

CHAPTER 40 – FEDERAL-AID FUNDING

Topic 41 – Enabling Legislation

Index 41.1 – General

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 was the first major transportation legislation since the Interstate System was enacted.

ISTEA changed the established Federal-Aid system. During the 20 years prior to ISTEA there were four Federal-Aid systems: Interstate, Primary, Secondary, and Urban. Now under ISTEA, instead of four Federal-aid systems there are two, the National Highway System (NHS) and the Interstate System, which is a component of the National Highway System.

In 2005, the Safe, Accountable, Flexible, Efficient Transportation Enhancement Act, Legacy for the Users, better known as SAFETEA-LU, was passed. SAFETEA-LU, invested in highway, transit and safety programs. While ISTEA created new federal-aid programs, SAFETEA-LU continued those programs such as the Surface Transportation Program, National Highway System, Congestion Mitigation and Air Quality Improvement Program and the Bridge Replacement and Rehabilitation Program.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law in 2012 and streamlined the performance-based surface transportation program, establishing asset management as a key direction for transportation funding. In 2015, the Fixing America's Surface Transportation (FAST) Act was signed into law, providing the first federal law in over a decade to provide long-term funding for infrastructure planning and investment. The FAST Act maintained focus on safety, keeping intact the established structure of the various highway programs, continued efforts to streamline delivery, and for the first time, provided dedicated funding for freight projects.

In November of 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law. The IIJA is the largest long-term infrastructure investment in our Nation's history, providing federal investments in infrastructure including: roads, bridges, mass transit, water infrastructure, resilience, and broadband. In addition to our core federal aid programs, IIJA created new programs, including Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT), Carbon Reduction Program (CRP), and the Bridge Formula Program (BFP), ensuring dedicated funding for specific scopes of work.

A variety of other programs also continued to exist to provide flexibility in determining transportation solutions and promote a multi-modal system approach. Some of these programs include those that target funding for rail and transit projects while others provide funds for environmental enhancement such as habitat mitigation and wetland banking. Numerous other funding categories are also available for use during the five-year term of the latest act.

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Topic 42 – Federal-Aid System

42.1 National Highway System

After consultation with the States in 1995, the Secretary of Transportation proposed a National Highway System (NHS) consisting of approximately 160,000 miles across the United States. The NHS consists of all Interstate routes, a large percentage of urban and rural principal arterials, the defense Strategic Highway Network, strategic highway network connectors, and intermodal connectors.

42.2 Interstate

As a result of ISTEA, the Interstate Highway System is a part of the NHS, but retains its separate identity. As a condition of funding for Federal-aid highway projects, Federal law prohibits State departments of transportation from adding any point of access to or from the Interstate System without the approval of the Secretary of Transportation and all new or modified points of access must be approved by FHWA and developed in accordance with federal laws and regulations as specified in 23 U.S.C. 109 and 111, 23 C.F.R. 624 and 625.4, and 49 C.F.R. 1.48(b)(1). Revenue from the Federal gas and other motor-vehicle user taxes was credited to the Highway Trust Fund to pay the Federal share of Interstate and all other Federal-aid highway projects. In this way, the Act guaranteed construction of all segments on a "pay-as-you-go" basis, where the program is self-financing without contributing to the Federal budget deficit.

Topic 43 – Federal-Aid Programs

43.1 Surface Transportation Block Grant Program (STBG)

The Surface Transportation Block Grant (STBG) Program provides flexible funding that may be used by States and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge, tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. These roads are collectively referred to as Federal-aid roads.

As under the FAST Act, the IIJA directs FHWA to apportion funding as a lump sum for each State then divide that total among apportioned programs. The IIJA requires the Secretary of Transportation to set aside 10 percent of STBG funds for Transportation Alternatives. Additionally, it requires that 2 percent of State's STBG apportionment be allocated for State Planning and Research (SPR), and an amount equal to at least 20 percent of the State's FY 2009 Highway Bridge Program apportionment for use on certain types of projects related to bridges and low water crossings. In addition, 55 percent of a State's STBG apportionment is to be suballocated in specific population-based areas and the remaining 45 percent obligated in any area of the State.

43.2 Congestion Mitigation and Air Quality Improvement Program (CMAQ)

The Congestion Mitigation and Air Quality (CMAQ) Improvement Program directs funds toward transportation projects in Clean Air Act non-attainment areas for ozone, carbon monoxide and particulate matter (both PM10 and PM2.5). Projects using CMAQ funds contribute to meeting the attainment of national ambient area air quality standards. CMAQ funds may not be used for projects which will increase capacity for single occupant vehicles. Exceptions might include HOV lanes which allow single occupant vehicles at other than peak travel times or auxiliary lanes.

43.3 Bridge Replacement and Rehabilitation Program

FHWA provides guidance for the implementation of a bridge replacement and rehabilitation program authorized in the Department of Transportation Appropriations Act, which clarifies eligible projects and provides information on the Administration's priorities and the use of funds. Additionally, please refer to the Bridge Formula Program (BFP) Implementation Guidance or guidance on Administration priorities and use of funds such as those provided under this program.

43.4 Federal Lands Highway Program

The Federal Lands Highway Program is administered by the FHWA Office of Federal Lands Highway. This program was established by the FAST Act and has been continued under the Infrastructure Investment and Jobs Act. Caltrans receives funding from the FHWA Office of Federal Lands Highway through programs like the Federal Lands Access Program (FLAP). This program provides funds for projects that improve transportation facilities providing access to, adjacent to, or located within Federal lands.

43.5 Highway Safety Improvement Program

The Highway Safety Improvement Program (HSIP) is a core Federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned roads and roads on tribal land. The HSIP requires a data-driven and strategic approach to improving highway safety on all public roads with a focus on performance. The HSIP is legislated under Section 148 of Title 23, United States Code (23 U.S.C. 148) and regulated under Part 924 of Title 23, Code of Federal Regulations (23 CFR Part 924). The HSIP consists of three main components: the Strategic Highway Safety Plan (SHSP), State HSIP or program of highway safety improvement projects, and the Railway-Highway Crossing Program (RHCP).

Current programming of HSIP-eligible projects includes both SHOPP 20.xx.201.010 and 20.xx.201.015 programs. Additionally, the IIJA established a new Special Rule under the Highway Safety Improvement Program under section 148 of title 23 of the United States Code (U.S.C.) for vulnerable road user (VRU) safety and continued the two existing special rules for High-Risk Rural Roads (HRRR) and Older Drivers and Pedestrians without change. The VRU Special Rule is part of a larger focus on non-motorist safety that includes a new requirement for States to complete VRU safety assessments (23 U.S.C. 148(l)).

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43.6 Emergency Relief

Congress authorized in Title 23, United States Code, Section 125, a special program from the Highway Trust Fund for the repair or reconstruction of Federal-aid highways and roads on Federal lands, which have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program, commonly referred to as the Emergency Relief (ER) program, supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help pay for unusually heavy expenses resulting from extraordinary conditions.

In order for a project to be eligible under the ER program, the project must have an FHWA-approved Damage Assessment Form (DAF) typically provided by the District Maintenance Major Damage Restoration Engineer (MDRE). The State programs ER-eligible projects under either the SHOPP Emergency Opening 20.xx.201.130 program or the Permanent Restoration 20.xx.201.131 program. Emergency Opening projects may be funded at 100 percent for the first 270 days of construction, however, a final determination will be made by the Office of Federal Resources based on the scope of work and inclusion of permanent repairs under emergency opening procedures.

The project manager should work closely with the District MDRE to establish eligibility under the ER Program based on the FHWA-approved DAF. Furthermore, the project manager should be aware of the high priority of ER-funded projects, based on the need to meet a shortened 2-year Construction authorization timeline. See the Project Development Procedures Manual, Chapter 9, Article 5 for additional information regarding the acceleration and high priority of ER-funded projects.

Topic 44 – Funding Determination

44.1 Funding Eligibility

Each Federal program has certain criteria and requirements. During design, the project manager is to consult with the HQ Office of Federal Resources (OFR) to determine the appropriate Federal program each individual project is eligible for and the level of future Federal involvement. The HQ OFR Area Engineer can assist with a determination of whether or not a SHOPP or STIP project is qualified for federal funding, based on the current Federal Aid Project Funding Guidelines, which establish federal funding thresholds based on Construction or Right of Way capital costs, among other aspects. FHWA Major Projects \$500m or greater and mini-Major Projects \$100m or greater have additional requirements such as Project Management Plans and Financial Plans, see the Project Development Workflow Guide, Task D408b for additional information. The final determination to request Federal participation will be made by the Office of Federal Resources.

44.2 Federal Participation Ratio

The maximum share of project cost that may be funded with Federal-aid highway funds (the “Federal share”) varies based upon the Federal-aid program from which the project receives funding. In some cases, the Federal share is also adjusted based on related statutory

provisions. The typical federal share under the sliding scale is 91.57 percent on Interstate projects and 88.53 percent on non-Interstate projects for federally eligible roads. Certain specified types of projects, mostly targeting safety improvements, are eligible to receive a Federal share of 100 percent. A toll project under 23 U.S.C. 129 is eligible for a maximum Federal share of 80 percent (regardless of whether the project would have qualified for a higher Federal share if advanced as a non-toll facility). The project manager should work directly with the Office of Federal Resources to determine federal funding and proposed federal reimbursement rates.

Topic 45 – FHWA Stewardship and Oversight

45.1 California Stewardship and Oversight Agreement with FHWA

The goal under the Stewardship and Oversight Agreement is to document the roles and responsibilities of the FHWA's California Division Office and Caltrans with respect to project approvals and related responsibilities, and to document the methods of oversight which will be used to efficiently and effectively deliver the Federal-aid Highway Program. The FHWA's Risk-Based Project Involvement process combines risks, data, and judgement to select risk-based involvement projects (RBI projects) and develop stewardship and oversight activities beyond what is required. The FHWA selects RBI projects statewide bi-annually. The Department generally still retains approval authority over actions on RBI projects. However, there are some exceptions for example on projects using alternative procurement processes such as Construction Manager General Contractor and Design Build, where the approval of actions may be retained by the FHWA. FHWA will verify compliance with federal regulations via annual program and process reviews. See the Project Development Procedures Manual for other essential procedures regarding the Stewardship and Oversight Agreement between the Department and FHWA. For additional information see the FHWA webpage on Stewardship and Oversight. See the Department Design website for the current Stewardship and Oversight Agreement between FHWA California Division Office and Caltrans.