

Subject: **ACTION:** Bridge Formula Program (BFP) Implementation Guidance

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From: Hari Kalla  
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HIF-1

To: Division Administrators

## Purpose

This memorandum provides background, guidance on Administration priorities and use of Federal-aid highway formula funding, eligibilities, fund information, and definitions for the implementation of the Bridge Replacement, Rehabilitation, Preservation, Protection, and Construction Program (hereafter, Bridge Formula Program (BFP)) as established in title VIII of division J of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, Public Law 117-58 (Nov. 15, 2021).

## Background

The Bipartisan Infrastructure Law (BIL) appropriates \$5,500,000,000 for the BFP under the Highway Infrastructure Program for each of Fiscal Years (FY) 2022 through 2026. Funds are distributed to the States<sup>1</sup> by a statutory formula (after set-asides for Federal Highway Administration (FHWA) administration and operations and Tribal transportation facility bridges). The statute requires that the apportionments be adjusted so that each State receives no less than \$45,000,000 each fiscal year. Additionally, 15 percent of each State's distributed funds are set aside for use on off-system bridges.

Funds made available under the BFP, except as otherwise provided, are to be administered as if apportioned under chapter 1 of title 23, United States Code (U.S.C.). Further, since any project funded under the BFP is to be treated as a project on a Federal-aid highway, Davis-Bacon wage requirements apply to all projects funded with BFP funds.

The FHWA Notice N4510.867 (<https://www.fhwa.dot.gov/legregs/directives/notices/>) provides more information on the distribution of FY 2022 funds and applicable statutory requirements. For FY 2023 through 2026 funds, please revisit FHWA's Notices website at the appropriate future time.

## Guidance on Administration Priorities and Use of Federal-aid Highway Formula Funding

On December 16, 2021, FHWA issued guidance ("Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America", hereafter "Policy") that serves as an overarching framework to prioritize the use of BIL resources on projects that will Build A Better America. That Policy is available on FHWA's BIL implementation website at the following URL: [https://www.fhwa.dot.gov/bipartisan-infrastructure-law/building\\_a\\_better\\_america-policy\\_framework.cfm](https://www.fhwa.dot.gov/bipartisan-infrastructure-law/building_a_better_america-policy_framework.cfm)

Congress established the BFP to provide funding for highway bridge replacement, rehabilitation, preservation, protection, and construction projects on public roads. BFP funding is distributed by a statutory formula based on the relative costs of replacing all highway bridges classified in poor condition in a State and the relative costs of rehabilitating all highway bridges classified in fair condition in a State. This distribution formula illustrates the importance of focusing this funding on improving the condition of such bridges.

The construction of a new highway bridge on a new alignment is an eligible project under the BFP, but FHWA encourages States to first focus their BFP funding on projects that improve the condition of in-service highway bridges classified in poor condition and that preserve or improve the condition of in-service highway bridges classified in fair condition. Note that the FHWA considers the construction of a new highway bridge in a new location, in connection with replacement of an existing highway bridge in poor condition, to be improving the condition of an in-service highway bridge.

Furthermore, the FHWA encourages the use of BFP funds—including for projects that involve new highway bridge construction—for projects that address equity, barriers to opportunity, challenges faced by individuals and underserved communities in rural areas, or restoring community connectivity. The FHWA also encourages the use of this funding to address the needs of highway bridges that impede the mobility of goods (e.g. freight) or services (e.g. emergency response and school bus) due to load or other operational restrictions. The FHWA also encourages the use of this funding—including for projects that involve new highway bridge construction—for projects that are designed and implemented to be resilient to multiple hazards and risks, including climate change, and that reduce greenhouse gas emissions relative to baseline conditions, including through the use of lower carbon materials and reducing vehicular traffic by accommodating multimodal use.

## Eligibilities

Consistent with the statutory formula provided in BIL which distributes BFP funding based on the relative cost of replacing and rehabilitating highway bridges in poor and fair condition in the National Bridge Inventory (NBI) and subject to the National Bridge Inspection Standards, BFP funding may be used on any

highway bridge that is listed in the NBI or any new highway bridge that upon the completion of construction would meet the established definition of a highway bridge and would be required to be reported to the NBI, irrespective of whether the bridge is an on-system or off-system bridge and what public agency owns the bridge.

As provided in the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law, BFP funds shall be used for highway bridge replacement, rehabilitation, preservation, protection, or construction projects on public roads. In authorizing eligible projects, BFP funds shall be obligated with the following appropriate Fiscal Management Information System (FMIS) Improvement Type codes:

- 8 – New Bridge,
- 10 – Bridge Replacement,
- 13 – Bridge Rehabilitation,
- 47 – Bridge Preservation,
- 48 – Bridge Protection, and
- 59 – Bridge Resurfacing.

These FMIS Codes are defined in the March 16, 2017 FHWA memorandum Financial Management Information System (FMIS) New Improvement Type Code for Bridges: <https://www.fhwa.dot.gov/bridge/170316.cfm>

Both FHWA and the States share the priority of ensuring the safety of the Nation's highway bridges. The inspection and load rating and posting of highway bridges are just a few of the requirements of FHWA's National Bridge Inspection Program, and its standards to ensure this safety. The FHWA encourages the use of BFP funding to address safety issues and to replace or rehabilitate highway bridges that are posted or restricted.

Inspection and load rating and posting of highway bridges are not eligible projects under the BFP. However, these projects are eligible under other programs of the Federal-aid Highway Program. States may use their National Highway Performance Program (NHPP) and Surface Transportation Block Grant Program (STBG) apportionments and other bridge owners are encouraged to work with their States in possibly securing NHPP or STBG funds for conducting the inspection and load rating and posting of their highway bridges.<sup>2</sup> Also, Tribes may use Tribal Transportation Program funds for these purposes.<sup>3</sup>

Providing connectivity and accessibility for all users and removing barriers to opportunity are also priorities for the FHWA, and the construction of bicycle and pedestrian bridges are ways in which these community needs could be addressed. Although the accommodation of bicycle and pedestrian users on highway bridges is an eligible activity (see **Accommodation for Bicyclists and Pedestrians** below), bicycle and pedestrian only bridges are not eligible under the BFP because they are non-highway bridges<sup>4</sup>.

## Off-System Bridges

To maximize the benefits of the program with respect to off-system bridges, the FHWA encourages States to use BFP funding on off-system bridges in proportion to the scale of each State's off-system bridge needs—particularly in relation to localities that historically have lacked resources for such projects. For example, if 50 percent of highway bridges by count or deck area within a State are in poor condition and located on the off-system, then FHWA encourages the State to use 50 percent of its BFP funding to address those off-system bridge needs.

Focusing on certain off-system bridges will help States accomplish more with this funding. Generally, the Federal share for costs reimbursed with BFP funds distributed to States is determined in accordance with 23 U.S.C. 120. However, the Federal share for costs reimbursed with BFP funds under this program for an off-system highway bridge owned by a county, town, township, city, municipality or other local agency, or federally-recognized Tribe<sup>5</sup> shall be 100 percent. The FHWA encourages States to take advantage of this opportunity to use 100 percent Federal funds for off-system highway bridges.

States are required to set aside 15 percent of their BFP funding to address off-system bridge needs. There is no provision authorizing States to reduce the minimum 15 percent set-aside amount, and the 15 percent set-aside is a minimum, not a maximum.

## Asset Management

Division Administrators should remind States of the requirement to develop a risk-based asset management plan for the National Highway System (NHS) to improve or preserve the condition of the assets and the performance of the system when determining the appropriate action to take to address their NHS bridge needs (23 U.S.C. 119(e)(1)). For all other infrastructure assets owned by States and other stakeholders, Division Administrations should also encourage States to include bridges not on the NHS and off-system bridges in their asset management plans.

## Accommodation for Bicyclists and Pedestrians

BFP funding is subject to requirements for accommodations for bicycles and pedestrians pursuant to 23 U.S.C. 217(e). Under this provision, all projects with Federal financial participation (including under BFP) that replace or rehabilitate a highway bridge deck are required to provide safe accommodation of pedestrians or bicyclists, as applicable, on the bridge, when both of the following conditions are met: (1) the bridge is located on a highway on which pedestrians or bicyclists are allowed to operate at each end of the bridge, and (2) FHWA determines that safe accommodation can be provided at reasonable cost.

The first step in this process is to assess whether the bridge is located on a highway on which pedestrians or bicyclists are allowed to operate at each end of the bridge. If that is the case, in making a determination as to whether safe accommodation can be provided at a reasonable cost FHWA will rely on its bicycle and pedestrian travel accommodation policy ([https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/design.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design.cfm)); the FHWA will

presume, that safe accommodation for bicyclists and pedestrians can be provided at reasonable cost for all BFP projects absent an affirmative showing by the project sponsor that the cost of such accommodation would exceed twenty percent of the cost of the larger transportation project. For instances where such accommodation exceeds twenty percent, the addition of bicyclist and pedestrian accommodation is not required, but FHWA encourages States to consider providing for such accommodation.

## Obligation Limitation

As a general fund appropriation, BFP funding is not subject to any obligation limitation that applies to Federal-aid contract authority. Specifically, the amounts made available shall not be subject to any limitations on obligations for Federal-aid highways or highway safety construction programs set forth in any Act making annual appropriations.

## Period of Availability for Obligation and Expenditure

BFP funds remain available for obligation and expenditure as follows:

Fiscal Year of BFP Funds	Period of Availability for	
	Obligation and Expenditure	Expenditure <sup>6</sup>
2022	Lapse on September 30, 2025	Cancel on September 30, 2030
2023	Lapse on September 30, 2026	Cancel on September 30, 2031
2024	Lapse on September 30, 2027	Cancel on September 30, 2032
2025	Lapse on September 30, 2028	Cancel on September 30, 2033
2026	Lapse on September 30, 2029	Cancel on September 30, 2034

Any such amounts not obligated within the period of availability for obligation shall lapse. Once the period of availability for obligation has expired, BFP funds will only remain available for adjusting and liquidating obligations as authorized in accordance with 31 U.S.C. 1553.

Obligated BFP balances are available for expenses properly charged to the account and incurred until the cancellation of the funds, which occurs five years after lapse as shown in the table above. After the dates of availability for expenditure, any unexpended balances of obligated BFP funds shall be de-obligated. Any such funds that have not been expended are then cancelled and returned to the U.S. Treasury in accordance with 31 U.S.C. 1552 and shall no longer be available for obligation or expenditure.

## Definitions

For the BFP, the following definitions apply:

- “Bridge” is defined in 23 Code of Federal Regulations (CFR) 650.305.
- “Construction” is defined in 23 U.S.C. 101(a)(4).
- “Federal-aid highway” is defined in the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law, for purposes of the BFP, as a public highway eligible for assistance under chapter 1 of title 23, U.S.C., other than a highway functionally classified as a local road or rural minor collector. This definition is the same as in 23 U.S.C. 101(a)(6).
- “Highway” is defined in 23 U.S.C. 101(a)(11).
- “Off-system bridge” is defined in the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law, for purposes of the BFP, as a highway bridge located on a public road, other than a bridge on a Federal-aid highway.
- “Public road” is defined in 23 U.S.C. 101(a)(23).
- “State” is defined in 23 U.S.C. 101(a)(28).

## Additional Information

For guidance on other Bipartisan Infrastructure Law and Federal-aid Highway Programs such as the set-aside for the Tribal transportation facility bridges, STBG, and NHPP, please see FHWA’s Bipartisan Infrastructure Law website at: <https://www.fhwa.dot.gov/bipartisan-infrastructure-law/>.

If you have questions, please contact Everett Matias (202-366-1078 or [everett.matias@dot.gov](mailto:everett.matias@dot.gov)), Semme Yilma (202-366-6712 or [semme.yilma@dot.gov](mailto:semme.yilma@dot.gov)) or Douglas Blades (202-366-4622 or [douglas.blades@dot.gov](mailto:douglas.blades@dot.gov)).

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<sup>1</sup> Under the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law, the term “State” is defined for the BFP as having the meaning in 23 U.S.C. 101(a)(28), any of the 50 States, the District of Columbia, or Puerto Rico.

<sup>2</sup> 23 U.S.C. 144(k), 23 U.S.C. 133(b)(10), and 23 U.S.C. 119(d)(1)(D) for NHS bridges.

<sup>3</sup> 23 U.S.C. 144(k).

<sup>4</sup> States are encouraged to use the flexibility in other Federal-aid Highway Programs for constructing bicycle and pedestrian bridges. More information on possible sources of funds can be found on FHWA’s website at: [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/funding/funding\\_opportunities.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/funding/funding_opportunities.cfm).

<sup>5</sup> A State-by-State list of Federally-recognized Tribes is provided by the U.S. Department of Interior at: <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>. A U.S. Department of Interior Federal Register Notice also provides a list of Federally-recognized Tribes: <https://www.federalregister.gov/documents/2021/01/29/2021-01606/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>.

<sup>6</sup> During this period, there is also limited availability for upward adjustments to existing obligations of BFP funds. Obligations of General Fund appropriations, such as those for the BFP, that have expired can be made only for costs associated with timely obligations related to legitimate cost overruns within the scope of work and purpose associated with the original obligation.