# Implementation Guidance for the Federal Lands Access Program

## Updated – BIL Enactment

## Purpose

The purpose of this document is to provide general guidance for implementing and administering the Federal Lands Access Program under 23 U.S.C. 204, established under section 1119 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141) and continued under the Fixing America’s Surface Transportation Act (Pub. L. 114-94) and the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

## Acronyms

FLAP – Federal Lands Access Program

BIA – Bureau of Indian Affairs

IIJA – Infrastructure Investment and Jobs Act

CFP – Calls for projects

CFR – Code of Federal Regulations

CR – Continuing Appropriations Resolution

ER – Emergency Relief

ERFO – Emergency Relief for Federally Owned Roads

FA Division – Federal-aid Division Office

FAHP – Federal-aid Highway Program

FAST – Fixing America’s Surface Transportation Act

FEMA – Federal Emergency Management Agency

FHWA – Federal Highway Administration

FLATF – Federal Lands Access Transportation Facilities

FLH – Office of Federal Lands Highway

FLMA – Federal Land Management Agency

FLPP – Federal Lands Planning Program

FLTP – Federal Lands Transportation Program

FMIS – Fiscal Management Information System

FMIS-PA – FMIS project agreement

FWS – U.S. Fish and Wildlife Service

LPA – Local Public Agency

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

MOA – Federal Lands project memorandum of agreement

PDC – Programming Decisions Committee

PROTECT – Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation program

S&O – Stewardship and Oversight

SOP – Standard Operating Procedures

State DOT – State Department of Transportation

TTP – Tribal Transportation Program

U.S.C. – United States Code

## Framework

The FLAP is administered by the FLH within FHWA. The goal of the FLAP is to improve transportation facilities that provide access to, are adjacent to, or are located within Federal lands. The FLAP supplements State and local resources for public roads, transit systems, and other transportation facilities that provide seamless access to high-use Federal recreation sites or Federal economic generators within Federally owned lands, as identified by the Secretaries of the appropriate FLMAs[[1]](#footnote-2). The FLAP was designed to provide flexibility for a wide range of transportation projects in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. A PDC within each State or State-equivalent political jurisdiction makes programming decisions and develops a multi-year program of projects[[2]](#footnote-3) in consultation with each applicable Federal agency.

The FLAP complements the FLTP and other Federal programs for transportation improvements, such as the Defense Access Roads Program[[3]](#footnote-4) and the Forest Development Roads and Trails Program[[4]](#footnote-5). It recognizes the importance of safe access to and within Federal lands.

Receipt of FLAP funding by State and local facility owners and operators does not affect the overall responsibility for construction, maintenance, and operations of the facilities. That responsibility remains with the owner or operator of the facility.

## Eligibility

Funds made available under the FLAP shall be used on FLATFs. A FLATF is defined as "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 or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government"[[5]](#footnote-6). Eligible activities are:

* + 1. Transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, context-sensitive solutions, construction, and reconstruction of FLATFs located on or adjacent to, or that provide access to, Federal lands; and–
	1. adjacent vehicular parking areas, including interpretive panels in or adjacent to those areas;
	2. acquisition of necessary scenic easements and scenic or historic sites;
	3. provisions for pedestrians and bicycles;
	4. environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;
	5. construction and reconstruction of roadside rest areas, including sanitary and water facilities;
	6. contextual wayfinding markers;
	7. landscaping;
	8. cooperative mitigation of visual blight, including screening or removal; and
	9. other appropriate public road facilities, as determined by the Secretary;
		1. operation and maintenance of transit facilities; and
		2. any transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to, or that provides access to, Federal land[[6]](#footnote-7).

Regarding (B) above, "operation and maintenance of transit facilities" includes the operation of all components of a transit system, including the acquisition of public transportation vehicles. This operation and maintenance eligibility applies solely to transit facilities.

The eligibility under (C) above includes transit capital projects eligible under chapter 53 of title 49, U.S.C., that are also eligible under title 23 and that are within or adjacent to, or that provide access to, Federal lands open to the public.

The IIJA has enacted provisions regarding the use of native plant materials and minimizing runoff and heat generation for projects receiving FLAP funds. When carrying out eligible FLAP activities, consideration shall be given to using locally adapted native plant materials and designs that minimize runoff and heat generation to the maximum extent practicable[[7]](#footnote-8).

## Funding

Funding allocations are based on contract authority authorized from the Highway Trust Fund under the IIJA. The FLAP authorized amounts under the IIJA are as follows:

* $285,975,000 for fiscal year 2022;
* $291,975,000 for fiscal year 2023;
* $296,975,000 for fiscal year 2024;
* $303,975,000 for fiscal year 2025; and
* $308,975,000 for fiscal year 2026[[8]](#footnote-9).

The authorized contract authority amounts are subject to reduction based on the limitation on obligations contained in annual appropriations acts. During the period of a CR, amounts available will be limited based on the terms and duration of such CR.

## Period of Availability

The funds made available under the FLAP will be available for obligation for four fiscal years (the fiscal year for which the funds are authorized, plus three additional fiscal years)[[9]](#footnote-10).

## Federal Share

In accordance with IIJA[[10]](#footnote-11), the FLAP Federal share shall be “up to 100 percent”. That is, Federal funds shall be used for up to 100 percent of the total eligible cost of a project carried out under the FLAP. This updated Federal share provision will be applied to the FLAP as follows:

* The FLAP’s Federal share will be 100 percent for:
* all new CFPs; and
* most CFPs that closed prior to the enactment of the IIJA and where projects must still be programmed.
* The PDC is responsible to approve 100 percent Federal share for projects which have been programmed using the provisions in 23 U.S.C. 120 (regardless of whether a project MOA has been executed or not).
* Active programmed projects will be divided into two categories, i.e., those with and those without executed project MOAs.
	+ The PDC is responsible for approving the 100 percent Federal share consistently across all projects in each category.
	+ Approval of the 100 percent Federal share will only apply to the unobligated balance of programmed funds for each FLAP project and must be applied consistently for each category across all active projects in the state.
* Changes to the Federal share cannot be applied retroactively to funds that have been previously obligated with a match requirement.
* If the PDC does not approve a change to the Federal share for projects programmed in their state prior to the enactment of IIJA, then the percentages in 23 U.S.C. 120 will be preserved. For these projects, the sliding scale provision may apply for States with higher percentages of Federal land[[11]](#footnote-12) (See [Sliding Scale Rates in Public Land States](https://www.fhwa.dot.gov/legsregs/directives/notices/n4540-12.cfm)[[12]](#footnote-13)). The amended Federal share provisions[[13]](#footnote-14) do not provide a blanket increase of the Federal share to 100 percent for all FLAP projects.
* If a project is approved for 100 percent Federal share and is to continue with the programmed scope, additional funds may be needed from another source to advance the project as-is. If the PDC decides to increase the Federal share in their state to 100 percent for new obligations of previously programmed projects, the PDC may ask the awardee or FLMA to keep contributing funds towards the project, may program additional FLAP funds if available in that State, or may elect to reduce the project scope. The PDC will not deprogram projects to advance other projects. There is no guarantee that additional FLAP funds will be available or, if available, the PDC will choose to add funds to a project.
* These Federal share provisions will apply to new project obligations, regardless of whether FLAP funds were authorized under the IIJA or a previous transportation bill, when approved by the PDC.

The following scenarios provide examples for the different cases the PDC and the FLH Divisions may encounter.

* + 1. New CFPs.
			1. The FLH Divisions will inform the PDCs of the change in Federal share to 100 percent.
			2. The PDCs and FLH Divisions will provide outreach to applicants and FLMAs regarding the new Federal share percentage.
			3. The PDCs will issue application templates that include the 100 percent Federal share provisions.
		2. CFPs where applications specified a match.
			1. The FLH Divisions will inform the PDCs of the change in Federal share to 100 percent.
			2. The PDC and FLH Division will advise applicants and FLMAs of the new Federal share percentage.
			3. The PDC will program projects at a 100 percent Federal share.
		3. Programmed FLAP projects with the cost share requirements assigned by 23 U.S.C. 120. These projects could be FLH Division delivered, FLH Division administered, or FA Division administered and are divided into two categories: (1) those where a project MOA has not been executed and (2) those where a project MOA has been executed. The PDC should consider each category as a distinct group of projects when considering approval of the 100 percent Federal share.

Programmed projects where a project MOA has not been executed:

* + - 1. The PDC may approve 100 percent Federal share. The programmed scope, as well as the effects of increasing the Federal share to 100 percent, should be considered by the PDC. The following criteria must be met:
		1. The PDC must approve the 100 percent Federal share consistently across all active programmed projects in this category and which have unobligated programmed FLAP funds.
		2. The 100 percent Federal share will only apply to the unobligated balance of programmed FLAP funds.
		3. Changes to the Federal share cannot be applied retroactively to funds that have previously been obligated with a match requirement, e.g., where a project was transferred to the FA Division and a FMIS-PA was executed.
		4. Any reclassifications of pre-IIJA obligations will follow the Federal share rules identified in 23 U.S.C. 120
		5. Upward adjustments to existing contracts will follow the original terms of the existing contract.
			1. If approved by the PDC, new agreement documents will be executed with the 100 percent Federal share provisions.
			2. The new legislation and obligation rules will be identified on allocation memos when funds are allocated to the FA Division.

Programmed projects where a project MOA has been executed:

* + - 1. The PDC may approve 100 percent Federal share. The programmed scope, as well as the effects of increasing the Federal share to 100 percent, should be considered by the PDC. The following criteria must be met:
		1. The PDC must approve the 100 percent Federal share consistently across all active programmed projects in this category that have unobligated programmed FLAP funds.
		2. The 100 percent Federal share will only apply to the unobligated balance of programmed FLAP funds.
		3. Changes to the Federal share cannot be applied retroactively to funds that have been obligated with a match requirement.
		4. The FLH Divisions must amend the existing project MOA to identify new legislation and Federal share rules, and state that new obligations will fall under the provisions outlined in IIJA.
		5. The amendment to the project MOA must be executed by all parties to the document. The FLH Divisions cannot execute the amendment to the project MOA as an administrative note to the file.
		6. New obligations could include new contract obligations (construction contracts, A&E contracts, construction inspection, etc.), or new Federal lands salary, motor pool, and materials lab obligations.
		7. Any reclassifications of pre-IIJA obligations will follow the Federal share rules identified in 23 U.S.C. 120 and the original project MOA.
		8. Upward adjustments to existing contracts will follow the original terms of the project MOA and the existing contract.
		9. The Federal share of all obligations incurred prior to the project MOA amendment to a 100 percent Federal share for remaining work will continue at the cost share rate when the obligation was first made, i.e., follow the cost share requirements assigned by 23 U.S.C. 120.
		10. The FLH Divisions must ensure that match requirements are met for any obligation incurred prior to the executed amendment of the project MOA.
		11. Existing FLAP projects that have been transferred to the FA Division:
			1. The FLH Divisions will not amend the detailed project selection letter to the awardee, which are issued at the start of a project.
			2. The FLH Divisions will separately advise the awardee, the State DOT, and the FA Division of changes to the FLAP Federal share made by the PDC for their project(s).
			3. Additionally, the new legislation and obligation rules will be identified on allocation memos when funds are allocated to the FA Division.
			4. For the FA Division to apply the new IIJA rules to projects with obligations in FMIS, the FMIS-PAs must be modified when processing new obligations to reflect the new rules.
		12. Projects where all programmed FLAP funds have been obligated and the PDC will not be programming additional FLAP funds:
			1. A change to the Federal share cannot be approved by the PDC.
			2. These projects should not be included in the project categories to be considered for 100 percent Federal share approval.
			3. The awardee is responsible for providing match for the FLAP obligations on these projects.
		13. Executed cooperative agreements directly between FLH Divisions and a local public agency through the acquisition’s procurement process are considered "old obligations" and the original rules apply.
			1. If a project MOA has been executed but the cooperative agreement has not been processed, and the PDC approves a 100 percent Federal share, the project MOA must be amended. The project MOA amendment must identify the new legislation and Federal share rules prior to routing and executing the cooperative agreement and incurring the obligation.

The following sections apply to projects where cost share requirements[[14]](#footnote-15) [[15]](#footnote-16) continue to be assigned based on 23 U.S.C. 120.

1. In accordance with 23 U.S.C.120(c)(1), a list of specific activities, predominantly safety activities, are identified that can be funded at 100 percent Federal share and therefore do not require a non-Federal match. (Please note that 23 U.S.C.120(c)(1) discusses a 10 percent limitation on those safety projects that apply to funds apportioned in accordance with 23 U.S.C.104, but this limitation does not apply under the FLAP.) PDCs may elect to leverage this funding flexibility on certain safety projects described in 23 U.S.C. 120(c)(1).
2. Funds authorized for the TTP[[16]](#footnote-17) and the FLTP[[17]](#footnote-18) may be used to pay the non-Federal share of any project funded under title 23 or chapter 53 of title 49, United States Code, that provides access to or within Federal land or tribal land. The decision to use FLTP or TTP funds as a match resides with the FLMAs or Tribes.[[18]](#footnote-19) However, FLAP funds may NOT be used as such a match.
3. Other Federal funds not authorized under titles 23 or 49 may also be used to pay the non-Federal share of any transportation project funded under title 23 or chapter 53 of title 49 that is within, adjacent to, or provides access to Federal land.[[19]](#footnote-20)
4. "Soft-matches" or "in-kind matches" (e.g., donations of funds[[20]](#footnote-21), materials, services, right-of-way acquisition, utility relocation) may be permitted from the project sponsor.[[21]](#footnote-22) A tapered match[[22]](#footnote-23) may be appropriate, where FHWA is doing the preliminary engineering and contract administration.[[23]](#footnote-24) The match requirements and commitments should be documented in the project agreement.

The following sections apply to the cost share requirements for restated or de-obligated funds:

1. FLAP funds from a previous transportation bill that have been restated, or older FLAP funds that have been de-obligated and then re-obligated following the passage of the IIJA, should adhere to the cost share requirements that apply when the new obligation is made. The following cost-share conditions apply to the use of FLAP funds from a previous transportation bill which are restated or deobligated in future years:
	* + 1. If the deobligated funds are used for upward adjustments of existing contracts with match, then the added funds will have the same match requirement as the original contract.
			2. If the deobligated funds are used for new obligations on a project where the project MOA or FMIS-PA does not include the 100 percent Federal share provisions in the IIJA, then the new obligations will have the match requirements as outlined in the project MOA or FMIS-PA.
			3. If the deobligated funds are used to fund new obligations in cases where the project MOA or FMIS-PA was executed with the IIJA 100 percent Federal share provisions, or the project MOA or FMIS-PA was amended to include the IIJA 100 percent Federal share provisions, the 100 percent Federal share requirements identified in 23 U.S.C. 201(b)(7)(B) of the IIJA will apply.

## Leveraged Funds

The FLAP was created to improve transportation facilities that provide access to, are adjacent to, or are located within Federal lands and it supplements State and local resources for public roads, transit systems, and other transportation facilities that provide seamless access to high-use Federal recreation sites or Federal economic generators within Federally owned lands. Under previous legislation, cost sharing was a prescribed component of the program where recipients, sub-recipients, or Federal Lands Management Agencies provided match towards the FLAP funds. With the enactment of the IIJA, the increase in Federal share promotes equity among applicants for FLAP funds. Funding from sources other than FLAP, while allowed, will not be used as a factor in the evaluation, ranking, and project selection phase. Applicants may, however, include leveraged funds for their projects. Example situations could include cases where:

* Some elements of a project are not aligned with the purpose of the FLAP program. For example, a county applies to re-build a section of highway that provides access to a national forest, but only 50 percent of the vehicles on the highway are accessing the forest while the remaining traffic is pass-through or local traffic.
* The scope of the desired project includes elements which are not eligible for FLAP funding as outlined in 23 U.S.C. 204(a)(1).
* A project is deemed of high importance to a Federal Land Management Agency which provides Federal Lands Transportation Program funds to supplement the FLAP funds requested on a project.
* A project is deemed of high importance to a State DOT or local agency and funds are provided to supplement FLAP funds requested on a project.

The FLAP funds within a state are limited. While funding from sources other than FLAP are not considered during evaluation, ranking and project selection, applicants may provide leveraged funds, where feasible, to stretch the available dollars within the state. If FLAP funds are not available within a state to fully fund a project proposal, the PDC may explore leveraged funding opportunities with stakeholders to advance a project scope or cover a scope change, while still promoting equity.

## Transfers

Upon agreement, the Secretary may transfer funds authorized under FLTP and FLAP between recipients of funds within those programs or between the two programs, with the appropriate concurrences, to enable the efficient use of funds made available for the two programs[[24]](#footnote-25). Statute under 23 U.S.C. 201(e) limits such transfers of funds to FLAP and FLTP and does not extend this flexibility to other programs. Transfers and reimbursement of FLTP funds to the ERFO program to advance emergency repair work are codified under 23 U.S.C. 125(e)(3)(B).

An agreement should be developed and signed by the pertinent parties to document any transfer (lending arrangement) authorized by statute[[25]](#footnote-26). The terms of such an agreement will, among other things, include a repayment term. The recipient of transferred funding must repay the funds to the loaning entity from unobligated balances of funds that have not lapsed and 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[[26]](#footnote-27). Such an agreement should not exceed the anticipated future authorized funds of the recipient to ensure it can repay the applicable balance. This allows the FLMA and/or PDC to have contract authority and obligation limitation transferred to another PDC and/or FLMA, and to obligate the funds for FLTP or FLAP funded projects.

The flexibility to loan funds has been used carefully in the past to award projects or to advance projects in cases where projects may need to be moved up, i.e., loans will be initiated for projects where there is an immediate need. Loans within and between the FLTP and FLAP will be brokered to advance specific projects identified in approved multi-year program of projects or annual obligation plans. The loan agreement and/or supporting documents will identify which project, set of projects, state, or region the loan will be used for, e.g., the loan funds will be used for projects X or Y, other projects in the approved FLMA Region # program of project, or projects programmed by the PDC in State Z. Transactions are subject to the availability of funds and loan/credit provisions are permitted under a Transportation Act authorization period. Any funds borrowed during the authorization period of a Transportation Act must be paid back to the loaning entity before the expiration date of the Transportation Act. During the last year of the Transportation Act and any subsequent extensions, new loan-reimbursement arrangements will cease since the expiration of the Act will be imminent and the length and funding levels of possible extensions are unpredictable. This ensures that program balances can be appropriately repaid and made whole.

As an example, the FWS National Elk Refuge in Wyoming may have a FY 2022 project programmed within its national wildlife refuge using FLTP funds. Conversely, the State of Wyoming’s PDC is planning to improve a State-owned transportation facility that provides direct public access to the Elk Refuge using FLAP funds; however, the PDC is in need of an additional $125,000 to deliver the FLAP project in FY 2022. Recognizing the operational and cost benefits of working together under a single construction project, the Wyoming PDC enters into a Transfer Agreement with the FWS, where the Wyoming PDC agrees to borrow $125,000 from the FWS in FY 2022 and then repay the FWS the $125,000 from its FY 2023 FLAP allocation. In summary, the Transfer Agreement is voluntary by all parties, allows the leveraging of funds across programs, addresses potential match funding challenges under the FLAP, and results in costs savings and reduced construction time when compared to delivering two, separate construction projects within the same proximity.

## Agreements

### Statewide Program Agreement

States, the District of Columbia, and the Commonwealth of Puerto Rico are encouraged to execute Statewide Program Agreements. These agreements should identify the PDC representatives, program roles and responsibilities, legislative and regulatory authorities, and other pertinent policies that address how the FLAP will be coordinated. The agreement should be updated as the PDC determines appropriate, particularly when there is a change in local government representation on the committee.

### Project Agreements

Each project receiving FLAP funds, and either delivered or administered by the FLH Divisions, is required to have an executed project MOA among all project partners, with roles and responsibilities that contribute to the successful completion of the project. The project MOA will be executed prior to initiating the environmental review process under the National Environmental Policy Act and other project development activities. To that end, a FLAP project MOA template is available to aid partners in the development of their agreement. Generally, the FLH Division will initiate the agreement process, although the State or local government may initiate the agreement for a project it administers. The FLAP project MOA includes, but is not limited to:

* Scope of work
* Schedule
* Budget
* Roles and responsibilities of all agreement signatories
* Maintenance commitment
* Federal share requirements
* Coordination with pertinent FLMAs
* Other requirements included in the Office of Federal Lands Highway’s Stewardship and Oversight Guidance and Instructions, if applicable.[[27]](#footnote-28)

For FLAP projects programmed by the PDC for delivery by the State DOT and projects carried out by LPAs through the State DOT, the applicable FLH Division will prepare detailed project selection and programming letters outlining the scope of work, programmed funding including year funds are available, maintenance commitment, match requirements, and other important project / program information. The authorizing document approved by the FA Division in FMIS will serve as the FMIS-PA and the applicable FA Division and State DOT Stewardship and Oversight Agreement will apply.

## Program Specific Provisions

## Programming Decisions Committee

The PDC responsible for the FLAP programming decisions in each State must be comprised of a representative of:

* The FHWA;
* The State Department of Transportation; and
* An appropriate political subdivision of the State.[[28]](#footnote-29)

The FHWA and State DOT each select internally the most appropriate candidate. The representative for an appropriate political subdivision of the State (i.e., the local government) should be from an organization or entity that is suited to represent the local entities responsible for building, operating, or maintaining publicly accessible transportation facilities that are located on, are adjacent to, or provide access to Federal lands. The local representative should work cooperatively with representatives of local public transportation service providers that provide access to, or which operate within Federal recreation areas within the State and represent local interests for access to Federal lands statewide. The local representative may not be affiliated with or work for the Executive Branch of the Federal or State government. The FHWA works with the State DOT to identify an appropriate local representative.

The PDC in each State should develop an SOP that may be part of a Statewide Program Agreement.

### Solicitation and Coordination

A general description of the project proposal solicitation process and coordination between the PDC, FLH Divisions, FLMAs, State, local facility owners, operators, and other eligible entities is as follows:

1. The PDC determines the frequency of CFPs within a State.
2. The FLH Division, with jurisdictional responsibility in that State, will issue the CFP on the PDC’s behalf. The notification of the CFP will include applicable FLMAs in each State, so they are equally informed. The FLH Division will post the information at: <http://flh.fhwa.dot.gov/programs/flap/>.
3. State, local facility owners, operators, and other eligible entities shall cooperatively engage with the respective FLMAs to identify FLMA priorities for accessing high-use Federal recreation sites and/or Federal economic generators to and within Federal lands.
4. State, local facility owners, operators and other eligible entities should submit proposed project application documents in the standard form provided by the FLH Division. A web-based project application system may be used to facilitate the process. The FLH Division may request supplementary information if it deems necessary.
5. The PDC will consult with the FLMAs before final programming decisions occur.[[29]](#footnote-30)
6. The information provided in the project application documents will be utilized for program data analysis and may be shared with the FLMAs as appropriate. No personal information contained in the project applications will be shared.

### Project Selection Criteria

Project selection criteria should be based on the following considerations:

* Before any joint discussion or final programming decision, did the PDC cooperate with the applicable FLMA?[[30]](#footnote-31)
* Is the project endorsed by the relevant FLMA(s) as a high priority?[[31]](#footnote-32)
* Does the project provide access to Federal high-use recreation sites or Federal economic generators?[[32]](#footnote-33)
* Is the project consistent with the owner's long-range transportation plan and is it consistent with the FLMA and other planning efforts in the State and/or region?[[33]](#footnote-34)
* Does the project improve safety while improving access to a Federal facility?
* \*Can the project be realistically completed based on the scope, schedule, and budget proposed?
* Does the project demonstrate intent to using locally adapted native plant materials and designs that minimize runoff and heat generation to the maximum extent practicable?
* \*Does the project align with the Administration’s priorities?

\*Considerations not in law

### Project Selection

When the PDC makes programming decisions within a State, preference must be given to the projects and facilities that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the Secretaries of the appropriate FLMAs.[[34]](#footnote-35) FLMAs are responsible for defining and identifying high-use recreation sites and Federal economic generators.

Open communication and transparency with FLMAs are key tenets within this guidance. The PDC shall cooperate with applicable FLMAs in each State before any joint discussion or final programming decision.[[35]](#footnote-36) State and local facility owners and operators should only consider projects that are supported and endorsed by the appropriate FLMA(s). If more than one project is identified by an FLMA in a particular State, the FLMA should delegate the establishment of priorities to their Headquarters, Regional, or State office as appropriate. The FLH Division will coordinate prioritization with competing Federal priorities to ensure preference is given to those projects considered most important by the appropriate FLMAs. The PDC should consider the selection criteria and FLMA input to optimize the use of the statewide FLAP funds.

Further, IIJA has enacted provisions regarding the use of native plant materials and minimizing runoff and heat generation for projects receiving FLAP fund. When making programming decisions, the PDCs should consider whether applications highlight the use of locally adapted native plant materials and designs that minimize runoff and heat generation to the maximum extent practicable.

## Building a Multi-Year Program

The basic approach in making programming decisions should be consistent in all States. Details will vary, depending on the specific circumstances; however, programming decisions should be made that will enable the PDC to build a multi-year program that maximizes and strategically makes the best use of FLAP funds. Generally, the PDC should meet as necessary, but no less frequently than once each Federal fiscal year, for overall coordination and for establishing and maintaining the multi-year program. The PDC shall cooperate with applicable FLMAs in each State before any joint discussions or finalizing programming decisions.[[36]](#footnote-37) The PDC may invite FLMA representatives to participate in annual meetings, as it deems appropriate. In some States, it may be appropriate for the PDC to establish a FLMA Technical Advisory Group. This is like the process used by many MPOs to solicit feedback from Federal agency stakeholders.

**Program Distributions**

The FLAP funds are allocated among those States that have Federal land by formula. First, FLAP funds are divided into two groups of States, as defined below[[37]](#footnote-38):

* 80 percent of the available funding is for the States that contain at least 1.5 percent of the total public land in the United States managed by the National Park Service, the Forest Service, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Corps of Engineers. These States are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
* The remaining 20 percent of the available funding is for the other 38 States, the District of Columbia, and the Commonwealth of Puerto Rico.

FLAP funding is distributed by formula to each State, as defined by the ratios below:

* 55 percent in the ratio that the Federal public road miles within the State bear to the total Federal public road miles in its State group.
* 30 percent in the ratio that recreational visitation within the State bears to the total recreational visitation within its State group.
* 10 percent in the ratio that Federal public bridges within the State bears to the total Federal public bridges in its State group.
* 5 percent in the ratio that Federal land area within the State bears to the total Federal land area in its State group.

Allocations for each State will be provided to the appropriate FLH Division at the start of each Federal fiscal year and will be pro-rated during any CRs. Each FLH Division will administer the funds as determined by the PDC and in accordance with the FLH’s S&O Guidance.

## Reporting Requirements

To promote program transparency and accountability, the FLH Divisions will work collaboratively with the PDC in each State and the FLAP National Program Manager to develop and make available an accomplishment report for each state detailing programming decisions, accomplishments, and budget information. This tool will provide State, LPA, and FLMA partners, Congressional staff, and other stakeholders with data to ascertain how and where FLAP funds are being obligated and expended nationally. The FHWA will provide guidance on the format of the report.

# Federal Lands Access Program Questions & Answers

### General

1. **Where in the Infrastructure Investment and Jobs Act is the FLAP authorized?**

The FLAP is authorized under section 11101(a)(3)(C) of the IIJA[[38]](#footnote-39).

1. **Where in title 23 of the U.S.C. is the FLAP cited?**

**The FLAP is cited in section 204 (23 U.S.C. 204).**

1. **How much funding does the FLAP receive each fiscal year?**

Under section 1101(a)(3)(C) of the MAP-21 Act, the FLAP was authorized from the Highway Trust Fund at the funding level of $250,000,000 for each of fiscal years 2013 and 2014 and was extended through 2015 at a continued funding level of $250,000,000. Funding is distributed to each State, the District of Columbia, and the Commonwealth of Puerto Rico according to a formula outlined in 23 U.S.C. 204(b).

The FLAP was continued through the FAST Act and was authorized from the Highway Trust Fund at the funding levels shown below. An extension was issued through 2021 at a funding level of $270,000,000.

|  |  |
| --- | --- |
| Fiscal Year | Authorized Amount |
| FY 2016 | $250 Million |
| FY 2017 | $255 Million |
| FY 2018 | $260 Million |
| FY 2019 | $265 Million |
| FY 2020 | $270 Million |
| FY 2021 (Extension) | $270 Million |

The FLAP has been reauthorized from the Highway Trust Fund in the IIJA at the funding levels shown below.

|  |  |
| --- | --- |
| Fiscal Year | Authorized Amount |
| FY 2022 | $285,975,000 |
| FY 2023 | $291,975,000 |
| FY 2024 | $296,975,000 |
| FY 2025 | $303,975,000 |
| FY 2026 | $308,975,000 |

**All authorized amounts listed above are before any reductions based on the imposition of the obligation limitation contained in annual appropriations acts.**

1. **How should FLH Divisions decide which projects receive FAST Act funds vs. IIJA funds?**

The FLH Divisions should follow the “first-in, first-out” method when administering the FLAP. This method presumes that the oldest funds in a given category are obligated first, minimizing the risk of a funding lapse.

1. **Can the IIJA funds be used before the FAST Act funds are fully obligated?**

The FLH Divisions should follow the “first-in, first-out” method when administering the FLAP. New obligations made after the passage of IIJA follow the cost share requirements that apply when the new obligation is made, i.e., those identified in 23 U.S.C. 201(b)(7)(B), as long as the executed project MOA/FMIS-PA includes the Federal share provisions from IIJA. If the project MOA/FMIS-PA was executed prior to the passage of IIJA and has not been amended to include the Federal share provisions in IIJA, then the cost share requirements will continue to follow 23 U.S.C. 120 regardless of whether FAST Act or IIJA funds are obligated.

1. **Can both Fast Act and IIJA funds be used on the same project?** *The project starts out with a match requirement, but then funds are added without the match requirement.*

Both FAST Act and IIJA funds can be used on the same project. However, the existing project MOA/FMIS-PA will need to be amended to capture any changes to the Federal share.

1. **How is the amount of FLAP funds for each State determined?**

The IIJA did not change the formula for the computation of FLAP funds. The funds will be distributed based on the formula in 23 U.S.C. 204(b).

Per the original enabling legislation, 80 percent of the available funding is for the States that contain at least 1.5 percent of the total public land in the United States managed by the National Park Service, the Forest Service, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Corps of Engineers. These States are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The remaining 20 percent of the available funding is for the other 38 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Funding is distributed by formula to each State, as defined by the ratios below:

* 55 percent in the ratio that the Federal public road miles within the State bear to the total Federal public road miles in its State group.
* 30 percent in the ratio that recreational visitation within the State bears to the total recreational visitation within its State group.
* 10 percent in the ratio that Federal public bridges within the State bears to the total number of Federal public bridges in its State group.
* 5 percent in the ratio that the Federal land area within the State bears to the total Federal land area in its State group[[39]](#footnote-40).

The total authorized amount by State and by fiscal year is located at: <http://flh.fhwa.dot.gov/programs/flap/>.

1. **What reductions will be applied before allocating FLAP funds to each State?**

The FLAP is subject to obligation limitation and the resulting lop-off in which authorized funding that is in excess of the obligation limitation is removed from the allocated program[[40]](#footnote-41). In previous years, the lop-off has reduced the authorized amount by 5 to 11 percent. In addition, 23 U.S.C. 201(c)(8) authorizes the Secretary to use a portion of funds authorized for the FLAP for transportation planning activities, including system-wide transportation planning, asset management, and innovation deployment[[41]](#footnote-42). In the IIJA, the total amount of FLAP and FLTP funds to be set aside for planning activities can be up to 20 percent. The remaining available balance will then be distributed by formula and allocated to each State in accordance with 23 U.S.C. 204(b).

1. **If the FLH Divisions strictly follow the “first-in, first-out” method when administering the FLAP at the fund level, does that mean that all the Fast Act funds need to be utilized before the FLH Divisions can access the IIJA funds?** *The FLH Divisions are assigned funds at the fund/State level based on the FLAP formula. Some
States may have fully obligated their allotted FAST Act FLAP funds, while other States may not have fully obligated their FAST Act FLAP funds.*

While the “first-in, first-out” method applies to the FLAP as a whole, the FAST Act fund distribution by State will be observed. Once FAST Act funds in a State are obligated, IIJA funds should be used. When FAST Act funds in a particular State are fully obligated, the FLH Division may start using IIJA funds.

1. **How will loan-credit be processed between the FLAP and FLTP with the FAST Act and the IIJA funds?**

Any FLAP funds loaned to the FLTP program will be returned to the FLAP under the IIJA fund code.

1. **FLATFs are defined as being owned or maintained by a State, tribal, or local government. Is it permissible to fund improvements to an access facility owned by a FLMA if the ultimate intent of the agency is to transfer ownership or maintenance responsibilities for the facility to a State or local government following the completion of the project?**

No, the Federal agency would have to transfer ownership or maintenance responsibilities to the State DOT or local government prior to the project being programmed[[42]](#footnote-43).

1. **The original FLAP enabling legislation presented in MAP-21 required that FLATFs have title or maintenance responsibility vested in a State, Tribe, or local government. Neither the FAST Act nor IIJA modified this requirement. Is a Federally owned road eligible for FLAP funding if a State, Tribe, or local government is providing maintenance under an agreement with the FLMA?**

Yes. 23 **U.S.C. 204 requires that FLATFs have title or maintenance responsibility vested in a State, Tribe, or local government.** A Federally owned road for which a State, Tribe, or local government has obtained prior to programming an easement, license, permit, agreement, or other written instrument which assumes much of the maintenance responsibility, is eligible for FLAP funding. Vice versa, if the road is own by a State, Tribe, or local government and maintained by an FLMA, the road still eligible for funding because ownership.

1. **Are non-profit organizations and foundations eligible to apply for FLAP funding directly?**

No. However, such organizations can contribute funds towards a project. If applicable, these funds can count towards the required match associated with a specific project.

1. **Can FLAP funds be used for FLTP projects under 23 U.S.C. 203?**

Yes. 23 U.S.C. 204(a)(1)(C) provides that FLAP funds are to be used to pay the cost of “any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal land.” This flexibility allows FLMAs and PDCs to coordinate and leverage program funds between the complementary FLAP and FLTP to reduce project costs and to enhance access to Federal lands. This program flexibility should only be used in extraordinary circumstances by the individual State PDC since other program fund sources support FLTP activities.

1. **Are Tribes eligible to apply for FLAP funding?**

Yes. Tribes may apply for FLAP funding if the road or facility proposed for funding is owned or operated by the Tribe and provides access to a Federally owned land. For example, a Tribally owned road (as opposed to a BIA-owned road) that provides access to a national park or national forest is eligible for the FLAP. Tribal lands are not defined as Federally owned land and are thus not eligible to be identified as FLMA land parcels potentially benefitting from a FLAP project.

1. **Is a county that does not have Federally owned land, but which has State Department of Conservation-owned and operated sites, eligible to apply for FLAP funding for transportation facilities accessing these State-owned sites?**

In accordance with 23 U.S.C. 204(a), FLAP funds may be used for improvements to FLATFs located on or adjacent to, or that provide access to, Federal land. A FLATF is defined as "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 or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government"[[43]](#footnote-44). Therefore, transportation facilities accessing State-owned and operated Department of Conservation sites are not considered FLATFs and are, therefore, not eligible for FLAP funds.

1. **Are FLATFs eligible for 100 percent Federal share under the ERFO Program and/or the Emergency Relief Program?**

No. Section 1408(b) of the FAST Act eliminated the 100 percent Federal share for repairs or reconstruction resulting from a qualifying ER event performed on FLATFs. ER projects on FLATFs are now subject to the same Federal share as ER projects on other eligible Federal-aid roads. (23 U.S.C. 120). State and county-owned roads that do not meet Federal-aid classification standards may apply for emergency funding through FEMA.

To support a seamless transition between MAP-21 and the FAST Act, the Consolidated Appropriations Act of 2016 made this change effective for ER-eligible disasters that occur on or after October 1, 2015. The 100 percent Federal share continues for repairs on FLATF roads resulting from a qualifying ER event that occurred before October 1, 2015.

Congress made no changes to Section 1408(b) of the IIJA. Therefore, the FAST Act provisions continue to apply.

1. **Is the construction of a bus/transit maintenance building eligible under FLAP?**

No. Maintenance buildings are not considered within the definition of a Federal Lands Access Transportation Facility. Further, there is a distinction between construction of facilities in 23 U.S.C. 204(a)(1)(A) and the operations and maintenance of a transit facility in 23 U.S.C. 204(a)(1)(B). This distinction suggests the construction of a bus maintenance facility would not be eligible.

1. **Can FLAP funds be used for safety-related activities on FLATFs located on, are adjacent to, or provides access to Federal lands?**

Yes. The use of FLAP funds for safety-related activities is authorized by 23 U.S.C. 204(a)(1)(C). This provision allows FLAP funds to be used for 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. The IIJA differs from the FAST Act in that it allows for the funding of specified safety projects under 23 U.S.C. 148(e)(3). Under 23 U.S.C. 148(a)(11)(B), specified safety projects include projects that facilitate the enforcement of traffic laws, promote public awareness, and inform the public regarding highway safety matters. Per 23 U.S.C. 504(e), safety-related workforce development, training, and education activities are also eligible uses of FLAP funds.FLAP funds are not eligible to fund law enforcement salaries full-time and/or where a specified safety project is not involved. The programming of FLAP funds on eligible projects is the task of the PDC in each state. The PDC is ultimately responsible for setting up project selection criteria in each state and will evaluate each application received based on these established measures.

1. **Can States fund safety projects that benefit FLMAs?**

Yes. SDOTs are encouraged to develop their Strategic Highway Safety Plans after consultation with FLMAs and to coordinate specified safety projects to seek joint opportunities. States may assign a portion of their HSIP funds on safety projects that benefit FLMAs for projects eligible under the HSIP.

1. **Is channel dredging an eligible activity for the FLAP?**

No, the dredging of a channel is considered a part of regular maintenance since this work is performed in reaction to the overall deterioration of the channel and requires regular, recurring attention. The responsibility for channel dredging continues to lie with the owner or operator of the facility and is not eligible for FLAP funding.

1. **Is bridge painting an eligible activity for the FLAP?**

Bridge painting is considered an eligible preventive maintenance activity under FLAP. Preventive maintenance is an eligible activity under 23 U.S.C. 204(a)(1)(A). For bridges, preventive maintenance is defined as a cost-effective means of extending the service life of highway bridges. The FHWA's current Bridge Preservation Guide identifies spot, zone, and full painting of steel elements of both the superstructure and substructure as examples of condition-based maintenance activity. Condition-based maintenance activities are those activities which fall within the preventative maintenance umbrella.

1. **Is the work to upgrade or rehabilitate camping pads eligible for the FLAP?**

If the camping pad resembles a single parking space adjacent to a central parking lot (tentacle-like), it may be possible to fund work to upgrade or rehabilitate camping pads through the FLAP as a part of a larger parking area project. However, any utility connection work, e.g., water and power, to the camping pads is not eligible under the FLAP.

On the other hand, if the camping pads are at a separate location within a campsite, i.e., not adjacent to the parking area, the work to the camping pads is not considered eligible for FLAP funds. Since this work is considered an extension of a recreational resource and not transportation specifically, the owner or the FLMA (if they are the owner) will be responsible for funding the work through sources that are specifically designated for improvements to recreational resources. If the work is not eligible for FLAP funds, then it is also not eligible for FLTP funds since 23 U.S.C. 203 has similar constraints on the use of the funds as 23 U.S.C. 204.

### Federal Share

1. **What is the Federal share of the FLAP?**

The FLAP Federal share under the IIJA shall be up to 100 percent. This updated Federal share provision will be applied to FLAP as follows:

* The FLAP’s Federal share will be 100 percent for:
	+ all new CFPs; and
	+ most CFPs that closed prior to the enactment of the IIJA and where projects must still be programmed.
* The PDC is responsible to approve 100 percent Federal share for projects which have been programmed using the provisions in 23 U.S.C. 120 (regardless of whether a project MOA has been executed or not).
	+ Approval of the 100 percent Federal share will only apply to the unobligated balance of programmed funds for each FLAP project.
	+ Changes to the Federal share cannot be applied retroactively to funds that have been previously obligated with a match requirement.
	+ If the PDC does not approve a change to the Federal share for projects programmed in their state prior to the enactment of IIJA, then the percentages in 23 U.S.C. 120 will be preserved.

Review the main Federal share section of this document for detailed information and scenarios regarding the implementation of the IIJA Federal share percentage.

1. **What role (if any) does the PDC have in determining match percentage by State?**

A uniform Federal share policy for the FLAP, as outlined in this document, has been developed by FLH headquarters for all States receiving FLAP funds. The PDCs will not be independently selecting the Federal share percentage in their State.

1. **Will the amended FLAP Federal share provisions in the IIJA apply to funds obligated before the passage of the IIJA?**

No. The funds obligated before amendment of the project MOA / FMIS-PA, and not de-obligated, will continue to have a required cost share even if there is a subsequent modification to the project MOA / FMIS-PA to revise the Federal share requirement. The 100 percent Federal share will only apply to the unobligated balance of programmed FLAP funds. Changes to the Federal share cannot be applied retroactively to funds that have been obligated with a match requirement

1. **Like some Federal-aid programs, does the FLAP fund certain safety activities at 100 percent?**

This response applies only to projects which continue to be administered in accordance with 23 U.S.C. 120. For projects administered in accordance with 23 U.S.C. 201(b)(7)(B), the Federal share is 100 percent regardless of the type of improvement on the project.

Yes. In accordance with 23 U.S.C. 120(c)(1), a list of identified activities, predominantly safety activities, can be funded at 100 percent Federal share and therefore do not require a non-Federal match. (Please note that 23 U.S.C. 120(c)(1) discusses a 10 percent limitation on those safety projects that apply to funds apportioned to Federal-aid programs in accordance with 23 U.S.C. 104. This limitation does not apply under the FLAP and projects may be eligible at 100 percent Federal share without limitation.) PDCs may elect to leverage this funding flexibility on safety projects.

1. **Does the guidance issued by the Office of Infrastructure's Director of Program Administration on the subject, "Increased Federal share under 23 U.S.C. 120(c)(1)" apply to the FLAP cost share requirement?**

Yes, but only for projects which continue to be administered in accordance with 23 U.S.C. 120.

1. **Can we use FLAP funds to match other Federal-aid programs?**

No[[44]](#footnote-45). The exception being PROTECT program. In accordance with 23 U.S.C. 176(c)(3)(D)(ii), any title 23 (FLAP included) Federal funds can be used as match for the PROTECT program. The PROTECT program funds, however, cannot be used as match for FLAP for those projects which were programmed with the MAP-21 and FAST Act match requirement.

1. **If a PDC and FLMA identify an opportunity to leverage both FLAP and FLTP funds to let a single project, can the FLTP funds be applied toward the FLAP match requirement for that project?**

This response applies only to projects which continue to be administered in accordance with 23 U.S.C. 120.

**Yes, FLTP funds applied to projects with a 100 percent Federal share that are administered in accordance with 23 U.S.C. 201(b)(7)(B) of the IIJA will be considered leveraged funds**.

1. **Can an adjacent FLTP-funded project be applied toward the match requirement for a FLAP project?**

This response applies only to projects which continue to be administered in accordance with 23 U.S.C. 120.

**For an adjacent FLTP funded project to be considered allowable as a match, the provisions under 2 CFR 200.306 section (b)(3) must be followed and met. Specifically, the awardee and the FLMA must demonstrate how the FLTP-funded project is “necessary and reasonable for the accomplishment of” the FLAP project or the FLAP objectives. The PDC will consider the provided reasoning as to why the FLTP project is necessary and reasonable for the accomplishment of the FLAP project or program when approving the use of the FLTP project as a match.**

1. **Are third-party in-kind contributions considered to count towards the non-Federal share? When will third-party in-kind contributions begin to count towards the non-Federal share required under the FLAP?**

This response applies only to projects which continue to be administered in accordance with 23 U.S.C. 120.

Third-party in-kind contribution is a term used for the value of non-cash contributions (i.e., property or services) that (1) benefit a federally-assisted project or program; and (2) are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award[[45]](#footnote-46). A third party is an entity (other than a recipient, subrecipient, or Federal agency) that is not a party to a Federal project agreement, but who may have an interest in the project. A third-party in-kind contribution used as a match[[46]](#footnote-47) must be eligible for the project and allowable per Federal cost principles[[47]](#footnote-48). Retroactive approval of costs for services incurred prior to execution of the reimbursable or project agreement is prohibited.

The applicant must indicate the intention to utilize third-party in-kind match for the proposed project within the project proposal so that the PDC can coordinate with the FA Division and the State DOT to verify whether third-party in-kind match is allowable in the State and whether the third-party in-kind contribution proposed in the project application is acceptable. If the third-party in-kind match is allowable for applicable Federal-aid programs, then the same flexibility may be considered by the PDC. Values for donated services and contributions are determined in accordance with 2 CFR 200.306, Cost Sharing or Matching, and 2 CFR 200.434, Contributions and Donations.

1. **Can FLPP funds be used as a match for the FLAP?**

This response applies only to projects which continue to be administered in accordance with 23 U.S.C. 120.

No. FLPP funds are consolidated from funds authorized for programs under 23 U.S.C. 203 and 204. However, the planning program is codified under 23 U.S.C. 201(c) – Transportation Planning. As a result, the funding identity and uses of the planning funds are unique to 23 U.S.C. 201 and distinct from 23 U.S.C. 203. Therefore, FLPP funds are considered 23 U.S.C. 201 funds and cannot be used as a match for the FLAP.

### Competitive Bidding

1. **Is competitive bidding required for FLAP projects?**

## Yes. FLAP projects shall be performed by contract awarded by competitive bidding unless the Secretary or the Secretary of the appropriate FLMA affirmatively finds that, under the circumstances relating to a project, a different method is in the public interest[[48]](#footnote-49). If a different method is intended to be used for the proposed project, the applicant must indicate the intention within the project proposal for applicant-delivered projects, so that the PDC can coordinate with the FA Division and the State DOT during the project evaluation process[[49]](#footnote-50).

### Programming Decisions Committee

1. **How are PDC members selected?**

The PDC in each State must be comprised of a representative of the FHWA, a representative of the State Department of Transportation, and a representative of any appropriate political subdivision of the State[[50]](#footnote-51).

The FHWA and State DOT each select internally the most appropriate candidate. The representative for an appropriate political subdivision of the State (i.e., a local government) should be from an organization or entity that is suited to represent the local entities responsible for building, operating, or maintaining publicly accessible transportation facilities that are located on, are adjacent to, or provide access to Federal lands. The local representative should work cooperatively with representatives of local public transportation service providers that provide access to, or which operate within Federal recreation areas within the State and represent local interests for access to Federal lands Statewide. The local representative may not be affiliated with or work for the Executive Branch of the Federal or State government. The FHWA works with the State DOT to identify an appropriate local representative.[[51]](#footnote-52)

### Asset Management and Data Collection

1. **Are the FLATFs subject to the same asset management and data collection requirements as the TTP and the FLTP?**

No, these are not specified requirements for the FLAP. However, these facilities may be subject to some or all of the management and reporting requirements under other Federal-aid programs and procedures[[52]](#footnote-53).

### Advance Construction

1. **Can Advance Construction be utilized in the absence of sufficient FLAP funds?**

Yes. Advance Construction (23 U.S.C. 115) allows States to begin projects using their own funding sources. Once the FLAP funds become available, the State may convert the project to a Federal project and receive reimbursement. However, the Federal Government cannot guarantee a state will be reimbursed if the FLAP funds do not become available. The project agreement will need to include provisions that the state assumes all risk and will fund the project in the absence of Federal funds[[53]](#footnote-54).

1. 23 U.S.C. 204(c)(3) [↑](#footnote-ref-2)
2. 23 U.S.C. 204(c) [↑](#footnote-ref-3)
3. 23 U.S.C. 210 [↑](#footnote-ref-4)
4. 23 U.S.C. 205 [↑](#footnote-ref-5)
5. 23 U.S.C. 101(a)(7) [↑](#footnote-ref-6)
6. 23 U.S.C. 204(a)(1)(A), (B), and (C) [↑](#footnote-ref-7)
7. 23 U.S.C. 204(a)(6) [↑](#footnote-ref-8)
8. Section 11101(a)(3)(C) of the IIJA [↑](#footnote-ref-9)
9. 23 U.S.C. 201(b)(2) [↑](#footnote-ref-10)
10. 23 U.S.C. 201(b)(7)(B): Federal share payable (applicable to projects programmed in accordance with the provisions in the IIJA) [↑](#footnote-ref-11)
11. 23 U.S.C. 120(b) - Federal share payable (applicable to projects programmed in accordance with the provisions in MAP-21 and the FAST Act) [↑](#footnote-ref-12)
12. Notice: Sliding Scale Rates in Public Land States - Rates Effective March 17, 1992:

 https://www.fhwa.dot.gov/legsregs/directives/notices/n4540-12.cfm [↑](#footnote-ref-13)
13. 23 U.S.C. 201(b)(7)(B) of the IIJA [↑](#footnote-ref-14)
14. Federal-Aid Guidance Non-Federal Matching Requirements – establishes uniform Federal-aid policy guidance for matching FAHP projects - <http://www.fhwa.dot.gov/legsregs/directives/policy/fedaid_guidance_nfmr.htm>

<http://www.fhwa.dot.gov/legsregs/directives/policy/fedaid_guidance_nfmr.pdf> [↑](#footnote-ref-15)
15. 23 U.S.C. 132: Payments on Federal-aid projects undertaken by a Federal agency [↑](#footnote-ref-16)
16. 23 U.S.C. 202 [↑](#footnote-ref-17)
17. 23 U.S.C. 203 [↑](#footnote-ref-18)
18. 23 U.S.C. 120(k) [↑](#footnote-ref-19)
19. 23 U.S.C. 120(j) [↑](#footnote-ref-20)
20. 23 U.S.C. 323: Donations and credits [↑](#footnote-ref-21)
21. 23 U.S.C. 323 and 49 CFR18.24 (c)-(e) [↑](#footnote-ref-22)
22. Federal-aid Matching Strategies – Tapered Match <https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/tapered_match.aspx> [↑](#footnote-ref-23)
23. 23 CFR 630.108(c)(2) [↑](#footnote-ref-24)
24. 23 U.S.C. 201(e) [↑](#footnote-ref-25)
25. 23 U.S.C. 201(e) [↑](#footnote-ref-26)
26. 23 U.S.C. 201(e)(2) [↑](#footnote-ref-27)
27. Federal Lands Highway - Stewardship and Oversight Guidance:

 http://flh.fhwa.dot.gov/programs/stewardship-oversight/ [↑](#footnote-ref-28)
28. 23 U.S.C. 204(c)(1) [↑](#footnote-ref-29)
29. 23 U.S.C. 201(c) [↑](#footnote-ref-30)
30. 23 U.S.C. 204(c)(2) [↑](#footnote-ref-31)
31. 23 U.S.C. 204(c)(2) [↑](#footnote-ref-32)
32. 23 U.S.C. 204(c)(3) [↑](#footnote-ref-33)
33. 23 U.S.C. 201(c) [↑](#footnote-ref-34)
34. 23 U.S.C. 204(c)(3) [↑](#footnote-ref-35)
35. 23 U.S.C. 204(c)(2) [↑](#footnote-ref-36)
36. 23 U.S.C. 204(c)(2) [↑](#footnote-ref-37)
37. 23 U.S.C. 204(b) [↑](#footnote-ref-38)
38. <https://www.congress.gov/bill/117th-congress/house-bill/3684> [↑](#footnote-ref-39)
39. 23 U.S.C. 204(b)(1) [↑](#footnote-ref-40)
40. Section 1002 of FAST Act [↑](#footnote-ref-41)
41. 23 U.S.C. 201(c)(8) [↑](#footnote-ref-42)
42. 23 U.S.C. 101(a)(7) [↑](#footnote-ref-43)
43. 23 U.S.C. 101(a)(7) [↑](#footnote-ref-44)
44. 23 U.S.C. 120(j) [↑](#footnote-ref-45)
45. 2 CFR 200.1 Definitions [↑](#footnote-ref-46)
46. 2 CFR 200.306 Cost sharing or matching [↑](#footnote-ref-47)
47. 2 CFR 200 Subpart E (Cost Principles) [↑](#footnote-ref-48)
48. 23 U.S.C. 204(a)(5) [↑](#footnote-ref-49)
49. For more information on Cost-Effectiveness Determinations and Public-Interest Findings, see Federal-aid Essentials for Local Public Agencies - <http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=43> [↑](#footnote-ref-50)
50. 23 U.S.C. 204(c) [↑](#footnote-ref-51)
51. PDC members are listed on each State page located at: <http://flh.fhwa.dot.gov/programs/flap/> [↑](#footnote-ref-52)
52. 23 U.S.C. 201(c)(5) and 23 U.S.C. 201(c)(6) [↑](#footnote-ref-53)
53. For more information on Advance Construction visit: <https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/ac_pcac/> [↑](#footnote-ref-54)