



Memorandum

Subject: **INFORMATION:** Increasing Safe and Accessible Transportation Options Implementation Guidance Under Section 11206 of the Bipartisan Infrastructure Law

Date: April 12, 2023

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In Reply
Refer To: HEPP-10

To: Division Administrators
Directors of Field Services

On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58), also known as the “Bipartisan Infrastructure Law” (BIL), into law. This memorandum provides background information and guidance (see attached) to clarify eligibility and other requirements for BIL section 11206 (Increasing Safe and Accessible Transportation Options).

Section 11206(a) defines the term ***Complete Streets standards or policies*** as “standards or policies that 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.”

State Planning and Research (SPR) and Metropolitan Planning (PL) funds are provided for States and Metropolitan Planning Organizations (MPOs) to carry-out “3-C” (comprehensive, continuous, and cooperative) transportation planning processes pursuant to 23 U.S.C. 135 (Statewide and Nonmetropolitan Transportation Planning) and 23 U.S.C. 134 (Metropolitan Transportation Planning), which are the basis for subsequent transportation investment decisions. Additionally, BIL section 11206(b) requires States and MPOs to expend not less than 2.5 percent of SPR and PL funds on Complete Streets activities. In accordance with BIL section 10003, the requirements of section 11206 took effect on October 1, 2021, and apply to the 2.5 percent set aside of SPR and PL funds for Complete Streets planning activities under BIL § 11206. Additionally, FHWA has determined that the interests of the Federal-aid highway program would be best served by eliminating the non-Federal share, as reflected in the Federal Highway Administrator’s [waiver approval](#) on January 5, 2023. This waiver of the non-Federal match of SPR and PL funds for Complete Streets planning activities covers the 2.5 percent minimum SPR and PL fund expenditure thresholds described

in BIL § 11206(b). This match waiver took effect on January 5, 2023 and does not apply to prior unobligated balances of SPR and PL funds.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States, MPOs, or the public in any way. This document is intended only to provide information regarding existing requirements under the law or Agency policies. This document will be accessible on the [FHWA Bipartisan Infrastructure Law Website](#) and through the [FHWA Policy and Guidance Center](#).

For questions about the use of SPR and PL funds for Complete Streets activities in transportation planning processes, please contact Mr. Harlan Miller (harlan.miller@dot.gov) or Mr. Spencer Stevens (spencer.stevens@dot.gov) of the Office of Planning.

Attachment

Increasing Safe and Accessible Transportation Options Implementation Guidance
(April 2023)

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A. PROGRAM PURPOSE

The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”) (BIL) requires States and Metropolitan Planning Organizations (MPOs) to use not less than 2.5 percent of State Planning and Research (SPR) and Metropolitan Planning (PL) funds, respectively, on activities to increase safe and accessible options for multiple travel modes for people of all ages and abilities (Complete Streets planning activities) as part of transportation planning processes carried out under 23 U.S.C. 135 (Statewide and Nonmetropolitan Transportation Planning) and 23 U.S.C. 134 (Metropolitan Transportation Planning) (*see* BIL § 11206(b)).

The BIL defines the term *Complete Streets standards or policies* as “...standards or policies that 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” (BIL § 11206(a)).

FHWA encourages States, MPOs, and communities to adopt and implement [Complete Streets](#) policies that prioritize the safety of all users in transportation network planning, design, construction, and operations. 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.

In general, the Complete Streets design model includes careful consideration of measures to set and design for appropriate speeds; separation of various users in time and space; improvement of connectivity and access for pedestrians, bicyclists and transit riders, including for people with disabilities; and addressing safety issues through implementation of safety countermeasures. Application of the Complete Streets design model is recommended on roadways where adjacent land use suggests that trips could be served by varied modes, and to achieve complete travel networks for various types of road users.¹

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

- 1. Overview:** This memorandum provides background and guidance to clarify eligibility requirements for the use of SPR and PL funds on Complete Streets planning activities under BIL § 11206.

¹An important aspect of supporting consistent prioritization of the safety of all users is to make funding and designing Complete Streets the easiest option for stakeholders. As discussed in detail in the recent FHWA report to Congress entitled [Moving to a Complete Streets Design Model: A Report to Congress on Opportunities and Challenges](#) (March 2022), a full transition to a Complete Streets design model requires leadership, identification and elimination of barriers, and development of new policies, rules, and procedures to prioritize safety.

2. Safety:

Prioritizing Safety in All Investments and Projects

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

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

FHWA encourages State and local agencies to consider the use of a variety of Federal funding sources to address roadway safety and implement the Safe System approach wherever possible. For example, the use of SPR and PL funds on Complete Streets planning activities helps address roadway safety by integrating safety considerations throughout transportation planning processes. Improvements to safety features, including traffic signs, pavement markings, and multimodal accommodations that are routinely provided as part of a broader Federal-aid highway project can and should be funded from the same source as the broader project as long as the use is eligible under that funding source.

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

3. **Transit Flex:** FHWA, working with FTA, seeks to help Federal-aid recipients plan, develop, and implement infrastructure investments that prioritize safety, mobility, and accessibility for all transportation network users, including pedestrians, bicyclists, transit

riders, micromobility users, freight and delivery services providers, and motorists. This includes the incorporation of data sharing principles and data management.

SPR and PL funds, along with FTA’s State Planning and Research Program (SPRP) and Metropolitan Planning Program (MPP) funds (pursuant to 49 U.S.C. 5305), are to be used on multimodal statewide and metropolitan transportation planning processes, activities, and products that support 23 U.S.C. 135 (Statewide and Nonmetropolitan Transportation Planning) and 23 U.S.C. 134 (Metropolitan Transportation Planning).

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. FHWA encourages recipients to consider using funding flexibility for transit or multimodal-related projects and to consider strategies that: (1) improve infrastructure for nonmotorized travel, public transportation access, and increased public transportation service in underserved communities; (2) plan for the safety of all road users, particularly those on arterials, through infrastructure improvements and advanced speed management; (3) reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors; (4) offer reduced public transportation fares as appropriate; (5) target demand-response service towards communities with higher concentrations of older adults and those with poor access to essential services; and (6) use equitable and sustainable practices while developing transit-oriented development.

- 4. 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 programs² *see also* FHWA Order 4551.1, “Fund Transfers to Other Agencies and Among Title 23 Programs” ([Fund Transfers to Other Agencies and Among Title 23 Programs](#)). Historically States have used this flexibility to address unmet needs in areas where apportioned funding was insufficient.

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.

States have the flexibility to transfer funds to other apportioned programs, but we encourage States to first consider the need to transfer in light of the significant increase in apportioned funding and the considerable funding for new programs. States, working with FHWA, should determine the need for funds – including the ability to apply funds to eligible assets owned by local governments, counties, and Tribes and identify and prioritize projects that maximize the funding before deciding to transfer funds.

² States may only transfer funds that are allocated for use anywhere in the State.

- 5. Americans with Disabilities Act (ADA):** The Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against people with disabilities and ensure equal opportunity and access for persons with disabilities. The Department of Transportation’s Section 504 regulations apply to recipients of the Department’s financial assistance (*see* 49 CFR 27.3(a)). Title II of the ADA applies to public entities regardless of whether they receive Federal financial assistance (*see* 28 CFR 35.102(a)). The ADA requires that no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity (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.

If the project reduces transportation emissions, 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. FHWA will provide oversight to recipients of funds to ensure that each public agency’s project planning, design, and construction programs comply with ADA and Section 504 accessibility requirements.

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

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

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

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

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

FHWA encourages the advancement of projects that address climate change and sustainability. To enable this, FHWA encourages recipients to consider climate change and sustainability throughout the planning and project development process, including the extent to which statewide and metropolitan transportation plans and programs align with the President’s greenhouse gas reduction, climate resilience, and environmental justice commitments. In particular, consistent with the statute and guidance below, recipients should fund projects that reduce carbon dioxide emissions. FHWA encourages States and MPOs to use SPR and PL funds for transportation plans and programs that support fiscally responsible land use and transportation efficient design or incorporate vehicle electrification or infrastructure to support low- or zero-emission transportation such as walking, bicycling, or public transportation. In addition, FHWA encourages recipients to consider projects within statewide and metropolitan transportation plans and programs that support climate change resilience, including consideration of the risks associated with wildfires, drought, extreme heat, and flooding, in line with guidance for projects in floodplains. FHWA also encourages States and MPOs to consider statewide and metropolitan transportation plans and programs that address environmental justice concerns.

- 8. Labor and Workforce:** Highway programs may provide opportunities to support the creation of good-paying jobs, including jobs with the free and fair choice to join a union, and the incorporation of strong labor standards, such as the use of project labor agreements; employer neutrality with respect to union organizing; the use of appropriately trained workforce (in particular registered apprenticeships and other joint

labor management training programs); and the use of an appropriately credentialed workforce in project planning stages and program delivery.

Recipients should work with FHWA, to the extent possible, to identify opportunities for Federal-aid highway investments to advance high-quality job creation through the use of local or other geographic or economic hire provisions authorized under section 25019 in the BIL, and Indian employment preference for projects that are located on or near Tribal reservations authorized under 23 U.S.C. 140(d), or other workforce strategies targeted at expanding workforce training opportunities for people to get the skills they need to compete for these jobs, especially underrepresented populations: women, people of color, and groups with other systemic barriers to employment (people with disabilities, formerly incarcerated, etc.).

- 9. Truck Parking:** Truck parking shortages are a national concern affecting the efficiency of U.S. supply chains and safety for truck drivers and other roadway users. Jason's Law, which was passed in 2012, established a national priority on addressing the shortage of long-term parking for commercial motor vehicles on the National Highway System (NHS).

Many Federal-aid highway funding programs have eligibility for truck parking projects, which may be obligated for a project on an eligible facility that reduces transportation emissions. FHWA anticipates that such projects may support progress toward the achievement of national performance goals for improving infrastructure condition, safety, congestion reduction, system reliability, or freight movement on the NHS. Advanced truck stop electrification systems are eligible under 23 U.S.C. 175(c)(1)(A) and projects that reduce transportation emissions at port facilities are eligible under 23 U.S.C. 175(c)(1)(M).

States should consider working with private sector truck stop operators and the trucking community in the siting and development of specific truck parking projects. States also are encouraged to offer opportunities for input from commercial motor vehicle drivers and truck stop operators through their State Freight Advisory Committees established under 49 U.S.C. 70201.

C. GOVERNING AUTHORITIES

1. BIL section 11206 (Increasing Safe and Accessible Transportation Options).
2. 23 U.S.C. 104(b)(6) and 104(d) (Metropolitan Planning (PL) Funds).
3. 23 U.S.C. 505(a) (State Planning and Research (SPR) Funds).
4. 23 U.S.C. 134 (Metropolitan Transportation Planning).
5. 23 U.S.C. 135 (Statewide and Nonmetropolitan Transportation Planning).
6. 23 CFR Part 450 (Planning Assistance and Standards).
7. 23 CFR Part 420 (Planning and Research Program Administration).

D. FUNDING

- 1. Authorization Levels:** Pursuant to 23 U.S.C. 505(a), the State Planning and Research (SPR) Program was established to support statewide and non-metropolitan transportation planning carried-out under 23 U.S.C. 135 as part of a two percent set-aside from each State’s apportionments of five core programs: National Highway Performance Program (NHPP) (23 U.S.C. 119); Surface Transportation Block Grant (STBG) Program (23 U.S.C. 133); Highway Safety Improvement Program (HSIP) (23 U.S.C. 148); Congestion Mitigation and Air Quality Improvement (CMAQ) Program (23 U.S.C. 149); and National Highway Freight Program (NHFP) (23 U.S.C. 167). Estimated annual SPR funding under the BIL is:

Estimated Annual SPR Funding (Before Set-Asides)³	
FY 2022	\$983.3 M
FY 2023	\$1,003.1 M
FY 2024	\$1,023.2 M
FY 2025	\$1,043.8 M
FY 2026	\$1,064.8 M

Pursuant to 23 U.S.C. 104(b)(6) and 104(d), Metropolitan Planning (PL) funds were established to support metropolitan transportation planning carried-out by MPOs under 23 U.S.C. 134. Estimated annual PL funding under the BIL (e.g., sum of estimated individual State PL apportionments) is:

Estimated Annual PL Funding (Before Set-Aside)^{4,5}	
FY 2022	\$438.1 M
FY 2023	\$446.9 M
FY 2024	\$455.8 M
FY 2025	\$464.9 M
FY 2026	\$474.2 M

³ For FY 2022 and FY 2023, the cumulative estimated annual SPR funding is derived from FHWA Apportionment Notices N4510.868 (Table 5) and N4510.876 (Table 5), respectively. For FY 2024-2026, the cumulative estimated annual SPR funding amounts are estimated by FHWA’s Budget Formulation and Apportionments Team (HCFB-11), subject to change based on updated factor data each fiscal year. In either instance, this is the cumulative estimated annual SPR funding prior to the 25 percent set-aside for RD&T activities (per 23 U.S.C. 505(b) and 23 CFR 420.107) and the 2.5 percent set-aside for Complete Streets planning activities (per BIL § 11206(b)(1)).

⁴ This is the cumulative estimated annual PL funding prior to the 2.5 percent set-aside for Complete Streets planning activities (per BIL § 11206(b)).

⁵ Per 23 U.S.C. 104(d)(2) and 23 CFR 420.109, State DOTs are responsible for making all PL funds apportioned via 23 U.S.C. 104(b)(6) available to the MPOs in accordance with a formula developed by the State (in consultation with the MPOs) and approved by the FHWA Division Administrator. As the pass-through entity for PL funds, the State is responsible for the monitoring of MPO expenditures of PL funds (*see* 2 CFR 200.332). In the case of satisfying the 2.5 percent minimum PL fund expenditure threshold on Complete Streets planning activities, States should track those expenditures on an MPO-by-MPO basis exclusive of any other requested and FHWA-approved MPO opt outs under BIL § 11206(e).

The methodology for calculating the apportionments for FY 2022 and FY 2023 under 23 U.S.C. 104 is discussed in [FHWA Notice N4510.858](#) and [FHWA Notice N4510.870](#), respectively. For FY 2024 through 2026 funds, please revisit FHWA’s BIL Funding website at the appropriate future time ([FHWA BIL Funding](#)).

The various Fiscal Management Information System (FMIS) Program Codes for SPR and PL funds are as follows:

Program Code	Program Description	Statutory/Legislative Reference
Y550	State Planning and Research (SPR)	23 U.S.C. 505(a)
Y450	Metropolitan Planning (PL)	23 U.S.C. 104(b)(6) and (d)
Y570	Safe and Accessible Transportation Options - Statewide Planning (SPR)	BIL § 11206
Y410	Safe and Accessible Transportation Options - Metropolitan Planning (PL)	BIL § 11206

2. **Period of Availability:** SPR and PL funds are contract authority. SPR and PL obligations are reimbursed from the Highway Account of the Highway Trust Fund. SPR and PL funds are available for obligation for a period of three years after the last day of the fiscal year for which the funds are authorized. Thus, SPR and PL funds, including the 2.5 percent set-asides described in BIL § 11206(b), are available for obligation for up to four years (23 U.S.C. 118(b)) and new obligations of SPR and PL funds must follow the requirements and eligibilities of 23 U.S.C. 135, 23 U.S.C. 134, and BIL § 11206.
3. **Obligation Limitation:** SPR and PL funds are subject to the annual obligation limitation imposed on the Federal-aid highway program.
4. **Federal Share:** The Federal share for SPR and PL funds is governed by 23 U.S.C. 120 and 23 U.S.C. 505(d), which is generally 80 percent (subject to sliding scale). Under Section 11206(d) of the BIL, the Federal share of the cost of carrying-out Complete Streets planning activities using the 2.5 percent set-aside of SPR and PL funds is 80 percent, unless the Secretary determines that the interests of the Federal-aid highway program would be best served by decreasing or eliminating the non-Federal share.

FHWA has determined that the interests of the Federal-aid highway program would be best served by eliminating the non-Federal share, as reflected in the Federal Highway Administrator’s approval on January 5, 2023 of the [Waiver of Non-Federal Match for State Planning and Research \(SPR\) and Metropolitan Planning \(PL\) Funds in Support of Complete Streets Planning Activities \(BIL § 11206\)](#). Thus, FHWA will allow the use of the 2.5 percent set-aside of SPR and PL funds without non-Federal match for Complete Streets planning activities (*see* BIL § 11206(c)), which are documented and carried-out in SPR Work Programs and MPO Unified Planning Work Programs (UPWPs) (*see* 23 CFR 420.111). This waiver of the non-Federal match of SPR and PL funds for Complete Streets planning activities is effective for each fiscal year under the BIL, subject to the following conditions: (1) it covers the 2.5 percent minimum SPR and PL fund

expenditure thresholds described in BIL § 11206(b) and (2) it ends once a State or MPO receives FHWA approval of a request to opt out of meeting the requirements described in BIL § 11206(e). This match waiver took effect on January 5, 2023 and does not apply to prior unobligated balances of SPR and PL funds.

5. **SPR or PL Funds Combined with FTA Planning Funds in a Consolidated Planning Grant (CPG) Arrangement:** Section 126 of title 23, U.S.C. (Transferability of Federal-aid Highway Funds) provides for and has conditions on the transfer of funds apportioned under 23 U.S.C. 104(b). Transferred funds are to be obligated for the same purposes and to meet the same requirements of the category to which they were transferred (*see* FHWA Order 4551.1, “Fund Transfers to Other Agencies and Among Title 23 Programs,” dated August 12, 2013 ([Fund Transfers to Other Agencies and Among Title 23 Programs](#))).

Consistent with the administrative authorities outlined within FHWA Order 4551.1 (“Fund Transfers to Other Agencies and Among Title 23 Programs”), dated August 12, 2013 and [FTA Circular 8100.1D \(Program Guidance for Metropolitan Planning and State Planning and Research Grants\)](#), dated September 10, 2018, States (in cooperation with MPOs) may combine FHWA SPR (Part I) and/or PL funds with FTA’s State Planning and Research Program (SPRP) and/or Metropolitan Planning Program (MPP) funds (pursuant to 49 U.S.C. 5305) into a single Consolidated Planning Grant (CPG) for administrative purposes to further promote multimodal metropolitan and/or statewide transportation planning. When FHWA SPR and/or PL funds are transferred to the FTA under a CPG arrangement, FHWA Division Offices and FTA Regional Offices must cooperatively ensure that the BIL § 11206 requirements are satisfied.

E. ELIGIBILITY

1. Eligible Activities:

Section 11206(c) of the BIL provides a list of activities that, if permissible under applicable State and local laws, States and MPOs may use to satisfy the requirement in section 11206(b) that not less than 2.5 percent of their SPR and PL funds be used to carry out Complete Streets planning activities. These activities include but are not limited to:

- (a) Adoption of Complete Streets standards or policies;
- (b) Development of a Complete Streets prioritization plan that identifies a specific list of Complete Streets projects to improve the safety, mobility, or accessibility of a street;
- (c) Development of transportation plans that:
 - (1) Create a network of active transportation facilities, including sidewalks, bikeways, or pedestrian and bicycle trails, to connect neighborhoods with destinations such as workplaces, schools, residences, businesses, recreation areas, healthcare and childcare services, or other community activity centers;
 - (2) Integrate active transportation facilities with public transportation service or improve access to public transportation;
 - (3) Create multiuse active transportation infrastructure facilities (including bikeways or pedestrian and bicycle trails) that make connections within or between communities;

- (4) Increase public transportation ridership; and
- (5) Improve the safety of bicyclists and pedestrians.
- (d) Regional and megaregional planning (i.e., multi-jurisdictional transportation planning that extends beyond MPO and/or State boundaries) that address travel demand and capacity constraints through alternatives to new highway capacity, including through intercity passenger rail; and
- (e) Development of transportation plans and policies that support transit-oriented development.

2. Opt Out Provision:

To provide flexibility to States and MPOs, BIL § 11206(e) specifies that a State or MPO may opt out of using not less than 2.5 percent of their SPR or PL funds on Complete Streets planning activities if they demonstrate to FHWA at least 30 days before the annual apportionments of SPR and PL funds that:

- (a) The State or MPO has documented Complete Streets standards and policies in place (consistent with BIL § 11206(a)) **and**
- (b) The State or MPO has developed and documented an updated Complete Streets prioritization plan (consistent with BIL § 11206(c)(2)).

Written requests to opt out of the BIL § 11206 provisions should be transmitted by the State to the FHWA Division Administrator prior to the beginning of the Federal fiscal year in which the State or any MPO(s) chooses to opt out. States should cooperate with their respective MPOs in determining whether any MPOs have met the opt out conditions under BIL § 11206(e) and obtain the necessary written supporting attestation(s) and background documents from the MPO(s). To expedite FHWA processing and approval of any opt out requests, States should assemble and transmit a single, consolidated opt out request package to the respective [FHWA Division Office](#) no later than July 1st each year.

Recognizing that State Planning and Research (SPR) Work Programs and Unified Planning Work Programs (UPWPs) may cover different time periods than the Federal fiscal year (e.g., State fiscal years or calendar years), FHWA will accept these consolidated State and MPO opt out request packages either as part of FHWA's review of draft SPR Work Programs and UPWPs or as part of a negotiated timeline between the State and FHWA Division Office.

FHWA Division Administrators are responsible for the review and approval of the State and MPO opt out requests under BIL § 11206(e), which must also receive written concurrence from the FHWA Associate Administrator for Planning, Environment and Realty (HEP). FHWA Division Administrators will submit any consolidated State and MPO opt out request packages via E-Mail to the FHWA Office of Planning, Environment and Realty (Attention: Kenneth.Petty@dot.gov), including a written analysis and recommendation from the FHWA Division Office, no later than July 24th each year for HEP written concurrence prior to Division Office approval. This timeline will provide sufficient time for HEP to respond to the annual "Certified Data Request" coordinated by

FHWA's Office of the Chief Financial Officer in defining the BIL § 11206 "set asides" of SPR and PL funds for each State prior to the beginning of each Federal fiscal year. At a later date, FHWA will analyze and determine the extent to which the FHWA Headquarters approval of these BIL § 11206(e) opt out requests can be delegated to the FHWA Division Administrators without prior Headquarters concurrence.

3. Other Requirements:

In addition to meeting the eligibility requirements outlined under 23 U.S.C. 505, 23 U.S.C. 104(b), 23 U.S.C. 134, 23 U.S.C. 135, and BIL § 11206, proposed expenditures of SPR and PL funds on Complete Streets planning activities must be necessary, reasonable, allocable, and otherwise allowable per the cost principles in [2 CFR part 200 \(Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards\), subpart E](#). Such determinations should be based upon close collaboration between the Division's Planning Team and Financial Management Team.

F. DIVISION OFFICE STEWARDSHIP AND OVERSIGHT RESPONSIBILITIES

Division Offices are encouraged to use all existing planning program stewardship and oversight opportunities and FHWA actions to ensure that the BIL § 11206 provisions are adequately met each fiscal year, through close collaboration between the Division's Planning Team and Financial Management Team. Examples of associated FHWA actions include:

- Review and approve SPR - Part I Work Program, either annually or bi-annually;
- Review and approve MPO UPWPs, either annually or bi-annually;
- Review of State/MPO Planning Work Program Progress and Expenditure Reports, at least annually;
- For MPOs with populations over 200,000, during the Transportation Management Area (TMA) Certification Review process conducted at least every four years;
- For States and MPOs as part of the Federal Planning Finding documenting FHWA/FTA approval of the Statewide Transportation Improvement Program (STIP), at least every four years;
- Review, analyze, and document recommended actions on BIL § 11206(e) opt out requests from States and MPOs prior to FHWA approval;
- For States using a Consolidated Planning Grant (CPG) approach in which SPR and/or PL funds are transferred to FTA, coordinate with the FTA Regional Office to cooperatively ensure that the BIL § 11206 requirements are satisfied; and
- Any other associated Division-defined process or program reviews (e.g., non-TMA planning process reviews).

G. ADDITIONAL RESOURCES

Other helpful resources include the following:

- [FHWA's Complete Streets Website](#); and

- [Pedestrian and Bicycle Information Center](#) (jointly funded by the Federal Highway Administration and National Highway Traffic Safety Administration and maintained by the University of North Carolina Highway Safety Research Center).