

U.S. Department of Transportation

Federal Highway Administration

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MAP-21 - Moving Ahead for Progress in the 21st Century

Transportation Alternatives Program (TAP) Guidance

FINAL: June 10, 2013, Updated March 6, 2014

This guidance supersedes all previous guidance, including questions and answers, regarding the Transportation Alternatives Program.

PROGRAM PURPOSE

The Transportation Alternatives Program (TAP) was authorized under Section 1122 of Moving Ahead for Progress in the 21st Century Act (MAP-21) and is codified at 23 U.S.C. sections 213(b), and 101(a)(29). Section 1122 provides for the reservation of funds apportioned to a State under section 104(b) of title 23 to carry out the TAP. The national total reserved for the TAP is equal to 2 percent of the total amount authorized from the Highway Account of the Highway Trust Fund for Federal-aid highways each fiscal year. (23 U.S.C. 213(a))

The TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; and projects for planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

GOVERNING AUTHORITIES

Section 1122 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) established TAP in 23 U.S.C. 213. Section 1105 of MAP-21 provides for the apportionment of funds in 23 U.S.C. 104(b), from which TAP funding is set aside.

Projects funded under TAP must comply with all applicable Federal requirements. The following sections of title 23 are among the requirements that most often need to be considered:

- a. 23 U.S.C. 101 Definitions
- b. 23 U.S.C. 104 Apportionment
- c. 23 U.S.C. 106 Project approval and oversight
- d. 23 U.S.C. 109 Standards
- e. 23 U.S.C. 112 through 116 Letting of contracts; Prevailing rate of wage; Construction; Advance Construction; Maintenance
- f. 23 U.S.C. 120 Federal share payable
- g. 23 U.S.C. 123 Relocation of utilities
- h. 23 U.S.C. 126 Transferability of Federal-aid highway funds
- i. 23 U.S.C. 131 Control of outdoor advertising
- j. 23 U.S.C. 133 Surface Transportation Program
- k. 23 U.S.C. 134 Metropolitan transportation planning

- l. 23 U.S.C. 135 Statewide transportation planning
- m. 23 U.S.C. 138 Preservation of parklands (Section 4(f))
- n. 23 U.S.C. 149 Congestion mitigation and air quality improvement program
- o. 23 U.S.C. 206 Recreational trails program
- p. 23 U.S.C. 213 Transportation alternatives
- q. 23 U.S.C. 217 Bicycle transportation and pedestrian walkways
- r. 23 U.S.C. 319 Landscaping and scenic enhancement
- s. 23 U.S.C. 323 Donations and credits
- t. 23 U.S.C. 328 Eligibility for environmental restoration and pollution abatement
- u. 23 U.S.C. 329 Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

Activities eligible under the following section of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) are eligible under TAP:

- a. Section 1404 (SAFETEA-LU) Safe Routes to School Program (23 U.S.C. 402 note).

The following section of MAP-21 is also applicable to TAP:

- a. a. Section 1524 Use of Youth Service and Conservation Corps.

A. FUNDING

Each State's TAP funding is determined by dividing the national total among the States based on each State's proportionate share of FY 2009 Transportation Enhancements funding. Within each State, the amount for TAP is set aside proportionately from the State's National Highway Performance Program (NHPP), Surface Transportation Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and Metropolitan Planning apportionments. (23 U.S.C. 213(a))

The following table shows the national total for TAP under MAP-21:

Fiscal Year	Transportation Alternatives Program Funds
FY 2013	\$808,760,000
FY 2014	\$819,900,000
TOTAL	\$1,628,660,000

The Fiscal Management Information System (FMIS) program codes were provided to the FHWA Division Offices and States:

FHWA Program Code	Program Description
M300	Transportation Alternatives Program (TAP) Flex
M301	TAP - Urbanized Areas With Population Over 200K
M302	TAP - Areas with Population Over 5K to 200K
M303	TAP - Areas with Population 5K and Under
M940	Recreational Trails Program (RTP)
M941	Return of 1% for RTP Administration
MR10	State RTP Administration
MR20	RTP Educational Programs

Period of Availability: TAP 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). (23 U.S.C. 118)

Funds apportioned for Transportation Enhancement (TE) activities and the RTP prior to MAP-21 are available for a period of 3 years after the last day of the fiscal year for which the funds were authorized. (23 U.S.C. 118)

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

Contract Authority and Obligation Limitation: TAP is funded by contract authority from the Highway Account of the Highway Trust Fund. The TAP funds are subject to the annual obligation limitation imposed on the Federal-aid highway program.

FEDERAL SHARE AND MATCHING FUNDS

The Federal share for TAP projects is as follows:

- For most TAP projects, including Safe Routes to School (SRTS) projects funded with TAP funds, the Federal share is the same as for the general Federal-aid highway program: 80 percent Federal/20 percent State or local match subject to the [sliding scale adjustment](#). (23 U.S.C. 120)
- Projects funded under the RTP set-aside from TAP 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. Please note that recreational trail projects funded from other TAP funds (not from the RTP set-aside) are subject to the general match requirement described for TAP funds above. See [RTP Federal Share and Matching Requirements](#) for more information.
- For projects funded under the Local Technical Assistance Program (LTAP), the 50 percent non-Federal share may be satisfied with up to 100 percent TAP funds.
- Section 120(j) allows **Federal agency funds** 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.
- Section 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.

General Matching or Cost Sharing Rule: 49 CFR 18.24

As provided in 49 CFR 18.24 "Matching or cost sharing", the following requirements are emphasized:

18.24(b) Qualifications and exceptions-(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

Innovative Financing and Programmatic Match: MAP-21 eliminated the provision for innovative financing and programmatic match that was available for TE funds in 23 U.S.C. 133(e)(5)(C) (authorized in the Transportation Equity Act for the 21st Century). Therefore:

- 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 to TAP funds.
- There is no provision for a programmatic match under TAP, except for the RTP set-aside funds.
- There is no provision to allow TAP funds to use up to 100 percent Federal share.

Donations: 23 U.S.C. 323: Title 23 Section 323 allows the fair market value of donated land that is acquired for a Federal-aid project, and allows credit for donations of funds, materials, or services. At the option of the State, these donations may be used to reduce State or local cash contributions required to meet the State or local matching share. For additional information on donations, see [Federal-Aid Guidance Non-Federal Matching Requirements](#).

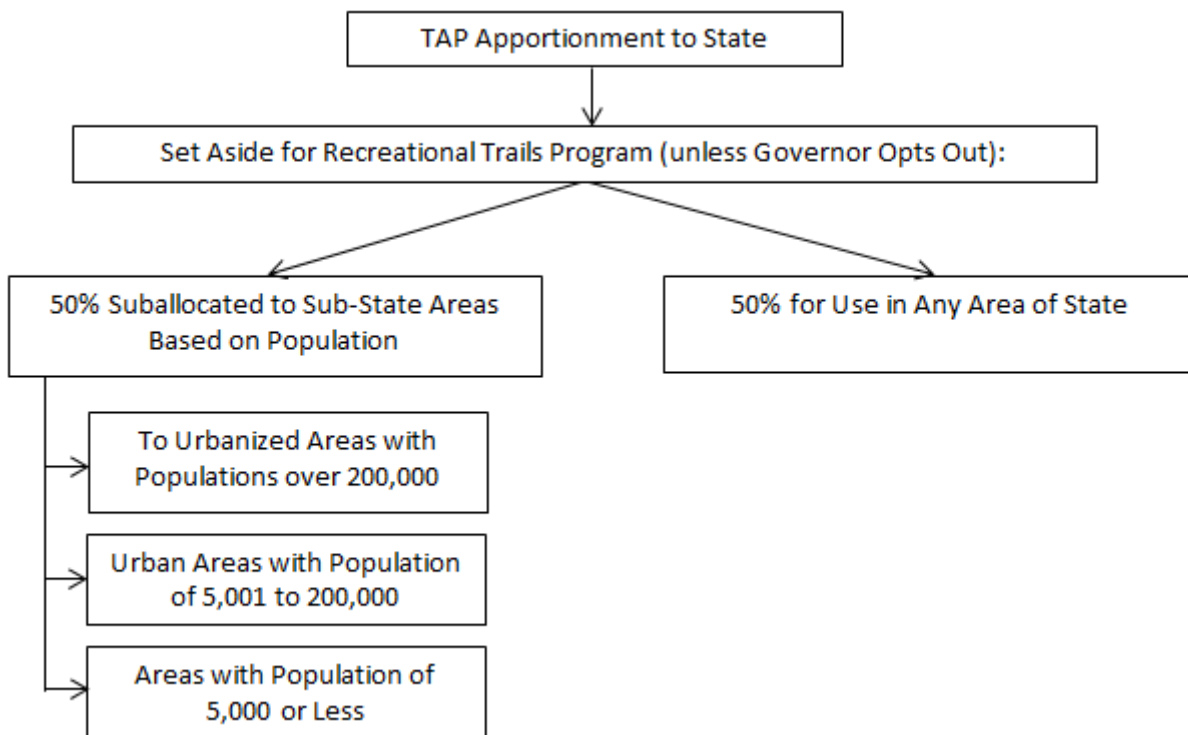
Advance Payment Option: MAP-21 eliminated the provision for an Advance Payment Option that was available for TE funds under 23 U.S.C. 133(e)(3)(B) (originally authorized in the National Highway System Designation Act of 1995, and amended in the Transportation Equity Act for the 21st Century).

B. ALLOCATIONS, SUBALLOCATIONS, AND TRANSFERS OF FUNDS

Suballocation: Fifty percent of a State's TAP apportionment (after deducting the set-aside for the Recreational Trails Program, if applicable) is suballocated to areas based on their relative share of the total State population with the remaining 50 percent available for use in any area of the State. MAP-21 uses the same suballocation structure as STP funds (see 23 U.S.C. 213(c), 23 U.S.C 133(d)).

Suballocations are made available through FHWA's Fiscal Management Information System (FMIS). Figure 1 shows the TAP suballocation:

Figure 1: Transportation Alternatives Program Suballocation
 Source: <http://www.fhwa.dot.gov/map21/qandas/qasuballocation.cfm>



MAP-21 Text:

23 U.S.C. 213(c) Allocations of Funds.--

- (1) Calculation.--Of the funds reserved in a State under this section--

- (A) 50 percent for a fiscal year shall be obligated under this section to any eligible entity in proportion to their relative shares of the population of the State--
 - (i) in urbanized areas of the State with an urbanized area population of over 200,000;
 - (ii) in areas of the State other than urban areas with a population greater than 5,000; and
 - (iii) in other areas of the State; and
- (B) 50 percent shall be obligated in any area of the State.

- Paragraph (i) refers to urbanized areas with populations over 200,000.
- Paragraph (ii) refers to areas under 5,000 population (nonurban areas).
- Paragraph (iii) refers to small urban areas of population 5,001 to 200,000.

Distribution among urbanized areas with populations over 200,000: States are required to obligate funds in urbanized areas with populations over 200,000 (which are referred to in this discussion as "large urbanized areas") based on their relative share of population, unless the Secretary approves a joint request from the State and relevant Metropolitan Planning Organization(s) (MPO) to use other factors in determining obligation (see 23 U.S.C. 213(c)(3)). Eligible entities within any large urbanized area also may apply to the State for "any area" funds. For large urbanized areas that cross State lines, each large urbanized area will receive an amount of suballocated funds. Eligible entities within these areas also may apply to their respective States for "any area" funds.

There may be MPOs with multiple urbanized areas, including one or more with populations above 200,000, and one or more with populations below 200,000. To be consistent with policies that govern the suballocation of STP funds, the large urbanized area's suballocated TAP funds may be used anywhere within the MPO planning boundaries that cover the large urbanized area. In addition, eligible entities within an urbanized area that is not a large urbanized area, but is still within the larger MPO planning boundaries, may also compete for TAP funds suballocated to areas between 5,001 and 200,000 population and for "any area" TAP funds. Any proposed projects within an MPO's planning area must be consistent with the relevant metropolitan transportation planning process.

Distribution among Small Urban Areas: MAP-21 does not require suballocation to individual local government entities, to individual MPOs with populations less than 200,000, or to other individual small urban areas. MAP-21 requires the State to have a competitive process to allow eligible entities to submit projects for funding; therefore, the State may not suballocate the small urban area funds by population to individual counties, cities, or other local government entities (23 U.S.C. 213(c)(4)(A)). The State's competitive process may include selection criteria to ensure a distribution of projects among small MPOs and other small urban areas across the State.

TAP funds suballocated for use in areas with a population between 5,001 and 200,000 may be used anywhere in those areas, including within the metropolitan planning area boundaries of an MPO serving an urbanized area with a population less than or equal to 200,000 (23 U.S.C. 213(c)(4)(A)). Eligible entities within any small urban area also may apply to the State for "any area" funds.

Distribution among Nonurban Areas: MAP-21 does not require suballocation to individual entities within areas of populations less than 5,000. MAP-21 requires the State to have a competitive process to allow eligible entities to submit projects for funding; therefore, the State may not suballocate the nonurban area funds by population to individual counties, cities, or other local government entities (23 U.S.C. 213(c)(4)(A)). The State's competitive process may include selection criteria to ensure a distribution of projects across the State. Eligible entities within any nonurban area also may apply to the State for "any area" funds.

Distribution of Any Area Funds: MAP-21 does not require suballocation of "any area" funds. The State's competitive process may include selection criteria to ensure a distribution of projects across the State; therefore, the State may not suballocate the "any area" funds by population to individual counties, cities, or other local government entities. MAP-21 requires the State to have a competitive process to allow eligible entities to submit projects for funding (23 U.S.C. 213(c)(4)(A)). The "any area" funds are available for projects in any area within a State, including within large urbanized areas, small urban areas, or nonurban areas.

TRANSFER OF FUNDS

A State may transfer up to 50 percent of TAP funds to NHPP, STP, HSIP, and CMAQ from the portion of TAP funds available for use anywhere in the State (no transfers of suballocated TAP funds or funds set aside for the RTP, which are discussed below). (MAP-21 §1509; 23 U.S.C. 126)

Funds may be transferred to the Federal Transit Administration (FTA) for TAP-eligible projects. If a transit project eligible under TAP is selected, funds for the project may be transferred to FTA to administer the project 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))

Projects eligible under TAP are generally eligible for STP funds and STP funds may be used for TAP projects without making a transfer. (23 U.S.C. 133(b)(11)). If a State funds a TAP-eligible project under STP, then STP provisions and requirements apply. TAP provisions and requirements would not apply.

Section 126 of title 23 provides the States with flexibility to shift program funds from one Federal-aid apportioned program category to another subject to certain limitations (see Funding Transfer Guidance to be issued). Upon transfer, the funds transferred are eligible to be obligated for the same purposes and under the same requirements that apply to the funding category to which funds are transferred.

FLEXIBILITY OF EXCESS RESERVED FUNDING

Section 213(d) allows:

- *(d) Flexibility of Excess Reserved Funding.--Beginning in the second fiscal year after the date of enactment of the MAP-21, if on August 1 of that fiscal year the unobligated balance of available funds reserved by a State under this section exceeds 100 percent of such reserved amount in such fiscal year, the State may thereafter obligate the amount of excess funds for any activity--*
 - *(1) that is eligible to receive funding under this section; or*
 - *(2) for which the Secretary has approved the obligation of funds for any State under section 149.*

The effective date of MAP-21 was October 1, 2012; therefore, §213(d) refers to August 1, 2014. (MAP-21 §3).

The term "exceeds 100 percent" applies to the ratio of the unobligated balance of available funds compared to total apportioned amount within a fiscal year.

In Section 213(d)(2), Section 149 refers to the Congestion Mitigation and Air Quality Improvement Program (CMAQ). States with nonattainment or maintenance areas may use TAP funds transferred under this Flexibility provision for any TAP or CMAQ project.

C. SELECTION PROCESS

Selection of Projects: Consistent with other Federal-aid highway programs, TAP funds are administered by the State Department of Transportation (State DOT). TAP funds must be used for eligible projects that are submitted by eligible entities (listed below in **Section D**) and chosen through a competitive process (23 U.S.C. 213(c)(4)(A)). TAP does not establish minimum standards or procedures for competitive processes.

The statute requires the following with respect to the selection of projects:

- For urbanized areas with populations over 200,000, the MPO, through a competitive process, selects the TAP projects in consultation with the State. (23 U.S.C. 213(c)(5))
- Funds suballocated to small urban areas and nonurban areas (i.e., areas with populations below 200,000) will be administered by the State through a competitive process. (23 U.S.C. 213(c)(4)(A))

- Funds available to any area of the State will be administered by the State through a competitive process. (23 U.S.C. 213(c)(4)(A))
- For the RTP set-aside, the Governor designates the State agency or agencies to administer the program. This may remain the same agency previously designated by the Governor (for most States, a State resource agency or grant agency, or may be the State DOT). (23 U.S.C. 206(c))
- If States have prior year TE 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.

In a large urbanized area, an MPO representing the large urbanized area may allow the State to run its competitive process. However, the final project selection decision must be retained by the MPO and the State cannot require an MPO to turn over the selection process to the State. (23 U.S.C. §§ 134(k)(4)(A) & 213(c)(5)). 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 TAP activities equally.

D. ELIGIBLE PROJECT SPONSORS

Under 23 U.S.C. 213(c)(4)(B), the **Eligible Entities** to receive TAP funds are:

- Local governments;
- Regional transportation authorities;
- Transit agencies;
- Natural resource or public land agencies;
- School districts, local education agencies, or schools;
- Tribal governments; and
- Any other local or regional governmental entity with responsibility for oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency) that the State determines to be eligible, consistent with the goals of subsection (c) of section 213 of title 23.

State DOTs and MPOs are not eligible entities as defined under 213(c)(4)(B) and therefore are not eligible project sponsors for TAP 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 recipients for TAP funds unless they qualify through one of the eligible entity categories (e.g., where a nonprofit organization is a designated transit agency or a school). Nonprofits are eligible to partner with any eligible entity on a TAP project, if State or local requirements permit.

- Local government entities include any unit of local government below a State government agency, except for a Metropolitan Planning Organization. Examples include city, town, township, village, borough, parish, or county agencies.
- 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)).
- Transit agencies include any agency responsible for public transportation that is eligible for funds under the Federal Transit Administration.
- 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
 - U.S. Forest Service

- 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.

The Recreational Trails Program (RTP) set-aside funds retain the RTP eligible project sponsor provisions under 23 U.S.C. 206. (23 U.S.C. 213(f)(3))

E. ELIGIBILITY

The project selection process and the eligible project sponsor requirements apply for all TAP eligibility. TAP projects are not required to be located along Federal-aid highways. Activities eligible under TAP are eligible for STP funds (23 U.S.C. 133(b)(11)). Some aspects of activities eligible under TAP also may be eligible under other Federal-aid highway programs.

Under 23 U.S.C. 133(c)(2), TAP-eligible projects funded with STP funds are exempt from the location restriction in 23 U.S.C. 133(c). See Section C of the [Surface Transportation Program Implementation Guidance](#) for more information.

For SRTS noninfrastructure projects, traffic education and enforcement activities must take place within approximately two miles of a primary or middle school (grades K - 8). Other eligible noninfrastructure activities do not have a location restriction. SRTS infrastructure projects are eligible for TAP funds regardless of their ability to serve school populations, and SRTS infrastructure projects are broadly eligible under other TAP eligibilities, which do not have any location restrictions.

Under 23 U.S.C. 213(b), eligible activities under the TAP program consist of:

1. Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) (MAP-21 §1103):
 - 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 USC 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 133(b)(11), 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.
2. The [recreational trails program](#) under section 206 of title 23.
3. The safe routes to school program eligible projects and activities listed at section 1404(f) of the SAFETEA-LU:
 - A. [Infrastructure-related projects](#).

B. [Noninfrastructure-related activities](#).

C. Safe Routes to School coordinator.

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

TAP funds cannot be used for:

- State or MPO administrative purposes, except for SRTS administration, and administrative costs of the State permitted for RTP set-aside funds.
- Promotional activities, except as permitted under the SRTS.
- General recreation and park facilities, playground equipment, sports fields, campgrounds, picnic areas and pavilions, etc.
- Routine maintenance and operations.

Careful consideration should be given to whether an activity falls within the eligibilities created under TAP. Section 1103 of MAP-21 eliminated the definition of transportation enhancement activities in section 101 of title 23 and inserted in its place a definition of transportation alternatives. The transportation alternatives definition contained in 23 U.S.C. 101(a)(29) created different categories of activities than those included under the previous transportation enhancement definition. As a result, some activities that were previously eligible as independent transportation enhancement projects are no longer eligible; some categories of eligibility remain, but for a different range of activities. In some cases, activities that are no longer eligible for funding as independent TAP projects may be eligible for FHWA participation under other title 23 provisions, such as project mitigation measures when determined necessary to mitigate project impacts (including the impacts of a TAP project). Transportation enhancement categories that are no longer expressly described as eligible activities under the definition of transportation alternatives are:

- Safety and educational activities for pedestrians and bicyclists. **Exception:** Activities targeting children in Kindergarten through 8th grade are eligible under SRTS (an eligible activity under the TAP funding). **Note:** Some of these activities may be eligible under HSIP. Nonconstruction projects for bicycle safety remain broadly eligible for STP funds.
- Acquisition of scenic easements and scenic or historic sites (including historic battlefields), and scenic or historic highway programs (including tourist and welcome center facilities). **Exceptions:** A few specific activities under this category are eligible for funding as TAP projects, including construction of turnouts, overlooks, and viewing areas; historic preservation and rehabilitation of historic transportation facilities; and bicycle and pedestrian facilities.
- Landscaping and other scenic beautification. However, under the "community improvement activities" category, projects such as streetscaping and corridor landscaping may be eligible under TAP if selected through the required competitive process. States may use TAP funds to meet junkyard screening and removal requirements under 23 U.S.C. 136 if selected through the competitive process. Landscaping and scenic enhancement features, including junkyard removal and screening, may be eligible as part of the construction of any Federal-aid highway project under [23 U.S.C. 319](#), including TAP-funded projects.
- Historic preservation, and rehabilitation and operation of historic buildings, structures, or facilities (including historic railroad facilities and canals). Historic preservation activities now are limited to historic preservation and rehabilitation activities relating to a historic transportation facility. See section 101(a)(29)(E). Operation of historic transportation facilities is not eligible under TAP.
- Archaeological planning and research. Under TAP, archaeological activities must relate to impacts from implementation of a transportation project eligible under title 23.
- Establishment of transportation museums. There is no eligibility for this activity under TAP.

TE funds apportioned in prior years will continue to be available for their specified period of availability under the same terms and conditions in effect prior to the effective date of MAP-21.

If there are insufficient TE funds to cover all previously selected TE projects, then a State may use old TE funds on projects that were eligible under TE, but are no longer eligible under TAP, and use TAP funds for previously selected TE projects that remain eligible. Note that TAP projects must be selected through a competitive process.

F. TREATMENT OF PROJECTS

Section 213(e) requires:

- *(e) Treatment of Projects.--Notwithstanding any other provision of law, projects funded under this section (excluding those carried out under subsection (f)) shall be treated as projects on a Federal-aid highway under this chapter.*

The "treatment of projects" requirement (23 U.S.C. 213(e)) means that all projects carried out using TAP funds (except for recreational trails projects carried out under the RTP set-aside) must comply with applicable provisions in title 23, such as project agreements, authorization to proceed prior to incurring costs, prevailing wage rates (Davis-Bacon), Buy America, competitive bidding, and other contracting requirements, regardless of whether the projects are located within the right-of-way of a Federal-aid highway.

Some eligible subgrantees may include partners at the community level who may not be familiar with title 23 requirements. It is important that the State fully inform potential subgrantees of these Federal requirements ahead of time. Some subgrantees may wish to seek a lead sponsor such as a public works department that has experience with Federal construction contracts in general, and title 23 in particular.

Additional treatment of projects notes:

- Subsection 213(f) refers to the Recreational Trails Program (RTP) setaside. Subsection (e) does not apply to projects funded under the RTP setaside, but applies to any other recreational trail project using TAP funds.
- FHWA understands that "this chapter" under 23 U.S.C. 213(e) was intended to mean "Chapter 1 of title 23."
- Buy America applies to all title 23 funds.
- [MAP-21 Section 1524](#) provides exceptions to certain requirements, addressed below.

G. YOUTH SERVICE AND CONSERVATION CORPS

MAP-21 Section 1524 requires the US 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, 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA-LU."

Section 1524 Requirements

To the extent the requirements of 23 U.S.C. 213(e) relating to Treatment of Projects conflicts with the express provisions in section 1524, the provisions in section 1524 prevail. There are differences between MAP-21 Section 1524 and the newly established 23 U.S.C. 213(e) under TAP regarding compliance with Federal-aid highway requirements. MAP-21 Section 1524 provides exceptions to certain requirements regarding pay rates and contracting requirements for projects using contracts and cooperative agreements with qualified youth service or conservation corps for certain projects.

Section 1524(b)(1) requires the Secretary to establish a living allowance or rate of pay for youth service and conservation corps as required under State law or at an amount not to exceed the maximum living allowance authorized by 42 U.S.C. 12594 (as implemented by Part 4 -- Corporation for National and Community Service of OMB Circular A -133 Compliance Supplement 2012, available at www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2012).

Section 1524(b)(2) exempts contracts and cooperative agreements with youth service and conservation corps from Federal-aid highway program contracting requirements under 23 U.S.C. 112. A State or regional transportation planning agency may sole-source contracts and cooperative agreements to qualified youth service and conservation

corps for work undertaken for byway, recreational trail, transportation alternatives, bicycle and pedestrian, or SRTS projects.

H. RECREATIONAL TRAILS PROGRAM

MAP-21 section 1122 amended the RTP to make the funding a set-aside from the TAP. Unless the Governor opts out in advance, an amount equal to the State's FY 2009 RTP apportionment is to be set aside from the State's TAP funds for recreational trails projects. (23 U.S.C. 213(f)-(g)). All RTP provisions and requirements continue under section 206 of title 23. (23 U.S.C. 213(f)(3)).

Under 23 U.S.C. 213(f), if continuing the RTP:

- Each State shall obligate an amount of funds reserved under section 213 of title 23 equal to the amount of the funds apportioned to the State for fiscal year 2009 under section 104(h)(2) for projects relating to recreational trails under section 206.
- Each State shall return 1 percent of those funds to the Secretary for the administration of RTP.
- Each State shall comply with the provisions of the administration of the recreational trails program under section 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.

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. 213(g)). Any State that desires to opt out of the RTP set-aside should notify FHWA via email, with a letter signed by the Governor or the Governor's designee accompanying the opt-out notification, to the HCFB-1 official mailbox (BudDiv@dot.gov) no later than the September 1st prior to the fiscal year in which the State wishes to opt out.
- The funds remain as TAP funds.
- The State cannot use a portion of its TAP funds for the fiscal year in which it opts out for RTP administrative costs.

I. RELATED INFORMATION

- Refer to the Transportation Alternatives Program (TAP) Question and Answers for additional information related to the Transportation Alternatives Program, the Recreational Trails Program, and Safe Routes to School activities.
- Refer to the Youth Service and Conservation Corps Questions and Answers for additional information on qualified youth service and conservation corps and eligibility.