funds were used shall be sold, leased, or otherwise disposed of except as provided by 2 CFR 200. The Federal share of proceeds from the disposal shall be used for an eligible Title 23 purpose.

G. OTHER USES OF VESSELS, PORTS, MARINAS, OR TERMINALS: The use of Federal-aid funds is limited to capital improvements necessary for and directly attributable to the construction of an eligible publicly owned functional ferry and ferry terminal. When a ferry terminal is constructed in conjunction with other uses (cost objectives) such as cruise ships, general marina, museum, and port management facilities, 2 CFR Part 200 requires that costs be allocated to the various benefiting uses.

The following are examples of eligibility determinations FHWA has made concerning the construction of ferry terminals:

1. Shared space, such as waiting areas, rest room facilities, ticket sales, or crew quarters are to be allocated proportionately among eligible uses directly associated with the provision of the ferry service and ineligible uses associated with non-ferry service use. General administration space not primarily for the ferry service is not eligible.
2. If a facility is being constructed for multiple uses, the costs of the shell of the building, heating, ventilation and air conditioning, plumbing, etc., require analysis to determine the portion attributable to the ferry service.
3. If a dock is to be constructed for the use of cruise or other vessels in addition to the ferry, the costs are to be allocated among the defined and benefiting uses.
4. Only the terminal parking spaces needed for the ferry service are eligible.
5. Construction or rehabilitation of fueling and maintenance facilities that are solely for the ferry service and are owned by a public entity is eligible. Cost allocation applies if these facilities serve other ineligible uses.

6. Operation and maintenance costs (i.e., staffing, regular maintenance of vessels or facilities, fuel, periodic inspections, certifications or permits, such as required by the U.S. Coast Guard, or disposable supplies) are not eligible.
7. Dredging in the immediate area of the terminal and docks as part of a terminal project necessary for the ferry operation is eligible but requires cost allocation when the dredging location will be used by other vessels.
8. The cost of the ineligible portion of a project cannot be used for the State or local share of the project costs.

H. APPLICABLE FEDERAL-AID REQUIREMENTS: Projects for the construction or purchase of ferry boats and ferry terminal facilities must be performed in accordance with 23 U.S.C. and 23 CFR. This applicability includes all planning, environmental, design, authorization, advertising, and construction requirements.

1. **Applicability of Planning Requirements:** Projects must be identified in the Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP) and be consistent with the Long-Range Statewide Transportation Plan and the Metropolitan Transportation Plan(s) under 23 U.S.C. 135.
2. **Ferries serving the NHS:** Pursuant to 23 U.S.C. 147(j), projects for ferries that serve as a highway link between two points of the NHS must be designed and constructed under all provisions applicable to the NHS.

I. TRANSFERS: FBP funds may be transferred to another State or another Federal agency to be administered by that State or agency for a project for the specified ferry operation for which the funds were originally allocated. However, funds may not be transferred to a different ferry operation from the one for which the funds were originally allocated. To transfer funds under the FBP, contact the Office of Program Administration. General guidance can be found at <http://www.fhwa.dot.gov/legsregs/directives/orders/45511.cfm>. Section 104(f)(1) of Title 23 will apply to any funds transferred to the Federal Transit Administration for administering transit projects under chapter 53 of Title 49, United States Code.