

***Transportation Alternatives Program (TAP)***  
***January 24, 2013***

**STATUS: ACTIVE**

**PROGRAM CODES:**

- M300 - Transportation Alternatives Program (TAP) Flex (MAP-21 – P.L. 112-141)
- M301 – TAP – Urbanized Areas With Population Over 200K (MAP-21 – P.L. 112-141)
- M302 – TAP Area with Population Over 5K to 200K (MAP-21 – P.L. 112-141)
- M303 – TAP Areas with Population 5K and Under (MAP-21 – P.L. 112-141)

**FEDERAL SHARE:** The Federal share for TAP projects is governed by 23 U.S.C. 120. The Federal share generally is 80 percent, subject to the sliding scale adjustment. Recreational Trails Program (RTP) projects funded under the RTP set-aside shall use the RTP Federal share provisions under 23 U.S.C. 206(f), which allows some additional flexibility, especially for the non-Federal share.

**PERIOD AVAILABLE:** 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. Thus funds are available for obligation for up to 4 years.

**FUND:** Highway Account of the Highway Trust Fund

**FUND DISTRIBUTION METHOD:** An amount equal to 2% of the total amount authorized to be apportioned under 23 USC 104(b) from the Highway Account of the Highway Trust Fund for Federal-aid highways each fiscal year (FY) is to be reserved for the TAP. [23 U.S.C. 213(a)] The national total is divided among States based on each State's proportionate share of FY 2009 Transportation Enhancements funding. Within each State, the amount for the TAP is set aside proportionately from the State's National Highway Performance Program (NHPP), Surface Transportation Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and Metropolitan Planning apportionments.

Unless the Governor opts out in advance, an amount equal to the State's FY 2009 Recreational Trails Program (RTP) apportionment is to be set aside from the State's TAP funds for the RTP. [23 U.S.C. 213(f)-(g)]

Fifty percent of a State's TAP apportionment (after deducting the set-aside for the RTP, if applicable) is suballocated to areas based on their relative share of the total State population, with the remaining 50 percent available for use in any area of the State. The suballocation is made in the same manner as for STP funds. [23 USC 213(c)]

A State may transfer up to 50% of its TAP funds to NHPP, STP, HSIP, CMAQ, and/or Metropolitan Planning. The amount transferred must come from the portion of TAP funds available for use anywhere in the State (no transfers of suballocated TAP funds, or funds set aside for the RTP). [MAP-21 §1509; 23 U.S.C. 126]

**AUTHORITY:** Contract

**SUBJECT TO OBLIGATION LIMITATION:** Yes

**STATUTORY REFERENCE:** 23 U.S.C. 101(a)(29), 133(b)(11), 213; MAP-21 §1103, §1108, and §1122; Recreational Trails - 23 U.S.C. 206; Safe Routes to School - SAFETEA-LU §1404.

**CFR REFERENCE:** None

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

1. Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) (MAP-21 §1103):
  - A. Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.
  - 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; and
    - iv. archaeological activities relating to impacts from implementation of a transportation project eligible under title 23.
  - F. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
    - i. address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329 of title 23; or
    - ii. reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.
2. The recreational trails program under section 206 of title 23.
3. The safe routes to school (SRTS) program under section 1404 of the SAFETEA-LU.
  - A. Infrastructure-related projects.-planning, design, and construction of infrastructure-related projects on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools that will substantially improve the ability of students to walk and bicycle to school, including 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. SRTS projects must be within approximately two miles of a school for kindergarten through eighth grade as specified in SAFETEA-LU §1404. (23 U.S.C. 402 note)
  - B. Noninfrastructure-related activities to encourage walking and bicycling to school, including public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and managers of safe routes to school programs.
  - C. Safe Routes to School coordinator.
4. Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.
5. Workforce development, training, and education activities that are in accordance with [23 U.S.C. 504\(e\)](#).

**Ineligible Activities:** Section 1103 of MAP-21 eliminated the definition of transportation enhancement activities in section 101 of title 23 and inserted in its place a definition of transportation alternatives, which does not include certain activities that were previously eligible as transportation enhancements. TE eligible items ineligible for TAP include but are not limited to:

- A. Safety and educational activities for pedestrians and bicycles.

- i. Note: SRTS activities targeting children in Kindergarten through 8th grade are eligible under the TAP.
- B. Acquisition of scenic easements and scenic or historic sites.
- C. Scenic or historic highway programs (including visitor and welcome centers).
  - i. Note: A few specific activities under this category (construction of turnouts, overlooks, and viewing areas) remain eligible under section 101(a)(29)(D) of title 23.
- D. Historic preservation as an independent activity unrelated to historic transportation facilities. Note: Historic preservation and rehabilitation of historic transportation facilities are permitted as one type of community improvement activity; see section 101(a)(29)(E).
- E. Operation of historic transportation facilities.
- F. Archaeological planning and research undertaken for proactive planning. This category now must be used only as mitigation for highway projects.
- G. Transportation museums.

**BACKGROUND:** The Transportation Alternatives Program (TAP) authorized under §1122 of MAP-21 (23 U.S.C. 213(b), 101(a)(29)) provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; and projects for the planning, design or construction of boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

Consistent with other Federal-aid highway programs, TAP funds are administered by the State Department of Transportation (State DOT). The statute requires the following with respect to the selection of projects:

- TAP funds must be obligated to eligible projects submitted by eligible entities through a competitive process. (23 U.S.C. 213)(c)(4)(A).
- For urbanized areas with populations over 200,000, the MPO, through a competitive process, selects the TAP projects in consultation with the State from proposed projects submitted by eligible entities. (23 U.S.C. 213(c)(3)).
- Funds suballocated to small urban areas and rural areas will be administered by the State. Using a competitive process, the State will select the projects from proposed projects submitted by eligible entities.
- Funds available to any area of the State will be administered by the State. Using a competitive process, the State will select the projects from proposed projects submitted by eligible entities. These funds may be used in any area of the State, including within large urbanized areas, small urban areas, and nonurban areas.
- For the RTP set-aside, if applicable, States administer the program through a designated State agency. This can remain the same agency it has been (for most States, the State resource agency or grant agency), or may be the State DOT. (23 U.S.C. 206(c) and 213(f)).

The "treatment of projects" requirement (23 U.S.C. 213(e)) means that all projects carried out using TAP funds (except for recreational trails projects carried out under the RTP set-aside) must comply with applicable provisions in title 23, such as project agreements, authorization to proceed prior to incurring costs, prevailing wage rates (Davis-Bacon), competitive bidding, and other contracting requirements, regardless of whether the projects are located within the right-of-way of a Federal-aid highway. There may be some exceptions for projects that use youth service and conservation corps. (MAP-21 §1524).

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

- local governments;
- regional transportation authorities;
- transit agencies;

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

State DOTs and MPOs are not eligible entities as defined under 213(c)(4)(B) and therefore are not eligible project sponsors for TAP funds. However, State DOTs and MPOs may partner with an eligible entity project sponsor to carry out a project.

Under TAP, nonprofit organizations are not eligible as direct grant recipients for TAP funds unless they qualify through one of the eligible entity categories (e.g., where a nonprofit organization is a designated transit agency or a school). Nonprofits are eligible to partner with any eligible entity on an eligible TAP project, if State or local requirements permit.

States and regional transportation planning agencies are encouraged to enter into contracts and cooperative agreements with qualified youth service or conservation corps to perform appropriate projects. Such contracts and cooperative agreements are exempt from some Federal-aid highway program contracting requirements. [§1524] <http://www.fhwa.dot.gov/map21/qandas/qayscc.cfm>

To provide for the continuation of recreational trails projects, MAP-21 requires each State to set aside a portion of its TAP funds for projects relating to recreational trails under 23 USC 206. [23 USC 213(f)-(g)] For additional information, see Recreational Trails Program.

- The amount to be set aside is equal to each State's FY 2009 RTP apportionment.
- 1% of the set-aside funds are to be returned for FHWA administration of the RTP.
- A State may opt out of this set-aside if the Governor notifies the Secretary no later than 30 days prior to the start of a fiscal year. A State opting out may not use TAP funds for RTP administrative costs for that fiscal year.
- If the State does not opt out of the RTP, the RTP provisions and requirements remain unchanged.

States also have the option to continue eligible SRTS program activities from section 1404 of SAFETEA-LU. For additional information, see Safe Routes to School.

**ADDITIONAL INFORMATION:** See <http://www.fhwa.dot.gov/map21/guidance/guidetap.cfm>. Contact the Office of Human Environment (HEPH).