



## KYOVA INTERSTATE PLANNING COMMISSION FUNDING ELIGIBILITY GUIDELINES

(This handout has been provided as a guide for project eligibility)

### SURFACE TRANSPORTATION BLOCK GRANT (STBG) PROGRAM STBG SET-ASIDE PROGRAM (formerly TA/TAP) CONGESTION MITIGATION AND AIR QUALITY (CMAQ) IMPROVEMENT PROGRAM – OH

The following information has been summarized from Memorandums issued for each program. For detailed program information please read the memorandums by clicking each topic.

- [Guidance for the Surface Transportation Block Grant Program \(STBG\) as Revised by the Bipartisan Infrastructure Law, dated June 1, 2022](#)
- [Transportation Alternative Set Aside Implementation Guidance as Revised by the Bipartisan Infrastructure Law, dated March 30, 2022](#)
- [Congestion Mitigation and Air Quality \(CMAQ\) Implementation Program Fact Sheet, dated February 8, 2022](#)

### **SURFACE TRANSPORTATION BLOCK GRANT (STBG) PROGRAM**

The Surface Transportation Block Grant (STBG) Program provides flexibility that may be used by States and localities for projects to preserve and improve the conditions and performance on any Federal-aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure and transit capital projects including intercity bus terminals. STBG requirements within the BIL took effect on October 1, 2021, and apply to all related funding obligated on or after that date, whether funded from new STBG authorizations or STBG and Surface Transportation Program (STP) funds authorized in previous years.

#### **Eligible Location of Projects/Activities**

Location of Projects (23 U.S.C. 133(c)): STBG projects may not be undertaken on a road functionally classified as a local road or a rural minor collector unless the road was on a Federal-aid highway system on January 1, 1991, except—

- For a bridge or tunnel project (other than the construction of a new bridge or tunnel at a new location);
- For a project described in 23 U.S.C. 133(b)(5)-(15) and described below under “Eligible Activities” (b)(5) through (15) and (b)(23);
- For a bridge for the replacement of a low water crossing (see CFR part 650);
- For transportation alternatives projects described in 23 U.S.C. 101(a)(29) before enactment of the FAST Act (these are described in 23 U.S.C. 133(h) [Transportation Alternatives Set-Aside Guidance]; and
- As approved by the Secretary.

#### **Funding Share**

The Federal share for STBG-Funded projects is generally 80 percent (See 23 U.S.C. 102(b)). Certain types of improvements, predominately safety improvements, listed in 23 U.S. C. 120(c)(1), as amended by the BIL, may have a Federal share of 100%.

- *Examples of possible 100% Federal funded safety projects: traffic control signalization, maintaining minimum levels of retroreflectivity of highway signs or pavement markings, traffic circles (also known as “roundabouts”, safety rest areas (an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest), pavement markings, shoulder and centerline rumble strips and stripes, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, and guardrails.*

#### **Period of Availability**

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 RTP. Thus, funds are available for obligation for up to 4 years (23 U.S.C. 118). New obligations of STBG, TA Set-Aside, and RTP funds must follow the requirements and eligibilities of applicable law as amended by the BIL.

## STBG Program Eligible Projects/Activities

Subject to the location of projects as indicated above, the following eligible activities are listed in 23 U.S.C. 133(b):

1. Construction, as defined in 23 U.S.C. 101(a)(4) as amended by the BIL, of the following:
  - A. Highways, bridges, and tunnels, including designated routes of the Appalachian development highway system and local access roads under 40 U.S.C. 14501;
    - *Examples of construction per 23 U.S.C. 101(a)(4): preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services.*
    - *40 U.S.C. 14501 – Appalachian Development Highway System: Purpose is to provide a highway system which, in conjunction with the Interstate System and other Federal-aid highways in the Appalachian region, will open up an area with a developmental potential where commerce and communication have been inhibited by lack of adequate access, the Secretary of Transportation may assist in the construction of an Appalachian development highway system and local access roads serving the Appalachian region. Construction on the development highway system shall not be more than three thousand and ninety miles. There shall not be more than 1,400 miles of local access roads that serve specific recreational, residential, educational, commercial, industrial, or similar facilities or facilitate a school consolidation program.*
  - B. Ferry boats and terminal facilities:
    - That are eligible under 23 U.S.C. 129(c) as amended by the BIL, or
    - That are privately or majority-privately owned, that the Secretary determines provide a substantial public transportation benefit or otherwise meet the foremost needs of the surface transportation system described in 23 U.S.C. 101(b)(3)(D). *This eligibility was added by BIL.*
  - C. Transit capital projects eligible under chapter 53 of title 49, U.S.C.
    - *Examples of eligible capital projects under 49 USC 53: acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), transit-related intelligent transportation systems; rehabilitating or remanufacturing a bus; preventative maintenance; associated transit improvements).*
  - D. Infrastructure-based intelligent transportation systems capital improvements, including the installation of vehicle-to-infrastructure communication equipment;
  - E. Truck parking facilities eligible under Section 1401 of MAP–21 (See 23 U.S.C. 137 note);
  - F. Border infrastructure projects eligible under Section 1303 of SAFETEA–LU (See 23 U.S.C. 101 note); and
  - G. Wildlife Crossing Structures. This eligibility was added by BIL.
2. Operational improvements and capital and operating costs for traffic monitoring, management, and control facilities and programs. Operational improvement is defined in 23 U.S.C. 101(a)(19).
  - *Operational Improvements as defined in 23 USC 101(a)(19): capital improvement for installation of traffic surveillance and control equipment, computerized signal systems, motorist information systems. This does not include resurfacing, restoring, or rehabilitating improves, construction of additional lanes, interchanges, and grade elevations, and construction of a new facility on a new location.*
3. Environmental measures eligible under 23 U.S.C. 119(g), 148(a)(4)(B)(xvii), 328, and 329, and transportation control measures listed in CAA Section 108(f)(1)(A) (other than clause (xvi) that of section) of the Clean Air Act (See 42 U.S.C. 7408(f)(1)(A)).
  - *23 USC 119(g): Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under 49 CFR 53.*
  - *23 USC 148(a)(4)(B)(xvii): the addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.*
  - *23 USC 328: Provides eligibility for environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funding under this title.*
  - *23 USC 329: Eligibility includes right-of-way surveys to determine management requirements to control Federal or State noxious weeds as defined in the plant protection Act or State law, and brush or tree species, whether native or nonnative, that may be considered by the State or local transportation authorities to be a threat with respect to the safety or maintenance of transportation systems; control or elimination of plants;*
  - *Clean Air Act 108(f)(1)(A): <https://scaq.ca.gov/sites/main/files/file-attachments/federal-clean-air-act-section108.pdf?1604444154#:~:text=%28f%29%281%29%20The%20Administrator%20shall%20publish%20and%20make%20available,and%20their%20precursors%2C%20in-cluding%2C%20but%20not%20limited%20to%E2%80%94>*
4. There is no longer a paragraph (4) in subsection (b).
5. Highway and transit safety infrastructure improvements and programs, including projects eligible under 23 U.S.C. 130 and installation of safety barriers and nets on bridges. Not subject to the location of Project requirements in 23 U.S.C. 133(c).
  - *23 USC 130: Eligibility for projects for construction for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, the relocation*

*of highways to eliminate grade crossings, and projects at grade crossings to eliminate hazards posed by blocked grade crossings due to idling trains.*

6. Fringe and corridor parking facilities and programs in accordance with 23 U.S.C. 137 and carpool projects in accordance with 23 U.S.C. 146. Carpool project is defined in 23 U.S.C. 101(a)(3). Not subject to the location of project requirement in 23 USC 133(c).
  - *23 USC 137: Acquisition of land adjacent to the right-of-way outside a central business district, construction of publicly owned parking facilities or within such right-of-way, to serve an urban area of 50,000 population or more. To be located and designed in conjunction with existing or planned public transportation facilities. Parking facilities include access roads, buildings, structures, equipment, improvements, and interests in lands.*
  - *23 USC 146: Projects designed to encourage the use of carpools and vanpools.*
  - *23 USC 101(a)(3): Carpool project means any project to encourage the use of carpools or vanpools, including provisions of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing facilities for use for preferential parking for carpools and real-time ridesharing projects where drivers, using an electronic transfer of funds, recover costs directly associated with the trip provided through the use of location technology to quantify those direct costs.*
7. Recreational trails projects eligible under 23 U.S.C. 206 as amended by the BIL, including maintenance and restoration of existing recreational trails, pedestrian and bicycle projects in accordance with 23 U.S.C. 217 as amended by the BIL (including modifications to comply with accessibility requirements under the Americans with Disabilities Act of 1990 (See 42 USC 12101 eq seq.)), and the Safe Routes to School Program under 23 USC 208 as amended by the BIL. Not subject to the Location of Project requirement in 23 USC 133(c).
  - *Recreational Trails means a thoroughfare or track across land or snow, used for recreational purposes such as pedestrian activities, including wheelchair use; skating or skateboarding; equestrian activities, bicycling or use of other human-powered vehicles; motorized vehicular activities, including all-terrain vehicle riding, motorcycling, use of off-road light trucks, or use of other off-road motorized vehicles.*
  - *Example of eligible projects: maintenance and restoration of existing recreational trails; development and rehabilitation of trailside and trailhead facilities and trail linkages; purchase and lease of recreational trail construction and maintenance equipment; construction of new recreational trails.*
8. Planning, design, or construction of boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
9. Development and implementation of a State asset management plan for the National Highway System (NHS) and a performance-based management program for other public roads. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
10. Protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) for bridges (including approaches to bridges and other elevated structures) and tunnels on public roads, and inspection and evaluation of bridges and tunnels and other highway assets. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
11. Surface transportation planning programs, highway and transit research and development and technology transfer programs, and workforce development, training, and education under chapter 5 of title 23, United States Code. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
12. Surface transportation infrastructure modifications to facilitate direct intermodal interchange, transfer, and access into and out of a port terminal. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
13. Projects and strategies designed to support congestion pricing, including electronic toll collection and travel demand management strategies and programs. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
14. Projects and strategies designed to reduce the number of wildlife-vehicle collisions, including project-related planning, design, construction, monitoring, and preventative maintenance. Preventive maintenance is defined in 23 USC 116(a). Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
  - *Preventative maintenance as defined in 23 U.S.C. 116(a): Pavement preservation programs and activities: programs and activities employing a network level, long-term strategy that enhances pavement performance by using an integrated, cost-effective set of practices that extend pavement life, improve safety, and meet road user expectations.*
15. The installation of electric vehicle charging infrastructure and vehicle to grid infrastructure. Not subject to the Location of Project requirement in 23 U.S.C. 133(c). This eligibility was added by BIL.
16. The installation and deployment of current and emerging intelligent transportation technologies, including the ability of vehicles to communicate with infrastructure, buildings, and other road users. This eligibility was added by the BIL.
17. Planning and construction of projects that facilitate intermodal connections between emerging transportation technologies, such as magnetic levitation and hyperloop. This eligibility was added by the BIL.

18. Protective features, including natural infrastructure, to enhance the resilience of a transportation facility otherwise eligible for assistance under STBG. Natural infrastructure is defined in 23 U.S. C. 101(a)(17). This eligibility was added by the BIL.
  - *Natural infrastructure as defined in 23 USC 101(a)(17): infrastructure that uses, restores, or emulates natural ecological processes and is created through the action of natural physical, geological, biological, and chemical processes over time; is created by human design engineering, and construction to emulate or act in concert with natural processes; or involves the use of plants, soils, and other natural features, including through creation, restoration, or preservation of vegetated areas using materials appropriate to the region to manage stormwater and runoff, to attenuate flooding and storm surges, and for other related purposes.*
19. Measures to protect a transportation facility otherwise eligible for assistance under STBG from cybersecurity threats. This eligibility was added by the BIL.
20. Upon request of a State and subject to the approval of the Secretary, if Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance is approved for a STBG eligible project, then the State may use STBG funds to pay the subsidy and administrative costs associated with providing Federal credit assistance for the projects.
21. The creation and operation by a State of an office to assist in the design, implementation, and oversight, including conducting value for money analyses or similar comparative analyses, of a public-private partnerships eligible to receive funding under title 23 and chapter 53 of title 49, and the payment of a stipend to unsuccessful private bidders to offset their proposal development costs, if necessary to encourage robust competition in public-private partnership procurements.
22. Any type of project eligible under 23 U.S.C. 133 as in effect on the day before the FAST Act was enacted, (i.e., in effect on December 3, 2015). Among these are: including projects described under section 191(a)(29) as in effect on such day. Among these are:
  - i. Replacement of bridges with fill material;
  - ii. Training of bridge and tunnel inspectors;
  - iii. Application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels;
  - iv. Projects to accommodate other transportation modes continue to be eligible pursuant to 23 U.S.C. 142(c) if such accommodation does not adversely affect traffic safety;
    - *23 USC 142(c): Accommodation of Other Modes of Transportation.—The Secretary may approve as a project on any Federal-aid highway for payment from sums apportioned under section 104(b) modifications to existing highways eligible under the program that is the source of the funds on such highway necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.*
  - v. Transit capital projects eligible for assistance under chapter 53 of title 49, United States Code, including vehicles and facilities (publicly or privately owned) that are used to provide intercity passenger bus service;
    - *49 USC Chapter 53: Public Transportation*
  - vi. Approach roadways to ferry terminals to accommodate other transportation modes and to provide access into and out of the ports;
  - vii. Transportation alternatives previously described in 23 U.S.C. 101(a)(29) and described in 23 U.S.C. 213 (as in effect on the day before enactment of the FAST Act);
    - *23 USC 101(a)(29): The term state funds includes funds raised under the authority of the State or any political or other subdivision thereof and made available for expenditure under the direct control of the State transportation department.*
    - *23 USC 213: Transportation Alternatives Program Guidance*
  - viii. Projects relating to intersections having disproportionately high accident rates, high levels of congestion (as evidenced by interrupted traffic flow at the intersection and a level of service rating of “F” during peak travel hours, calculated in accordance with the Highway Capacity Manual), and are located on a Federal-aid highway;
  - ix. Construction and operational improvements for any minor collector if the minor collector and the project to be carried out are in the same corridor and in proximity to an NHS route; the construction or improvements will enhance the level of service on the NHS route and improve regional traffic flow; and the construction or improvements are more cost-effective, as determined by a benefit-cost analysis, than an improvement to the NHS route;
  - x. Workforce development, training, and education activities discussed in 23 U.S.C. 504(e);
  - xi. Advanced truck stop electrification systems. Truck stop electrification system is defined in 23 U.S.C. 101(a)(34).

- *23 USC 101(a)(34): The term “truck stop electrification system” means a system that delivers heat, air conditioning, electricity, or communications to a heavy-duty vehicle.*
- xii. Installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife;
- xiii. Electric vehicle and natural gas vehicle infrastructure in accordance with 23 U.S.C. 137;
  - *23 USC 137(f)(1): The Secretary may approve for Federal financial assistance from funds apportioned under section 104(b)(1), projects for designating existing facilities, or for acquisition of rights of way or construction of new facilities, including the addition of electric vehicle charging stations or natural gas vehicle refueling stations, for use as preferential parking for carpools, provided that such facilities (A) are located outside of a central business district and within an interstate highway corridor, and (B) have as their primary purpose the reduction of vehicular traffic on the interstate highway.*
- xiv. Data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk based asset management and performance based management, and for similar activities related to the development and implementation of a performance based management program for other public roads;
- xv. Construction of any bridge in accordance with 23 U.S.C. 144(f) that replaces any low water crossing (regardless of the length of the low water crossing); any bridge that was destroyed prior to January 1, 1965; any ferry that was in existence on January 1, 1984; or any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers. Not subject to the Location of Project requirement in 23 U.S.C. 133(c); and
- xvi. Actions in accordance with the definition and conditions in 23 U.S.C. 144(g) to preserve or reduce the impact of a project on the historic integrity of a historic bridge if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge. Not subject to the Location of Project requirement in 23 U.S.C. 133(c).
- 23. Rural barge landing, dock, and waterfront infrastructure projects in accordance with 23 U.S.C. 133(j) (Subsection (j)). Not subject to the Location of Project requirement in 23 U.S.C. 133(c). This eligibility was added to the BIL.
- 24. Projects to enhance travel and tourism. This eligibility was added to the BIL.

The following activities are made eligible by other sections of 23 U.S.C.:

- 25. Public transportation projects: (i) as described in 23 U.S.C. 142(a)(1), (a)(2), (a)(3), and (c); and (ii) meeting the requirement contained in 23 U.S.C. 142.
  - *23 USC 142(a)(1): the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service)*
  - *23 USC 142(a)(2): the Secretary may approve as a project on the 1 surface transportation program for payment from sums apportioned under section 104(b)(3) for carrying out any capital transit project eligible for assistance under chapter 53 of title 49, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.*
  - *23 USC 142(c): The Secretary may approve as a project on any Federal-aid system for payment from sums apportioned under section 104(b) modifications to existing highway facilities on such system necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.*
- 26. Initiatives to halt the evasion of payment of moto fuel taxes as provided for under 23 U.S.C. 143(b)(8), including expenditure limitations.
- 27. Workforce development, training, and education activities under 23 U.S.C. 504(e).
  - *23 USC 504(e) project activities: tuition and direct educational expenses, excluding salaries, in connection with the education and training of employees of State and local transportation agencies; employee professional development; student internships; pre-apprenticeships, apprenticeships, and career opportunities for on-the-job training; university, college, community college, or vocational school education activities, including outreach, to develop interest and promote participation in surface transportation careers; activities associated with workforce training and employment services, such as targeted outreach and partnerships with industry, economic development organizations, workforce development boards, and labor organizations; activities carried out by the National Highway Institute under subsection (a); and (l) local technical assistance programs under subsection (b).*

**Please note:**

- Programing and expenditure of funds for projects shall be consistent with 23 USC 134 and 135 as amended by the BIL. 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 – see 23 USC 133 (d)(5).

- STBG projects for eligible planning purposes must be reflected in the statewide SPR work program or Metropolitan Unified Planning Work Program (See 23 CFR 420.111). Further, these projects must be in the STIP/TIP unless the State DOT or MPO agree that they may be excluded (See 23 CFR 420.119(e)).
- Bridges on a federal-aid highway (see 23 U.S.C.)
  - An off-system bridge is a highway bridge or low water crossing located on a public road that is not a Federal-aid highway. Eligible activities for the set-aside for off-system bridges are as follows:
    - Construction, as defined in 23 U.S.C. 101(1)(4), of off-system bridges (other than the construction of a new bridge at a new location – See 23 U.S.C. (c)(1).
    - Replacement of low water crossings with bridges.
    - Protection for bridges and low water crossings located on the public roads, and inspection and evaluation of bridges and low water crossings.
- 23 USC 217(i) requires that bicycle facilities be principally for transportation, rather than recreation, purposes. However, 23 USC 133(b)(7) and 133(h) list “recreational trail projects” as eligible activities under the STBG program. Therefore, 23 U.S.C. 217(i) does not apply to recreational trails projects (including for bicycle use) using STBG funds. The transportation requirement under Section 217(i) is only applicable to bicycle projects; does not apply to any other trail use or transportation mode.

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## ***SURFACE TRANSPORTATION BLOCK GRANT (STBG) SET-ASIDE PROGRAM (formerly TA/TAP)***

The BIL continues the Transportation Alternatives set-aside from the Surface Transportation Block Grant (STBG). Program. Eligible uses of the set-aside funds include all projects and activities that were previously eligible under the Transportation Alternatives Program under the Moving Ahead for progress in the 21<sup>st</sup> Century Act (MAP-21). This encompasses 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. FHWA encourages State and local agencies and other project sponsors to consider the use of funds from the TA Set-Aside to address four areas identified by BIL: complete streets, American with Disabilities Act, equity, and flexing of funds to other federal agencies. All TA Set-Aside funds must be selected through a competitive process (See 23 U.S.C. 133(h)(4)). Projects eligible under the TA Set-Aside are also eligible under the STBG. The Set-Aside program is required to have a competitive process to award funding. Therefore, KYOVA will solicit for projects with a competitive funding process for the TA Set-Aside Program.

### ***Eligible Location of Projects/Activities***

There are no local restrictions for the use of TA Set-Aside; 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)(5), (7), (8), and (22)). Under 23 U.S.C. 133(c)(3), projects eligible under the TA Set-Aside funded with STBG funds are exempt from the general location restriction in 23 U.S.C. 133(c). However, Safe Routes to School (SRTS) noninfrastructure projects, traffic education and enforcement activities must take place within approximately two miles of a primary, middle, or high school (Kindergarten through 12<sup>th</sup> grade) (23 U.S.C. 208(a) and (g)(2)(A)).

### ***Period of Availability***

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 RTP. Thus, funds are available for obligation for up to 4 years (23 U.S.C. 118). New obligations of STBG, TA Set-Aside, and RTP funds must follow the requirements and eligibilities of applicable law as amended by the BIL.

### ***STBG Set-Aside Program Eligibility Project Sponsors***

Under FAST Act Section 1109, 23 U.S.C. 133 (h) the TA Set-aside eligible entities are:

- Local governments;
- Regional transportation authorities;
- Transit agencies;
- Natural resource or public land agencies;
- School districts, local education agencies, or schools;
- Tribal governments;
- A metropolitan planning organization that serves an urbanized area with a population of 200,000 or fewer.
- A non-profit entities;
- A state at the request of an eligible entity listed above;
- Any other local or regional governmental entity with responsibility for oversight of transportation or recreational trails (other than a metropolitan planning organization that serves an urbanized area with a population of over 200,000 or a State agency) that the State determines to be eligible, consistent with the goals of 23 U.S.C. 133(h).
- A State\* at the request of an eligible entity listed above.

*Note: \*State DOTs are not eligible entities as defined under 23 U.S.C. 133(h)(4)(A) unless requested by another eligible entity. (23 U.S.C. 133(h)(4)(A)(x)). MPOs representing urbanized areas with over 200,000 population are not eligible entities. (23 U.S.C. 133(h)(4)(A)(ix)). State Dots and MPOs may partner with any eligible entity project sponsor to carry out a project. After projects have been selected, the State DOT may manage projects.*

### **Set-Aside/TA Eligible Projects/Activities**

The BIL retained previous TA Set-Aside eligibility, amended the reference for Safe Routes to School (SRTS) projects, and added activities in furtherance of a vulnerable road user safety assessment, as defined in 23 U.S.C. 148(a). The BIL also added eligibility for State DOTs to use funds for administrative and technical assistance (limited to 5% of the TA Set-Aside fund). TA Set-Aside eligible projects consist of: Section 133(h)(3)(A): Projects or Activities described in 23 U.S.C. 101(a)(29) as it appeared prior to changes made by the FAST Act: Those sections contained the following eligible projects:

1. Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) as it appeared prior to changes made by the FAST Act: The term “transportation alternatives” means any of the following activities when carried out as part of any program or project authorized or funded under title 23 U.S.C., 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 (see State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance); and
    - iv. archaeological activities relating to impacts from implementation of a transportation project eligible under title 23, U.S.C.
  - 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; or
    - ii. reduce vehicle-cause wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.



2. The recreational trails program under 23 U.S.C. 206 of title 23. Any project eligible under the RTP also is eligible under the TA Set-Aside.) See RTP Guidance and Information ([https://www.fhwa.dot.gov/environment/recreational\\_trails/guidance/](https://www.fhwa.dot.gov/environment/recreational_trails/guidance/))
3. The safe routes to school program under section 1404 of the SAFETEA-LU (23 U.S.C. 402 note; Public Law 109-59)[now codified as 23 U.S.C. 208 and including]:
  - Infrastructure-related projects eligible under section 1404(f)(1) [now eligible under 23 U.S.C. 208(g)(1)].
    - *Examples of Eligible Infrastructure Projects: sidewalk improvements; traffic calming and speed reduction improvements; pedestrian and bicycle crossing improvements; on-street bicycle facilities; off-street bicycle and pedestrian facilities; secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools (section 1404(f)(1)(A).*
  - Noninfrastructure-related activities eligible under section 1404(f)(1) [now eligible under section 1404(f)(2)].
    - *Examples of eligible non-infrastructure: Creation and reproduction of promotional and educational materials; Bicycle and pedestrian safety curricula, materials and trainers; training, including SRTS training workshops that target school- and community-level audiences; modest incentives for SRTS contests, and incentives that encourage more walking and bicycling over time; safety and educational tokens that also advertise the program; photocopying, duplicating, and printing costs, including CDs, DVDs, etc.; mailing costs; costs for data gathering, analysis, and evaluation reporting at the local project level; costs for additional law enforcement or equipment needed for enforcement activities; equipment and training needed for establishing crossing guard programs; costs to engage the services of a consultant (either non-profit or for-profit) to manage a SRTS program as described in the prior bullet.*
  - SRTS coordinators eligible under section 1404(f)(3) [now eligible under 23 U.S.C. 208(g)(3)].
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* - [https://www.fhwa.dot.gov/environment/transportation\\_alternatives/guidance/boulevards.cfm](https://www.fhwa.dot.gov/environment/transportation_alternatives/guidance/boulevards.cfm).

#### Other eligible projects and BIL dedicated funds:

- Section 133(h)(3)(B): projects and activities under the safe routes to school program under 23 U.S. C. 208;
- Section 133(h)(3)(C): activities in furtherance of a vulnerable road user safety assessment (as defined in US 23 U.S. C 148(a).
- The BIL amended other sections or title 23 that relate to projects eligibility under the TA Set-Aside including:
  - STBG: 23 U.S.C. 133(b)(7) clarified eligibility for recreational trail projects including the maintenance and restoration of existing recreational trails and amended the citation for the safe routes to school program under section 208.
  - HSIP: 23 U.S.C. 148(a)(11)(B)(v) added SRTS noninfrastructure projects as eligible under HSIP as a specified safety project. Many activities eligible under the TA Set-Aside already were eligible under HSIP, subject to HSIP criteria.

#### Shared Micromobility and Electric Bicycles

The BIL inserted shared micromobility to CMAQ eligibility under section 1049 and as eligible bicycle and pedestrian projects under 217.

- CMAQ: Under 23 U.S.C. 149(b)(7), a project or program is eligible for CMAQ funding if it “shifts” traffic demands to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduced demand for roads through such means as .....shared micromobility including bike sharing and shared scooter systems.
- The Bill changed the definition of an electric bicycle in section 217(j)(2), which modified the kinds of electric bicycles that States and local governments may allow on non-motorized trails and pedestrian walkways that use Federal-aid funds. Therefore, electric bicycle infrastructure is eligible under the TA Set Aside. However, BIL did not amend section 271(h) which lists restrictions on the use of motorized vehicles to allow other shared micromobility devices on nonmotorized trails and pedestrian walkways.
- The BIL codified SRTS at 23 U.S.C. 208 and expanded eligibility from kindergarten through 8<sup>th</sup> grade to kindergarten through 12 (23 U.S.C. 208(a)(2) and 208(b).

#### ***STBG Set-Aside Program Ineligible Projects/Activities***

TA Set-Aside funds cannot be used for the following activities:

- MPO Administrative purposes. (Exceptions See FHWA memo Allocating Indirect Cost to Projects dated September 4, 2015.
- Promotional activities, except as permitted under SRTS 92CFR 200.421(e)(3).
  - *92 CFR 200.421(e)(3): Unallowable expenses - All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section; costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including: costs of displays, demonstrations, and exhibits; costs of meeting rooms, hospitality suites, and other*



*special facilities used in conjunction with shows and other special events; and salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings; costs of promotional items and memorabilia, including models, gifts, and souvenirs; costs of advertising and public relations designed solely to promote the non-Federal entity.*

- Routine maintenance and operations, except trail maintenance and restoration as permitted under the RTP.
- General recreation and park facilities, playground equipment, sports fields, campgrounds, picnic areas, pavilions, or other facilities that do not serve an eligible TA Set-Aside, RTP, or SRTS purpose.

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## **CONGESTION MITIGATION AND AIR QUALITY (CMAQ) IMPROVEMENT PROGRAM\***

The BIL continues the Congestion Mitigation and Air Quality (CMAQ) Improvement Program to provide a flexible funding source to State and local governments for transportation projects and programs to help meet the requirements of the Clean Air Act. Funding is available to reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter (nonattainment areas) and for former nonattainment areas that are now in compliance (maintenance areas).

*\*KYOVA oversees CMAQ funded projects located within the urbanized only in the urbanized area of Lawrence County, Ohio. However, due to prior project commitments, KYOVA will not be accepting new projects applications until FY2026. CMAQ projects located in West Virginia and Kentucky must contact the West Virginia Department of Highways (WVDOH) or the Kentucky Transportation Cabinet (KYTC), respectively.*

### **CMAQ Eligible Projects/Activities**

Funds may be used for transportation projects likely to contribute to the attainment or maintenance of a national ambient air quality standard, with a high level of effectiveness in reducing air pollution and be included in the Metropolitan Planning Organization's (MPO) current Metropolitan Transportation Plan (MTP) and Transportation Improvement Program (TIP) or the current state transportation improvement program (STIP) in areas without an MPO. Many types of projects are eligible under the CMAQ program including electric vehicles and charging stations, diesel engine replacements and retrofits, transit improvements, bicycle and pedestrian facilities, shared micromobility projects including shared scooter systems, and more. In addition to improving air quality and reducing congestion, CMAQ projects can improve equitable access to transportation services, improve safety, and promote application of new and emerging technologies.

Each project must meet three basic criteria: (1) It must be a transportation project; (2) it must generate an emissions reduction; and (3) it must be located in or benefit a nonattainment or maintenance area.

Some specific eligible projects are described below:

1. Establishment or operation of a traffic monitoring, management, and control facility, including advanced truck stop electrification systems, if it contributes to attainment of an air quality standard.
2. Projects that improve traffic flow, including projects to improve signalization, construction of HOV lanes, improve intersections, add turning lanes, improve transportation systems management and operations that mitigate congestion and improve air quality, and implement ITS and other CMAQ-eligible projects, including projects to improve incident and emergency response or improve mobility, such as real-time traffic, transit, and multimodal travel information.
3. Purchase of integrated, interoperable emergency communications equipment.
4. Projects that shift traffic demand to nonpeak hours or other transportation modes, increase vehicle occupancy rates, or otherwise reduce demand.
5. Purchase of diesel retrofits or conduct related outreach activities.
6. Facilities serving electric or natural gas-fueled vehicles (except where this conflict with prohibition on rest area commercialization) are explicitly eligible.
7. Some expanded authority to use funds for transit operations.
  - a. Capital Investments:

- i. Capital investments may be used to establish new or expanded transportation projects or programs that reduce emissions, including capital investments in transportation infrastructure, congestion relief efforts, vehicle acquisitions, diesel engine retrofits, or other capital projects.
- b. Operating Assistance:
  - i. The intent is to help start-up viable new transportation services that can demonstrate air quality benefits and eventually cover costs as much as possible. Other funding sources should supplement and ultimately replace CMAQ funds for operating assistance, as these projects no longer represent additional, net air quality benefits but have become part of the baseline transportation network.
  - ii. Operating assistance includes all costs of providing new transportation services, including, but not limited to, labor, fuel, administrative costs, and maintenance.
  - iii. With the focus on start-up and recognizing the importance of flexibility in the timing of financial assistance, the 3 years of operating assistance allowable under the CMAQ program may now be spread over a longer period, for a total of up to 5 sequential years of support. Grantees who propose to use CMAQ funding for operating support may spread the third-year amount not to exceed the greater of year 1 or year 2) across an additional 2 years (i.e., years 4 and 5). This will provide an incremental, taper-down approach, while other funding is used for a higher proportion of the operating costs as needed.

The BIL added four new eligibilities:

1. shared micromobility, including bike sharing and shared scooter systems; [§ 11115(1); 23 U.S.C. 149(b)(7)];
2. the purchase of diesel replacements, or medium-duty or heavy-duty zero emission vehicles and related charging equipment; [§ 11115(1); 23 U.S.C. 149(b)(8)];
3. modernization or rehabilitation of a lock and dam, or a marine highway corridor, connector, or crossing if functionally connected to the Federal-aid highway system and likely to contribute to attainment or maintenance of national ambient air quality standards (capped at 10% of CMAQ apportionment); and [§ 11115(1) and (2); 23 U.S.C. 149(b)(10), (b)(11), and (c)(4)];
4. in alternative fuel projects, vehicle refueling infrastructure that would reduce emissions from nonroad vehicles and nonroad engines used in construction projects or port-related freight operations. [§ 11115(3); 23 U.S.C. 149(f)(4)(A)].

### ***CMAQ Ineligible Projects/Activities***

1. Light-duty vehicle scrappage programs.
2. Projects that add new capacity for SOVs are ineligible unless construction is limited to high occupancy vehicle (HOV) lanes. This HOV lane eligibility includes the full range of HOV facility uses authorized under 23 U.S.C. 166, such as high-occupancy too (HOT) and low-emission vehicles.
3. Routine maintenance and rehabilitation projects (e.g., replacement-in-kind of track or other equipment, reconstruction of bridges, stations, and other facilities, and repaving or repairing roads) are ineligible as they only maintain existing levels of highway and transit service and therefore do not reduce emissions.
4. Administrative costs of the CMAQ program may not be defrayed with program funds.
5. Projects that do not meet the specific eligibility requirements of Titles 23 and 49, U.S.C.
6. Stand-alone projects to purchase fuel.
7. Models and Monitors-acquisition, operation, or development of models or monitoring networks. Modeling or monitoring emissions, traffic operations, travel demand or other related variables do not directly lead to an emissions reduction.
8. Litigation costs surrounding CMAQ or other Federal-aid projects.