



Memorandum

Subject: **ACTION**: Implementation Guidance for the
Puerto Rico Highway Program as Revised
by the Bipartisan Infrastructure Law

Date: March 8, 2024

From: Hari Kalla **HARI KALLA** Digitally signed by HARI KALLA
Date: 2024.03.08 09:13:23 -0500
Associate Administrator for
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In Reply Refer To:
HISM-40

To: Director of Field Services, South
Puerto Rico Deputy Division Administrator
Florida Division Administrator

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. Section 11126 of BIL amended the Puerto Rico Highway Program (PRHP), codified at 23 U.S.C. 165(b). The attached PRHP Implementation Guidance provides information on funding, eligible activities, and requirements of the PRHP.

PRHP requirements within BIL took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new PRHP authorizations or PRHP funds authorized in previous years. The attached guidance supersedes the “Puerto Rico Highway Program (PRHP) Implementation Guidance as Revised by the FAST Act” dated February 24, 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 FHWA Bipartisan Infrastructure Law Website (<https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>) and through the Federal Highway Administration’s Policy and Guidance Center (<https://www.fhwa.dot.gov/pgc/>).

For questions about the PRHP, please contact Mr. Omar Elkassed of the Office of Stewardship, Oversight, and Program Management at (213) 894-6718 or Omar.Elkassed@dot.gov.

Attachment

Puerto Rico Highway Program Implementation Guidance

(March 8, 2024)

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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)) continues the Puerto Rico Highway Program (PRHP). The purpose of the PRHP is to carry out a highway program in the Commonwealth of Puerto Rico (23 U.S.C. 165(b)(1)).

B. GOVERNING AUTHORITIES

1. Section 11101(a)(4) of BIL authorizes Highway Trust Fund (HTF) contract authority (CA) for the PRHP.
2. Section 165(b) of title 23, U.S.C., as amended by BIL, section 11126, provides program requirements for the PRHP.

C. FUNDING

1. **Authorization Levels:** Authorized annual PRHP funding under the BIL is (23 U.S.C. 165(a)(1)):

Authorized Annual PRHP Funding	
Fiscal Year (FY)	BIL PRHP Highway Trust Fund (HTF) Contract Authority (CA)
FY 2022	\$173,010,000
FY 2023	\$176,960,000
FY 2024	\$180,120,000
FY 2025	\$183,675,000
FY 2026	\$187,230,000

The Fiscal Management Information System (FMIS) Program Codes for these BIL PRHP funds are:

Program Code	Program Description	Title 23 Reference
YP10	Puerto Rico Highway Program - 25% for Chapter 1 Activities	23 U.S.C. 165(b)(2)(C)(iii)
YP20	Puerto Rico Highway Program – 50% for NHPP Activities	23 U.S.C. 165(b)(2)(C)(i)
YP30	Puerto Rico Highway Program – 25% for HSIP Activities	23 U.S.C. 165(b)(2)(C)(ii)
YP31	Puerto Rico Highway Program - Vulnerable Road User (VRU) Special Rule	23 U.S.C. 148(g)(3)
YP40	Puerto Rico Highway Program - Section 154 Penalty (Open Container Requirements Penalty) for HSIP Eligible Activities	23 U.S.C. 154
YP50	Puerto Rico Highway Program - Section 164 Penalty (Minimum Penalties for Repeat Offender)	23 U.S.C. 164
YP53	Puerto Rico Highway Program - Interstate System Condition Penalty	23 U.S.C. 119(f)(1)

2. **Period of Availability:** PRHP funds are contract authority and are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized (23 U.S.C. 118(b)). Thus, funds are available for obligation for 4 fiscal years.

PRHP funds made available under previous authorizations continue to be available for their original period of availability, but new obligations must follow the requirements and eligibilities of 23 U.S.C. 165(b), as amended by BIL (*see* BIL, § 10003).

3. **Obligation Limitation:** The PRHP HTF amount of CA authorized (*see* table in section C.1. above) is subject to the annual obligation limitation (Ob Lim) imposed on the Federal-aid highway program, resulting in the amount available for obligation.

Each fiscal year, the amount of CA authorized for the PRHP will be reduced (known as “lop-off”) according to section 11102(f) of BIL or the corresponding provision in the

annual appropriations act.¹ Any authorized funds that exceed the amount of obligation limitation provided for will be deducted from the PRHP and distributed to the States for use on projects eligible under the Surface Transportation Block Grant Program (STBG). When PRHP funds are allocated after being reduced through the “lop-off” process, they are accompanied by an equal amount of non-formula Ob Lim. When PRHP funds are obligated, an equal amount of Ob Lim is used.

PRHP obligation authority is also subject to August redistribution of Ob Lim per section 11102(d) of BIL or the corresponding provision in the annual DOT appropriations act. PRHP funds and related Ob Lim that will not be obligated by the end of the fiscal year will be withdrawn after August 1, and the Ob Lim will be redistributed among the States as formula Ob Lim. Carryover PRHP funds and an equal amount of new Ob Lim will be returned to Puerto Rico in the following fiscal year if the funds have not lapsed.

4. **Federal Share:** The Federal share for PRHP-funded projects is governed by 23 U.S.C. 120 and is generally 80 percent (*see* 23 U.S.C. 120(b)). The Federal share for projects on the Interstate System is generally 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 under 23 U.S.C. 120(b). An upward sliding scale adjustment is available to Puerto Rico (*see* FHWA Notice 4540.12, “[Sliding Scale Rates in Public Land States](#)”). Puerto Rico may choose to 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 (*see* FHWA Memo, “[Increased Federal Share under 23 U.S.C. 120\(c\)\(1\)](#),” dated November 25, 2014). Puerto Rico is encouraged to consider the use of PRHP funds for such safety improvements that would increase the Federal share to 100 percent.

Projects located on toll roads are generally subject to a Federal share that is 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 Puerto Rico (*see* BIL, § 11117(b)(1)). The provision for increased Federal share to replace or retrofit a diesel fuel ferry vessel terminates on September 30, 2025 (*see* BIL, § 11117(b)(2)).

The Federal share for projects using funds set aside due to penalties under 23 U.S.C. 154 and 164 for eligible activities under the Highway Safety Improvement Program (HSIP) is 100 percent (*see* 23 U.S.C. 154(c)(4) and 164(b)(4)).

5. **Imposition of Penalties and Other Funding Provisions:**

For the purposes of imposing any penalty under title 23 or title 49, U.S.C., 23 U.S.C. 165(b)(2) provides that the amounts for the PRHP shall be treated as being apportioned under 23 U.S.C. 104(b) and 144, as in effect for FY 1997, for each program funded under

¹ For an example of an obligation limitation provision in an annual DOT appropriations act, see the Consolidated Appropriations Act, 2023 (Public Law 117-328), division L, title I, § 120(e). The obligation limitation provisions in an annual DOT appropriations act enacted after BIL supersede the obligation limitation provisions in BIL.

those sections in an amount that is based upon the proportional share Puerto Rico received under each program in FY 1997.

Penalty determinations are made annually and could change in future fiscal years. Puerto Rico has been subject to the following penalties in recent years:

- 23 U.S.C. 158 - National Minimum Drinking Age;
- 23 U.S.C. 119(f)(1) - Condition of Interstate System;
- 23 U.S.C. 154 - Open Container Requirements;
- 23 U.S.C. 164 - Minimum Penalties for Repeat Offenders; and
- 23 U.S.C. 148(g)(3) – Vulnerable Road User (VRU) Safety Special Rule

The penalty funds for 23 U.S.C. 158 are withheld and not made available for allocation to Puerto Rico (*see* 23 U.S.C. 158(b)).

If the Condition of Interstate System penalty (23 U.S.C. 119(f)(1)) is triggered, the funding that Puerto Rico is required to obligate in accordance with that provision is distributed to Puerto Rico after application of any obligation limitation.

If a penalty is triggered under 23 U.S.C. 154 or 164, Puerto Rico may transfer funds reserved under these penalties for alcohol-impaired driving programs to Puerto Rico's apportionment under 23 U.S.C. 402 or release those reserved funds to be used for activities eligible under 23 U.S.C. 148 (*see* 23 U.S.C. 154(c) and 164(b)). The split between these programs is as directed by Puerto Rico (*see* 23 CFR 1270.7(a) and 1275.7(a)). The penalties under 23 U.S.C. 154 and 164 are also subject to any obligation limitation.

After the reduction for the penalty funds (as discussed above), at least 50 percent of the remaining funds available for the PRHP must be used for eligible purposes in the National Highway Performance Program (NHPP) under 23 U.S.C. 119 (23 U.S.C. 165(b)(2)(C)(i); *see* 23 U.S.C. 119(d), 119(g), 119(i), 119(k)).

Further, at least 25 percent of the remaining funds must be used for eligible purposes under the HSIP (23 U.S.C. 165(c)(2)(C)(ii); *see* 23 U.S.C. 148(a)(4), 148(a)(11), 148(e)). If Puerto Rico triggers the VRU Safety Special Rule under 23 U.S.C. 148(g)(3), which requires that a State must obligate at least 15 percent of the amounts apportioned to the State for the HSIP for the following fiscal year for highway safety improvement projects to address the safety of vulnerable road users, the 15 percent penalty is applied to the minimum 25 percent of funds that must be used for purposes eligible under HSIP. For further information about the VRU Safety Special Rule please refer to the [April 18, 2022, memorandum to Division Administrators titled "23 U.S.C. 148\(g\) Highway Safety Improvement Program Special Rules."](#)

Any remaining funds are available for any eligible activity under chapter 1 of title 23, U.S.C. (23 U.S.C. 165(c)(2)(C)(iii)).

D. ELIGIBILITY

Program Code	Eligible Use of Funds
YP10: Puerto Rico Highway Program - 25% for Chapter 1 Activities	25 percent of the funds may be used for any purpose eligible under chapter 1 of title 23, U.S.C.
YP20: Puerto Rico Highway Program - 50% for NHPP Activities	50 percent of the funds may only be used for purposes eligible under the National Highway Performance Program (23 U.S.C. 119).
YP30: Puerto Rico Highway Program - 25% for HSIP Activities	25 percent of the funds may only be used for the purposes eligible under the Highway Safety Improvement Program (23 U.S.C. 148).
YP31: Puerto Rico Highway Program - Vulnerable Road User (VRU) Special Rule	Highway safety improvement projects that address the safety of vulnerable road users. (23 U.S.C. 148(g)(3))
YP40: Puerto Rico Highway Program - Section 154 Penalty (Open Container Requirements Penalty)	Activities eligible under the Highway Safety Improvement Program (23 U.S.C. 148).
YP50: Puerto Rico Highway Program - Section 164 Penalty (Minimum Penalties for Repeat Offender)	Activities eligible under the Highway Safety Improvement Program (23 U.S.C. 148).
YP53: Puerto Rico Highway Program - Interstate System Condition Penalty	Purposes under the Interstate Maintenance program, as in effect on July 5, 2012, the day before the date of enactment of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Public Law 112-141), which includes projects for resurfacing, restoring, rehabilitating, and reconstructing routes on the Interstate system. ²

E. ADMINISTRATION

The definition of State in 23 U.S.C. 101(a)(28) includes Puerto Rico. Therefore, all provisions of title 23, U.S.C., that are applicable to the States, other than those for apportionment of funds, apply to Puerto Rico and the funds provided under the PRHP.

² Additional information on eligibility of the Interstate Maintenance Program can be found in the *Guide to Federal-aid Programs and Projects* at: <https://www.fhwa.dot.gov/federalaid/projects.cfm>.