Ferry Boat Program Implementation Guidance
(April 21, 2023)

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A. PROGRAM PURPOSE

The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the "Bipartisan Infrastructure Law" (BIL)) continues the Ferry Boat Program (FBP). The purpose of the FBP is to provide Federal assistance for the construction of ferry boats and ferry terminal facilities (including ferry maintenance facilities), whether toll or free, and the procurement of transit vehicles used exclusively as an integral part of an intermodal ferry trip, in accordance with Title 23, United States Code (U.S.C.), Sections 129(c) and 147. The program makes Federal-aid highway funds available for eligible projects, through State[1] and territorial[2] transportation agencies.

B. GUIDANCE ON STRATEGIC PRIORITIES AND USE OF THE FEDERAL-AID HIGHWAY FORMULA FUNDING

FBP funding is provided for the focused program purpose shown above. Many of the eligible uses for FBP funding are consistent with the U.S.DOT strategic priorities. Funds can be transferred to the Federal Transit Administration (FTA) for FBP eligible projects, consistent with Transit Flex as discussed below. Americans with Disabilities Act (ADA) compliant pedestrian facilities are incorporated into FBP projects including incorporation of these elements at ferry terminals in accordance with applicable regulations. In an effort to address climate change and sustainability, BIL provides for an increased Federal share for projects to replace or retrofit a diesel fuel ferry vessel that provides substantial emissions

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[1] The definition of State in 23 U.S.C. 101(a) includes the District of Columbia and Puerto Rico.

[2] The four U.S. territories (America 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)). The Federal share for FBP funds made available to the four territories is 100 percent, per 23 U.S.C. 120(g).

reductions, as discussed further in Section D.6. of this guidance. Recipients are encouraged to consider the strategic priorities described below as they develop eligible FBP projects.

1. **Overview:** This document provides background and guidance to clarify eligibility requirements for the FBP.

2. **Safety:**
   Prioritizing Safety in All Investments and Projects
   The National Roadway Safety Strategy (NRSS) (issued January 27, 2022) commits the United States Department of Transportation (USDOT) and FHWA to respond to the current crisis in traffic fatalities by "taking substantial, comprehensive action to significantly reduce serious and fatal injuries on the Nation's roadways," in pursuit of the goal of achieving zero highway deaths. FHWA recognizes that zero is the only acceptable number of deaths on our roads and achieving that is our safety goal. FHWA therefore encourages States and other funding recipients to prioritize safety in all Federal highway investments and in all appropriate projects, using relevant Federal-aid funding, including funds from the FBP.

   The Safe System approach addresses the safety of all road users, including those who walk, bike, drive, ride transit, and travel by other modes. It involves a paradigm shift to improve safety culture, increase collaboration across all safety stakeholders, and refocus transportation system design and operation on anticipating human mistakes and lessening impact forces to reduce crash severity and save lives. To achieve the vision of zero fatalities, safety should be fully reflected in a State's transportation investment decisions, from planning and programming, environmental analysis, project design, and construction, to maintenance and operations. States should use data-driven safety analyses to ensure that safety is a key input in any decision made in the project development process and fully consider the safety of all road users in project development.

   FHWA encourages State and local agencies to consider the use of funds from the FBP to address safety and implement the Safe System approach wherever possible. Improvements to safety features, including traffic signs, pavement markings, and multimodal accommodations that are routinely provided as part of a broader Federal-aid highway project can and should be funded from the same source as the broader project as long as the use is eligible under that funding source.

   Because of the role of speed in fatal crashes, FHWA is also providing new resources on the setting of speed limits and on re-engineering roadways to help "self-enforce" speed limits. To achieve the vision of zero fatalities on the Nation's roads, FHWA encourages States to assess safety outcomes for all project types and promote and improve safety for all road users, particularly vulnerable users. FHWA recommends that streets be designed and operated to maximize the existing right-of-way for accommodation of nonmotorized modes and transit options that increase safety and connectivity. Pedestrian facilities in the public right-of-way must comply with the Americans with Disabilities Act.

Complete Streets
As one approach to ensuring the safety of all roadway users, FHWA encourages States and communities to adopt and implement Complete Streets policies that prioritize the safety of all users in transportation network planning, design, construction and operations. Section 11206 of the BIL defines Complete Streets standards or policies as those which "ensure the safe and adequate accommodation of all users of the transportation system, including pedestrians, bicyclists, public transportation users, children, older individuals, individuals with disabilities, motorists, and freight vehicles." A complete street includes but is not limited to, sidewalks, bike lanes (or wide paved shoulders), special bus lanes, accessible public transportation stops, safe and accommodating crossing options, median islands, pedestrian signals, curb extensions, narrower travel lanes, and roundabouts. A Complete Street is safe, and feels safe, for everyone using the street.

3. **Transit Flex:** FHWA, working with FTA, seeks to help Federal-aid recipients plan, develop, and implement infrastructure investments that prioritize safety, mobility, and accessibility for all transportation network users, including pedestrians, bicyclists, transit riders, micromobility users, freight and delivery services providers, and motorists. This includes the incorporation of data sharing principles and data management.

   Funds from FBP can be "flexed" to FTA to fund transit projects (*See* Section J). For title 23 funds that are flexed to FTA, section 104(f) of title 23, U.S.C., allows funds made available for transit projects or transportation planning to be transferred to FTA and administered in accordance with chapter 53 of title 49, U.S.C., except that the Federal share requirements of the original fund category continue to apply (*See* 23 U.S.C. 104(f)(1)).

   The use of Federal-aid funding on transit and transit-related projects can provide an equitable and safe transportation network for travelers of all ages and abilities, including those from marginalized communities facing historic disinvestment. FHWA encourages recipients to consider using funding flexibility for transit or multimodal-related projects and to consider strategies that: (1) improve infrastructure for nonmotorized travel, public transportation access, and increased public transportation service in underserved communities; (2) plan for the safety of all road users, particularly those on arterials, through infrastructure improvements and advanced speed management; (3) reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors; and (4) target demand-response service towards communities with higher concentrations of older adults and those with poor access to essential services.

4. **ADA:** The Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination against people with disabilities and ensure equal opportunity and access for persons with disabilities. The Department of Transportation's Section 504 regulations apply to recipients of the Department's financial assistance (*See* 49 CFR 27.3(a)). Title II of the ADA applies to public entities regardless of whether they receive Federal financial assistance (*See* 28 CFR 35.102(a)). The ADA requires that no qualified individual with a disability shall, because a public entity's

facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity (*See* 28 CFR 35.149). A public entity's pedestrian facilities are considered a "service, program, or activity" of the public entity. As a result, public entities and recipients of Federal financial assistance are required to ensure the accessibility of pedestrian facilities in the public right-of-way, such as curb ramps, sidewalks, crosswalks, pedestrian signals, and transit stops in accordance with applicable regulations.

Funds from FBP are available to improve accessibility and to implement recipients' ADA transition plans and upgrade their FBP facilities to eliminate physical obstacles and provide for accessibility for individuals with disabilities. FHWA will provide oversight to recipients of FBP funds to ensure that each public agency's project planning, design, and construction programs comply with ADA and Section 504 accessibility requirements.

5. **Equity:** The BIL provides considerable resources to help States and other funding recipients advance projects that consider the unique circumstances affecting community members' mobility needs and allocate resources consistently with those needs, enabling the transportation network to effectively serve all community members. FHWA will work with States to ensure consideration of using FBP funds for projects and inclusion of project elements that proactively address racial equity, workforce development, economic development, and remove barriers to opportunity, including automobile dependence in both rural and urban communities as a barrier to opportunity or to redress prior inequities and barriers to opportunity.

   Federal-aid recipients, including recipients of FBP funds, are responsible for involving the public, including traditionally underserved and underrepresented populations in transportation planning and complying with participation and consultation requirements in 23 CFR 450.210 and 23 CFR 450.316, as applicable. "Underserved populations" include minority and low-income populations but may also include many other demographic categories that face challenges engaging with the transportation process and receiving equitable benefits (*See* FHWA's Environmental Justice Reference Guide for additional information). In addition, FBP projects can support the Justice40 Initiative, which establishes a goal that at least 40 percent of the benefits of federal investments in climate and clean energy infrastructure are distributed to disadvantaged communities. (*See* OMB's Interim Implementation Guidance for the Justice40 Initiative or its successor for additional information).

   To assist with these public engagement efforts, FHWA expects recipients of FBP funds to engage with all impacted communities and community leaders to determine which forms of communication are most effective. Recipients should gain insight on the unique circumstances impacting various disadvantaged and underrepresented groups so that new channels for communication may be developed. The recipients should use this information to inform decisions across all aspects of project delivery including planning, project selection, and the design process.

Among other things, recipients of FBP funds are also required to assure equitable treatment of workers and trainees on highway projects through compliance with Equal Employment Opportunity requirements under 23 CFR Part 230, Subpart A, as well as ensuring nondiscrimination in all of their operations on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964. Recipients of FBP funds should ensure that they have the capacity and expertise to address Federal civil rights protections that accompany grant awards.

6. **Climate Change and Sustainability:** The United States is committed to a whole-of-government approach to reducing economy-wide net greenhouse gas pollution by 2030. The BIL provides considerable resources—including new programs and funding—to help States and other funding recipients advance this goal in the transportation sector. In addition, the BIL makes historic investments to improve the resilience of transportation infrastructure, helping States and communities prepare for hazards such as wildfires, floods, storms, and droughts exacerbated by climate change.

   FHWA encourages the advancement of projects that address climate change and sustainability. To enable this, FHWA encourages recipients to consider climate change and sustainability throughout the planning and project development process, including the extent to which projects under the FBP align with the President's greenhouse gas reduction, climate resilience, and environmental justice commitments. In particular, consistent with the statute and guidance below, recipients should fund projects that reduce carbon dioxide emissions. FHWA encourages recipients to fund projects that support fiscally responsible land use and transportation efficient design, or incorporate electrification or zero emission vehicle infrastructure. In addition, FHWA encourages recipients to consider projects under the FBP that support climate change resilience, including consideration of the risks associated with wildfires, drought, extreme heat, and flooding, in line with guidance for projects in floodplains. FHWA also encourages recipients to consider projects under the FBP that address environmental justice concerns.

7. **Labor and Workforce:** Highway programs, including the FBP, 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.

   Recipients should work with FHWA, to the extent possible, 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), or other workforce strategies targeted at expanding workforce training opportunities for people to get the skills they need to compete for these jobs, especially underrepresented populations: women, people of color, and groups with other systemic barriers to employment (people with disabilities, formerly incarcerated, etc.).

C. GOVERNING AUTHORITIES

1. Section 11121 of the BIL authorizes Highway Trust Fund (HTF) contract authority (CA) for the FBP.
2. Section 11117 of the BIL amends 23 U.S.C. 129(c) and provides for increased Federal share.
3. Section 71103(g) of the BIL amends 23 U.S.C. 147.
4. Title VIII of Division J of BIL provides General Fund (GF) Appropriated Budget Authority (ABA) for the FBP.
5. Section 1801(e)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the Fixing America's Surface Transportation Act (FAST Act) (Section 1112), provides for the National Census of Ferry Operators (NCFO) database.

D. FUNDING

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

Authorized Annual FBP Funding			
Fiscal Year (FY)	**BIL FBP Highway Trust Fund (HTF) Contract Authority (CA)**	**BIL FBP General Fund (GF) Appropriated Budget Authority (ABA)**	**Total Budget Authority**
FY 2022	$110,000,000	$68,400,000	$178,400,000
FY 2023	$112,000,000	$68,400,000	$180,400,000
FY 2024	$114,000,000	$68,400,000	$182,400,000
FY 2025	$116,000,000	$68,400,000	$184,400,000
FY 2026	$118,000,000	$68,400,000	$186,400,000

The Fiscal Management Information System (FMIS) Program Code for these BIL FBP funds is:

Program Code	Program Description	Title 23 or BIL Reference
Y950	Construction of Ferry Boats and Ferry Terminal Facilities (FBP) (HTF)	23 U.S.C. 147
Y951	Construction of Ferry Boats and Ferry Terminal Facilities (FBP) (GF)	Title VIII of Division J of BIL

2. **Period of Availability:** Highway Trust Fund (HTF) contract authority (CA) FBP funds remain available until expended (*See* 23 U.S.C. 147(i)) but the associated one-year obligation authority is subject to August redistribution (*See* Section D.3. below). General Fund (GF) appropriated budget authority (ABA) FBP funds are also available until expended (*See* Title VIII of Division J of BIL) but August redistribution is not applicable as the ABA funds are not subject to any obligation limitation. Both the HTF and GF FBP funds are subject to Redistribution of Unobligated Amounts as described in 23 U.S.C. 147(e) and Section D.5. (below).

   FBP funds from previous authorizations continue to be available, but new obligations of FBP funds must follow the requirements and eligibilities of 23 U.S.C. 147 and 23 U.S.C. 129(c), both as amended by the BIL.

3. **Obligation Limitation:** The FBP HTF amount of CA authorized is subject to the annual obligation limitation (Ob Lim) imposed on the Federal-aid highway program, resulting in the amount available for distribution and obligation.

   Each fiscal year, the FBP HTF CA amounts authorized (*See* table in section D.1. above) will be reduced (known as "lop-off") according to Section 11102(f) of the BIL or the corresponding provision in the annual appropriations act. [3] The excess FBP HTF CA will be distributed to the States, without Ob Lim, for use on projects eligible under the Surface Transportation Block Grant Program (STBG). When FBP funds are allocated, they are accompanied by an equal amount of non-formula Ob Lim, separate from a State's formula Ob Lim. When FBP funds are obligated, an equal amount of Ob Lim is used.

   FBP HTF CA obligation authority is also subject to August redistribution of Ob Lim per Section 11102(d) of the BIL or the corresponding provision in the annual appropriations act.[4] The FBP HTF CA funds and related Ob Lim that will not be obligated by the end of the fiscal year will be withdrawn after August 1, and the Ob Lim will be redistributed among the States as formula Ob Lim. Carryover FBP funds and an equal amount of new Ob Lim will generally be available to the States or territories in the next fiscal year unless subject to Redistribution of Unobligated Amounts (*See* section D.5.).

   The authorized amount of FBP GF ABA (*See* table in section D.1. above) is not subject to annual obligation limitation but is subject to an administrative takedown of 1.5% (*See* Title VIII of Division J of BIL), resulting in the amount available for distribution and obligation.

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[3] For example, see Section 120(e) ("Redistribution of Certain Authorized Funds") of Title I of Division L of the Consolidated Appropriations Act, 2023 (Public Law 117-328). As the later enacted law, the obligation limitation provisions in an annual appropriations act supersede the obligation limitation provisions in BIL.

[4] For example, see Section 120(c) ("Redistribution of Unused Obligation Authority") of Title I of Division L of the Consolidated Appropriations Act, 2023 (Public Law 117-328). As the later enacted law, the obligation limitation provisions in an annual appropriations act supersede the obligation limitation provisions in BIL.

4. **Funds Distribution:** The FBP funds authorized by the BIL will be distributed according to 23 U.S.C. 147(d). 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.

   In accordance with 23 U.S.C. 147(g), FBP funds are made available to 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 (23 U.S.C. 147(g)(2)). The NCFO database can be found at the National Census of Ferry Operators website (https://www.bts.gov/NCFO).

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

   FBP funds are made available for eligible projects through; a) State, or b) territorial transportation agencies.

   a. The State, through its SDOT in accordance with 23 U.S.C. 302, is the recipient of these funds and is responsible for administration of these funds. If the SDOT acts as a pass-through entity of Federal assistance, the SDOT maintains the pass-through responsibilities specified in 2 CFR 200.332. The SDOT may 1) develop and administer a FBP project, 2) assist Local Public Agencies (LPAs) in the development and administration of FBP projects (if provided for by the State), or 3) transfer the FBP funds to an appropriate Federal agency (*See* Section J Transfers).
   b. Territorial transportation agencies follow their FHWA/Territorial agreements.

5. **Redistribution of Unobligated Amounts:** While FBP funds remain available until expended (*See* Section D.2.), 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 in the subsequent fiscal year to eligible entities from which no funds were

withdrawn (23 U.S.C. 147(e)). Program Codes for redistribution funds will be provided in the annual FBP Distribution Memo.

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

Fiscal Year of Funds (Authorization)	Funds Must Be Obligated By	Redistribution Occurs After October 1 of FY
2019 (FAST Act)	September 30, 2022	2023
2020 (FAST Act)	September 30, 2023	2024
2021 (FAST Act Ext.)	September 30, 2024	2025
2022 (BIL)	September 30, 2025	2026
2023 (BIL)	September 30, 2026	2027
2024 (BIL)	September 30, 2027	2028
2025 (BIL)	September 30, 2028	2029
2026 (BIL)	September 30, 2029	2030

6. **Federal Share:** In accordance with 23 U.S.C. 147(b), the maximum Federal share for a project in any State or Puerto Rico under this program is 80 percent.[5] In the case of a project to replace or retrofit a diesel fuel ferry vessel that provides substantial emissions reductions, the Federal share of the cost of the project may be up to 85 percent, as determined by the State (BIL Section 11117(b)(1)). The provision for increased Federal share to replace or retrofit a diesel fuel ferry vessel terminates on September 30, 2025 (BIL Section 11117(b)(2)). The sliding scale Federal share does not apply to this program. Other matching flexibilities such as donations and "soft match" may be considered. Guidance can be found at Federal-aid Essentials Matching or Cost Sharing Requirements (https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=13).

7. **Allocation of Funds:** When a project is ready to be obligated, and the FHWA division office has confirmed that the ferry service and project are eligible, an allocation request is submitted to the FHWA Office of Stewardship, Oversight, and Program Management by the FHWA division office to make the funds available in FMIS. The request for allocation of funds should include the following six items:

   a. identify the operator,
   b. identify the FY and amount of the requested FBP funding,
   c. identify the purpose for which the funds will be used,
   d. provide confirmation that the ferry operation is eligible,
   e. provide confirmation the project is eligible, and
   f. provide confirmation the project is ready for obligation.

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

Refer to the annual FBP distribution of funds memo located at [FHWA FBP Website (https://www.fhwa.dot.gov/specialfunding/fbp/)](https://www.fhwa.dot.gov/specialfunding/fbp/) for additional guidance on requesting allocation of funds.

Once funds are allocated, division offices should ensure the funds are only obligated for the specified (eligible) ferry operator and eligible purpose. Similarly, subsequent deobligations of FBP funding from projects are only available for the specified (eligible) ferry operator and eligible purpose. To assist in funds management of any future deobligations and deallocations of FBP funds, it is recommended information identifying the allocation of FBP funds, including the operator and FY of the funds, be included in the FMIS recipient remarks field. This practice also assists division offices in ensuring funds are only obligated consistent with the original allocation of funds.

If the State wants to transfer FBP funds to another Federal agency for project implementation, in addition to the above six items, form FHWA 1576 must be completed and submitted to this office. For additional information on transfer of FBP funds, see Section J Transfers.

8. **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 will be included in implementation guidance for these programs at [FHWA Bipartisan Infrastructure Law Website](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/) (https://www.fhwa.dot.gov/bipartisan-infrastructure-law/). These apportioned STBG and NHPP funds may also be used for approach roads to ferry terminal facilities as provided in 23 U.S.C. 129(b).

   The Federal Transit Administration (FTA) also has ferry boat programs that differ from FHWA's. The formula-based FHWA FBP is administered under 23 U.S.C. 129(c) and 147. Funding for FBP is generally available to construct ferry boats, ferry terminals, and ferry maintenance facilities, where both passenger and vehicle ferries are eligible, if service is on a fixed route in a situation where it is not feasible to build a bridge or tunnel. Eligibilities for operators and projects are prescribed in statute. FTA administers three competitive ferry programs, the Passenger Ferry Grant Program, the Electric or Low-Emitting Ferry Pilot Program, and the Ferry Service for Rural Communities Program. These discretionary programs are available for ferries in urban and rural areas that provide regular and continuing shared-ride service for pedestrians, although these ferries may accommodate vehicles. Under 23 U.S.C. 104(f)(2), SDOTs may elect to transfer funds to be administered under the highway or transit program. For additional information on transfer of FBP funds, see Section J Transfers.

9. **Ferry Boat Discretionary Program (FBD) Funds**: Although the FBD program was repealed, funds for some awarded projects remain available and can be reallocated, if requested by a SDOT, for projects that are consistent with the awarded project description.

   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 [Ferry Boat Discretionary 2000 - 2012 Awards (https://www.fhwa.dot.gov/discretionary/fbavailable.cfm)](https://www.fhwa.dot.gov/discretionary/fbavailable.cfm).

FBD program funds may also be eligible for earmark repurposing if certain conditions are met. To learn more about the eligibilities, conditions, and requirements of repurposing, including whether earmark repurposing is currently available, please refer to FHWA's [Earmark Repurposing Guidance and Q&A (https://www.fhwa.dot.gov/cfo/guidance.cfm)](https://www.fhwa.dot.gov/cfo/guidance.cfm).

E. DEFINITIONS FOR THE PURPOSE OF THIS IMPLEMENTATION GUIDANCE

1. **Approach Road.** An approach road is a public road (*See* 23 U.S.C. 129(b)) 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 an NHS Intermodal Connector. Approach roads are not eligible for FBP funds but may be eligible for other Federal-aid funding.

2. **Control.** Control means a public entity oversees the schedules, routes, fares, and operation. Control can include a service on a public route with private entity operating authority established by 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 (*See* 23 U.S.C. 129(c)(7) and Section G.).

4. **Ferry Boat.** A ferry boat is a 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, including maintenance facilities.

6. **Public Entity.** A public entity includes Federal, State, or local governmental agencies, Tribal or territorial governments, and organizations established by Federal, State, or local law with control of ferry boat services, including schedules, 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. Only public operating authority operation costs are eligible for FBP funding (*See* Section F.2. Operation Structure table).

8. **Operating Costs.** Operating costs are costs associated with continuous performance of the ferry boat and terminal facility. Examples include staffing, fuel, inspections, certifications and permits, labor cost, administrative costs, utility cost, rent, replacing defective equipment, and purchasing supplies. In order for operating costs to be eligible for FBP funds, cost must be reasonable, allocable, and allowable per 2 CFR 200 and, when a ferry boat or 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 (*See* Section H.).

9. **Ownership and Operation.** Eligible ferry boats or terminal facilities shall be publicly owned or publicly operated. In addition, the Secretary may determine if majority publicly owned ferry boat or terminal facilities provide substantial public benefits to qualify under the definition of ownership (*See* 23 U.S.C. 129(c)(3)(A)). Ferry boats or terminal facilities that are publicly owned or publicly operated are eligible for FBP programs as outlined in Section F. These categories of ownership and operation are defined as follows:

   a) **Publicly owned**. Publicly owned means the ferry boat or terminal facility is titled to a public entity.
   b) **Majority publicly owned**. Majority publicly owned means the 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**. Publicly operated means the ferry boat or terminal facility is under the operating authority of a public entity. A ferry boat or terminal facility can also be publicly operated if it is under the operating authority of a private entity if a public entity has control and has entered a contract, permit, or other agreement with a private entity to carryout operating authority. The public entity is still responsible for complying with all applicable Federal-aid requirements. As noted in Section D.4., the State, through its SDOT in accordance with 23 U.S.C. 302, is the recipient of these funds and is responsible for administration of these funds.
   d) **Ferry boat or ferry terminal lease**. When a public entity leases a ferry boat or terminal facility from a private entity, both the capital and operation (*See* 23 U.S.C. 147(k)) portion of the cost of leasing the ferry boat will be eligible for reimbursement under the FBP and, per 23 U.S.C. 129(c)(4), all revenues derived from a tolled vessel or facility 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 publicly leased toll ferry, for a reasonable rate of return. (*See* F.5. Eligible Activities below).

F. ELIGIBILITY AND ELIGIBILITY REQUIREMENTS

1. **Construction or Purchase:** The construction or purchase of ferry boats, ferry terminal facilities, or other eligible FBP projects for private ownership are not eligible for FBP funds (23 U.S.C. 129(c)(3)(B)).

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	**Construction or Purchase Eligibility**[6]
Ferry boats and landside terminal facilities are owned by a public entity.	Ferry boats and landside terminal facilities may be eligible for FBP funding (*See* footnote 6).
Ferry boats and landside terminal facilities are owned by a private entity.	Ferry boats and landside terminal facilities are not eligible for FBP funding.
Ferry boats are owned by a private entity. Landside terminal facilities are owned by a public entity.	Ferry boats are not eligible for FBP funding. Landside terminal facilities may be eligible for FBP funding (*See* footnote 6).
Ferry boats are owned by a public entity. Landside terminal facilities are owned by a private entity.	Ferry boats may be eligible for FBP funding (*See* footnote 6). Landside terminal facilities are not eligible for FBP funding.

[6] Project must meet 23 U.S.C. 129(c) requirements, including public control (23 U.S.C. 139(c)(4) and F.3.d, below).

2. **Operations:** The ferry boat or ferry terminal facility shall be publicly owned or operated, or majority publicly owned (*See* 23 U.S.C. 129(c)(3)(A); see also publicly operated discussion in Section E.9.c).

   Ferry systems operate under a variety of operation structures that affect their eligibility for FBP operations funds (23 U.S.C. 147(k)) 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 operations funding:

Operation Structure	Operations Costs Eligibility[7]
Ferry boats and landside terminal facilities are operated by a public entity.	Public entity operations costs may be eligible for FBP funding (*See* footnote 7).
Ferry boats and landside terminal facilities are operated by a private entity.	Private entity operations costs are not eligible for FBP funding.
Ferry boats are operated by a private entity. Landside terminal facilities are operated by a public entity.	Private entity operations costs of ferry boats are not eligible for FBP funding. Public entity operations costs of landside terminal facilities may be eligible for FBP funding (*See* footnote 7).
Ferry boats are operated by a public entity. Landside terminal facilities are operated by a private entity.	Public entity operations costs of ferry boats may be eligible for FBP funding (*See* footnote 7). Private entity operations costs of landside terminal facilities are not eligible for FBP funding.

3. **Eligibility Requirements:** The following conditions of 23 U.S.C. 129(c) and 147(g) apply to the use of FBP funds:

   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 1) on a route classified as a public road within the State, and 2) which has not been designated as a route on the Interstate System, or 3) 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 (*See* 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 (23 U.S.C. 129(c)(3)(A)). Any Federal participation shall not involve the construction or purchase, for private ownership, of

[7] Project must meet 23 U.S.C. 129(c) requirements, including public control (23 U.S.C. 129(c)(4) and F.3.d, below).

a ferry boat, ferry terminal facility, or other eligible project under this section (23 U.S.C. 129(c)(3)(B)).

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 (23 U.S.C. 147(g)).

4. **Location of Projects:** The FBP funds may only be used for eligible activities (*see* Section F.5.) for the entities identified in the distribution of funds.

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

5. **Eligible Activities:** For activities to be considered eligible, Section F1 through F4 must first be met. Eligible activities include:

   a) Construction, as defined in 23 U.S.C. 101(a)(4), or purchase of ferry boat and ferry terminal facilities, including ferry maintenance facilities, whether toll or free, and the procurement of transit vehicles used exclusively as an integral part of an intermodal ferry trip (23 U.S.C. 147(a) and 23 U.S.C. 129(c)).
   b) Operating cost of an eligible entity as defined in Section E.8. (*Se*e 23 U.S.C. 147(k)).
   c) The capital and operation (*see* 23 U.S.C. 147(k)) portion of the cost of leasing a vessel or facility. Operations cost eligibility is described in Section F.2. Only public entity operations costs are eligible for FBP funding. The costs of participation should equal the annual lease costs and Federal-aid may not pay for the entire lease period costs up front.

6. **Temporary Ferry Operations:** 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 project. Temporary ferry operations may also be eligible for emergency relief purposes in accordance with 23 U.S.C. 125(d)(5) and 23 CFR Part 668.

G. DISPOSAL: In accordance with 23 U.S.C. 129(c)(7)(A), no ferry or ferry terminal 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 (*See* 23 U.S.C. 129(c)(7)(B)).

H. OTHER USES OF VESSELS, PORTS, MARINAS, OR TERMINALS: When a ferry boat or 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 other uses:

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. Operating costs as defined in Section E.8. are eligible only as described in Section F.2. Cost allocation applies if there is ineligible use of vessels and terminals.

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.

I. APPLICABLE FEDERAL-AID REQUIREMENTS: Projects for the construction or purchase of ferry boats, ferry terminal facilities (including maintenance facilities), or other eligible FBP projects, must be performed in accordance with 23 U.S.C. and 23 CFR (*See* 23 U.S.C. 147(j)). This applicability includes all planning, environmental, design, authorization, advertising, and construction requirements. Specific requirements that apply to all FBP funds include Buy America (23 U.S.C. 313) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq*.).

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.

J. TRANSFERS: FBP funds may be transferred to another State or another Federal agency to be administered by that State or agency for an eligible project or activity for the specified ferry operation for which the funds were originally distributed. However, funds may not be transferred to a different ferry operation from the one for which the funds were originally distributed.

To transfer funds under the FBP, in addition to the six items discussed in section D.7., complete the FHWA Transfer Request Form (Form FHWA-1575) as discussed in FHWA Order 4551.1 (*see* link below) and provide that Transfer Request Form to the Office of Stewardship, Oversight, & Program Management. FBP funds must not be allocated (*i.e*., funds must not reside in FMIS) if the intent is to transfer the funds.

General Transfer guidance can be found in [FHWA Order 4551.1 Fund Transfers to Other Agencies and Among Title 23 Programs (https://www.fhwa.dot.gov/legsregs/directives/orders/45511.cfm).](https://www.fhwa.dot.gov/legsregs/directives/orders/45511.cfm)

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