



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

# Memorandum

Subject: **INFORMATION:** Implementation  
Guidance for the National Highway  
Performance Program (NHPP) as Revised  
by the Bipartisan Infrastructure Law

Date: June 1, 2022

From: Hari Kalla /s/  
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In Reply Refer To:  
HISM-40

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. The BIL amended the National Highway Performance Program (NHPP) in section 119 of title 23, United States Code (23 U.S.C.). The attached NHPP Implementation Guidance provides information on funding, eligible activities, and requirements of the NHPP.

NHPP requirements within the BIL took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new NHPP authorizations or NHPP funds authorized in previous years. This guidance replaces the “NHPP Implementation Guidance” dated March 9, 2016.

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

This document will be accessible on the BIL Website ([FHWA Bipartisan Infrastructure Law Website](#)) and through the Policy and Guidance Center ([FHWA Policy and Guidance Center](#)).

If you have any questions, please contact David Bartz (512-417-5191) or Moises Marrero (717-649-5418) of the Office of Stewardship, Oversight, and Program Management.

Attachment

**National Highway Performance Program (NHPP) Implementation Guidance**  
(June 1, 2022)

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

This document provides background and guidance to clarify eligibility requirements for the National Highway Performance Program (NHPP) under the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the “Bipartisan Infrastructure Law” (BIL)).

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

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

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

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

### **1. Overview:**

On December 16, 2021, FHWA issued guidance, [\*Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America\*](#), that serves as an overarching framework to encourage the use of BIL resources for projects that advance United States Department of Transportation (USDOT) strategic priorities and will Build a Better America. That policy is available on FHWA’s BIL resources implementation website at the following URL: [Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#).

## **2. Safety:**

### **Prioritizing Safety in All Investments and Projects**

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

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

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

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

### **Complete Streets**

As one approach to ensuring the safety of all roadway users, FHWA encourages States and communities to adopt and implement Complete Streets policies that prioritize the safety of all users in transportation network planning, design, construction and operations. Section 11206 of the BIL defines Complete Streets standards or policies as those which “ensure the safe and adequate accommodation of all users of the transportation system, including pedestrians, bicyclists, public transportation users,

children, older individuals, individuals with disabilities, motorists, and freight vehicles.” A complete street includes but is not limited to, sidewalks, bike lanes (or wide paved shoulders), special bus lanes, accessible public transportation stops, safe and accommodating crossing options, median islands, pedestrian signals, curb extensions, narrower travel lanes, and roundabouts. A Complete Street is safe, and feels safe, for everyone using the street.

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

Funds from NHPP can be “flexed” to FTA to fund transit projects if certain requirements are met as required by title 23, United States Code (23 U.S.C.) (*See* 23 U.S.C. 119(d)(2)(G)). For title 23 funds that are flexed to FTA, section 104(f) of title 23, U.S.C., allows funds made available for transit projects or transportation planning to be transferred to FTA and administered in accordance with chapter 53 of title 49, U.S.C., except that the Federal share requirements of the original fund category continue to apply (*See* 23 U.S.C. 104(f)(1)).

The use of Federal-aid funding on transit and transit-related projects can provide an equitable and safe transportation network for travelers of all ages and abilities, including those from marginalized communities facing historic disinvestment. FHWA encourages recipients to consider using funding flexibility for transit or multimodal-related projects and to consider strategies that: (1) improve infrastructure for nonmotorized travel, public transportation access, and increased public transportation service in underserved communities; (2) plan for the safety of all road users, particularly those on arterials, through infrastructure improvements and advanced speed management; (3) reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors; (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, including NHPP, to other eligible apportioned highway programs. *See also* FHWA Order 4551.1, [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 out of NHPP 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 NHPP funds – including the ability to apply NHPP funds to eligible assets owned by local governments, counties, and Tribes – and identify and prioritize projects that maximize the NHPP funding before deciding to transfer funds out of the NHPP.

See Section D.5. for additional NHPP specific transfer information.

- 5. ADA:** The Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination against people with disabilities and ensure equal opportunity and access for persons with disabilities. The Department of Transportation’s Section 504 regulations apply to recipients of the Department’s financial assistance (*See* 49 CFR 27.3(a)). Title II of the ADA applies to public entities regardless of whether they receive Federal financial assistance (*See* 28 CFR 35.102(a)). The ADA requires that no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity (*See* 28 CFR 35.149). A public entity’s pedestrian facilities are considered a “service, program, or activity” of the public entity. As a result, public entities and recipients of Federal financial assistance are required to ensure the accessibility of pedestrian facilities in the public right-of-way, such as curb ramps, sidewalks, crosswalks, pedestrian signals, and transit stops in accordance with applicable regulations.

Funds from NHPP 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 NHPP 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 projects that consider the unique circumstances affecting community members’ mobility needs and allocate resources consistently with those needs, enabling the transportation network to effectively serve all community members. FHWA will work with States to ensure consideration of using NHPP funds for projects and inclusion of project elements that proactively address racial equity, workforce development, economic development, and remove barriers to opportunity, including automobile dependence in both rural and urban communities as a barrier to opportunity or to redress prior inequities and barriers to opportunity.

Federal-aid recipients, including recipients of NHPP 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, NHPP projects can support the Justice40 Initiative, which establishes a goal that at least 40 percent of the benefits of federal investments in climate and clean energy infrastructure are distributed to disadvantaged communities. (See [OMB's Interim Implementation Guidance for the Justice40 Initiative](#) or its successor for additional information).

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

Among other things, recipients of NHPP funds are also required to assure equitable treatment of workers and trainees on highway projects through compliance with Equal Employment Opportunity requirements under 23 CFR Part 230, Subpart A, as well as ensuring nondiscrimination in all of their operations on the basis of race, color, or national origin under Title VI of the Civil Rights Act of 1964. Recipients of NHPP funds 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 projects under NHPP align with the President’s greenhouse gas reduction, climate resilience, and environmental justice commitments. In particular, consistent with the statute and guidance below, recipients should fund projects that reduce carbon dioxide emissions. FHWA encourages recipients to fund projects that support fiscally responsible land use and transportation efficient design, or incorporate electrification or zero emission vehicle infrastructure. In addition, FHWA encourages

recipients to consider projects under NHPP that support climate change resilience, including consideration of the risks associated with wildfires, drought, extreme heat, and flooding, in line with guidance for projects in floodplains. FHWA also encourages recipients to consider projects under NHPP that address environmental justice concerns.

- 8. Labor and Workforce:** Highway programs, including NHPP, may provide opportunities to support the creation of good-paying jobs, including jobs with the free and fair choice to join a union, and the incorporation of strong labor standards, such as the use of project labor agreements; employer neutrality with respect to union organizing; the use of an appropriately trained workforce (in particular registered apprenticeships and other joint labor-management training programs); and the use of an appropriately credentialed workforce in project planning stages and program delivery. Under BIL Section 25019, projects using NHPP and other Federal-aid highway program funds may be awarded with a local or other geographic or economic hiring preference, including any such preference that may be included in a prehire agreement, without the need for any prior approval from FHWA, subject to any applicable State and local laws, policies, and procedures.

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 NHS.

Many Federal-aid highway funding programs have eligibility for truck parking projects, including the NHPP. NHPP funds may be obligated for a project on an eligible facility that supports progress toward the achievement of national performance goals for improving infrastructure condition, safety, congestion reduction, system reliability, or freight movement on the NHS (*See* 23 U.S.C. 119(d)(1)). Eligible projects include highway safety improvements on the NHS (*See* 23 U.S.C. 119(d)(2)(I)), which may include truck parking (*See* 23 U.S.C. 148(a)(4)(B)(xxiii)).

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

### D. FUNDING

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

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

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

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

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

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

|      |  |                          |
|------|--|--------------------------|
| Y530 | NHPP Set-Aside for Minimum Condition of Interstate Penalty | 23 U.S.C. 119(f)(1)A)(i) |
|------|--|--------------------------|

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

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

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

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

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

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

Projects located on toll roads are generally subject to a Federal share specified in the applicable tolling statute. In the case of a project to replace or retrofit a diesel fuel ferry vessel that provides substantial emissions reductions, the Federal share of the cost of the project may be up to 85 percent, as determined by the State (*See* BIL § 1117(b)(1)). The provision for increased Federal share to replace or retrofit a diesel fuel ferry vessel terminates on September 30, 2025 (*See* BIL § 1117(b)(2)).

Section 1435 of the Fixing America's Surface Transportation Act (FAST Act) (Public Law 114-94) amended section 1528 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141) concerning the Federal share for Appalachian Development Highway System (ADHS) projects as provided in 40 U.S.C. 14501. For FYs 2012 through 2050, the Federal share for local access roads and ADHS projects that contribute to the completion of the ADHS and are included in the latest approved Cost to Complete Estimate, may be up to 100 percent, as determined by the State. Work on completed segments of the ADHS or a section that was listed as ineligible in the latest approved Cost to Complete Estimate, could be eligible for NHPP or Surface Transportation Block Grant (STBG) funds, but only at a Federal share specified in 23 U.S.C. 120.

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

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

- 5. Transferability of NHPP Funds:** As discussed in Section B.4., Section 126 of title 23, U.S.C. as amended by the BIL, provides for and places conditions on the transfer of funds apportioned under 23 U.S.C. 104(b). *See also* FHWA Order 4551.1, "Fund Transfers to Other Agencies and Among Title 23 Programs" dated August 12, 2013, ([Fund Transfers to Other Agencies and Among Title 23 Programs](#)).

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

- a. The State's Interstate System condition (excluding bridges) falls below the minimum threshold established under 23 U.S.C. 150(c)(3); or
- b. More than 10 percent of the total deck area of bridges in the State on the NHS is located on bridges that have been classified as in poor condition (*See* [Section G](#) of this memorandum).

- 6. Deobligations of Other Title 23 Obligated Funds:** Project Agreements should not be modified to replace one Federal fund category with another unless specifically authorized by statute (*See* 23 CFR 630.110(a)).

## E. ELIGIBLE ACTIVITIES

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

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

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

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

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

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

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

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

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

## F. STATE PERFORMANCE MANAGEMENT

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

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

- a. Summary list, including condition, of the State's NHS pavements and bridges;
  - b. Asset management objectives and measures;
  - c. Performance gap identification;
  - d. Lifecycle cost and risk management analyses, both of which shall take into consideration extreme weather and resilience<sup>1</sup>;
  - e. Financial plan; and
  - f. Investment strategies
- (See 23 U.S.C. 119(e)(4), as amended by BIL).

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

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

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

## **H. BUNDLING OF BRIDGE PROJECTS**

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

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<sup>1</sup> Additional guidance is forthcoming on this new BIL requirement.

1. Have the same financial characteristics, such as the same funding category or subcategory and the same Federal share;
2. Be eligible under 23 U.S.C. 119 or 23 U.S.C. 133 as amended by BIL;
3. Be included as a single bundled project in the applicable TIP or STIP; and
4. Be awarded to a single consultant or contractor pursuant to a contract for engineering and design or construction.

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

## **I. RESILIENCY AND PROTECTIVE FEATURES**

Under 23 U.S.C. 119(d)(2)(R), as amended by BIL § 11105(2), NHPP funds may be used for “Resiliency improvements on the National Highway System, including protective features described in subsection (k)(2).” Given the addition of a fourth purpose for the NHPP program – to “to provide support for activities to increase the resiliency of the National Highway System to mitigate the cost of damages from sea level rise, extreme weather events, flooding, wildfires, or other natural disasters”, FHWA will be flexible in its interpretation of the term “resiliency improvements” and work with States seeking feedback on whether planned resiliency investments on NHS assets are eligible activities under NHPP. Resiliency is defined in 23 U.S.C. 101(a)(24).

In addition to resiliency improvements on the NHS, a State may use not more than 15 percent of the funds apportioned to the State under 23 U.S.C. 104(b)(1) (NHPP) for each fiscal year for 1 or more protective features on a Federal-aid highway or bridge *not on the NHS*. The protective feature must be designed to mitigate the risk of recurring damage or the cost of future repairs from extreme weather events, flooding, or other natural disasters (*See* 23 U.S.C. 119(k)(1) as amended by BIL § 11105(4)). Other examples of natural disasters are provided in several locations in title 23, including 23 U.S.C. 119(b)(4), 23 U.S.C. 125(a)(1), 23 U.S.C. 176(b)(2)(C), and 23 U.S.C. 176(e)(2)(C). Natural disasters include, but are not limited to, a flood, hurricane, tidal wave, severe storm, wildfire, flooding, drought, levee and dam failures, rockslides, mudslides, sea level rise, extreme weather, including extreme temperatures, and earthquakes.

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

1. Raising roadway grades;
2. Relocating roadways in a base floodplain to higher ground above projected flood elevation levels or away from slide prone areas;
3. Stabilizing slide areas;
4. Stabilizing slopes;
5. Lengthening or raising bridges to increase waterway openings;



6. Increasing the size or number of drainage structures;
7. Replacing culverts with bridges or upsizing culverts;
8. Installing seismic retrofits on bridges;
9. Adding scour protection at bridges, installing riprap, or adding other scour, stream stability, coastal, or other hydraulic countermeasures, including spur dikes; and
10. The use of natural infrastructure to mitigate the risk of recurring damage or the cost of future repair from extreme weather events, flooding, or other natural disasters. Natural Infrastructure is defined in 23 U.S.C. 101(a)(17) as amended by BIL § 11103.

The above list is not all inclusive and could include other features whose purpose is to mitigate the risk of recurring damage or the cost of future repairs from extreme weather events, flooding, or other natural disasters. FHWA will work with States who are interested in using NHPP funds for protective features not included on the list that would help to mitigate the risk of recurring damage or the cost of future repairs from extreme weather events, flooding, or other natural disasters (for example, bridge fenders and dolphins).

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