

**Date:** July 13, 2012

**Subject:** MAP-21 and Its Effects on Transportation Enhancements

The recently enacted Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) includes a number of substantial changes to the transportation enhancement (TE) activities defined in Title 23. The activities are now termed “transportation alternatives,” (TAs) and will henceforth be referred to in this memo as such.

### Transportation Alternative Definitions in MAP-21

Under SAFETEA-LU, there were twelve eligible enhancement activities. Under MAP-21 there are nine eligible TAs. The overall theme of the revisions is to expand the eligibilities from strictly *enhancing* the transportation system to include planning, construction, and design related to *compliance* with existing federal regulations. Previously, the Federal Highway Administration (FHWA) Guidance on Transportation Enhancement Activities prohibited the use of TE funds for “project elements or mitigation that normally would be required in a regular highway project.”<sup>1</sup> This included project elements and costs associated with meeting the requirements of laws such as the Americans with Disabilities Act (ADA) of 1990, the National Environmental Protection Act (NEPA) of 1969, the National Historic Preservation Act of 1966, and the Department of Transportation Act of 1966. New regulatory guidance from FHWA will be required to clarify exactly how changes in the legal definitions will impact eligibility.

Four previously eligible activities are not included in MAP-21: pedestrian and bicycle safety and educational programs; acquisition of scenic or historic easements and sites; scenic or historic highway programs including tourist and welcome centers; and establishment of transportation museums.

MAP-21 Transportation Alternatives	Notes
1. 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.	In the past 20 years, a majority of TE funds have been used for just one of the historic twelve TE activities: construction of facilities for bicyclists and pedestrians. This activity remains eligible under MAP-21. However, the definition is expanded to include transportation projects to achieve ADA compliance.

<sup>1</sup> [http://www.fhwa.dot.gov/environment/transportation\\_enhancements/guidance/principles\\_pt1.cfm#general](http://www.fhwa.dot.gov/environment/transportation_enhancements/guidance/principles_pt1.cfm#general)

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<p>2. 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.</p>	<p>A new activity, providing “safe routes for non-drivers,” is established by MAP-21.</p>
<p>3. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.</p>	<p>Under SAFETEA-LU, rail-trails were described as “preservation of abandoned rail corridors, including the conversion and use thereof for pedestrian and bicycle trails.” In MAP-21, the wording is only “conversion and use.”</p>
<p>4. Construction of turnouts, overlooks, and viewing areas.</p>	<p>Under SAFETEA-LU, all scenic and historic highway programs were eligible. Under MAP-21 this is restricted to the construction of turnouts and overlooks.</p>
<p>5. Inventory, control, or removal of outdoor advertising.</p>	<p>The definition of the outdoor advertising management activity is unchanged from SAFETEA-LU.</p>
<p>6. Historic preservation and rehabilitation of historic transportation facilities.</p>	<p>Historic preservation is combined with rehabilitation of historic transportation facilities. The <u>operation</u> of historic transportation facilities such as lighthouses and the Erie Canal is no longer included.</p>
<p>7. Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control.</p>	<p>“Landscaping or other scenic beautification” is recast under MAP-21 as “vegetation management practices in transportation rights-of-way.” This narrows the geographic scope of landscaping as compared to SAFETEA-LU. In addition, <u>beautification</u> is no longer part of the definition – the goals are roadway safety, invasive species management, and erosion control.</p>
<p>8. Archaeological activities relating to impacts from implementation of a transportation project eligible under this title.</p>	<p>The definition is restricted to only those archaeological activities relating to impacts from implementation of a transportation project. Previously only archaeological activities related to surface transportation but <u>not</u> required as part of a Federal-aid highway project were eligible. This is an example of the shift from enhancement to compliance.</p>
<p>9. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.</p>	<p>The environmental mitigation activity is changed from pollution due to stormwater runoff and reducing vehicle-caused wildlife mortality to cover <u>any</u> environmental mitigation activity. Guidance will be needed to determine the implications of this word choice.</p>



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## Reservation of Funds

Prior to MAP-21, states were required to set-aside 10% of their STP funds for TE activities. However, under the new designation of TA, a reservation of funds for TA will be determined by a formula based off a changing variable known as the “National Amount”:<sup>2</sup>

$$StateTA = NationalAmt \times \left( \frac{StateFY09}{TotalFY09} \right)$$

StateTA	=	On October 1 <sup>st</sup> of fiscal years 2013 and 2014, the amount proportionally reserved for State TA projects from the funds apportioned to the state for STP on October 1st of fiscal years 2013 and 2014
NationalAmt	=	amount for each fiscal year that is equal to 2.0% of the amounts authorized to be appropriated for such fiscal year from the Highway Trust Fund (other than the Mass Transit account) to carry out chapters 1, 2, 5, and 6 of Title 23.
StateFY09	=	the amount apportioned to the State for the transportation enhancements program for fiscal year 2009
TotalFY09	=	the total amount of funds apportioned to all States for that fiscal year for the transportation enhancements program for fiscal year 2009

## Federal Share

Section 1508 of MAP-21 addresses the Federal share payable, amending 23 U.S.C. 120. In general, 23 U.S.C. 120 applies to the entire Federal-aid highway program, “except where there is specific statutory language for a specific program.”<sup>3</sup> The TA program falls under the general provisions for federal share payable for non-interstate system projects at 80%, with the remaining 20% being local match funding.<sup>4</sup> Although there is no longer specific language particularly for the TA program, the ratio of 80:20 of federal to non-federal share remains unchanged from the former program under SAFETEA-LU.

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<sup>2</sup> MAP-21 § 1122; 23 U.S.C. 213(a)

<sup>3</sup> [http://www.fhwa.dot.gov/environment/recreational\\_trails/guidance/financial\\_management/fedshare.cfm](http://www.fhwa.dot.gov/environment/recreational_trails/guidance/financial_management/fedshare.cfm)

<sup>4</sup> MAP-21 § 1508(b); 23 U.S.C. 120



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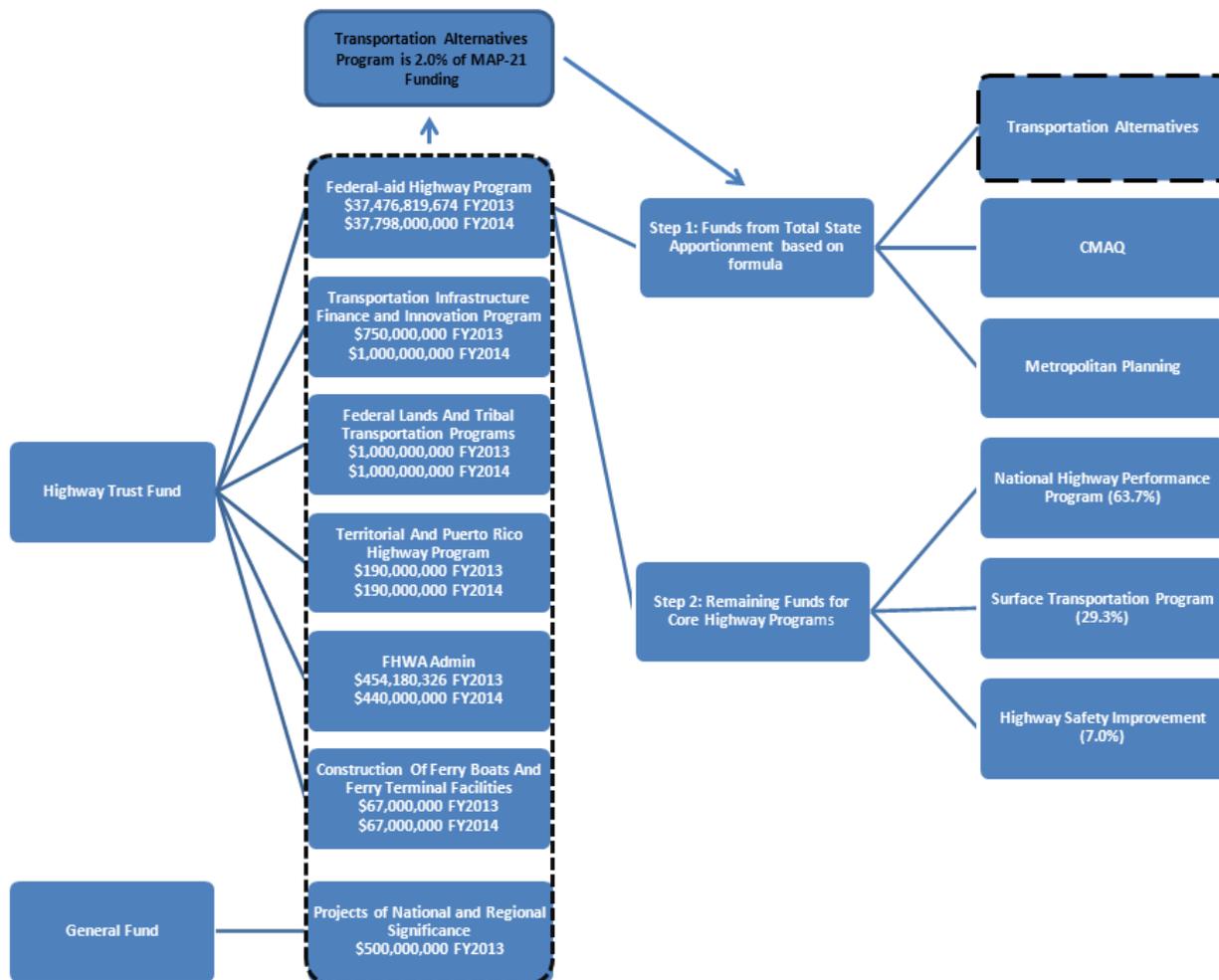


Figure 1: Flowchart of Apportionment from Highway Trust Fund to TA program

## Suballocation

Of the funds apportioned to a state's Transportation Alternatives program --- which includes the TA projects defined above, the recreation trails program, and the safe routes to school program --- 50% is suballocated to areas based on population, while the other 50% may be obligated to any area of the state. The divisions for the population based suballocation are: <sup>5</sup>

1. in urbanized areas of the State with an urbanized area population of over 200,000;
2. in areas of the State other than urban areas with a population greater than 5,000; and
3. in other areas of the State

<sup>5</sup> MAP-21 §1122; 23 U.S.C 213(c)(1)(A)



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A Metropolitan Planning Organization (MPO) with an urban population over 200,000 has authority to select and award funding from its suballocation to projects carried out within its urbanized bounds through a competitive selection process.

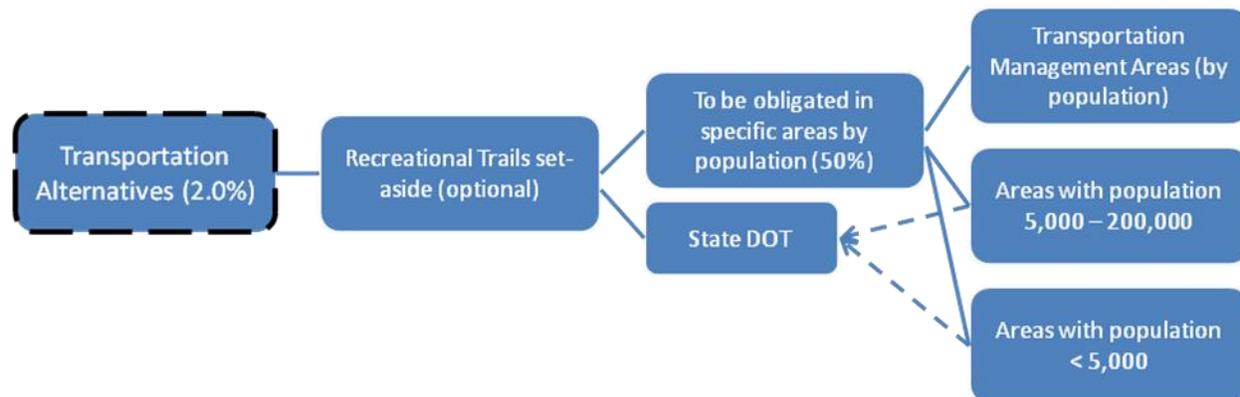


Figure 2: Suballocation from TA funding reservation (TA definitions, Safe Routes to School, and Rec Trails all eligible)

## Project Selection/Access to Funds

Both State DOTs and TMAs are required to develop a competitive process to allow eligible entities to submit projects for funding. The 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
- any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency) that the State determines to be eligible

Guidance will be required to determine if this competitive process must apply to all or some portion of the reserved funds, and to clarify what qualifies as a competitive process. State DOTs are not eligible entities.

## Transferability

Section 1509 no longer exempts TE from the general 50% transferability clause. Therefore, State DOTs may transfer the 50% of the TA reserved funding that is available for obligation anywhere in the state.



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These funds may be transferred to other Federal-aid highway programs, including the national highway performance program, the surface transportation program, the highway safety improvement program, and the congestion mitigation and air quality improvement program.

If relevant TMAs and the State jointly apply for permission, the population-based suballocation to TMA funds may be obligated to “other factors”.<sup>6</sup> Of the 50% of funding retained by the State, if greater than 100% of the annual reserved funds for that year remain unobligated on August 1<sup>st</sup> of the second fiscal year, these funds may be used by the State for the CMAQ program. A State may also opt out of the recreational trails component of the overall TA program prior to receiving funding for each fiscal year before state apportionments are made.

## **NEPA and MAP-21 Categorical Exclusion of Transportation Alternatives**

In Title 23, categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.<sup>7</sup> If categorically excluded, the project then does not have to be processed using an environment impact statement, and project delivery is expedited.

The FHWA Guidance on Transportation Enhancement Activities, stated that, “Except in unusual circumstances, a TE project may be processed as a categorical exclusion (CE) under the National Environmental Policy Act,” and several state Departments of Transportation entered into programmatic agreements with the FHWA to officially add TE projects as categorical exclusions. MAP-21 addresses categorical exclusion for projects of “limited federal assistance” in Section 1317 paragraph (1), defining them as any project:

- “(A) that receives less than \$5,000,000 of Federal funds;
- or
- (B) with a total estimated cost of not more than \$30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost”

From the May 2012 TE Spending Report, the average federal project award for TE projects was only \$384,277 nationwide. This varied from as low as \$115,020 in Montana to \$1,417,480 in Hawaii. With no

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<sup>6</sup> MAP-21 §1122; 23 U.S.C. 213(c)(3)(B)

<sup>7</sup> [23 C.F.R. § 117.771\(a\)](#)



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change to the federal reimbursement and local-match practices used prior to the enactment of MAP-21 (and a general decrease in the available funds for TA projects specifically), the newly defined Transportation Alternative projects will mostly fall under the categorical exclusion provided in MAP-21 §1317, as the federal funding for these projects' TE counterparts rarely approached the \$5,000,000 ceiling set by the MAP-21 definition.