

Implementation Guidance for the Federal Lands Transportation Program

DATE: June 29, 2016

Purpose

The purpose of this document is to provide guidance for implementing and administering the Federal Lands Transportation Program (FLTP). Funding for the FLTP is authorized in section 1101(a)(3)(B) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114-94.

Framework

The FLTP provides funding for transportation facilities owned and maintained by the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), U.S. Forest Service (USFS), U.S. Army Corps of Engineers (USACE), Bureau of Land Management (BLM), and with the enactment of the FAST Act, the Bureau of Reclamation (BOR) and independent Federal agencies with natural resource and land management responsibilities. The program focuses on improving Federal lands transportation facilities (FLTFs) that are located on, adjacent to, or provide access to Federal lands. The FLTFs must be owned and maintained by the Federal government and must be included in the national FLTF inventory.

The use of FLTP funds does not affect the overall responsibility for construction, maintenance, and operations of partners' transportation facilities. That responsibility continues to lie with the owner of the transportation facility.

Eligibility

Section 203(a)(1) of title 23, United States Code (U.S.C.), provides that funds made available under FLTP shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency (FLMA) to pay the costs of:

- (A) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of FLTFs¹ and --
 - i. adjacent vehicular parking areas;
 - ii. acquisition of necessary scenic easements and scenic or historic sites;
 - iii. provision for pedestrians and bicycles;
 - iv. environmental mitigation in or adjacent to Federal land open to the public --
 - I. to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and
 - II. to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

- v. construction and reconstruction of roadside rest areas, including sanitary and water facilities;
 - vi. congestion mitigation; and
 - vii. other appropriate public road facilities, as determined by the Secretary;
- (B) capital, operations, and maintenance of transit facilities;
- (C) any transportation project eligible for assistance under title 23 that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public; and
- (D) not more than \$10,000,000 of the amounts made available per fiscal year to carry out 23 U.S.C. 203 for activities eligible under section 203(a)(1)(A)(iv)(I) only.

In regard to (B) above, “operation and maintenance of transit facilities” includes the operation and maintenance of any components of a transit system, including vehicles. This operation and maintenance eligibility applies solely to transit facilities.

In regard to (D) above, the mitigation activities are limited to “improving public safety and reducing vehicle-caused wildlife mortality while maintaining habitat connectivity.”

Funding

The FLTP funding levels for the fiscal years (FYs) authorized in the FAST Act are reflected in the table below. On average, the program increased by about 18 percent compared to the MAP-21 level in FY 2015. By statute, the NPS, FWS and USFS receive annual allocations identified in the legislation while the Secretary decides the allocation amounts for the BLM, BOR, USACE, and eligible independent Federal agencies based on their applications. (See Q.9 below for discussion of the impact of the obligation limitation on program funding.)

	FY2016	2017	2018	2019	2020	Total
NPS	\$268M	\$276M	\$284M	\$292M	\$300M	\$1.420B
FWS	\$30M	\$30M	\$30M	\$30M	\$30M	\$150M
USFS	\$15M	\$16M	\$17M	\$18M	\$19M	\$85M
BLM, BOR, USACE, and eligible Federal Independent Agencies	\$22M	\$23M	\$24M	\$25M	\$26M	\$120M
Total	\$335M	\$345M	\$355M	\$365M	\$375M	\$1.775B

Period of Availability

The funds made available under this program will be available for obligation for the fiscal year for which authorized plus three additional fiscal years.

Federal Share

The Federal share for FLTP projects is 100%. In addition, 23 U.S.C. 120(k) allows FLTP funds to be used to pay the non-Federal share of the cost of any project that is funded under title 23 or chapter 53 of title 49, U.S.C., and that provides access to or within Federal or tribal land.

Exceptions or limitations to this funding flexibility apply to new Nationally Significant Federal Lands and Tribal Projects Program (FAST Act § 1123) and the new Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grant Program (authorized by the Nationally Significant Freight and Highway Projects Program) (FAST Act § 1105; 23 U.S.C. 117). Refer to the guidance for those programs for more information.

Transfers or "Loan" Provisions

Per 23 U.S.C. 201(e), upon agreement of, as appropriate, the Secretary, the affected Secretaries of the respective FLMAs, State departments of transportation, and local government agencies, the Secretary may transfer funds authorized under FLTP and the Federal Lands Access Program (FLAP) between recipients of funds within those programs or between the two programs in order to fully leverage available funds for delivering projects in a timely manner. The loan would be of equal amounts of contract authority and obligation limitation.

An agreement should be developed and signed by the pertinent parties to document any loan arrangement. The terms of such agreement will, among other things, include a repayment term.

The borrower must pay back the funds to the lender from unobligated balances of funds that have not lapsed that are available to the recipient for the program to which or within which the loan was made, whether current year funds or carryover balances, in accordance with the terms of the loan agreement.

The FHWA is working toward a multi-year investment strategy process, which will provide funding over multiple years and provide greater certainty regarding the amounts of funding available for the process authorized in 23 U.S.C. 201(e). The FHWA currently allocates FLTP and FLAP funding each fiscal year. If this practice continues, the loan-reimbursement process will continue to be available to FLTP partners who participate in the competitive portion of the program; however, the recipient of loaned funds must be able to reimburse the lender and any amounts loaned should be well below prior allocation amounts.

Agreements

Program Agreements

The FHWA will work with new and existing partners to develop or update program agreements, within one year of FAST Act enactment, to document the processes and responsibilities of each agency in meeting the requirements of the FLTP. The purpose of these agreements will be to

address authority, roles and responsibilities, financial reporting requirements, program management, and risk-based stewardship and oversight.

Project Agreements

The FHWA will work with partners to execute a Project Agreement for each construction project using FLTP funds. Generally, the agency administering the project will initiate the agreement, and the agreement must be executed prior to starting environmental compliance (e.g., NEPA) and other project development activities. The project agreement will generally include:

1. Scope of the project;
2. Schedule for delivery;
3. Budget, including funding sources other than FLTP;
4. Roles and responsibilities; staff funding responsibility; and
5. Other project issues worth noting, such as the performance goal(s) supported by the project.

Further instructions on the use of Project Agreements for both Office of Federal Lands Highway (FLH) and partner-delivered projects using FLTP funds are included in FLH's Stewardship and Oversight (S&O) Guidance document dated December 2014 and S&O Supplemental Instructions dated January 2016. These documents can be found at <http://flh.fhwa.dot.gov/programs/stewardship-oversight>.

Program Specific Provisions

Performance Management

As described in 23 U.S.C. 203, a central theme of this program is transportation performance management.² Congress emphasized this point further in the FAST Act, which amended 23 U.S.C. 203(b)(2)(B) to now state: "In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support performance management, including..." The FHWA's interpretation of 23 U.S.C. 203(b)(2)(B) requires an application, also known as "investment strategy", from each eligible partner that describes how FLTP funds will be used to advance performance goals of both the Secretary and FLMAs. Each FLMA should include a description of how the program will support performance management, including:

- (i) the transportation goals of –
 - (I) a state of good repair of transportation facilities;
 - (II) a reduction of bridge deficiencies;
 - (III) an improvement in safety;
- (ii) high-use Federal recreation sites or Federal economic generators; and
- (iii) the resource and asset management goals of the Secretary of the respective FLMA.

These processes do not remove FLMAs from making the final programming decisions with FLTP funds. This role continues to reside with the FLMAs. In addition, FLMAs, in coordination with FHWA, are responsible for defining high-use Federal recreational sites and economic generators on their lands.

Agencies where the Secretary decides the allocation amounts (i.e., BLM, USACE, BOR, and eligible independent Federal agencies) are asked to include multiple funding scenarios within their investment strategy. The FHWA will use these partners' investment strategies to determine funding levels and will reasonably consider their forecasts of performance outcomes given limited available funding compared to their vast deferred maintenance costs.

A specific application format or structure is not provided in legislation. Additional working instructions on the application process for all partners can be found at <http://flh.fhwa.dot.gov/programs/fltp>.

(Note: The funds management and allocation approach employed in MAP-21 and now in FY 2016 under the FAST Act may change following collaborative discussions with partners and FHWA staff. Should this occur, this guidance will be updated accordingly.)

Reporting

The FLMA should provide an accomplishment report annually to FHWA. This information will promote transparency and accountability and provide national program managers, FLMA partners, Congressional staff, and other stakeholders with data to ascertain how and where the FLTP funds are being obligated and expended nationally. Guidance on the format of the report is provided within the FLTP Investment Strategy Working Instructions found at <http://flh.fhwa.dot.gov/programs/fltp>.

National Program Manager

Each FLMA will designate a National Program Manager to work with FLH offices to organize the development of the FLMA investment strategy. The FHWA role in the development of partners' investment strategies will be focused on clarifying any questions associated with this guidance, providing program data if available, and offering other empirical information.

Federal Lands Transportation Program Questions & Answers

GENERAL

1. Where under the Fixing America's Surface Transportation (FAST) Act is this program authorized?

The Federal Lands Transportation Program (FLTP) is authorized under section 1101(a)(3)(B) of the FAST Act. Changes to the program are addressed in section 1119 of the FAST Act. See <http://www.fhwa.dot.gov/fastact/legislation.cfm>.

2. Is this program only for Federal agencies?

Yes.

3. Which Federal agencies receive funding under the FLTP program?

The National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), U.S. Forest Service (USFS), the U.S. Army Corps of Engineers (USACE), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), and independent Federal agencies with natural resource and land management responsibilities receive funding under the FLTP. The requirements in 23 U.S.C. 203 apply to all eligible partners.

4. What are the requirements that prospective “independent Federal agencies (IFAs)” must follow to be considered an eligible partner?

Each prospective IFA should provide to the Office of Federal Lands Highway Headquarters the following.

- A. Description of its statutory authority and mission.
- B. Description of its land management and natural resource management responsibilities and a copy of any land use and/or management plans.
- C. Description of the transportation assets owned and managed by the IFA.

5. Can any other entity receive FLTP funding directly?

No. On occasion, other public agencies can leverage these funds at the request of the NPS, FWS, USFS, USACE, BLM, BOR, or independent Federal agencies with natural resource and land management responsibilities on transportation facilities that provide access to/through the FLMA's respective lands.

6. Can a Federal agency use FLTP funds for improvements on a non-Federal facility (e.g., State or local road)?

Yes. The use of FLTP funds to improve non-Federal transportation facilities is authorized by 23 U.S.C. 203.

7. Where in law does it state that FLTP programs should be *performance-based*?

In the FAST Act, Congress reinforced the expectation of a performance-based system by amending 23 U.S.C. 203(b)(2) to include “performance management”. Under 23 U.S.C. 203(b)(2), FLMAs must submit applications to the Secretary that describe how FLTP funds will be used to: (a) advance transportation performance management goals and the FLMA’s resource and asset management goals; and (b) provide access to high-use recreational sites or Federal economic generators. These goals should coincide with the Federal lands transportation facility inventory that each FLMA defines under the program. These requirements are consistent with performance-based programs.

8. The NPS, FWS, and USFS will receive a fixed amount of funding. Why do they need to submit an application (investment strategy)?

The FHWA’s interpretation of 23 U.S.C. 203(b)(2) requires that all eligible agencies submit an application (investment strategy) to document their needs and to show how the FLTP funds will be used to (a) advance transportation performance management goals and the FLMA’s resource and asset management goals; and (b) provide access to high-use recreational sites or Federal economic generators.

9. What reductions will be applied before allocating the funds?

Like other allocated programs, the FLTP is subject to obligation limitation and lop-off. Most years, this has reduced the amount available by 5 to 10 percent from the authorized amount. In addition, the FAST Act authorizes the Secretary to use up to 5 percent of the FLTP funds for transportation planning, data collection, bridge inspections, and cooperative research and innovation deployments.

10. Can FLTP funds be used as the non-Federal match for other title 23 programs, including FLAP?

Yes. 23 U.S.C. 120(k) allows FLTP funds to be used as the non-Federal match for any transportation project eligible for assistance under title 23 or chapter 53 of title 49, U.S.C., that provides access to or within Federal or tribal land. This funding flexibility should be used judiciously to promote the leveraging of other program and/or agency’s funds. Exceptions or limitations to this funding flexibility apply to the new Nationally Significant Federal Lands and Tribal Projects Program (FAST Act § 1123) and the new Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grant Program (authorized by the Nationally Significant Freight and Highway Projects Program)

(FAST Act § 1105; 23 U.S.C. 117). Refer to the guidance for those programs for more information.

11. How did the FAST Act change the environmental mitigation cap of \$10M?

Under MAP-21, a maximum of \$10,000,000 could be spent on activities listed in both 23 U.S.C. 203(a)(1)(A)(iv)(I) and (II). Under the FAST Act, the \$10M cap now applies solely to activities that fall under 23 U.S.C. 203(a)(1)(A)(iv)(I). Therefore, under the FAST Act, no more than \$10M can be spent on activities to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

12. 23 U.S.C. 203(d) requires the FLMAs to prohibit the use of bicycles on each federally owned road that has a speed limit of 30 miles per hour or greater and an adjacent paved path for use by bicycles within 100 yards of that road, unless the Secretary determines that the bicycle level of service on that roadway is rated B or higher. How do the FLMAs determine the Bicycle Level of Service (BLOS) rating?

The BLOS calculation methodology can be found in the Highway Capacity Manual published by the Transportation Research Board at: <http://www.trb.org/Main/Blurbs/164718.aspx>. The determination of BLOS is based primarily upon consideration of variables such as: lateral speed and vehicular speed, percent of trucks, presence of on-street parking, and pavement width and condition. However, since alternative methodologies exist to calculate BLOS in addition to that contained in the Highway Capacity Manual, it is left to the individual FLMAs to determine the most appropriate BLOS methodology.

Footnotes:

1. 23 U.S.C. 101(a)(8) (“The term ‘Federal Lands transportation facility’ means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c) [of title 23, U.S.C.]”).
2. 23 U.S.C. 203(b)(2)(B).
3. 23 U.S.C. 201(b)(2).
4. 23 U.S.C. 201(e)(2).