



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **INFORMATION:** Implementation  
Guidance for the National Highway  
Performance Program (NHPP) as Revised  
by the Infrastructure Investment and Jobs  
Act

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From: Hari Kalla   
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In Reply Refer To:  
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To: Division Administrators  
Directors of Field Services

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58) was signed into law. The IIJA amended the National Highway Performance Program (NHPP) authorized in section 119 of title 23, United States Code (23 U.S.C.). The attached NHPP Implementation Guidance provides information on funding, eligible activities, and requirements of the NHPP.

NHPP requirements within the IIJA took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new NHPP authorizations or NHPP funds authorized in previous years. This guidance supersedes the “Implementation Guidance for the National Highway Performance Program (NHPP) as Revised by the Bipartisan Infrastructure Law” dated June 1, 2022.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

This document will be accessible on the Federal Highway Administration (FHWA) [IIJA Website](#) and through the [FHWA Policy and Guidance Center](#).

For questions about the NHPP, please contact David Bartz (512-417-5191) or Samantha Pratt (737-389-1048) of the Office of Infrastructure’s Stewardship and Oversight Team.

Attachment

# National Highway Performance Program (NHPP) Implementation Guidance

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## **A. OVERVIEW OF THE NATIONAL HIGHWAY PERFORMANCE PROGRAM**

This document provides background and guidance to clarify eligibility requirements for the National Highway Performance Program (NHPP) under the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58).

The NHPP is focused on the condition, performance, and resiliency of the National Highway System (NHS), a network of 222,000 system miles of roadways important to the Nation's economy, defense, and mobility which carries 55 percent of Vehicle Miles Travelled nationally. In addition to the Interstate System, the NHS includes the Strategic Highway Network (STRAHNET), major strategic highway network connectors and intermodal connectors, and both urban and rural principal arterials. NHPP funds may be obligated only for a project on an "eligible facility" that is a project, part of a program of projects, or an eligible activity supporting progress toward the purposes of the NHPP program specified in 23 U.S.C. 119(b) as amended by IIJA. The purposes of the NHPP program are:

1. to provide support for the condition and performance of the NHS;
2. to provide support for the construction of new facilities on the NHS;
3. to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the NHS; and
4. to provide support for activities to increase the resiliency of the NHS to mitigate the cost of damages from sea level rise, extreme weather events, flooding, wildfires, or other natural disasters.

The fourth program purpose was added in Section 11105 of the IIJA, along with provisions discussed further in sections D and H of this memorandum that include addition of eligibilities for resiliency improvements, including protective features, and activities to protect segments of the NHS from cybersecurity threats.

## **B. GOVERNING AUTHORITIES**

1. Section 11101 of the IIJA authorizes contract authority for the NHPP.
2. Section 11104 of the IIJA updates apportionment instructions in 23 U.S.C. 104.
3. Section 11105 of the IIJA amends the NHPP in 23 U.S.C. 119.
4. Section 11310 of the IIJA amends 23 U.S.C. 144 for Bundling of Bridge Projects.
5. Section 11524 of the IIJA amends Bridge Terminology in 23 U.S.C. 119.

## **C. FUNDING**

1. **Authorization Levels:** Estimated annual NHPP funding under the IIJA is:

Estimated Annual NHPP Funding	
Fiscal Year (FY) 2022	\$28.439 B
FY 2023	\$29.008 B
FY 2024	\$29.588 B
FY 2025	\$30.180 B
FY 2026	\$30.784 B

The IIJA sets each State’s initial share of Federal-aid highway program apportioned (formula) funds annually based on the share of formula funds each State received in fiscal year 2021. The methodology for calculating the apportionments for FY 2022 under 23 U.S.C. 104 is discussed in FHWA Notice N4510.858 ([FHWA Notice N4510.858](#)). For FY 2023 through 2026 funds, please revisit FHWA’s Notice website at the appropriate future time ([FHWA Notice Website](#)).

From the State’s NHPP apportionment, 2 percent is to be set aside for State Planning and Research (SPR) (*See* 23 U.S.C. 505).

The Fiscal Management Information System Program Codes for these NHPP funds are as follows:

Program Code	Program Description	Title 23 Reference
Y001	National Highway Performance Program (NHPP)	Section 119; 23 U.S.C. 104(b)(1)
Y002	National Highway Performance Program (NHPP) Exempt	Section 119 [IIJA § 11102(b)(14)]
Y008	NHPP Protective Features	23 U.S.C. 119(k)
Y510	NHPP Set-Aside for National Highway System Bridge Penalty	23 U.S.C. 119(f)(2)
Y530	NHPP Set-Aside for Minimum Condition of Interstate Penalty	23 U.S.C. 119(f)(1)A(i)

- 2. Period of Availability:** NHPP funds are contract authority. NHPP obligations are reimbursed from the Highway Account of the Highway Trust Fund. NHPP funds are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized (*See* 23 U.S.C. 118(b)). Thus, funds are available for obligation for up to 4 years.

NHPP funds from previous authorizations continue to be available for their original period of availability, but are subject to 23 U.S.C. 119, as amended by the IIJA.

3. **Obligation Limitation:** NHPP funds are subject to the annual obligation limitation imposed on the Federal-aid highway program except for \$639,000,000 in each of fiscal years 2022 through 2026 that are exempted by Section 11102(b)(14) of the IIJA. The exception (exempt) amount may change in the annual appropriations act.
4. **Federal share:** The Federal share for NHPP-funded projects is governed by 23 U.S.C. 120, as amended by the IIJA, except as provided in 23 U.S.C. 119(e)(5). It is generally 80 percent (*See* 23 U.S.C. 120(b)). The Federal share for projects on the Interstate System is 90 percent unless the project adds lanes that are not high-occupancy-vehicle or auxiliary lanes (*See* 23 U.S.C. 120(a)). For projects that add single occupancy vehicle capacity, that portion of the project will revert to an 80 percent Federal share. An upward sliding scale adjustment is available to States having public lands (*See* [Sliding Scale Rates In Public Land States](#)). States may choose a lower Federal share on Federal-aid projects as provided in 23 U.S.C. 120(h).

Certain types of improvements, predominantly safety improvements, listed in 23 U.S.C. 120(c)(1), as amended by the IIJA, may have a Federal share of 100 percent. Use of this provision is limited to 10 percent of the total funds apportioned to a State under 23 U.S.C. 104. *See* FHWA Memo, “Increased Federal Share under 23 U.S.C. 120(c)(1),” dated November 25, 2014 ([Increased Federal Share under 23 U.S.C. 120\(c\)\(1\)](#)).

In accordance with 23 U.S.C. 120(f), funds apportioned under 23 U.S.C. 104 may be used at 100 percent Federal share for Federal-aid highways within Indian reservations, national parks, and monuments.

NHPP funds may be used for workforce development, training, and education activities and the Federal share for such activities carried out with NHPP funds under 23 U.S.C. 504(e)(1)(A) - (H), is 100 percent (*See* 23 U.S.C. 504(e), as amended by the IIJA). Under 23 U.S.C. 504(b)(3)(A)(ii), NHPP funds can be used as the non-Federal share to match the 50 percent Federal share for projects funded by the Local Technical Assistance Program under 23 U.S.C. 504(b)(1) and (2).

Projects located on toll roads are generally subject to a Federal share specified in the applicable tolling statute. 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 (*See* IIJA § 1117(b)(1)). The provision for increased Federal share to replace or retrofit a diesel fuel ferry vessel terminates on September 30, 2025 (*See* IIJA § 1117(b)(2)).

Section 1435 of the Fixing America’s Surface Transportation Act (FAST Act) (Public Law 114-94) amended section 1528 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141) concerning the Federal share for Appalachian Development Highway System (ADHS) projects as provided in 40 U.S.C. 14501. For FYs 2012 through 2050, the Federal share for local access roads and ADHS projects that contribute to the completion of the ADHS and are included in the latest approved Cost to Complete Estimate, may be up to 100 percent, as determined by the

State. Work on completed segments of the ADHS or a section listed as ineligible in the latest approved Cost to Complete Estimate, could be eligible for NHPP or Surface Transportation Block Grant (STBG) funds, but only at a Federal share specified in 23 U.S.C. 120.

Projects incorporating Innovative Project Delivery as described in 23 U.S.C. 120(c)(3), as amended by the IIJA, may be increased by up to 5 percent of the total project cost not to exceed a 100 percent Federal share, subject to limitations in 23 U.S.C. 120(c)(3).

The Federal share for NHPP projects and activities is reduced to 65 percent for States that have not developed and implemented an asset management plan in the required time periods as provided in Section 119(e)(5) (See [Section E](#) of this memorandum).

5. **Transferability of NHPP Funds:** Section 126 of title 23, U.S.C. as amended by the IIJA, provides for and places conditions on the transfer of funds apportioned under 23 U.S.C. 104(b). *See also* FHWA Order 4551.1, “Fund Transfers to Other Agencies and Among Title 23 Programs” dated August 12, 2013, ([Fund Transfers to Other Agencies and Among Title 23 Programs](#)).

The ability to transfer NHPP funds is restricted by 23 U.S.C. 119(f)(1)-(2), if:

- a. The State’s Interstate System condition (excluding bridges) falls below the minimum threshold established under 23 U.S.C. 150(c)(3); or
  - b. More than 10 percent of the total deck area of bridges in the State on the NHS is located on bridges that have been classified as in poor condition (See [Section F](#) of this memorandum).
6. **Deobligations of Other Title 23 Obligated Funds:** Project Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute (See 23 CFR 630.110(a)).

## D. ELIGIBLE ACTIVITIES

1. Subject to the general eligibility requirements described in 23 U.S.C. 119(d)(1), the following activities are listed as eligible in 23 U.S.C. 119(d):
  - a. Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the NHS. The terms “Construction” and “Operational improvement” are defined in 23 U.S.C. 101(a).
  - b. Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the NHS.
  - c. Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the NHS.
  - d. Inspection and evaluation, as described in 23 U.S.C. 144 as amended by the IIJA, of bridges and tunnels on the NHS, and inspection and evaluation of other highway infrastructure assets on the NHS. This includes, but is not limited to, signs, retaining walls, and drainage structures.
  - e. Training of bridge and tunnel inspectors, as described in 23 U.S.C. 144, as amended by the IIJA.
  - f. Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches that connect road segments of the NHS. Eligible ferry approaches are described in 23 U.S.C. 129(b). Eligible ferry boats and facilities are described in 23 U.S.C. 129(c), as amended by the IIJA.
  - g. Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the NHS, and construction of a transit project eligible for assistance under chapter 53 of Title 49, U.S.C., if:
    - (i) The highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway on the NHS;
    - (ii) The construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and
    - (iii) The construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway on the NHS.
  - h. Bicycle transportation and pedestrian walkways in accordance with 23 U.S.C. 217, as amended by the IIJA. The project or activity must be associated with an NHS facility (*See* 23 U.S.C. 217(b)).
  - i. Highway safety improvements on the NHS. The term "Safety improvement project" is defined in 23 U.S.C. 101(a), as amended by the IIJA.

- j. Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs. The project or activity must be associated with an NHS facility.
- k. Development and implementation of a State asset management plan for the NHS, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.
- l. Infrastructure-based intelligent transportation systems capital improvements, including the installation of vehicle-to-infrastructure communication equipment. The project or activity must be associated with an NHS facility.
- m. Environmental restoration and pollution abatement in accordance with 23 U.S.C. 328. The project must be associated with an NHS facility.
- n. Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with 23 U.S.C. 329. The project or activity must be associated with an NHS facility.
- o. Environmental mitigation efforts related to projects funded with NHPP, as described in 23 U.S.C. 119(g). The project or activity must be associated with an NHS facility.
- p. Construction of publicly owned intracity or intercity bus terminals servicing the NHS.

IIJA § 11105(2) amended 23 U.S.C. 119(d)(2)(q) through (s), to make three new categories of activities eligible under NHPP:

- q. Undergrounding public utility infrastructure carried out in conjunction with a project otherwise eligible under NHPP.
- r. Resiliency improvements on the NHS (and in some cases on facilities off the NHS), including protective features described in 23 U.S.C. 119(k)(2) as amended by section 11105(4) of IIJA, and as described in [Section H](#) of this memorandum.
- s. Implement activities to protect segments of the NHS from cybersecurity threats.

The following activities are made eligible by other subsections of 23 U.S.C. 119:

- t. Upon request of a State and subject to the approval of the Secretary, if Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance is approved for an NHPP-eligible project, the State may use NHPP funds to pay the subsidy and administrative costs associated with providing Federal credit assistance for the project (*See* 23 U.S.C. 119(h)).
- u. Reconstruction, resurfacing, restoration, rehabilitation, or preservation of a bridge on a Federal-aid highway that is not on the NHS. To use this provision, States must ensure any obligations required under 23 U.S.C. 119(f) are satisfied. The obligation requirements are discussed in [Section F](#) of this memorandum (*See* 23 U.S.C. 119(i)).
- v. A State may use NHPP funds for projects intended to reduce the risk of failure of critical infrastructure in the State. In this subsection, the term “critical infrastructure” means those facilities the incapacity or failure of which would have a debilitating impact on national or regional economic security, national or regional energy security, national or regional public health or safety, or any combination of those

matters. This eligibility is limited to NHS facilities that are eligible under 23 U.S.C. 119(j).

The following activities are made eligible by other sections of 23 U.S.C.:

- w. Workforce development, training, and education activities under 23 U.S.C. 504(e).
  - x. Preferential parking for carpools associated with an NHS facility, including the addition of electric vehicle charging stations or natural gas vehicle refueling stations, as provided for in 23 U.S.C. 137(f).
  - y. Public transportation projects: (1) as described in 23 U.S.C. 142(a)(1), (b), and (c); and (2) meeting the requirements contained in 23 U.S.C. 142(d) through (f), and in 23 U.S.C. 119(d)(2)(G).
2. **Applicability of 23 U.S.C. 217(i) for Bicycle Projects:** 23 U.S.C. 217(i) requires bicycle facilities be principally for transportation, rather than recreation, purposes. The transportation requirement under Section 217(i) is applicable only to bicycle projects; it does not apply to any other trail use or transportation mode.
  3. **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) (See 23 U.S.C. 119(d)(1)).

## E. STATE PERFORMANCE MANAGEMENT

1. **Performance Management:** As it pertains to the NHPP, the rulemaking mandated by 23 U.S.C. 150(c) established (*See* 23 CFR Part 490):
  - a. Data standards, data collection, metric calculation, and metric reporting requirements for States;
  - b. Performance measures to be used to assess pavement condition on the Interstate and non-Interstate NHS, bridge condition on the NHS, and performance of the Interstate and non-Interstate NHS and to carry out the NHPP.
  - c. Target establishment and reporting requirements for States and MPOs;
  - d. Progress reporting requirements for States and MPOs; and
  - e. An approach used by FHWA to determine if States have made significant progress in achieving their targets.
2. **Asset Management:** The rulemaking required by 23 U.S.C. 119(e)(8) established the process for States to use in developing a risk-based asset management plan for preserving and improving the condition of the NHS (*See* 23 CFR Part 515). The rulemaking also established minimum standards for States to use in developing and operating bridge and pavement management systems as required by 23 U.S.C. 150(c)(3)(A)(i) (*See* 23 CFR 515.17). States are encouraged to include all infrastructure assets within the right-of-way corridor.

The plan must include, at a minimum, the following:

- a. Summary list, including condition, of the State's NHS pavements and bridges;
  - b. Asset management objectives and measures;
  - c. Performance gap identification;
  - d. Lifecycle cost and risk management analyses, both of which shall take into consideration extreme weather and resilience;
  - e. Financial plan; and
  - f. Investment strategies
- (See 23 U.S.C. 119(e)(4), as amended by IIJA).

Each State's process must be reviewed and certified, and then recertified at least every 4 years. Under 23 U.S.C. 119(e)(6), if certification is denied, the State will have at least 90 days to cure deficiencies. Each fiscal year, if the Secretary determines a State has not developed and implemented a State asset management plan consistent with 23 U.S.C. 119 requirements, the Federal share payable on account of any project or activity for which NHPP funds are obligated by the State in that fiscal year shall be 65 percent (See 23 U.S.C. 119(e)(5)).

## **F. INTERSTATE SYSTEM AND NHS BRIDGE CONDITION**

- 1. Interstate condition:** The Secretary established the minimum level of condition for Interstate pavements (See 23 U.S.C. 150(c)) (See 23 CFR Part 490). Under 23 U.S.C. 119(f), if Interstate pavement conditions in a State fall below the minimum set by the Secretary, the State must devote the resources as outlined in 23 CFR 490.317(e) to improve Interstate pavement conditions during the following fiscal year (and each year thereafter if the condition remains below the minimum).
- 2. NHS Bridge condition:** 23 U.S.C. 119(f) established a minimum standard for NHS bridge conditions. If more than 10 percent of the total deck area of bridges in the State on the NHS is located on bridges that are in poor condition for three consecutive years prior to the date of the determination, the State must devote NHPP funds as outlined in 23 CFR 490.413(a) to improve bridge conditions during the following fiscal year and each year thereafter in which the percentage of deck area on a bridge in poor condition remains at or above 10 percent of the total deck area on NHS bridges (See 23 U.S.C. 119(f) as amended by IIJA § 11524(a)).

## **G. BUNDLING OF BRIDGE PROJECTS**

This provision encourages States to save costs and time by bundling multiple eligible bridges into one project using STBG or NHPP funds under one project agreement. As required under 23 U.S.C. 144(j) as amended by IIJA, each bridge project to be included in a bundle to be funded from NHPP or STBG funds must:

1. Have the same financial characteristics, such as the same funding category or subcategory and the same Federal share;

2. Be eligible under 23 U.S.C. 119 or 23 U.S.C. 133 as amended by IIJA;
3. Be included as a single bundled project in the applicable TIP or STIP; and
4. Be awarded to a single consultant or contractor pursuant to a contract for engineering and design or construction.

The requirements contained in 23 U.S.C. 144(j) only apply to activities funded by the project agreement for the bundled project. For example, preliminary engineering from multiple sources (in-house and consultant), may subsequently be bundled into a single bridge bundling construction contract project agreement. The provision does not preclude the use of other FHWA acceptable alternative contracting methods, including design-build, if the 23 U.S.C. 144(j) requirements are satisfied.

## H. RESILIENCY AND PROTECTIVE FEATURES

Under 23 U.S.C. 119(d)(2)(R), as amended by IIJA § 11105(2), NHPP funds may be used for “Resiliency improvements on the National Highway System, including protective features described in subsection (k)(2).” Resilience is defined in 23 U.S.C. 101(a)(24).

In addition to resiliency improvements on the NHS, a State may use not more than 15 percent of the funds apportioned to the State under 23 U.S.C. 104(b)(1) (NHPP) for each fiscal year for 1 or more protective features on a Federal-aid highway or bridge *not on the NHS*. The protective feature must be designed to mitigate the risk of recurring damage or the cost of future repairs from extreme weather events, flooding, or other natural disasters (*See* 23 U.S.C. 119(k)(1) as amended by IIJA § 11105(4)). Other examples of natural disasters are provided in several locations in title 23, including 23 U.S.C. 119(b)(4), 23 U.S.C. 125(a)(1), 23 U.S.C. 176(b)(2)(C), and 23 U.S.C. 176(e)(2)(C).

Under 23 U.S.C. 119(k)(2), as amended by IIJA § 11105(4), a protective feature referred to in this section includes:

1. Raising roadway grades;
2. Relocating roadways in a base floodplain to higher ground above projected flood elevation levels or away from slide prone areas;
3. Stabilizing slide areas;
4. Stabilizing slopes;
5. Lengthening or raising bridges to increase waterway openings;
6. Increasing the size or number of drainage structures;
7. Replacing culverts with bridges or upsizing culverts;
8. Installing seismic retrofits on bridges;
9. Adding scour protection at bridges, installing riprap, or adding other scour, stream stability, coastal, or other hydraulic countermeasures, including spur dikes; and
10. The use of natural infrastructure to mitigate the risk of recurring damage or the cost of future repair from extreme weather events, flooding, or other natural disasters. Natural Infrastructure is defined in 23 U.S.C. 101(a)(17) as amended by IIJA § 11103.

The above list is not all inclusive and could include other features whose purpose is to mitigate the risk of recurring damage or the cost of future repairs from extreme weather

events, flooding, or other natural disasters. FHWA will work with States who are interested in using NHPP funds for protective features not included on the list that would help to mitigate the risk of recurring damage or the cost of future repairs from extreme weather events, flooding, or other natural disasters.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.