

# Transportation Alternatives (TA) Set-Aside Implementation Guidance

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## PROGRAM PURPOSE

The Fixing America's Surface Transportation (FAST) Act replaced the Transportation Alternatives Program (TAP) with a set-aside of Surface Transportation Block Grant (STBG) Program funding for transportation alternatives (TA). These set-aside funds include all projects and activities that were previously eligible under TAP, encompassing a variety of smaller-scale transportation projects such as pedestrian and bicycle facilities, recreational trails, safe routes to school projects, community improvements such as historic preservation and vegetation management, and environmental mitigation related to stormwater and habitat connectivity.

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) codified the TAP under sections 213(b) and 101(a)(29) of title 23, United States Code (U.S.C.). The FAST Act repealed section 213, removed the former 101(a)(29), and recodified the program (as a set-aside of STBG funding) under 23 U.S.C. 133(h). For administrative purposes, the Federal Highway Administration (FHWA) is calling these funds the "Transportation Alternatives Set-Aside" or "TA Set-Aside."

## GOVERNING AUTHORITIES

- Section 1101 of the FAST Act authorized funds for the STBG.
- Section 1104 of the FAST Act provided for apportionment of funds under 23 U.S.C. 104.
- Section 1109 of the FAST Act amended the STBG under 23 U.S.C. 133, and established the TA Set-Aside under 23 U.S.C. 133(h).
- Section 1446 of the FAST Act amended title 23 U.S.C. with technical corrections.

## FUNDING

**Authorization Levels under the FAST Act:** Estimated annual STBG funding under the FAST Act is listed in the STBG Guidance, Section C, Funding.

Section 1104 of the FAST Act provides for the reservation of funds apportioned to a State under 23 U.S.C. 104(b)(2) to carry out the TA Set-Aside under 23 U.S.C. 133(h). Each State's TA Set-Aside funding is determined by dividing the national total TA Set-Aside funds shown in the table below among the States based on each State's proportionate share of FY 2009 Transportation Enhancements funding. See the FAST Act Funding Tables. The following table shows the national total for the TA Set-Aside under the FAST Act:

Fiscal Year	Transportation Alternatives Funds (23 U.S.C. 133(h))
FY 2016	\$835,000,000
FY 2017	\$835,000,000
FY 2018	\$850,000,000
FY 2019	\$850,000,000
FY 2020	\$850,000,000

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

Program Code	Program Description	Statutory Reference
Z300	TA Set-Aside – Flex	23 U.S.C. 133(h)(2)
Z301	TA Set-Aside – Urbanized Areas With Population Over 200,000	23 U.S.C. 133(h)(2)
Z302	TA Set-Aside – Areas with Population Over 5,000 to 200,000	23 U.S.C. 133(h)(2)
Z303	TA Set-Aside – Areas with Population 5,000 and Under	23 U.S.C. 133(h)(2)
Z304	TA Set-Aside – Large Urbanized areas 50% for any STBG purpose	23 U.S.C. 133(h)(6)(B)
Z940	Recreational Trails Program (RTP)	23 U.S.C. 133(h)(5)
Z941	Return of 1% for RTP Administration	23 U.S.C. 133(h)(5)(B)
ZR10	State RTP Administration	23 U.S.C. 206(d)(2)(H)
ZR20	RTP Educational Programs	23 U.S.C. 206(d)(2)(G)

For other Program Codes, including MAP-21 extension codes, see Apportioned Program Codes under the FAST Act.

**Period of Availability:** TA Set-Aside funds are contract authority. TA Set-Aside obligations are reimbursed from the Highway Account of the Highway Trust Fund. TA Set-Aside funds are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized. This includes funds set aside for the Recreational Trails Program (RTP). Thus, funds are available for obligation for up to 4 years (23 U.S.C. 118).

Surface Transportation Program (STP), TAP, and RTP funds from previous authorizations continue to be available for their original period of availability (3 years after the last day of the fiscal year for which the funds were authorized (23 U.S.C. 118)), but new obligations of STP, TAP, and RTP funds must follow the requirements and eligibilities of 23 U.S.C. 133, as amended by the FAST Act. See Treatment of Carryover Funds Under the FAST Act.

Funds apportioned for the Safe Routes to School (SRTS) Program prior to MAP-21 are available until expended (SAFETEA-LU § 1404(i)).

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

**Federal Share and Match:** The Federal share for TA Set-Aside projects is as follows:

- For most projects, including SRTS projects funded with TA Set-Aside funds, the Federal share is the same as the Federal-aid Highway Program under 23 U.S.C. 120: generally 80 percent Federal and 20 percent State or local match. An upward sliding scale adjustment is available to States having public lands (23 U.S.C. 120).
- States may use a lower Federal share on Federal-aid projects as provided in 23 U.S.C. 120.
- Certain types of improvements, predominantly safety improvements, listed in 23 U.S.C. 120(c)(1) may have a Federal share of 100 percent. Use of this provision is limited to 10

percent of the total funds apportioned to a State under 23 U.S.C. 104. See FHWA's Memo, Increased Federal Share under 23 U.S.C. 120(c)(1), dated November 25, 2014, for examples.

- 23 U.S.C. 120(f) allows funds apportioned under 23 U.S.C. 104 to be used at 100 percent Federal share for Federal-aid highways within Indian Reservations, and national parks and monuments.
- 23 U.S.C. 120(j) allows Federal agency funds (other than those made available under title 23 or title 49) to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, for projects funded under title 23 or under chapter 53 of title 49.
- 23 U.S.C. 120(k) allows Federal land and tribal transportation funds to pay the non-Federal share of the cost of any project that is funded under title 23 or under chapter 53 of title 49 that provides access to or within Federal or tribal land.
- Projects funded under the RTP set-aside retain the Federal share and flexible match and donation provisions available under 23 U.S.C. 206(f) and 23 U.S.C. 206(h), and these provisions remain in effect for prior year RTP funds. Recreational trail projects funded from other STBG funds under sections 133(b)(6) or 133(h) (not from the RTP set-aside) are subject to the general match requirement described above. See RTP Federal Share and Matching Requirements for more information.

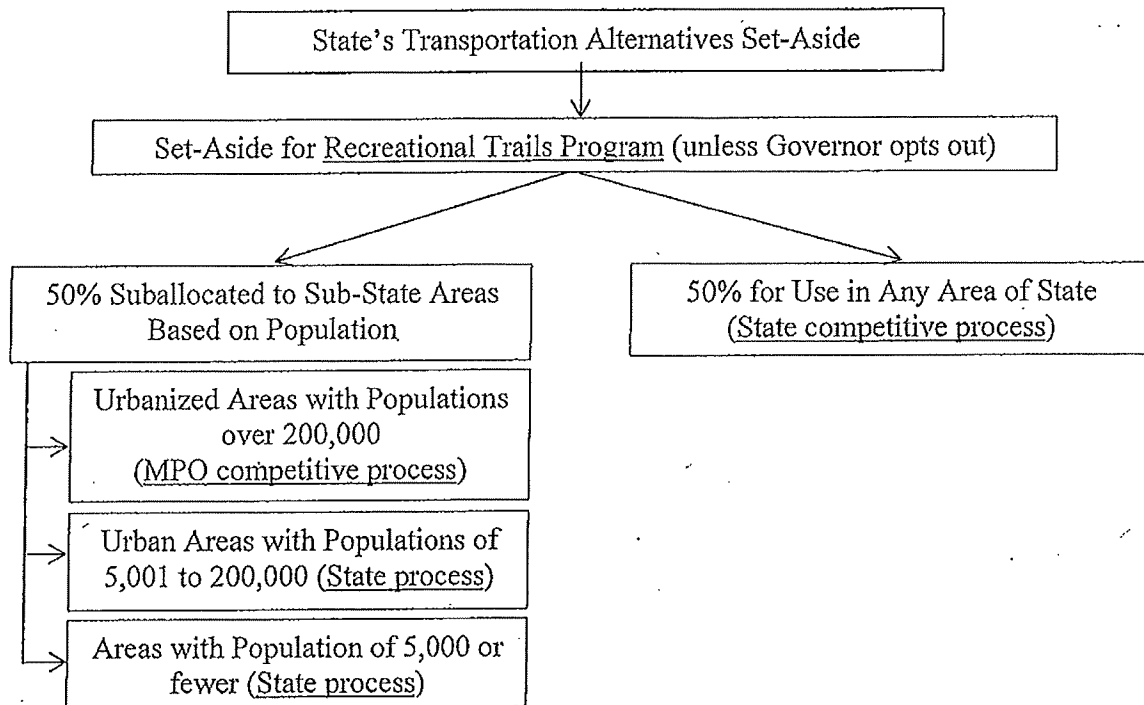
#### Other match provisions:

- Except as noted above under 23 U.S.C. 120(j) and (k), 23 U.S.C. 206, or as allowed through other Federal program legislation, other Federal funds may not serve as the non-Federal match. Two Federal programs that allow Federal-to-Federal match are:
  - U.S. Department of Housing and Urban Development Community Development Block Grants may match or be matched by other Federal funds (42 U.S.C. 5305).
  - Federal programs for youth conservation or service corps, such as AmeriCorps under 42 U.S.C. 12571, may receive funds from other Federal programs as match. See AmeriCorps guidance for further information.
- There is no provision for a programmatic match under the STBG or TA Set-Aside, except for the RTP set-aside funds.
- There is no provision to allow TA Set-Aside funds to use up to 100 percent Federal share, except as noted above under section 120(c) and (f).

**Allocations and Suballocations:** Fifty percent of the amount set aside for TA in the State (after deducting the set-aside for the RTP, if applicable) is suballocated to areas based on their relative share of the total State 2010 Census population. The remaining 50 percent is available for use in any area of the State. Other than the total percentage suballocated, the suballocation structure is the same as for STBG funds (see the STBG Guidance, Section E, Suballocation), except the requirement to provide obligation limitation to urbanized areas with populations over 200,000 does not apply to TA Set-Aside funds (23 U.S.C. 133(h)(2), MAP-21 § 1109(b)). Figure 1 shows the TA Set-Aside suballocation:

### Figure 1: Transportation Alternatives Suballocation

Source: FAST Act Suballocation of Apportioned Funds Questions and Answers  
See the FAST Act Funding Supplementary Tables for the specific dollar amounts.



**Transfer of Funds:** 23 U.S.C. 126 (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 are transferred. See FHWA Order 4551.1, Fund Transfers to Other Agencies and Among Title 23 Programs, dated August 12, 2013, and Transferability of Apportioned Program Funding under 23 U.S.C. 126.

The following provisions apply to TA Set-Aside funds:

- A State may transfer up to 50 percent of TA Set-Aside funds for the fiscal year to any 23 U.S.C. 104(b) apportionment for the State from the portion of TA Set-Aside funds available for use in any area of the State. No transfers are permitted from TA Set-Aside funds suballocated to sub-State areas based on population or funds set aside for the RTP (FAST Act § 1109; 23 U.S.C. 126).
- Funds for TA Set-Aside-eligible projects may be transferred to the Federal Transit Administration (FTA) to administer in accordance with chapter 53 of title 49. Funds may be transferred in the same manner as other Federal-aid Highway Program procedures (23 U.S.C. 104(f)).
- States may use STBG funds for projects eligible as TA Set-Aside projects without making a transfer and STBG provisions and requirements will apply. (23 U.S.C. 133(b)(15)). See the STBG Guidance, Section D, Eligibility.
- There is no authorization to transfer funds to or from the RTP set-aside funds. However:

- States may use STBG funds for any recreational trail (23 U.S.C. 133(b)(6) and 133(h)), without making a transfer, and STBG provisions and requirements will apply. See STBG Eligibility.
- If a State opts out of the RTP, the funds remain under the TA Set-Aside, and the transferability provisions pertaining to the TA Set-Aside apply.

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## COMPETITIVE SELECTION PROCESS (23 U.S.C. 133(h)(4)(A))

Consistent with other Federal-aid Highway Programs, TA Set-Aside funds are administered by the State Department of Transportation (DOT). All TA Set-Aside funds must be used for eligible projects that are submitted by eligible entities and chosen through a competitive project selection process. The statute requires the following with respect to the selection of projects:

A State or metropolitan planning organization required to obligate funds in accordance with paragraph (2) [23 U.S.C. 133(h)(2)] shall develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of this subsection. A metropolitan planning organization for an area described in subsection (d)(1)(A)(i) [i.e., an urbanized area of the State with a population of over 200,000] shall select projects under such process in consultation with the relevant State. (23 U.S.C. 133(h)(4)).

### State Competitive Process

The State is responsible for selecting projects through a competitive process for all other funds (23 U.S.C. 133(h)(4)). However, also see Planning Requirements for requirements to coordinate with regional and metropolitan planning organizations (MPOs).

- For funds suballocated to small urban areas (i.e., areas with populations of 5,001 to 200,000), the State is responsible for selecting projects through a competitive process (23 U.S.C. 133(h)(4)). The State may make these funds available for projects anywhere within the metropolitan planning area boundaries of an MPO serving an urbanized area with a population less than or equal to 200,000. For small urban areas not within MPOs, the State may make these funds available for projects anywhere within the municipal boundaries of the applicable small urban area, for example, within a town or township. Eligible entities within any small urban area also may apply to the State for “any area” funds.
- For funds suballocated to nonurban areas (i.e., areas with populations below 5,000), the State is responsible for selecting projects through a competitive process (23 U.S.C. 133(h)(4)).
- For funds available to any area of the State, the State is responsible for selecting projects through a competitive process (23 U.S.C. 133(h)(4)). These funds are available for any area of the State: large urbanized areas, small urban areas, or nonurban areas.
- Section 133(d) does not authorize the State to further suballocate the small urban area funds, nonurban area funds, or any area funds to individual MPOs, counties, cities, or other local government entities prior to competitive selection. The statute requires the State to be responsible for the competitive process for these funds (23 U.S.C. 133(d)(2) and 133(h)(4)). However, the State’s competitive process may include selection criteria to ensure a

distribution of projects among small MPOs, other small urban areas, and nonurban areas across the State. The State may consult with MPOs to ensure that MPO priorities are considered.

### **MPOs Representing Urbanized Areas with Population of Over 200,000**

For funds suballocated to urbanized areas with populations of over 200,000, the MPO(s) representing the urbanized area(s) is/are responsible for selecting projects through a competitive process, in consultation with the State (23 U.S.C. 133(h)(4)).

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

The MPO may use up to 50 percent of its suballocated funds for any project eligible under STBG, subject to the competitive project selection process. See <http://www.fhwa.dot.gov/specialfunding/stp/160307.cfm>.

Section 23 U.S.C. 133(d)(4)(A) requires suballocation of funds to urbanized areas with populations of over 200,000. In the case of MPOs that represent two or more urbanized areas with populations over 200,000, or where urbanized areas with populations over 200,000 are represented by two or more MPOs:

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

### **Other Provisions and Priorities**

**Recreational Trails Program:** For the RTP set-aside, the Governor designates the State agency or agencies to administer the program. This remains the same agency previously designated by the Governor (for most States, a State resource agency or grant agency, or may be the State DOT), unless the Governor designates a new agency (23 U.S.C. 206(c)). All RTP provisions and requirements continue under 23 U.S.C. 206. See the Recreational Trails Program section.

**SAFETEA-LU Funds:** If States have prior year Transportation Enhancement or SRTS funds available, those funds may be administered under the same terms and conditions in effect prior to the effective date of MAP-21. See Safe Routes to School guidance and Treatment of Carryover Funds Under the FAST Act.

**Priorities:** States and MPOs have discretion about how to establish project priorities, or whether to fund (or not fund) particular categories. There is no requirement to consider all eligible TA Set-Aside activities equally. However, the statute does not authorize a State or MPO to suballocate or set-aside funds for small businesses, youth corps, or categories of applicants prior to project selection. The State or MPO must select projects submitted by eligible entities and

chosen through a competitive process (23 U.S.C. 133(h)(4)). The competitive process may include criteria giving priority to projects that meet desired goals.

**Competitive Process Procedures:** The statute did not establish specific standards or procedures for the required competitive process (23 U.S.C. 133(h)(4)). FHWA's TAP Guidance webpage has links to competitive process examples, which discuss illustrative selection criteria such as connectivity to essential services, safety, equity for disadvantaged populations, and the extent of community support for the project. FHWA also developed the Transportation Alternatives Program (TAP) Performance Management Guidebook to provide sample performance objectives and measures that States, MPOs, and project sponsors may consider as they administer, implement, and evaluate the TA projects and program outcomes.

The FHWA Division office should ensure that the State and MPOs have competitive project selection processes, but there are no formal criteria, checklists, or certification requirements. The State and MPOs should ensure adequate public involvement and transparency as they develop their competitive processes. A competitive process should allow project sponsors to understand the project selection evaluation criteria.

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#### **ELIGIBLE ENTITIES (23 U.S.C. 133(h)(4)(B))**

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

- (1) a local government: Local government entities include any unit of local government below a State government agency, except for an MPO. Examples include city, town, township, village, borough, parish, or county agencies.
- (2) a regional transportation authority: Regional transportation authorities are considered the same as the Regional Transportation Planning Organizations defined in the statewide planning section (23 U.S.C. 135(m)).
- (3) a transit agency: Transit agencies include any agency responsible for public transportation that is eligible for funds as determined by the Federal Transit Administration.
- (4) a natural resource or public land agency: Natural resource or public land agencies include any Federal, Tribal, State, or local agency responsible for natural resources or public land administration. Examples include:
  - State or local park or forest agencies;
  - State or local fish and game or wildlife agencies;
  - Department of the Interior Land Management Agencies; and
  - U.S. Forest Service.
- (5) a school district, local education agency, or school: School districts, local education agencies, or schools may include any public or nonprofit private school. Projects should benefit the general public and not only a private entity.



(6) a tribal government.

(7) a nonprofit entity responsible for the administration of local transportation safety programs:  
Examples include a nonprofit entity responsible for:

- a local program implementing construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs; and
- a safe routes to school program.

(8) any other local or regional governmental entity with responsibility for, or oversight of, transportation or recreational trails (other than an MPO or a State agency) that the State determines to be eligible, consistent with the goals of this subsection.

State DOTs and MPOs are not eligible entities as defined under 23 U.S.C. 133(h)(4)(B) and therefore are not eligible project sponsors for TA Set-Aside funds. However, State DOTs and MPOs may partner with an eligible entity project sponsor to carry out a project.

Nonprofit organizations are not eligible as direct grant subrecipients for TA Set-Aside funds unless they qualify through one of the eligible entity categories (e.g., where a nonprofit organization is a designated transit agency, school, or an entity responsible for the administration of local transportation safety programs). Nonprofit entities are eligible to partner with any eligible entity on an eligible project, if State or local requirements permit.

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

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## **ELIGIBLE PROJECTS (23 U.S.C. 133(h)(3))**

TA Set-Aside funds may be obligated for projects or activities described in 23 U.S.C. 101(a)(29) or 213, as such provisions were in effect on the day before the date of enactment of the FAST Act. See TAP Eligible Projects Legislation as in effect prior to enactment of the FAST Act.

Former 23 U.S.C. 213(b)(1):

(1) Transportation Alternatives as defined in section 101 [former 23 U.S.C. 101(a)(29)]:

The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

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

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

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

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

(E) Community improvement activities, *which include but are not limited to:*

- (i) inventory, control, or removal of outdoor advertising;
- (ii) historic preservation and rehabilitation of historic transportation facilities;
- (iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
- (iv) archaeological activities relating to impacts from implementation of a transportation project eligible under title 23.

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

- (i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 23 U.S.C. 133(b)(3) [as amended under the FAST Act], 328(a), and 329 of title 23; or
- (ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats (Former 23 U.S.C. 213(b)(2)-(4)).

(2) The recreational trails program under 23 U.S.C. 206 of title 23. See the Recreational Trails Program section.

(3) The safe routes to school program eligible projects and activities listed at section 1404(f) of the SAFETEA-LU:

- Infrastructure-related projects.
- Noninfrastructure-related activities.
- SRTS coordinator. SAFETEA-LU section 1404(f)(2)(A) lists “managers of safe routes to-school programs” as eligible under the noninfrastructure projects.

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

- See Boulevards from Divided Highways for examples.

TA Set-Aside projects must benefit the general public (23 CFR 1.23 and 23 CFR 460.2).

**Not Eligible:** TA Set-Aside funds cannot be used for the following activities because there is no authorization under the Federal-aid Highway Program:

- State or MPO administrative purposes. Exceptions:
  - See FHWA’s Memo Allocating Indirect Costs to Projects, dated September 4, 2015.
  - RTP administrative costs of the State for RTP set-aside funds.
- Promotional activities, except as permitted under the SRTS (200 CFR 200.421(e)(3)).
- Routine maintenance and operations, except trail maintenance as permitted under the RTP.
- General recreation and park facilities, playground equipment, sports fields, campgrounds, picnic areas and pavilions, etc.

**Location:** There are no location restrictions for TA Set-Aside infrastructure projects; they are not required to be located along highways. Activities eligible under the TA Set-Aside also are eligible for STBG funds (23 U.S.C. 133(b)(15)). Under 23 U.S.C. 133(c)(3), projects eligible under the TA Set-Aside funded with STBG funds are exempt from the location restriction in 23 U.S.C. 133(c). Some aspects of activities eligible under the TA Set-Aside also may be eligible under other Federal-aid Highway Programs. See STBG Eligibility.

For SRTS noninfrastructure projects, traffic education and enforcement activities must take place within approximately two miles of a primary or middle school (Kindergarten through 8<sup>th</sup> grade). Other eligible SRTS noninfrastructure activities do not have a location restriction. SRTS infrastructure projects do not have location restrictions because SRTS infrastructure projects are broadly eligible under other TA Set-Aside eligibilities.

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## OTHER REQUIREMENTS

**Annual Report (23 U.S.C. 133(h)(7)):** The FAST Act established an annual reporting requirement for States or MPOs responsible for carrying out TA Set-Aside requirements. FHWA is developing the annual reporting procedures. The reporting requirements will begin with FY 2016 funds.

**Planning Requirements (23 U.S.C. 133(d)(5)):** 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). When obligating suballocated funding, the State must coordinate with relevant MPOs or rural planning organizations. Programming and expenditure of funds for projects shall be consistent with 23 U.S.C. 134 and 135.

Section 135(g)(6)(A) states:

“In general.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title [title 23] or under sections 5310 and 5311 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations...”

Projects for eligible planning must be reflected in the statewide planning and research work program or Metropolitan Unified Planning Work Program. Further, these projects must be in the STIP/TIP unless the State DOT or MPO agree that they may be excluded (23 CFR 420.119(e)).

**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”. However, sections 133(b)(6) and 133(h) list “recreational trails projects” as eligible activities under STBG. Therefore, the requirement in 23 U.S.C. 217(i) does not apply to recreational trails projects

(including for bicycle use) using STBG funds. Section 217(i) continues to apply to bicycle facilities other than trail-related projects, and section 217(i) continues to apply to bicycle facilities using other Federal-aid Highway Program funds (e.g., National Highway Performance Program, Highway Safety Improvement Program, Congestion Mitigation and Air Quality Improvement Program). 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.

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## **TREATMENT OF PROJECTS (23 U.S.C. 133(i))**

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

**Youth Service and Conservation Corps:** Section 1524 of MAP-21 remains in effect. It provides exceptions to certain requirements regarding pay rates and contracting requirements for projects using qualified youth service or conservation corps. This provision requires the DOT/FHWA to “encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps...to perform appropriate projects eligible under sections 162, 206, [former] 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA-LU.” These projects include scenic byways, recreational trails, transportation alternatives, bicycle and pedestrian, and safe routes to school. Section 1524 of MAP-21 applies to any projects eligible under these sections, including projects funded under other Federal-aid Highway Program funds. See the MAP-21 Section 1524 Questions and Answers and Youth Workforce Development Resources. To the extent the requirements of 23 U.S.C. 133 relating to Treatment of Projects conflicts with the express provisions in section 1524, the provisions in section 1524 prevail because they are more specific than the general provision of 23 U.S.C. 133(i).

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## **RECREATIONAL TRAILS PROGRAM**

Section 1109 of the FAST Act amended the RTP to make the funding a set-aside from the TA Set-Aside. Unless the Governor opts out 30 days in advance of an apportionment for any fiscal year, an amount equal to the State’s FY 2009 RTP apportionment is set aside from the State’s TA Set-Aside funds for recreational trails projects. (23 U.S.C. 133(h)(5)). All RTP provisions and requirements continue under 23 U.S.C. 206. See RTP Guidance and Information.

For the RTP set-aside, the Governor designates the State agency or agencies to administer the program. This remains the same agency previously designated by the Governor (for most States, a State resource agency or grant agency, or the State DOT), unless the Governor designates a new agency (23 U.S.C. 206(c)). If an agency other than the State DOT administers the RTP, then

the States should have (or should develop) a Stewardship and Oversight Plan to outline the roles and responsibilities of FHWA and the State agency or agencies that administer the RTP. See an example on the RTP website: ([HTML](#) / [PDF](#)).

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

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

If opting out of the RTP:

- The Governor of the State must notify the Secretary not later than 30 days prior to apportionments being made for any fiscal year (23 U.S.C. 133(h)(6)(A)). Any State that desires to opt out of the RTP set-aside shall notify FHWA via email, with a letter signed by the Governor or the Governor’s designee accompanying the opt-out notification, to the FHWA Office of Budget’s official mailbox ([BudDiv@dot.gov](mailto:BudDiv@dot.gov)) no later than the September 1st prior to the fiscal year in which the State wishes to opt out. [FAST Act Funding Tables](#).
- The funds remain as TA Set-Aside funds.
- The State cannot use a portion of its TA Set-Aside funds for RTP administrative costs for the fiscal year in which it opts out. The ability to use RTP funds for State administrative costs is limited to a percentage “of the apportionment made to the State for the fiscal year” (which would include the RTP set-aside funds). If there is no apportionment, then there is no program to administer, and the administrative funds cannot be permitted.

Recreational trail projects that would be eligible under the RTP also are eligible under [STBG](#) under 23 U.S.C. 133(b)(6) and under the TA Set-Aside under 23 U.S.C. 133(h).

- STBG provisions and requirements apply to STBG funds used for recreational trail projects.
- TA Set-Aside provisions and requirements apply to TA Set-Aside funds used for recreational trail projects (excluding the RTP set-aside funds).

**RTP Administrative Funds** are limited to “costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State *for the fiscal year*” (emphasis added). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. A State cannot carry over administrative funds from Year 1 because that would increase the administrative funds available in Year 2. RTP funds obligated for administrative costs but not expended within a fiscal year must be deobligated and used for

other eligible trail projects. The restriction applies to all RTP funds, including funds apportioned prior to the enactment of MAP-21 or the FAST Act (23 U.S.C. 206(d)(2)(H)).

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

For eligible administrative costs, see RTP Trail Assessments, Education and Training, and State Administrative Costs.

**RTP Educational Funds** are limited to the “development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the apportionment made to the State for the fiscal year” (23 U.S.C. 206(d)(2)(G)). The limitation is subject to the amount necessary within a fiscal year, and does not carry over. RTP funds obligated for educational costs but not expended within a fiscal year must be deobligated and used for on-the-ground trail projects. This restriction applies to all RTP funds, including funds apportioned prior to the enactment of MAP-21 or the FAST Act.

States may use STBG funds under 23 U.S.C. 133(b)(6) or TA Set-Aside funds under 23 U.S.C. 133(h) for recreational trail educational programs. The educational activities eligible under the RTP do not depend on the existence of a program. Therefore, even if a State opts out of the RTP, it may fund recreational trail educational programs under STBG. Because there is no specific apportionment for a State that opts out of the RTP, there is no limitation on the funds available for recreational trail educational programs using STBG funds under 133(b)(6) or 133(h).

For eligible educational costs, see RTP Trail Assessments, Education and Training, and State Administrative Costs.

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

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## TA SET-ASIDE PROJECT ELIGIBILITY QUESTIONS AND ANSWERS

The following questions and answers relating to project eligibility come from previous MAP-21 guidance and questions and answers, updated to be consistent under the FAST Act. See TAP Eligible Projects Legislation as in effect prior to the enactment of the FAST Act for the text from the former 23 U.S.C. 213(b) and 101(a)(29). Eligible TA Set-Aside projects must be sponsored by an eligible entity and selected through the competitive selection process.

### **Archaeological Activities: What archaeological activities are eligible?**

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

### **Bike Sharing: Are bike sharing systems eligible?**

Yes. Bike sharing systems are eligible for Federal-aid Highway Program funds, under several Federal-aid programs, including the STBG and TA Set-Aside. In addition to bike sharing docks, equipment, and other capital costs, FHWA funds may be used to purchase bicycles that are integral to a bike sharing system. Federal-aid Highway Program funds cannot be used for operational costs (Former 23 U.S.C. 101(a)(29)(A) and (B)).

### **Historic Preservation: What historic preservation projects are eligible?**

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

### **Land Acquisition: Is land acquisition eligible?**

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

### **Landscaping: Is landscaping and scenic enhancement eligible as an independent project?**

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

### **Lighting: Is lighting eligible?**

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

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

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

**Resilience: Are resilience improvements eligible?**

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

**Road Diets: Are road diets eligible?**

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

**Safety Education Activities: Are safety education activities eligible?**

Safety education activities are eligible for TA Set-Aside funds if they are eligible as SRTS projects, targeting children in Kindergarten through 8<sup>th</sup> grade (Former 23 U.S.C. 213(b)(3)). STBG funds may be used for carrying out nonconstruction projects related to safe bicycle use under 23 U.S.C. 133(b)(6) and 217(a).

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

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

**Utilities: Is utility relocation eligible?**

Utility relocation that is necessary to accommodate an eligible project may be eligible for Federal reimbursement only if permitted under State law or policy. Federal law and regulation (23 U.S.C. 123, *Relocation of utility facilities*, and 23 CFR 645, Utilities) recognize that some States, by State law or policy, prohibit using public funds to relocate utilities; in these States, it is illegal to use funds to relocate utilities. (23 U.S.C. 123, *Relocation of utility facilities*, and 23 CFR 645, Utilities)

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**TRANSPORTATION ALTERNATIVES PROGRAM: ELIGIBLE PROJECTS  
LEGISLATION AS IN EFFECT PRIOR TO ENACTMENT OF THE FAST ACT**

**23 U.S.C. 213(b)**

(b) **ELIGIBLE PROJECTS.**—A State may obligate the funds reserved under this section for any of the following projects or activities:

- (1) Transportation alternatives, as defined in section 101.
- (2) The recreational trails program under section 206.
- (3) The safe routes to school program under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59).
- (4) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

**23 U.S.C. 101(a)(29)**

(29) **TRANSPORTATION ALTERNATIVES.**—The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

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

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

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

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

(E) Community improvement activities, including—

- (i) inventory, control, or removal of outdoor advertising;
- (ii) historic preservation and rehabilitation of historic transportation facilities;
- (iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
- (iv) archaeological activities relating to impacts from implementation of a transportation project eligible under this title.

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

- (i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or
- (ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

Note: For 23 U.S.C. 101(a)(29)(E), FHWA defines “including” as “which include, but not limited to”.

