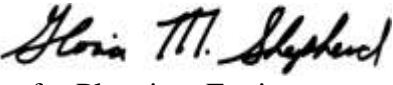




U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Transportation Alternatives Set-Aside Implementation Guidance as Revised by the Infrastructure Investment and Jobs Act Date: March 30, 2022

From: Gloria M. Shepherd  In Reply Refer To: HEPH-10
Associate Administrator for Planning, Environment, and Realty

To: Division Administrators
Directors of Field Services

Overview of Transportation Alternatives Set-Aside and of this Guidance

This memorandum provides background information and guidance to clarify eligibility, transfer, and other requirements for the Transportation Alternatives (TA) Set-Aside from the Surface Transportation Block Grant Program (STBG) (23 U.S.C. 133(h)) under the Infrastructure Investment and Jobs Act (Pub. L. 117-58, also known as the [“Bipartisan Infrastructure Law”](#) (BIL)). The TA Set-Aside requirements within the BIL took effect on October 1, 2021, and apply to all funding obligated on or after that date, whether carryover or new. The implementation guidance attached to this memorandum replaces the [May 13, 2016 Transportation Alternatives Set-Aside Implementation Guidance](#).

In enacting the BIL, Congress increased the size of the TA Set-Aside from \$850 million annually in the last years of the FAST Act (Pub. L. 114-94) to 10 percent of STBG per fiscal year, which amounts to \$1.38 billion in FY 2022 and increases to nearly \$1.5 billion in FY 2025. This presents opportunities to fund many smaller-scale but critically important multimodal transportation projects at both the State and local level. The TA Set-Aside provides funding for a variety of transportation projects such as pedestrian and bicycle facilities; construction of turnouts, overlooks, and viewing areas; community improvements such as historic preservation and vegetation management; environmental mitigation related to stormwater and habitat connectivity; recreational trails; safe routes to school projects; and vulnerable road user safety assessments. With its eligibilities including bicycle and pedestrian facilities, safe routes to school projects, and vulnerable road user safety assessments, Transportation Alternatives is a key program for helping States build Complete Streets that are safe for all users and achieve safe, connected, and equitable on-and off-road networks. The program also provides significant resources to local governments, both through its suballocation provisions (including allowing States to develop a process to suballocate up to 100 percent of funds) and a requirement for holding a competitive grant process for local governments and other eligible entities before transferring TA set-aside funds to other Federal-aid programs. Finally, under some circumstances, there are flexible

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funding provisions for TA Set-Aside funds. These provisions are explained in more detail in this guidance.

On December 16, 2021, the Federal Highway Administration (FHWA) issued guidance ([Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#), hereafter “Policy”) that serves as an overarching policy framework on the use of BIL resources. The Policy is available on FHWA’s BIL implementation website at the following URL: <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>. Among other guidance, the Policy expresses FHWA’s intent of ensuring that the funding and eligibilities provided by the BIL will be interpreted and implemented, to the extent allowable under statute, to encourage States and other funding recipients to invest in projects that upgrade the condition of streets, highways and bridges and make them safe for all users, while at the same time modernizing them so that the transportation network is accessible for all users, provides people with better choices across all modes, accommodates new and emerging technologies, is more sustainable and resilient to a changing climate, and is more equitable.

The FHWA encourages staff to work with State transportation departments, local governments, and other stakeholders to identify opportunities to use BIL resources for the repair, rehabilitation, reconstruction, replacement, and maintenance of existing transportation infrastructure, especially the incorporation of safety, accessibility, multimodal, and resilience features. This includes projects that maximize the existing right-of-way for nonmotorized modes and transit options and increase safety, accessibility, and/or connectivity. The TA Set-Aside provides resources that can help achieve these policy objectives.

This guidance provides information on the TA Set-Aside and the provisions and requirements for the use of Federal-aid highway funds, project selection processes, and eligible activities. It also includes information on and links to related activities including [Complete Streets](#); [Bicycle and Pedestrian Planning, Program, and Project Development](#) guidance; the [Highway Safety Improvement Program \(HSIP\)](#); the [Recreational Trails Program \(RTP\)](#); and the [Safe Routes to School Program \(SRTS\)](#).

As noted above, the BIL established several new requirements for TA Set-Aside funds, including a certification by the Secretary before funds from the TA Set-Aside may be transferred to other apportioned programs. FHWA is in the process of updating the Federal-aid Highway Program Delegations of Authority to require review and concurrence from the Associate Administrator for Planning, Environment, and Realty before a Division Office may authorize a transfer of funds from the TA Set-Aside to other apportioned programs. The guidance describes the requirements in 23 U.S.C. 126(b)(2) that States must follow before a transfer from the TA Set-Aside may take place. Such requirements also apply to any carryover funds. If a State does not follow the requirements in 23 U.S.C. 126(b)(2) to transfer TA Set-Aside funds that are available for obligation in any area of the State to another apportioned program, and the State does not obligate those TA Set-Aside funds, the funding will lapse as provided in 23 U.S.C. 118(b) and will no longer be available to the State. If States have any questions about establishing a sufficient competitive process as outlined in 23 U.S.C. 126(b)(2), FHWA will provide technical assistance to help them

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establish such process. There are no new restrictions on transferring funds into the TA Set-Aside from other Federal-aid programs.

Additional Information

This document will be accessible on the [FHWA Bipartisan Infrastructure Law Website](#), through the Federal Highway Administration's [Policy and Guidance Center](#), and on the [Transportation Alternatives](#) web page. It will also be accessible from the [Complete Streets](#), [Recreational Trails Program](#), and [Safe Routes to School](#) web pages.

Except for the statutes and regulations cited within, 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.

If you have questions concerning the TA Set-Aside, including the RTP, please contact Mr. Christopher Douwes (202-366-5013) of the Office of Human Environment. For questions related to the STBG, please contact Mr. David Bartz (512-417-5191) or Mr. Moises Marrero (717-649-5418) of the Office of Stewardship, Oversight, and Program Management.

For additional guidance on other Bipartisan Infrastructure Law and Federal-aid Highway Programs, please see FHWA's Bipartisan Infrastructure Law website at: <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>.

Attachment

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Program Purpose

The Transportation Alternatives (TA) Set-Aside from the Surface Transportation Block Grant (STBG) Program provides funding for a variety of generally smaller-scale transportation projects such as pedestrian and bicycle facilities; construction of turnouts, overlooks, and viewing areas; community improvements such as historic preservation and vegetation management; environmental mitigation related to stormwater and habitat connectivity; recreational trails; safe routes to school projects; and vulnerable road user safety assessments.

This implementation guidance replaces the [May 13, 2016 Transportation Alternatives Set-Aside Implementation Guidance](#).

Guidance on Using Bipartisan Infrastructure Law Resources to Build a Better America

This guidance incorporates overall Federal Highway Administration (FHWA) policy principles, consistent with the [Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#), dated December 16, 2021, (hereafter, “Policy”) which states that FHWA would subsequently incorporate the principles advanced in that Policy into all guidance documents issued for “legacy” apportioned programs for which the BIL includes changes in eligibility or other requirements, including the TA Set-Aside. The December 16, 2021 Policy serves as an overarching framework to prioritize the use of BIL resources on projects that will Build a Better America, informing the decision-making of States and other Federal-aid recipients who ultimately select projects in which to invest, consistent with 23 U.S.C. 145. That guidance is intended to ensure that the BIL “is interpreted and implemented, to the extent allowable under statute, to encourage States and other funding recipients to invest in projects that upgrade the condition of streets, highways, and bridges and make them safe for all users, while at the same time modernizing them so that the transportation network is accessible for all users, provides people with better choices across all modes, accommodates new and emerging technologies, is more sustainable and resilient to a changing climate, and is more equitable.”

Prioritizing Safety in All Investments and Projects

The [National Roadway Safety Strategy](#) (issued January 27, 2022) commits the U.S. Department of Transportation (DOT) 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. The FHWA recognizes that zero is the only acceptable number of deaths on our surface transportation system and achieving that is our safety goal. The 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 TA Set-Aside.

The [Safe System approach](#) addresses the safety of all 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 and [Building a Better America](#),

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safety should be fully considered 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 users in project development.

The FHWA encourages State and local agencies and other project sponsors to consider the use of funds from the TA Set-Aside 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. For the TA Set-Aside, this includes on- and off-road facilities.

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 deaths on the Nation’s roads and [Building a Better America](#), FHWA encourages States to assess safety outcomes for all project types and promote and improve safety for all users, particularly vulnerable users. The FHWA recommends that surface transportation networks 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. (28 CFR 35.149).

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. The TA Set-Aside is a key program flexibility to States in building Complete Streets to achieve safe, connected, and equitable networks.

Americans with Disabilities Act

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

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(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 (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.

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

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. The FHWA will work with States to ensure consideration of using TA Set-Aside funds for projects and inclusion of project elements that proactively address racial equity, workforce development, economic development, and removing 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 TA Set-Aside 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 more information).

To assist with these public engagement efforts, FHWA expects recipients of TA Set-Aside funds to engage with all impacted communities and community leaders to determine which forms of communication are most effective, including gaining insight on the unique circumstances impacting various disadvantaged and underrepresented groups so that new channels for communication may be developed, and to 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 TA Set-Aside 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

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Title VI of the Civil Rights Act of 1964. Recipients of TA Set-Aside funds should ensure that they have the capacity and expertise to address Federal civil rights protections that accompany grant awards.

Transit Flex

The FHWA, working with the Federal Transit Administration (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 the TA Set-Aside that have been selected through a competitive process can be “flexed” to FTA to fund projects for transit agencies and used for transit projects. A key goal of the use of Federal-aid funding on transit and transit-related projects is to provide an equitable and safe transportation network for travelers of all ages and abilities, including those from marginalized communities facing historic disinvestment. The 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 and public transportation access, especially in underserved communities; (2) plan for the safety of all users through both on- and off-road infrastructure improvements; (3) reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors; and (4) consider equitable and sustainable practices and consideration of environmental justice populations.

Transferability Between FHWA Programs

Section 126 of title 23, U.S.C., provides that a State may transfer up to 50 percent of the amount apportioned for the fiscal year for certain highway programs to other eligible apportioned highway programs. Historically, States have used this flexibility to address unmet needs in areas where apportioned funding was insufficient. However, section 126(b)(2)(A) limits the amount transferable from the TA Set-Aside to the 41 percent of the funds not suballocated by population, and added requirements, described further below, that a State must comply with before it may transfer funds out of the TA Set-Aside to other programs.

The BIL made historic investments in highway programs including more than \$300 billion in Contract Authority from the Highway Trust Fund. This represents an average annual increase of 29 percent in Federal-aid funding over the amount of Contract Authority for FHWA programs compared to fiscal year 2021. Congress also established more than a dozen new highway programs to help address urgent surface transportation needs.

The FHWA encourages States to first consider the need to transfer in light of the significant increase in apportioned funding and the considerable funding for new programs. The FHWA should work with the States to assist in determining the need for TA Set-Aside funds — including the ability to apply TA Set-Aside funds to eligible assets owned by local governments, counties, MPOs, and Tribes — and to identify and prioritize projects that maximize the increased funding before deciding to transfer funds out of program.

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The guidance describes transit flex and other transferability provisions in the [Transfer of Funds](#) section.

Relationship to Other Highway Programs

TA Set-Aside projects can help provide complete networks through both on- and off-road facilities but the TA Program is not the only resource available for some such projects. Projects eligible under the TA Set-Aside are also eligible under the [STBG](#). Projects eligible under the Recreational Trails Program ([RTP](#)) set-aside described in 23 U.S.C. 206 also are eligible under the TA Set-Aside and STBG, including maintenance and restoration of existing recreational trails. Projects eligible under the Safe Routes to School ([SRTS](#)) Program described in 23 U.S.C. 208 also are eligible under the TA Set-Aside and STBG, including both infrastructure and noninfrastructure projects. *See* 23 U.S.C. 133(b)(5), (7), and (22); 133(h)(3); 206; and 208.

Many bicycle and pedestrian safety and SRTS projects eligible under the TA Set-Aside also are eligible under the Highway Safety Improvement Program ([HSIP](#)). The BIL added eligibility for vulnerable road user safety assessments under the TA Set-Aside and HSIP, and added eligibility for SRTS noninfrastructure-related activities under HSIP. Further prioritizing the safety of all users, the BIL amended the TA Set-Aside to allow HSIP funds to be credited toward the non-Federal share of the costs of projects that are eligible under 23 U.S.C. 148(e)(1) and consistent with the State strategic highway safety plan (23 U.S.C. 133(h)(7)(B)), if certain requirements are met. See the section on [Federal share](#).

Funding Authorizations, Program Codes

The BIL increased funding for the TA Set-Aside from \$850 million annually for each of fiscal years 2018 through 2020 to 10 percent of STBG per fiscal year, presenting opportunities to fund additional bicycle and pedestrian, safe routes to school, trail, historic preservation, and environmental mitigation projects. *See* 23 U.S.C. 133(h)(1)(A). The formula in 23 U.S.C. 133(h)(1)(B) determines each State's share of the TA Set-Aside.

The [Highway Authorizations under the Bipartisan Infrastructure Law](#) table available on [FHWA's BIL implementation website](#) provides the TA Set-Aside funding amounts for FY 2022 to 2026.

Fiscal Year	Transportation Alternatives Set-Aside (23 U.S.C. 133(h))
2022	\$1,383,540,438
2023	\$1,411,211,247
2024	\$1,439,435,472
2025	\$1,468,224,182
2026	\$1,497,588,662

Up to \$84,160,000 of the TA Set-Aside is set aside each year for the RTP, unless the Governor of a State opts out. *See* 23 U.S.C. 133(h)(5) and (6)(A).

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The Program Codes for the TA Set-Aside and RTP funds are as follows:

Program Code	Program Description	Statutory Reference
Y300	Transportation Alternatives - Flex (Any Area)	23 U.S.C. 133(h)(2); 133(d)(1)(B)
Y301	Transportation Alternatives - Urbanized Areas with Population Over 200,000	23 U.S.C. 133(h)(2); 133(d)(1)(A)(i)
Y306	Transportation Alternatives - Urbanized Areas with Population 50,000 to 200,000 [NEW]	23 U.S.C. 133(h)(2); 133(d)(1)(A)(ii)
Y307	Transportation Alternatives - Urban Areas with Population 5,000 to 49,999 [NEW]	23 U.S.C. 133(h)(2); 133(d)(1)(A)(iii)
Y308	Transportation Alternatives - Areas with Population Less than 5,000 [NEW]	23 U.S.C. 133(h)(2); 133(d)(1)(A)(iv)
Y100	Improving Accessibility and Efficiency - Any Area Flex [NEW]	Section 133(h)(6)(C)
Y101	Improving Accessibility and Efficiency - Urbanized Areas with Population Over 200,000 [NEW]	Section 133(h)(6)(C)
Y106	Improving Accessibility and Efficiency - Areas with Population 50,000 to 200,000 [NEW]	Section 133(h)(6)(C)
Y107	Improving Accessibility and Efficiency - Areas with Population 5,000 to 49,999 [NEW]	Section 133(h)(6)(C)
Y108	Improving Accessibility and Efficiency - Areas with Population Less than 5,000 [NEW]	Section 133(h)(6)(C)
Y304	TA Set-Aside - Urbanized areas with Population Over 200,000, up to 50% for any STBG Program Eligibilities	23 U.S.C. 133(h)(6)(B)
Y940	Recreational Trails Program (RTP)	23 U.S.C. 133(h)(5)
Y941	Return of 1% for RTP Administration	23 U.S.C. 133(h)(5)(B)
YR10	State RTP Administration	23 U.S.C. 206(d)(2)(H)
YR20	RTP Educational Programs	23 U.S.C. 206(d)(2)(G)

Period of Availability

TA Set-Aside funds are contract authority with obligations reimbursed from the Highway Account of the Highway Trust Fund. TA Set-Aside 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. This includes funds set aside for the RTP. Thus, funds are available for obligation for up to 4 years (23 U.S.C. 118). New obligations of STBG, TA Set-Aside, and RTP funds must follow the requirements and eligibilities of applicable law as amended by the BIL.

Funds apportioned for the Safe Routes to School ([SRTS](#)) Program prior to MAP-21 are available until expended (Public Law 109-59, also known as “SAFETEA-LU,” § 1404(i), as in effect prior to the BIL).

Obligation Limitation

The TA Set-Aside funds are subject to the annual obligation limitation imposed on the Federal-aid Highway Program.

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Obligation Authority

The BIL amended the TA Set-Aside to remove the provision, formerly at 23 U.S.C. 133(h)(2)(B)(ii), that section 133(e) did not apply to the TA Set-Aside. Section 133(e) requires States to provide specified amounts of obligation authority during fiscal years 2022 through 2026 to urbanized areas with an urbanized area population of over 200,000. Effective under the BIL, this provision also applies to the TA Set-Aside.

Allocations and Suballocations

The TA Set-Aside is designed to allow [eligible entities](#) to apply for funds through competitive project selection processes that may be carried out at the State or sub-State level. The law also ensures that a share of funds flow through to sub-State areas and local governments through a process of suballocation. First, TA funds are automatically suballocated to sub-State areas based on their relative population size. Figure 1 shows the TA Set-Aside suballocation. After deducting the set-aside for the RTP, if applicable, the BIL increased the percentage of suballocated funding for the TA Set-Aside from 50 percent to 59 percent to areas based on their relative share of the total State population. *See* 23 U.S.C. 133(h)(2)(A). Other than the total percentage suballocated, the suballocation structure is the same as for STBG funds (see information on the [STBG Program](#)). These suballocated funds are not available to be transferred to other Federal-aid programs. (23 U.S.C. 126(b)(2)(A)).

After this suballocation, States have two options for the remaining 41 percent of the TA Set-Aside funds: providing them for use in any area of the State using a statewide [competitive project selection process](#), or suballocating up to 100 percent of the funds based on a plan developed by the State, as described under [Local Control](#). *See* 23 U.S.C. 133(h)(2)(B).

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**Figure 1
Transportation Alternatives Suballocation**

State's Transportation Alternatives Set-Aside 23 U.S.C. 133(h)(1)(B)	
Set-Aside for Recreational Trails Program (unless Governor opts out) 23 U.S.C. 133(h)(5) and (6)(A)	
59% Suballocated to sub-State areas based on relative population size. (23 U.S.C. 133(h)(2)(A)(i)) <ul style="list-style-type: none"> • Funds not available for transfer to other Federal-aid programs. (23 U.S.C. 126(b)(2)(A)) 	41% for use in any area of State, using State competitive process. (23 U.S.C. 133(h)(4)(B)) <ul style="list-style-type: none"> • State may develop a process to suballocate up to 100%, subject to DOT-FHWA approval of State suballocation plan. (23 U.S.C. 133(h)(2)(B)) • Funds available for transfer to other Federal-aid programs only after State holds a competitive process. (23 U.S.C. 126(b)(2)(B))
Urbanized areas with populations over 200,000. (23 U.S.C. 133(d)(1)(A)(i)) <ul style="list-style-type: none"> • Funds suballocated to each urbanized area over 200,000 by relative population. (23 U.S.C. 133(d)(4)) • Metropolitan Planning Organization competitive process (23 U.S.C. 133(h)(4)(B)) 	
Urbanized areas with population 50,000 to 200,000. (23 U.S.C. 133(d)(1)(A)(ii)) <ul style="list-style-type: none"> • State competitive process unless State develops process to suballocate further. 	
Urban areas with population 5,000 to 49,999. (23 U.S.C. 133(d)(1)(A)(iii)) <ul style="list-style-type: none"> • State competitive process unless State develops process to suballocate further. 	
Areas with population less than 5,000. (23 U.S.C. 133(d)(1)(A)(iv)) <ul style="list-style-type: none"> • State competitive process unless State develops process to suballocate further. 	

Apportionment Notices, including suballocation levels, will be posted on FHWA's [BIL Funding webpage](#) as they become available. The FHWA will also post apportionment, project selection, obligation, transfer, and other financial information on the [Transportation Alternatives webpage](#) to demonstrate the use of TA Set-Aside funds in each State.

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Local Control: Additional Suballocations

BIL authorized States to suballocate up to 100 percent of TA Set-Aside funds (23 U.S.C. 133(h)(2)(B)) if the State submits a plan to the Secretary for approval. As provided in 23 U.S.C. 133(h)(2)(B)(i), the plan must describe—

- How funds will be allocated to counties, MPOs, regional transportation planning organizations as described in 23 U.S.C. 135(m), or local governments.
- How the entities will carry out a [competitive process](#) to select projects for funding and report selected projects to the State.
- The legal, financial, and technical capacity of the entities.
- How input was gathered from the entities to ensure they will be able to comply with program requirements.
- How the State will comply with the TA reporting requirements.

This plan should be submitted to FHWA for approval. FHWA is in the process of updating the Federal-aid Highway Program Delegations of Authority to consider the appropriate level of approval authority for this plan.

State Technical Assistance

States may use up to 5 percent of TA Set-Aside funds to provide technical assistance to applicants. *See* 23 U.S.C. 133(h)(6)(C). FHWA staff should encourage States to consider using this flexibility to provide technical and application assistance to help ensure that local governments can effectively compete for and use TA Set-Aside funds.

This provision authorizes States to use up to 5 percent of TA Set-Aside funds in each of the suballocated categories under 23 U.S.C. 133(d) to provide technical and application assistance and to administer the TA set-aside. Such activities may include administering a statewide competitive program, assisting applicants to help them successfully apply for funds (including for applicants to the statewide, MPO, or other competitive processes authorized under 23 U.S.C. 133(h)(2)(B)), and assisting applicants with project implementation, including NEPA review, planning, design, permits, and project management. After a State makes this election under section 133(h)(6)(C), such funds may be used for any of the purposes described in Section 133(h)(6)(C) and are no longer restricted to specific suballocated areas.

The State may use these funds for one or more full-time State employee positions to administer the State's TA Set-Aside program and to provide application assistance, technical assistance, and assistance in reducing the amount of time between project selection and obligation of funds for the project. *See* 23 U.S.C. 133(h)(6)(C)(i)(II). States also may issue contracts to other State agencies, private entities, or nonprofit entities to provide assistance as described above. *See* 23 U.S.C. 133(h)(6)(C)(ii)(II). The State DOT retains responsibility for administering the program.

- This provision allows support for a State Safe Routes to School coordinator position to promote SRTS projects to be funded under the TA Set-Aside.
- This provision does not provide funding for or substitute for the requirement for up to two State bicycle and pedestrian coordinator positions under 23 U.S.C. 217(d), as amended by the

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BIL, which may use STBG or Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds.

Additional information that may be relevant and valuable for assisting applicants with TA Set-Aside project implementation is available on FHWA's website including:

- General information on [NEPA and Project Development](#) and FHWA's [Strategies for Accelerating Multimodal Project Delivery](#).
- Information on [State DOTs Leveraging Alternative Uses of the Highway Right-of-Way](#).

Transfer of Funds

In general, under 23 U.S.C. 126, States may transfer funds among Federal-aid highway program funds apportioned under 23 U.S.C. 104(b), subject to restrictions. The BIL, however, revised section 126(b)(2) regarding transfers of TA Set-Aside funds to other funding programs. Specifically, the BIL added requirements before a State may transfer funds out of the TA Set-Aside to other programs. As explained below, the State will need to demonstrate genuine efforts to establish a robust TA Set-Aside program before FHWA will authorize a transfer of TA Set-Aside funds to other programs. While States are undertaking efforts to comply with these new requirements, particularly in FY 2022, FHWA will not certify State requests to transfer TA set-aside funds to other programs. If a State does not follow the requirements in 23 U.S.C. 126(b)(2) to transfer TA Set-Aside funds that are available for obligation in any area of the State to another apportioned program, and the State does not obligate those TA Set-Aside funds, the funding will lapse as provided in 23 U.S.C. 118(b) and will no longer be available to the State.

Although section 126(a) allows States to transfer up to 50 percent of apportioned program funds, section 126(b)(2)(A) limits the amount transferable from the TA Set-Aside to the 41 percent of the funds not suballocated by population; as a result, no transfers are permitted for the 59 percent of funds suballocated by population. According to 23 U.S.C. 126(b)(2)(B), before a State may transfer funds from the TA Set-Aside to another Federal-aid apportioned category, the Secretary must certify that the State:

- Held a competitive grant opportunity in compliance with TA Set-Aside guidance, and provide sufficient time for eligible applicants to apply.
- Offered, and upon request provide, technical assistance which may include helping [eligible entities](#) successfully apply for and carry out eligible TA Set-Aside projects, through statewide, metropolitan, and other competitive processes within the State.
- Demonstrated that there were not sufficiently suitable applications from [eligible entities](#) to use the funds to be transferred.

While States are undertaking efforts to comply with these new requirements, particularly in FY 2022, FHWA will not certify State requests to transfer TA set-aside funds to other programs given the time necessary to meet these requirements. Based on [TA Set-Aside Annual Reports](#) for FY 2016 through 2020, all States receive requests for TA Set-Aside funds that exceed the funds that they have available. Therefore, to comply with 23 U.S.C. 126(b)(2)(B), FHWA will need to establish that a State has demonstrated genuine efforts to establish a robust TA Set-Aside program that complies with the statutory requirements before it will authorize a transfer of TA Set-Aside funds to other programs. Efforts include funding one or more full-time positions to

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administer the State's TA Set-Aside program and providing technical assistance to help applicants to successfully implement projects.

While States are subject to new requirements in order to transfer funds out of the TA-Set-Aside, States are permitted to transfer funds from certain other Federal-aid programs *to* the TA Set-Aside and may wish to do so if there are requests for TA Set-Aside funds that exceed the available funds. Subject to certain limitations, States may transfer up to 50 percent of funds from the National Highway Performance Program ([NHPP](#)), [STBG](#) (except for funds suballocated by population), [HSIP](#), [CMAQ](#), National Highway Freight Program, Carbon Reduction Program, or PROTECT Formula Program *to* the TA Set-Aside. Because projects eligible under the TA Set-Aside also are eligible under STBG, States may use STBG funds for projects eligible under the TA Set-Aside without making a transfer, and follow STBG provisions and requirements. (23 U.S.C. 133(b)(5), (7), (8), and (22)). See information on the [STBG](#) Program.

FHWA is in the process of updating the Federal-aid Highway Program Delegations of Authority to require review and concurrence from the Associate Administrator for Planning, Environment, and Realty before a [Division office](#) may authorize a transfer of funds from the TA Set-Aside to other apportioned programs.

Other Transfers

Funds for transit projects eligible under the TA Set-Aside, once selected, may be transferred to the Federal Transit Administration (FTA) to administer in accordance with chapter 53 of title 49, U.S.C. Transit projects that are funded with funds made available under title 23, U.S.C., which are obligated by the FHWA, must be administered in accordance with title 23, U.S.C., and meet all applicable FHWA requirements (23 CFR 1.9(a)) unless such funds are flexed to the FTA. For title 23 funds that are flexed to FTA, 23 U.S.C. 104(f) allows funds made available for transit projects or transportation planning to be transferred to the 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 (23 U.S.C. 104(f)(1)). Should a State choose to utilize funds for a transit projects, States should work with the FHWA [Division Office](#) to flex the funds to FTA to be allocated and obligated to the desired project.

There is no authorization to transfer funds to or from the RTP set-aside funds. However:

- States may use STBG funds for any recreational trail, including the maintenance and restoration of existing recreational trails, without making a transfer. See information on the [STBG](#) Program. 23 U.S.C. 133(b)(7). These funds would be administered in accordance with 23 U.S.C. 206. *See* 23 U.S.C. 206(j) and Treatment of Projects below.
- States may use TA Set-Aside funds for any recreational trail, including the maintenance and restoration of existing recreational trails, without making a transfer. 23 U.S.C. 133(h)(3)(A) and 206. These funds would be administered in accordance with 23 U.S.C. 206. *See* 23 U.S.C. 206(j) and [Treatment of Projects](#) below.
- If a State opts out of the RTP, the funds remain under the TA Set-Aside, and the transferability provisions pertaining to the TA Set-Aside apply.

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Federal Share and Flexibilities for Increasing Federal Share

For most TA Set-Aside projects the Federal share is generally 80 percent with a 20 percent State or local match, but States can use a number of flexibilities discussed below, including some new ones under the BIL, to increase the Federal share for specific projects to 100 percent. For example, the Federal share of the cost of an individual TA Set-Aside project may be increased up to 100 percent, subject to a State meeting requirements for the average annual non-Federal share. (23 U.S.C. 133(h)(7)(A)). Certain safety projects, projects on Federal lands, and projects within Indian reservations and national parks and monuments may also have a Federal Share of 100 percent as explained in this section. In addition, BIL provisions effectively allow certain TA Set-Aside projects to be built with 100 percent Federal funds by allowing the non-Federal share to be met with Federal funds. For example, Highway Safety Improvement Program funds can be credited toward the non-Federal share of the costs of TA Set-Aside safety projects, including Safe Routes to School projects.

The following guidance provides the context for Federal share provisions for TA Set-Aside funds, including new flexibilities under the BIL.

- In general, for most TA Set-Aside projects, the Federal share is the same as the Federal-aid Highway Program under 23 U.S.C. 120: generally, 80 percent Federal and 20 percent State or local match. An upward [sliding scale adjustment](#) is available to States based on public land area (23 U.S.C. 120).
- Section 120 provides flexibility for safety, Federal lands, and RTP projects as described below.

A provision in the BIL amended 23 U.S.C. 133(h)(7) to provide for a flexible Federal share. This flexibility can be applied to a project, group of projects, or program. The provision allows a State to establish the Federal share on a project at a maximum of 100 percent, subject to requirements explained below. The following are specific requirements for the use of this flexibility:

- Funds made available under [HSIP](#) (23 U.S.C. 148) may be credited toward the non-Federal share of the costs of a TA Set-Aside project if the project is an eligible HSIP project as described in 23 U.S.C. 148(e)(1) and is consistent with the State strategic highway safety plan. 23 U.S.C. 133(h)(7)(B)(i).
- The Federal share of the cost of an individual TA Set-Aside project may be up to 100 percent as long as the average Federal share of all TA Set-Aside projects does not exceed the Federal share authorized under 23 U.S.C. 120. *See* 23 U.S.C. 133(h)(7)(A) and 133(h)(7)(B)(iii).
- To use the flexible provisions under 23 U.S.C. 133(h)(7)(B), the State must have adequate financial controls, as certified by the Secretary, to account for the average annual non-Federal share, *see* 23 U.S.C. 133(h)(7)(C).

FHWA is in the process of developing supplemental guidance on this flexible funding provision and is updating the Federal-aid Highway Program Delegations of Authority to consider the appropriate level of approval authority for certifying financial controls to account for the average annual non-Federal share.

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Federal Share Payable Flexibilities

- States may use 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) 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 memorandum, [Increased Federal Share under 23 U.S.C. 120\(c\)\(1\)](#), dated November 25, 2014, for examples.
- Section 120(f) of title 23, U.S.C. allows funds apportioned under 23 U.S.C. 104 to be used at 100 percent Federal share for Federal-aid highways within Indian reservations, and national parks and monuments.
- Section 120(j) of title 23, U.S.C. allows Federal agency funds (other than those made available under title 23 or title 49, U.S.C.) to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, for projects funded under title 23 or under chapter 53 of title 49, U.S.C.
- Section 120(k) of title 23, U.S.C. authorizes funds to carry out the [Tribal Transportation Program](#) under 23 U.S.C. 202 and funds to carry out the [Federal Lands Transportation Program](#) under 23 U.S.C. 203 to pay the non-Federal share of the cost of any project that is funded under title 23, or under chapter 53 of title 49, U.S.C., that provides access to or within Federal or tribal land. However, this provision does not authorize the use of [Federal Lands Access Program](#) funds, which are made available under 23 U.S.C. 204, as the non-Federal match.

Recreational Trails Program

The BIL did not change the Federal share or match for projects funded under the RTP set-aside. RTP projects retain the Federal share and flexible match and donation provisions available under 23 U.S.C. 206(f) and 206(h). Under 23 U.S.C. 206(j), funds made available for RTP projects are to be administered as if made available under section 206. Therefore, RTP projects funded from other [STBG](#) funds under 23 U.S.C. 133(b)(7) or 133(h) are also subject to the Federal share and flexible match and donation provisions available under 23 U.S.C. 206(f) and 206(h). See [RTP Federal Share and Matching Requirements](#) for more information.

Other match provisions

Except as provided in 23 U.S.C. 133(h)(7), 120(j) and (k), and 206 as noted above, or as may be authorized in other Federal legislation, other Federal funds may not serve as the non-Federal match for projects under the TA Set-Aside. *See* 2 CFR 200.306(b)(5). Two Federal programs that allow Federal-to-Federal match are:

- U.S. Department of Housing and Urban Development [Community Development Block Grants](#) may match or be matched by other Federal funds (42 U.S.C. 5305(a)(9)).
- Federal programs for youth conservation or service corps, such as [AmeriCorps](#) under [42 U.S.C. 12571](#), may receive funds from other Federal programs as match under some conditions. See [AmeriCorps funding opportunities](#) for more information.

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Competitive Process – Generally (23 U.S.C. 133(h)(4))

All TA Set-Aside funds must be selected through a competitive process carried out at the State level or after suballocation. 23 U.S.C. 133(h)(4)(B). A State may carry out a competitive process under 23 U.S.C. 133(h)(4)(B) to solicit and select [eligible projects](#) that are submitted by [eligible entities](#), or it may submit a plan to FHWA for approval according to 23 U.S.C. 133(h)(2)(B), as described under [Local Control](#). A competitive process should include providing [technical assistance](#) to [eligible entities](#), and providing sufficient time for these entities to apply for funding. If States have any questions about establishing a sufficient competitive process, FHWA will provide technical assistance to help them establish such process, and to obligate unused TA set-aside funds from prior fiscal years. FHWA staff should encourage every State and MPO to prioritize using TA Set-Aside funding to advance the purposes of the program to promote safety, equity, and climate sustainability consistent with FHWA [Policy](#).

State Competitive Process

The State is responsible for selecting projects submitted by [eligible entities](#) through a competitive process for all funds not suballocated to MPOs representing urbanized areas with populations greater than 200,000 (23 U.S.C. 133(h)(4)(B)).

- For funds suballocated to small urbanized areas with populations of 50,000 to 200,000, the State may make these funds available for projects anywhere within the metropolitan planning area boundaries of an MPO serving the urbanized area. (23 U.S.C. 133(d)(2)). [Eligible entities](#) within any small urbanized area also may apply to the State for funds that may be used in any area of the State.
- For small urban areas not served by an MPO, the State may make these funds available for projects anywhere within the municipal boundaries of the applicable small urban area, for example, within a town or township. [Eligible entities](#) within any small urban area also may apply to the State for funds that may be used in any area of the State.
- For funds suballocated to nonurban areas (i.e., areas with populations below 5,000), the State is responsible for selecting projects through a competitive process (23 U.S.C. 133(h)(4)(B)).
- For funds available to any area of the State, the State is responsible for selecting projects through a competitive process (23 U.S.C. 133(h)(4)(B)). These funds are available for any area of the State: large urbanized areas, small urbanized areas, small urban areas, or nonurban areas.
- The statute does not authorize the State to further suballocate the small urbanized, small urban, nonurban, or any area funds to individual MPOs, counties, cities, or other local government entities prior to competitive selection, unless it develops a process as described under [Local Control](#). (23 U.S.C. 133(h)(2)(B)). However, the State's competitive process may include selection criteria to ensure a distribution of projects among small MPOs, other small urban areas, and nonurban areas across the State. FHWA staff should encourage States to consult with MPOs to ensure that MPO priorities are considered.

MPOs Representing Urbanized Areas with Population Over 200,000

Section 133(d)(4)(A) of title 23, U.S.C., requires suballocation of funds to urbanized areas with populations of over 200,000. For these funds, the MPO (or MPOs) representing the urbanized

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area is (are) responsible for selecting projects through a competitive process, in consultation with the State (23 U.S.C. 133(h)(4)(C)).

The MPO may use these funds for projects anywhere within the boundaries of the applicable MPO area (23 U.S.C. 133(d)(2)). [Eligible entities](#) within urbanized areas also may apply to the State for funds that may be used in any area of the State.

The MPO may use up to 50 percent of its suballocated funds for any project eligible under STBG (23 U.S.C. 133(h)(6)(B)). These projects must be selected through the MPO's competitive project selection process. 23 U.S.C. 133(h)(4)(B).

In the case of MPOs that represent two or more urbanized areas with populations over 200,000, or where urbanized areas with populations over 200,000 are represented by two or more MPOs:

- If applicable, the State(s), MPO(s), and the local government entities representing the urbanized areas with populations over 200,000 may develop an agreement about how the MPOs solicit and select projects among the urbanized areas with populations over 200,000.
- A State may obligate the funds based on other factors if the State and MPO(s) jointly apply to FHWA for the permission to base the obligation on other factors and the Secretary grants the request (23 U.S.C. 133(d)(4)(B)).

Prioritization

The BIL added a provision to the TA Set-Aside requiring that the competitive process used by a State or MPO include prioritization of project location and impact in high-need areas as defined by the State, such as low-income, transit-dependent, rural, or other areas (23 U.S.C. 133(h)(4)(D)).

The FHWA [Division Office](#) should ensure that the State and MPO(s) have competitive project selection processes, but there are no formal criteria, checklists, or certification requirements, except if a State intends to transfer funds from the TA Set-Aside to other apportioned programs (see [Transfer of Funds](#)). The Division Office should ensure that the competitive process has provisions to prioritize project location and impact in high-need areas as defined by the State, such as low-income, transit-dependent, rural, or other areas.

The Division Office should also ensure that the State and MPOs provide for adequate public involvement and transparency as they develop their competitive processes. A competitive process should allow project sponsors to understand the project selection evaluation criteria and how projects will be evaluated.

States and MPOs have discretion in establishing project priorities, or whether to fund (or not fund) particular eligible categories, although the competitive process used must prioritize project location and impact in high-need areas as defined by the State, such as low-income, transit-dependent, rural, or other areas. 23 U.S.C. 133(h)(4)(D). The competitive process may include other criteria giving priority to projects that meet the desired goals of the States or MPOs.

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FHWA's [TA Set-Aside webpage](#) has links to competitive process examples, which discuss illustrative selection criteria such as connectivity to essential services, safety, equity for disadvantaged populations, and the extent of community support for the project. FHWA also developed the [Transportation Alternatives Program \(TAP\) Performance Management Guidebook](#) to provide sample performance objectives and measures that States, MPOs, and project sponsors may consider as they administer, implement, and evaluate the TA projects and program outcomes.

Eligible Entities

Under 23 U.S.C. 133(h)(4)(A), as amended by the BIL, the entities eligible to receive TA Set-Aside funds are:

1. **A local government.** Local government entities include any unit of local government below a State government agency, except for an MPO representing an urbanized area with a population over 200,000. Examples include city, town, township, village, borough, parish, or county agencies.
2. **A regional transportation authority.** Regional transportation authorities are considered the same as the Regional Transportation Planning Organizations defined in the statewide planning section (23 U.S.C. 135(m)).
3. **A transit agency.** Transit agencies include any agency responsible for public transportation that is eligible for funds as determined by the Federal Transit Administration.
4. **A natural resource or public land agency.** Natural resource or public land agencies include any Federal, Tribal, State, or local agency responsible for natural resources or public land administration. Examples include:
 - State or local park or forest agencies.
 - State or local fish and game or wildlife agencies.
 - Department of the Interior land management agencies.
 - U.S. Forest Service.
5. **A school district, local education agency, or school.** School districts, local education agencies, or schools may include any public or nonprofit private school. Projects should benefit the general public and not only a private entity.
6. **A Tribal government.**
7. **A metropolitan planning organization that serves an urbanized area with a population of 200,000 or fewer.** MPOs representing urbanized areas over 200,000 population are not eligible entities.
8. **A nonprofit entity.** The BIL removed the requirement that the nonprofit entity be responsible for the administration of local transportation safety programs.
9. **Any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails** (other than a metropolitan planning organization that serves an urbanized area with a population of over 200,000 or a State agency) that the State determines to be eligible, consistent with the goals of 23 U.S.C. 133(h).
10. **A State,** at the request of an eligible entity listed above.

State DOTs are not eligible entities as defined under 23 U.S.C. 133(h)(4)(A) unless requested by another eligible entity. (23 U.S.C. 133(h)(4)(A)(x)). MPOs representing urbanized areas over 200,000 population are not eligible entities. (23 U.S.C. 133(h)(4)(A)(ix)). State DOTs and MPOs

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may partner with any eligible entity project sponsor to carry out a project. After projects have been selected, the State DOT may manage projects.

The RTP set-aside funds retain the [RTP eligible project sponsor](#) provisions under 23 U.S.C. 206 (23 U.S.C. 133(h)(5)(C)).

Eligible Projects

The BIL retained previous TA Set-Aside eligibility, amended the reference for SRTS projects, and added activities in furtherance of a vulnerable road user safety assessment, as defined in 23 U.S.C. 148(a). *See* 23 U.S.C. 133(h)(3). The BIL also added eligibility for State DOTs to use funds for [administrative and technical assistance](#), limited to 5 percent of the TA Set-Aside fund (after the RTP set-aside). 23 U.S.C. 133(h)(6)(C). TA Set-Aside eligible projects consist of:

Section 133(h)(3)(A): Projects or Activities described in 23 U.S.C. 101(a)(29) or 23 U.S.C. 213 as in effect prior to the enactment of the FAST Act. Those sections contained the following eligible projects:

(1) Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) as it appeared prior to changes made by the FAST Act: The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under title 23 U.S.C., or as an independent program or project related to surface transportation:

(A) Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(B) Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.

(C) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.

(D) Construction of turnouts, overlooks, and viewing areas.

(E) Community improvement activities, including:

(i) inventory, control, or removal of outdoor advertising;

(ii) historic preservation and rehabilitation of historic transportation facilities;

(iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control (see [State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance](#)); and

(iv) archaeological activities relating to impacts from implementation of a transportation project eligible under title 23, U.S.C.

(F) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to:

(i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff;¹ or

¹ This includes activities described in 23 U.S.C. 119(g), 328(a), and 329.

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(ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

(2) The [recreational trails program](#) under 23 U.S.C. 206 of title 23. (See the [Recreational Trails Program](#) section. Any project eligible under the RTP also is eligible under the TA Set-Aside.)

(3) The [safe routes to school program](#) under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59) [now codified as 23 U.S.C. 208 and including]:

- [Infrastructure](#)-related projects eligible under section 1404(f)(1) [now eligible under 23 U.S.C. 208(g)(1)].
- [Noninfrastructure](#)-related activities eligible under section 1404(f)(2) [(now eligible under 23 U.S.C. 208(g)(2)].
- SRTS coordinators eligible under section 1404(f)(3) [now eligible under 23 U.S.C. 208(g)(3)].

(4) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

- See [Boulevards from Divided Highways](#) for examples.

Section 133(h)(3)(B): projects and activities under the safe routes to school program under 23 U.S.C. 208.

Section 133(h)(3)(C): activities in furtherance of a vulnerable road user safety assessment (as defined in 23 U.S.C. 148(a)).

Section 133(h)(6)(C): Improving Accessibility and Efficiency. See [State Technical Assistance](#) description under the [Allocations and Suballocations](#).

Other Related Eligibility

The BIL amended other sections of title 23 that relate to projects eligible under the TA Set-Aside, including:

- [STBG](#): 23 U.S.C. 133(b)(7) clarified eligibility for recreational trail projects including the maintenance and restoration of existing recreational trails, and amended the citation for the safe routes to school program under section 208.
- [HSIP](#): 23 U.S.C. 148(a)(11)(B)(v) added SRTS noninfrastructure projects as eligible under HSIP as a specified safety project. Many activities eligible under the TA Set-Aside already were eligible under HSIP, subject to HSIP criteria.

Shared Micromobility and Electric Bicycles

The BIL inserted shared micromobility to CMAQ eligibility under section 149 and as eligible bicycle and pedestrian projects under section 217. For consistency, FHWA interprets this eligibility as applicable to TA Set-Aside projects.

- [CMAQ](#): Under 23 U.S.C. 149(b)(7), a project or program is eligible for CMAQ funding if it “shifts traffic demand to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduces demand for roads through such means as ... shared micromobility (including bikesharing and shared scooter systems)[.]”

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- Bicycle Transportation and Pedestrian Walkways: Under 23 U.S.C. 217(a), a State may obligate its apportioned STBG and CMAQ funds for “construction of pedestrian walkways and bicycle and shared micromobility transportation facilities and for carrying out nonconstruction projects related to safe access for bicyclists and pedestrians.”

The BIL also changed the definition of an electric bicycle in section 217(j)(2), which modified the kinds of electric bicycles that States and local governments may allow on nonmotorized trails and pedestrian walkways that use Federal-aid funds. Therefore, electric bicycle infrastructure is eligible under the TA Set-Aside. However, the BIL did not amend section 217(h) which lists restrictions on the use of motorized vehicles to allow other shared micromobility devices on nonmotorized trails and pedestrian walkways. See [TA Set-Aside Project Eligibility Questions and Answers](#).

Bicycle Projects

Since TA Set-Aside funds may be used for both bicycle projects eligible under 217(i) and recreational bicycle projects eligible as recreational trails projects under 133(b)(7) and 133(h), bicycle projects funded by TA Set-Aside funds (as well as any STBG funds) may be for both transportation and recreational purposes.

Ineligible Activities

TA Set-Aside funds cannot be used for the following activities:

- MPO administrative purposes. Exceptions:
 - See FHWA’s [Memo Allocating Indirect Costs to Projects](#), dated September 4, 2015.
- Promotional activities, except as permitted under the [SRTS](#) (2 CFR 200.421(e)(3)).
- Routine maintenance and operations, except trail maintenance and restoration as [permitted under the RTP](#).
- General recreation and park facilities, playground equipment, sports fields, campgrounds, picnic areas, pavilions, or other facilities that do not serve an eligible TA Set-Aside, RTP, or SRTS purpose.

Location

There are no location restrictions for the use of TA Set-Aside funds; they are not required to be located along highways. Activities eligible under the TA Set-Aside also are eligible for STBG funds (23 U.S.C. 133(b)(5), (7), (8), and (22)). Under 23 U.S.C. 133(c)(3), projects eligible under the TA Set-Aside funded with STBG funds are exempt from the general location restriction in 23 U.S.C. 133(c). Some aspects of activities eligible under the TA Set-Aside also may be eligible under other Federal-aid highway programs. See information on the [STBG Program](#).

For [SRTS noninfrastructure projects](#), traffic education and enforcement activities must take place within approximately two miles of a primary, middle, or high school (Kindergarten through 12th grade) (23 U.S.C. 208(a) and (g)(2)(A)). Other eligible SRTS noninfrastructure activities do not have a location restriction. [SRTS infrastructure projects](#) eligible under 23 U.S.C. 208(g)(1) do

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not have location restrictions because SRTS infrastructure projects are broadly eligible under other TA Set-Aside eligibilities.

Realty Guidance

In general, location and permit issues for TA Set-Aside projects are resolved in the planning and NEPA stages prior to the right-of-way phase. The [Real Estate Guidance for Enhancement Projects](#) issued in 2009 remains relevant for TA Set-Aside projects.

References in 23 CFR 710.403(e)(4) and 23 CFR 710.405(a)(2)(iii) refer to 23 CFR 652, which has been repealed. Because projects for bicycle transportation, pedestrian walkways, and trails are eligible under the TA Set-Aside, and any project eligible under the TA Set-Aside is eligible under STBG, all TA Set-Aside projects are eligible transportation projects. Therefore, they do not need special use agreements to be located in highway rights-of-way.

Treatment of Projects

Projects funded under 23 U.S.C. 133, including projects carried out under the TA Set-Aside under 23 U.S.C. 133(h), but excluding [RTP](#) projects carried out under 23 U.S.C.133(h)(5), shall be treated as projects on a Federal-aid highway (23 U.S.C. 133(i)). This subjects all STBG projects (excluding those funded from the RTP set-aside) to, among other things, [Davis-Bacon Act prevailing wage requirements](#) and other Federal-aid requirements applicable to projects on Federal-aid highways (e.g., [Buy America](#), [planning](#), [environmental review](#), [letting](#), etc.).

Note that the BIL amended 23 U.S.C. 206 to add subsection (j), which states:

(j) USE OF OTHER APPORTIONED FUNDS.—Funds apportioned to a State under section 104(b) that are obligated for a recreational trail or a related project shall be administered as if the funds were made available to carry out this section.

This means that TA Set-Aside and STBG funds that are obligated for RTP projects are to be administered as if they were made available to carry out 23 U.S.C. 206. Therefore, the treatment of projects provision in 23 U.S.C. 133(i) would not apply to such projects.

Youth Service and Conservation Corps

Section 1524 of MAP-21 provides exceptions to certain requirements regarding pay rates and contracting requirements for projects using qualified youth service or conservation corps. This provision supports equity goals by reaching underserved youth and supports initiatives related to climate change mitigation, resilience, and sustainability.

This provision requires the DOT to “encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps...to perform appropriate projects eligible under sections 162, 206, [former] 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA-LU [now codified as 23 U.S.C. 208].” These projects include scenic byways, recreational trails, transportation alternatives, bicycle and pedestrian, and safe routes to school. Section 1524 of

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MAP-21 applies to any projects eligible under these sections, including projects funded with other Federal-aid Highway Program funds. See the [MAP-21 Section 1524 Questions and Answers](#) and [Youth Workforce Development Resources](#). To the extent the requirements of 23 U.S.C. 133(i) relating to treatment of projects conflict with the express provisions in section 1524, the provisions in section 1524 prevail because they are more specific than the general provision of 23 U.S.C. 133(i).

Recreational Trails Program

The BIL continued the RTP as a set-aside under the TA Set-Aside. 23 U.S.C. 133(h)(5). Unless the Governor of the State opts out 30 days in advance of an apportionment for any fiscal year, an amount equal to the State's FY 2009 RTP apportionment is set aside from the State's TA Set-Aside funds for recreational trails projects. (23 U.S.C. 133(h)(5) and (6)(A)). All RTP provisions and requirements continue under 23 U.S.C. 206. See [RTP Guidance and Information](#).

For the RTP set-aside, the Governor designates the State agency or agencies to administer the program. 23 U.S.C. 206(c)(1). This remains the same agency or agencies previously designated by the Governor (for most States, a State resource agency or grant agency, or the State DOT), unless the Governor designates a new agency (23 U.S.C. 206(c)(1)). If an agency other than the State DOT administers the RTP, then the State should have (or develop) a Stewardship and Oversight Plan between the State DOT and other State agency to outline the roles and responsibilities of each State agency.

Under 23 U.S.C. 133(h)(5), if continuing the RTP:

- Each State shall obligate an amount of funds reserved under 23 U.S.C. 133(h) (the TA Set-Aside) equal to the amount of the funds apportioned to the State for FY 2009 under 23 U.S.C. 104(h)(2), as in effect on the day before enactment of MAP-21, for projects relating to recreational trails under 23 U.S.C. 206. (23 U.S.C. 133(h)(5)(A)). See [BIL Funding Tables](#).
- Each State shall return 1 percent of those funds to the Secretary for the administration of RTP. (23 U.S.C. 133(h)(5)(B)).
- Each State shall comply with the provisions of the administration of the RTP under 23 U.S.C. 206, including the use of apportioned funds. (23 U.S.C. 133(h)(5)(C)). Therefore, all RTP provisions and requirements remain unchanged, including the [requirement for 40 percent diverse recreational trail use, 30 percent motorized recreation, and 30 percent nonmotorized recreation](#). (23 U.S.C. 206(d)(3)(A)). (Section 206(d)(3)(B) provides an exemption from this requirement for States with land areas under 3,500,000 acres: Connecticut, Delaware, the District of Columbia, and Rhode Island.)
- For a State to be eligible to use funds set aside for the RTP, the State must establish a [State recreational trail advisory committee](#) that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year. If a State does not meet this requirement, it is not eligible to use RTP set-aside funds (23 U.S.C. 206(c)(2)).

If opting out of the RTP:

- The Governor must notify the Secretary not later than 30 days prior to apportionments being made for any fiscal year (23 U.S.C. 133(h)(6)(A)). Any State that desires to opt out of the

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RTP set-aside should notify FHWA via email, with a letter signed by the Governor (or the Governor's designee representing the agency designated to administer the RTP) accompanying the opt-out notification, to the FHWA Office of Budget's official mailbox (BudDiv@dot.gov) no later than September 1 prior to the fiscal year in which the State wishes to opt out.

- The funds remain as TA Set-Aside funds.
- The State cannot use a portion of its TA Set-Aside funds for RTP administrative costs for the fiscal year in which it opts out. The ability to use RTP funds for State administrative costs is limited to a percentage "of the apportionment made to the State for the fiscal year" (which would include the RTP set-aside funds). (23 U.S.C. 206(d)(2)(H)). If there is no apportionment, then administrative funds cannot be permitted.

Recreational trail projects that would be eligible under the RTP also are eligible under [STBG](#) under 23 U.S.C. 133(b)(7) and under the TA Set-Aside under 23 U.S.C. 133(h).

RTP Administrative Funds are limited to "costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year". (23 U.S.C. 206(d)(2)(H)). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. A State cannot carry over administrative funds from Year 1 because that would increase the administrative funds available in Year 2. RTP funds obligated for administrative costs but not expended within a fiscal year must be deobligated and used for other eligible uses under 23 U.S.C. 206(d)(2)(A) through (F). (23 U.S.C. 133(h)(5)(A)).

To cover administrative costs at the beginning of a fiscal year, States may request authorization to obligate administrative costs as an Advance Construction project, which is allowable under 23 U.S.C. 115 and 23 CFR 630 Subpart G.

For eligible administrative costs, see [RTP Trail Assessments, Education and Training, and State Administrative Costs](#).

RTP Educational Funds are limited to the "development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the uses of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year" (23 U.S.C. 206(d)(2)(G)). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. RTP funds obligated for educational costs but not expended within a fiscal year must be deobligated and used for other eligible uses under 23 U.S.C. 206(d)(2)(A) through (F).

States may use STBG funds under 23 U.S.C. 133(b)(7) or TA Set-Aside funds under 23 U.S.C. 133(h) for recreational trail educational programs. The educational activities eligible under the RTP do not depend on the existence of a program. Therefore, even if a State opts out of the RTP, it may fund recreational trail educational programs under STBG or the TA Set-Aside. Because there is no specific apportionment for a State that opts out of the RTP, there is no limitation on

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the funds available for recreational trail educational programs using STBG funds under 133(b)(7) or the TA Set-Aside under 133(h).

For eligible educational costs, see [RTP Trail Assessments, Education and Training, and State Administrative Costs](#).

RTP Suballocation Requirement: MAP-21 created (and the FAST Act and the BIL continued) a potential conflict for the requirements for 40 percent diverse use, 30 percent motorized use, and 30 percent nonmotorized use, because the 40-30-30 percentage requirements apply to the full apportionment before the return of 1 percent to the U.S. DOT for administrative purposes. The [RTP guidance for State Suballocations](#) explains how States can meet the 40-30-30 requirements by selecting projects that qualify simultaneously under the motorized and diverse categories or the nonmotorized and diverse categories.

Safe Routes to School

While the BIL did not provide any dedicated funds for the Safe Routes to School (SRTS) program, changes were made to ways that States can use TA Set-Aside funds (as well as [STBG](#) and [HSIP](#) funds) for Safe Routes to School projects.

The BIL codified SRTS at 23 U.S.C. 208 and expanded eligibility from kindergarten through 8th grade to kindergarten through 12th grade. 23 U.S.C. 208(a)(2) and 208(b).

The BIL reaffirmed SRTS eligibility under the TA Set-Aside (23 U.S.C. 133(h)(3)(B)) and STBG (23 U.S.C. 133(b)(7)), and specifically added SRTS eligibility to the [HSIP](#) by including safe routes to school noninfrastructure-related activities as specified safety projects (23 U.S.C. 148(a)(11)(B)(v)). The BIL also added [Federal share flexibility](#) to allow HSIP funds to be credited toward the non-Federal share of the costs of TA Set-Aside safety projects, including SRTS projects. (23 U.S.C. 133(h)(7)(B)(i) and 148(e)(3)). SRTS-eligible projects already were eligible under HSIP, subject to HSIP eligibility criteria.

The BIL did not provide any dedicated funds for the SRTS program. Therefore, references in section 208 related to apportionments cannot be required.

Annual Report Requirement

The BIL modified reporting requirements for the TA Set-Aside under 23 U.S.C. 133(h)(8). FHWA will issue new reporting instructions in the fall of 2022.

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TA Set-Aside Project Eligibility Questions and Answers

The following questions and answers relating to project eligibility cover questions raised since 2012. Eligible TA Set-Aside projects must be sponsored by an [eligible entity](#) and selected through the [competitive selection process](#).

Archaeological Activities: What archaeological activities are eligible?

Archaeological activities must relate to impacts from implementation of a transportation project eligible under title 23, U.S.C. (former 23 U.S.C. 101(a)(29)(E)(iv)).²

Bike Sharing and Scooter Share: Are bike sharing and scooter sharing systems eligible?

Yes. The BIL added “shared micromobility (including bikesharing and shared scooter systems)” as eligible under CMAQ (23 U.S.C. 149(b)(7)). Bike sharing systems already were eligible for Federal-aid highway program funds under 23 U.S.C. 217. For consistency, FHWA interprets this provision to apply to TA Set-Aside funds. In addition to bike and scooter sharing docks, equipment, and other capital costs, FHWA funds may be used to purchase bicycles that are integral to a bike sharing system and scooters integral to scooter sharing systems. Federal-aid highway program funds cannot be used for operational costs (former 23 U.S.C. 101(a)(29)(A) and (B) as in effect prior to the FAST Act, and current 23 U.S.C. 133(b)(7) and 149(b)(7)).

Electric Bicycles and Scooters: Which electric bicycles, scooters, or other devices are permitted under 23 U.S.C. 217(h)?

The BIL changed the definition of an electric bicycle in section 217(j)(2) to specify 3 classes of electric bicycles. However, the BIL did not amend section 217(h) which restricts the use of motorized vehicles on nonmotorized trails and pedestrian walkways under most Federal-aid funded facilities. Section 217(h) does not apply to on-road facilities. Therefore:

- States may allow electric devices on on-road facilities.
- States may allow electric bicycles on nonmotorized trails and pedestrian walkways if the bicycles meet the classes defined under 23 U.S.C. 217(j)(2). States and local governments may specify which classes they choose to allow.
- Electric scooters are not permitted on nonmotorized trails and pedestrian walkways that use Federal-aid highway program funds.
- The BIL did not change the definition of motorized use under the RTP, therefore, electric bicycles are motorized use under the RTP, and cannot be permitted on RTP-funded trails designated for only nonmotorized use.

Historic Preservation: What historic preservation projects are eligible?

Historic preservation activities are limited to historic preservation and rehabilitation activities relating to historic transportation facilities. Operation of historic transportation facilities is not eligible (former 23 U.S.C. 101(a)(29)(E)(ii)).

² TA Set-Aside eligible projects include “projects or activities described in section 101(a)(29) or 213, as those provisions were in effect on the day before the date of enactment of the FAST Act (Public Law 114-94; 129 Stat. 1312).” 23 U.S.C. 133(h)(3)(A). These Questions and Answers indicate use of pre-FAST Act provisions by the word “former.”

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Land Acquisition: Is land acquisition eligible?

Land acquisition is allowed for eligible TA projects, such as right-of-way or easements for pedestrian and bicycle projects; turnouts, overlooks, and viewing areas; historic transportation facilities; or environmental mitigation. FHWA's [Real Estate Guidance for Enhancement Projects](#) remains a useful resource to address real estate and property management issues. However, MAP-21 eliminated eligibility for acquisition of scenic easements and scenic or historic sites (including historic battlefields), scenic or historic highway programs (including tourist and welcome center facilities), or museums.

Landscaping: Are landscaping and scenic enhancement eligible as independent projects?

Under the “community improvement activities” category (former 23 U.S.C. 101(a)(29)(E)), projects such as streetscaping and corridor landscaping may be eligible under the TA Set-Aside if sponsored by an [eligible entity](#) and selected through the required [competitive process](#). Landscaping and scenic enhancement features, including junkyard screening and removal under 23 U.S.C. 136, may be eligible as part of the construction of any Federal-aid highway project, including eligible TA-funded projects (23 U.S.C. 319).

Lighting: Is lighting eligible?

Yes. Lighting is eligible for bicycle and pedestrian facilities and may be appropriate as part of other eligible categories. Project sponsors should consider energy-efficient methods and options that reduce light pollution (former 23 U.S.C. 101(a)(29)(A)).

Planning: Is planning eligible as an independent TA Set-Aside project?

Yes. Planning for pedestrian and bicycle activities is eligible as an independent project. Former 23 U.S.C. 101(a)(29) did not specify if “construction, planning, and design” limits planning to a component of a project, or whether planning may be an independent project related to eligible projects. Title 23, U.S.C. has sections that use “and” to describe both related and unrelated types of activities, therefore FHWA interprets section 101(a)(29) as supporting both planning components and independent planning projects.

Resilience: Are resilience improvements eligible?

Yes. Making transportation systems more resilient to changing environmental conditions is an important aspect of maintaining a state of good repair. Federal-aid highway planning and projects, including activities funded through the TA Set-Aside, may include climate and extreme weather resiliency elements to make transportation systems more reliable. For more information, please see FHWA guidance [Eligibility of Activities to Adapt to Climate Change](#).

Road Diets: Are road diets eligible?

[Road Diets](#) are among FHWA's [Proven Safety Countermeasures](#). If work to benefit activities eligible under the TA Set-Aside that are associated with a road diet (such as widening sidewalks or installing separated bike lanes) would require incidental highway reconstruction, then TA Set-Aside funds may cover those costs (former 23 U.S.C. 101(a)(29)(A) and (B)).

Safety Education Activities: Are safety education activities eligible?

Safety education activities are eligible for TA Set-Aside funds if they are eligible as SRTS projects, targeting children in Kindergarten through 12th grade (23 U.S.C. 133(h)(3)(B)). For

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other safety education, STBG funds may be used for carrying out nonconstruction projects related to safe access for bicyclists and pedestrians under 23 U.S.C. 133(b)(7) and 217(a).

Turnouts: What is eligible under “construction of turnouts, overlooks, and viewing areas”?

The activity “construction of turnouts, overlooks, and viewing areas” may use the criteria for “scenic overlooks” described in [23 CFR 752.6](#): “Scenic overlooks may provide facilities equivalent to those provided in safety rest area[s]” described in [23 CFR 752.5](#) (former 23 U.S.C. 101(a)(29)(D)).

Utilities: Is utility relocation eligible?

Utility relocation that is necessary to accommodate an eligible project may be eligible for Federal reimbursement only if permitted under State law or policy. Federal law and regulation (23 U.S.C. 123, *Relocation of utility facilities*, and [23 CFR 645, Utilities](#)) recognize that some States, by State law, legal contract, or policy, prohibit using public funds to relocate utilities; in these States, Federal funds may not be used to participate in the relocation of utilities. (23 U.S.C. 123(b)(2), *Relocation of utility facilities*, and [23 CFR 645, Utilities](#)).