CHAPTER 3

PROJECT INITIATION, MANAGEMENT AND FUNDING
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NOTE: There are no appendices or forms associated with this Chapter.
3.1 INTRODUCTION

This chapter provides an overview of how locally-administered transportation projects are funded\(^1\) through Federal Aid Highway Programs\(^2\) according to Title 23\(^3\) of the U.S. Code of Federal Regulations (CFR) and how they are to be administered by the Federal Highway Administration (FHWA), the New York State Department of Transportation (NYSDOT) and project Sponsors.

3.1.1 History

On July 6, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law (P.L. 112-141)\(^4\). Funding surface transportation programs at over $105 billion for federal fiscal years (FY) 2013 and 2014, MAP-21 is the first long-term highway authorization enacted since 2005 and remains funded through the present time via multiple extensions.

MAP-21 builds on and refines many of the highway, transit, bicycle, and pedestrian programs and policies established in 1991 when the Intermodal Surface Transportation Efficiency Act (ISTEA) was enacted. ISTEA created new categories of federal programs for funding multi-modal transportation projects. It allowed local authorities more discretion in making decisions and required transportation projects to be more sensitive to air quality. Essentially, ISTEA initiatives were extended through the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, and the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)\(^5\), enacted in 2005.

The goal of the Federal Aid Highway Program is constructing and improving facilities eligible for FHWA funds. The following highway systems are eligible for Federal-aid:

- The National Highway System (NHS).
- The Interstate System, which is a component of the NHS.
- All other roads which have been functionally classified higher than a local road or rural minor collector.

Functional Class Maps are the official source for functional class designations. An alternative source is a highway inventory listing such as the Local Highway Inventory (LHI), which is distributed annually by the NYSDOT Highway Data Services Bureau. The Functional Class Maps and detailed highway inventory listings are on the NYSDOT Publications\(^6\) website.

Federal-aid routes are eligible for federal transportation funds. The National Highway System includes:

- Interstate routes,
- A large percentage of urban and rural principal arterials,
- The Strategic Highway Network (STRAHNET),
- Major strategic connectors,
- Routes which serve intermodal facilities, and

\(^1\) [http://www.fhwa.dot.gov/reports/financingfederalaid/index.htm](http://www.fhwa.dot.gov/reports/financingfederalaid/index.htm)
\(^2\) [http://www.fhwa.dot.gov/federalaid/projects.cfm](http://www.fhwa.dot.gov/federalaid/projects.cfm)
\(^3\) [http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200823](http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200823)
• High priority corridors throughout the United States.

Certain types of facilities located off of the Federal-aid system may also be eligible for federal highway funds, e.g., bridges, railroad grade crossings, high-accident locations, bicycle/pedestrian trails.

Federal funding of transportation projects is accomplished through a reimbursement program. Federal aid sub-recipients (project Sponsors) are required to pay all project expenses first, and then apply to NYSDOT for reimbursement. The New York State Office of the State Comptroller (OSC) reimburses Sponsors on behalf of NYSDOT. NYSDOT in turn applies to the FHWA for reimbursement of funds sent to Sponsors.

3.2 SPONSOR FINANCIAL RESPONSIBILITIES

Sponsors assume significant financial responsibility when undertaking Federal-aid projects. A Sponsor must be able to first-instance (i.e., pay up front) all cost shares and bills before requesting reimbursement from NYSDOT. Billing reimbursement requests may be submitted as frequently as monthly but must be submitted no less than every six months.

A Sponsor is responsible for all project costs incurred whether anticipated or not. This is specified in agreements with NYSDOT or other contributing agencies. The Sponsor is liable for all project costs which could subsequently be determined ineligible for reimbursement by Federal or State agencies. The most common cause of ineligible costs is improper construction monitoring (i.e., not inspecting, testing and documenting construction of the project as required in the specifications). There may be other costs associated with a project which are not eligible for federal participation, such as betterments or certain utility work. In these cases, it is the Sponsor’s responsibility to pay these costs, assess the owners of these facilities for the costs of improvements, or otherwise ensure the costs are paid. Should the federal and state participating costs increase due to design changes, construction orders-on-contract, etc., it may be necessary for the Sponsor to pay these extra charges in their entirety until the NYSDOT funding agreement (if necessary) can be modified to cover the eligible share of the unexpected costs.

In the normal progression of these projects it is not unusual for costs to change. It is essential for Sponsors to try to anticipate aspects of the project which may result in scope changes and cost increases and to notify the Regional Local Project Liaison (RLPL) to ensure Federal authorizations and obligations are adjusted to align with the project’s current scope and cost estimate. The Federal aid process is designed to respond to change, and though there are fiscal constraints within which a Sponsor must operate, reasonable increases in project costs can often be accommodated with sufficient notice. When unanticipated costs arise and no Federal funds are immediately available to cover the costs, Sponsors should consult with the RLPL about available funds. Within metropolitan planning areas, Metropolitan Planning Organizations (MPO) must approve changes in cost and schedule and therefore need to be consulted early in the process (see 3.3 Project Initiation).

Sponsors should meet with the RLPL early in the process to discuss the legal and financial responsibilities of sponsoring a project. Sponsors are encouraged to consult their legal counsel and financial officers before entering into any agreements for the purpose of undertaking a federal aid transportation project (see Chapter 4).

Prior to the execution of the State-Local Agreement (SLA), the Sponsor should begin preparing its Project Management Plan (PMP).
3.3 PROJECT INITIATION

Projects for which Sponsors desire Federal-aid must be part of the transportation planning process required under federal law. There are two separate procedures by which projects are programmed depending on whether the project is located in an urban or rural area.

3.3.1 Urban Area Projects

By federal statute Metropolitan Planning Organizations (MPOs) are designated for urban areas with populations of more than 50,000. MPOs consist of federal, state, county, and municipal officials representing the various jurisdictions and agencies responsible for providing transportation services within the MPO boundaries. An MPO must be established in these areas for local Sponsors to receive federal funds. Each MPO must develop a twenty-year transportation plan and a four-year Transportation Improvement Program (TIP). The TIP must include a priority list of federally supported projects, strategies to implement the project list and a financial plan showing how it can be funded. The TIP is updated at least once every two to three years and is approved by the MPO and the Governor.

Sponsors must have their projects approved by their MPO and added to the TIP. Each approved project will appear on the TIP showing the cost for each phase of work and the schedule for obligating federal funds. The costs are based on project application forms prepared by the Sponsor. The project performance schedule will be determined by the nature of the improvements and the availability of funds and will be included as part of the Project Management Plan (PMP). While the Sponsor is developing the project, it must also alert the MPO to significant changes in cost, scope and schedule. These changes may require revising the TIP, as well as the PMP. It is very important to keep the TIP/PMP current because inaccurate information could delay obligating federal funds and could impact project design and construction schedules.

3.3.2 Rural Area Projects

In rural areas, formal MPOs do not exist, but Transportation Advisory Committees (TACs) perform a similar function. TACs are ad-hoc organizations of State, county, and municipal officials. TACs are not required to develop a TIP, although they develop and recommend to the NYSDOT Regions annual lists of projects to be progressed with federal funds. Not all NYSDOT Regions have TACs operating in their areas but instead deal directly with rural municipalities. In either case, each NYSDOT Region has a formal process through which rural municipalities are consulted about transportation issues and can progress proposals for new projects.

3.3.3 Statewide Transportation Improvement Program Process

The final step in the transportation planning process consists of combining individual urban area TIPs with projects to be implemented in the rural areas. The combined programs are designated as the Statewide Transportation Improvement Program (STIP). A project must be added to the STIP prior to federal authorization.

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7 http://nysmpos.org/
The specific organization and operations of MPOs and TACs, particularly the TIP development and project selection procedures, are relatively complex. There is more information about MPOs and TACs in Chapter 2, *Roles and Responsibilities*. The RLPL may be consulted as well.

Each MPO and TAC follows its own process for soliciting and evaluating projects to add to the TIP and STIP. While the process and time frames may differ, the project selection guidelines and eligibility criteria used by these organizations are similar and were developed according to federal rules and regulations and NYSDOT criteria.

The following is information a Sponsor typically must provide to the MPOs and TACs when applying to include a local project on the TIP or STIP:

- Project description
- Municipality/County
- Federal aid funding source
- Functional classification of roadway
- Average Annual Daily Traffic (AADT)
- Problem description
- Project objective
- Project elements to be investigated
- Project type (bridge, pavement, capacity, safety, appurtenance, misc.)
- Anticipated environmental classification
- Proposed project schedule and cost estimate as contained in the Project Management Plan (PMP) by which performance will be measured.

NYSDOT is responsible to ensure the delivery of projects that receive any federal aid, including Local Public Agency (LPA) administered projects. NYSDOT must also ensure that these projects receive adequate supervision and inspection and certify projects are completed in conformance with approved plans and specifications.

Pursuant to **23 U.S.C. 106(g)(4)**, NYSDOT shall be responsible for determining that sub-recipients (project Sponsors) of federal funds have adequate project delivery systems for locally administered projects and sufficient accounting controls to properly manage such federal aid funds. [The Regional Planning and Program Manager (RPPM) is responsible for making the determination.] NYSDOT is also responsible for ensuring compliance with reporting and other requirements applicable to grantees making sub-awards, such as monthly reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, PL 109-282 (as amended by PL 110-252).

NYSDOT determines if the Sponsor is capable of administration and delivery of the project as outlined in Chapter 2. If the Sponsor is approved to advance the project, the project is proposed for inclusion on the TIP/STIP. The Sponsor should then contact the RLPL to discuss implementation, including federal funds management requirements over the lifetime of the project, and the development of the PMP. A PMP is required for every project. It is a living document which informs NYSDOT and other interested parties of how the Sponsor plans to meet its responsibilities and should be updated regularly throughout the life of the project (see Chapter 2).

The PMP must contain monitoring and controls that ensure the project’s performance.
requirements and schedule, including periodic reviews to adjust or modify the project authorization to reasonably reflect the current cost estimate. Both the Sponsor and NYSDOT are responsible for periodic reviews (preferably monthly but no less than quarterly) that identify inactive obligation balances (see 3.6.1 “Inactive Projects”). Expenditures for Preliminary Engineering and Right-Of-Way are subject to repayment provisions if the project does not progress to the next phase of work. Performance reports for consultants must be retained for three years.

3.4 PROJECT PHASE AUTHORIZATIONS

Properly authorizing projects is the first step in sound funds management. A proper authorization includes a clearly defined scope of work for the applicable phase with sufficient funds to accomplish the work. RLPLs should obtain assistance from the NYSDOT subject matter experts (i.e. regional structures, environmental, materials, etc. staff) and appropriate professional staff when confirming project scope in the Project Management Plan (PMP).

FHWA authorizes funds once the Sponsor and NYSDOT establish project eligibility, identify funding sources for the project, demonstrate a commitment to progress the project according to federal rules and regulations, and place the project on the State Transportation Improvement Program (STIP). The RLPL will only request authorization once the locally-executed State-Local Agreement (SLA)\(^1\) has been received and the federal funds needed are based on an accurate scope and cost estimate for the phase of work that is ready to proceed for an allowed purpose, as detailed in the PMP.

To receive Federal authorization, the following steps must be followed:

- RPPM determines that the Sponsor has the capacity to deliver the project on time and within budget, and the RLPL identifies relevant resource documents and references.
- Sponsor contacts the RLPL to initiate project development (or to discuss work/scope/costs changes in the Project Management Plan).
- At the beginning of a project, after agreement on the scope, cost, schedule, and PMP, the RLPL prepares an SLA, for the Sponsor to endorse. For a phase authorization, a supplemental agreement (SA) to an SLA is prepared.
- RLPL will initiate the request for FHWA authorization of federal funds once he/she has received the locally-executed SLA or SA from the Sponsor.
- RLPL forwards the locally-executed SLA or SA to NYSDOT Main Office for signature and subsequent forwarding to the AG and the OSC for approval.
- RLPL notifies the Sponsor that federal authorization has been granted and the Sponsor may proceed on the authorized phase(s) at its own risk.
- RLPL receives and transmits the fully executed SLA or SA to the Sponsor. (The Sponsor may elect not to proceed with authorized work until the SLA or SA is fully executed; this may not occur, however, until three or more months after the date of authorization.)
- Sponsor must submit periodic requests for reimbursement. (See section 3.2, Project

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\(^1\) The rule regarding the timing of the request for authorization of federal funds applies strictly to the original SLA. With respect to Supplemental Agreements (SAs) to the SLA which may be needed to initiate a subsequent project phase or to accommodate an increase in project cost or change in scope, the FHWA is permitting NYSDOT some flexibility on the timing of the request for authorization of funds so as not to cause unnecessary delays in progressing an ongoing project. Signed SAs, however, will still be required to be in place and approved by the AG and the OSC before reimbursements for costs incurred on work performed under the SA can be made.
Initiation and Sponsor Reimbursement Requests 5.3.2).

FHWA Authorization must be obtained prior to the commencement of reimbursable work. FHWA’s project development process is divided into three primary phases: preliminary engineering, right-of-way (ROW), and construction.

Preliminary Engineering is subdivided into a preliminary design phase and a final design phase. Each of these design phases has to be separately authorized by FHWA. FHWA Order 6640.1A requires two design authorizations. The order states: “The execution or modification of a project agreement to authorize final design for design-bid-build projects shall not occur until after the NEPA decision.”

The primary ROW phase is also divided into two phases: an incidental phase and an acquisition phase. ROW acquisition cannot be obtained until NEPA and Design Approval are completed (see 3.5.1.3 Right-of-Way (ROW) Incidentals and Acquisition Phases).

NYSDOT may require some large or complex projects to be further divided into sub-categories. All phases must be separately authorized by FHWA before reimbursable charges can be incurred. This graduated phase authorization process is intended to assure all required steps in the project design and implementation process are satisfactorily completed. In order to avoid incurring ineligible costs, it is important that a Sponsor contacts the RLPL before any new phase is undertaken (see Table 8-1, Design Approval Matrix, in Chapter 8).

FHWA’s Phase Authorization lists the maximum amount of federal funds that can be reimbursed for that phase unless later modified. There are Federal-aid programs where additional funds are not available beyond the approved project amount such as Transportation Alternatives Program (TAP), Transportation Enhancement Program (TEP), Safe Routes to School (SRTS), High Priority Projects (HPP) and Transportation, Community, and System Preservation (TCSP). While many of these fund sources are no longer available for new starts, ongoing projects continue to be capped in the amounts available.

As a general rule, a project should be advertised, consultant selection begun, or work started within 90 days of phase authorization. Sponsor must begin and continue submitting bills within six months of each phase authorization.

If there is a justifiable cost increase, NYSDOT submits a request to FHWA to increase the funds for the appropriate phase of work once any necessary MPO and TIP/STIP actions are completed. (See section 3.2, Sponsor’s Financial Responsibilities). Work on the project may continue while the request is processed. An amendment or supplement to the SLA must be approved by the State Office of Attorney General (AG) and OSC before increased reimbursements can be made.

The Schedule A of the SLA shows the maximum amount payable to the Sponsor for each phase of work. NYSDOT cannot reimburse a Sponsor more than the amount shown on the Schedule.

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12 Failure to submit a reimbursement request over the course of one year, i.e., 12 consecutive months, will result in a FHWA determination of inactivity and subsequent de-obligation or withdrawal of federal funds from the project.

13 The Schedule A attached to the SLA shows combined approved amounts for the phases of work, e.g., Preliminary Engineering, Right-of-Way, and Construction and Construction Inspection. The Schedule A should show funding allocations for each phase of work as broken down in the TIP/STIP listing for the project.
A, even if the amount of federal funds has been increased, until a SA has been approved by the AG and OSC. If extension of the completion date is the only change being made to the project, the extension may be approved through a No-Cost Time Extension without having to process a SLA (see Chapter 4). Changes in project scope or increases in project cost may also require an amendment to be made to the project as listed on the STIP.

Each phase of a project should be authorized and funds obligated only when that phase – Preliminary Engineering (Preliminary Design or Final Design), Right-Of-Way, or Construction/Construction Engineering – is actually ready to proceed\textsuperscript{14}. Each authorized phase of the project needs specific deliverables to be able to determine a reasonable cost estimate for completion of that phase developed by the Sponsor and approved by the RLPL. Once the deliverables scope is decided at each phase, a detailed project performance schedule, can be developed from the scope and used to update the initial schedule located within the PMP. Changes to scope, schedule, or cost may also require a supplemental agreement to the SLA (Chapter 4), and significant changes require the Sponsor to submit a modified package that includes revised estimates, schedules, and supporting data justifying the changes. The RLPL is responsible for monitoring and controlling project changes and ensuring that the Sponsor’s Project Manager stays within budget and on time for each phase.

The RLPL works with the Sponsor to monitor and control costs throughout the project lifecycle, using milestones as review points. For example, a NEPA determination typically ends the environmental sub-phase of a project when the PE phase is about 30 to 40 percent complete. If costs exceed expectations at any point, the RLPL and the Sponsor’s Project Manager may need to ask FHWA to authorize more funds to keep the project development process progressing on a reasonable schedule. Monitoring finances and controlling expenditures within budget are critical aspects of ensuring the individual projects and local programs meet the goals of FHWA, NYSDOT, the local public agency, Sponsors, and U.S. taxpayers. At the conclusion of each phase, any unspent funds must be returned to FHWA.

3.5 FEDERAL AID REIMBURSEMENT REQUIREMENTS

The Federal Highway Program is a reimbursement program. FHWA notifies the states of the amount of Federal-aid available to be obligated (temporarily set aside) for project expenses. The use of federal funding also typically requires a Sponsor contribution or match. All sources of federal funds (including matched funds) in a Federal-aid project are subject to federal requirements.

After federal authorization has been obtained and the RLPL has issued the notice to proceed, the Sponsor may incur costs which NYSDOT will later reimburse. Costs incurred prior to federal authorization are not reimbursable.\textsuperscript{15} The Sponsor may proceed on an authorized phase(s) prior to the SLA being fully executed at its own risk. Reimbursement of costs to the Sponsor cannot be made until NYSDOT has signed and the AG and OSC have approved the SLA for the project (see Chapter 4).

The project or phase of a project does not need to be complete before a Sponsor can begin to receive Federal-aid reimbursement. To substantiate a project’s progression, as well as to comply with the FHWA’s Federal Funds Management Policy, payment requests must be

\textsuperscript{14} Projects that are strictly equipment purchases can be authorized to go directly to construction. These normally occur in programs such as SRTS and RTP.

\textsuperscript{15} The only exception where a State-Local Agreement would not be necessary prior to costs being incurred would be under the ER Program (see Section 3.2.5).
submitted at least every six (6) months as the project progresses, as agreed to in the SLA. NYSDOT recommends submission of monthly reimbursement requests for a typical project, although not more frequently than monthly, unless otherwise approved. If no payment requests are received in a period of 12 months (inactive) the project will be de-obligated\textsuperscript{16}/withdrawn\textsuperscript{17}. Once a project has been de-obligated/withdrawn, work occurring after the de-obligation/withdrawn date is no longer eligible for reimbursement. Withdrawn projects will also need to be re-approved and placed back on the STIP/TIP.

A Sponsor and its consultant or contractor must carefully document the work being completed and keep the records on file and available for inspection and audit. Copies of supporting documentation must accompany the Sponsor’s requests for reimbursement. Sponsors should familiarize themselves with Chapter 5, as well as with 2 CFR 200\textsuperscript{18} (formerly OMB Circular A-87).

Projects must be monitored to ensure Federal funds and project agreement estimates reasonably align with current cost estimates, scope, and the performance schedule. Sound funds management entails efficiently advancing projects from authorization of the scope of work and funds to closing the project, while ensuring proper use of available Federal funding. This includes timely reviews that ensure Federal obligations are adjusted to align with the project’s current estimate. Costs must be necessary, reasonable, and allocable to qualify for Federal reimbursement.

The SLA must address billing requirements and suggested timeframes for Standard Operating Procedures; e.g. - a monthly billing schedule during construction. Budgets for each phase must be established and managed. For example, PE costs should be reasonable for the phase of the work to eliminate fraud, waste, or abuse and avoid administrative actions required to adjust funds. Stalled projects equate to an improper obligation and can result in unilateral de-obligation of funds.

3.5.1 Activities Eligible for Federal Reimbursement

3.5.1.1 General

Participating items for federal reimbursement include:

- Sponsor employees’ personal services,
- Sponsor employees’ leave and fringe additives,
- travel expenses,
- materials and supplies,
- equipment use charges, or
- other federal participating costs directly identifiable with the eligible project.

Costs not directly attributable to the project, indirect costs, are not generally eligible for reimbursement (i.e. expenditures for the establishment, maintenance, general administration, supervision, and other general operating or capital overhead of the Sponsor’s organization). In certain instances, indirect costs can be approved for reimbursement but only if the Sponsor’s

\textsuperscript{16} De-obligation occurs when a project has had past bills/reimbursements but has been inactive.

\textsuperscript{17} While a withdrawn project is one that has not had any reimbursements and is inactive.

\textsuperscript{18} http://www.ecfr.gov/cgi-bin/textidx?SID=137f4b82745bb366db232e6fd389a4b7&mc=true&node=se2.1.200_1501&rgn=div8
indirect cost rates are approved by the cognizant federal agency, i.e. oversight agency (see Chapter 5).

Reasonable fees associated with Federal Single Audits are federally reimbursable as project costs (see Chapter 16).

3.5.1.1.1 NYSDOT Oversight Cost Policy

While most costs incurred on locally administered Federal-aid transportation projects are for work performed by the Sponsor or its agents, NYSDOT will also incur costs for its review or oversight of these projects. These costs are included in the NYSDOT indirect cost rate and are billed directly to the FHWA. Oversight costs are not billed to the Sponsor, and NYSDOT covers the match for these costs.

On those occasions when project-specific functions are performed by NYSDOT on behalf of the Sponsor, costs incurred by NYSDOT staff may be charged to an appropriate Project Identification Number (PIN) for reimbursement from the approved funding source. (See Chapter 5, Accounting and Reimbursement Procedures, for further details to account for such costs.)

3.5.1.2 Preliminary Engineering (PE)

Only eligible work performed after PE is authorized may be reimbursed. The project must have a federally-approved environmental determination (see Chapter 7). Project design approval must be granted before acquisition of ROW or progression to the final design phase may begin. Only ROW incidentals may be progressed prior to design approval.

Preliminary Engineering (PE) activities eligible for reimbursement include:

- Site evaluation,
- Environmental studies,
- Preliminary and final design, and
- Related work undertaken according to the NYSDOT Project Development Manual (PDM)

PE activities eligible for reimbursement end when a project is awarded. Consultant selection for PE activities must meet federal requirements (see Chapter 6).

In accordance with 23 CFR 630.112 (c) (2) PE must lead to a construction project or selection of the Null Alternative in a timely manner. If a project does not progress to construction or ROW acquisition within ten years, the Sponsor may have to repay federal funds previously reimbursed.

If a project exceeds ten years between federal authorization and ROW acquisition or construction, NYSDOT may seek a time extension from FHWA on behalf of the Sponsor for the reasons listed below:

- Environmental/Permit issues (difficulty obtaining permits causes time delays, etc.).
- Difficulties in ROW acquisition.
- Litigation resulting in delay or stoppage of preliminary project design.
- Complex project consultations involving federal, state and local agencies as well as sovereign Indian Nations.

• Projects funded by a Congressional earmark with specific, narrow language on the “plan” or “design” of the project.
• The public involvement process has altered the Sponsor’s plan for satisfying the project’s purpose and need.
• Non-budgetary or priority based issues outside the Sponsor’s control.

Time extension requests\(^{20}\) should provide specifics on what delayed the project, timelines, ROW offer dates, proposed letting date, and anticipated construction date.

3.5.1.3 Right-of-Way (ROW) Incidentals and Acquisition Phases

ROW activities eligible for reimbursement include: contracting for private acquisition services, relocation planning, and related preliminary work; appraising and reviewing appraisals of necessary property acquisitions; and payments for real property necessary for the project according to 23 CFR 710.203\(^{21}\) (see Chapter 11). Note: Preparing ROW plans, economic studies, mapping and survey are Preliminary Design costs.

ROW activities will not be eligible for reimbursement if performed prior to authorization date. There are two authorization dates for ROW activities: one for the ROW incidental phase and the other for the ROW acquisition phase. ROW incidental activities may be performed in advance of the environmental determination and include: title search, and preparing the appraisal. When requesting the authorization for ROW incidentals a Supplemental Agreement along with a ROW 353c\(^{22}\) form should be sent to the RLPL.

ROW activities which are performed in the ROW acquisition phase (after an environmental determination and design approval is complete) include: establishing just compensation, making ROW offers, negotiating with property owners, payment at closing, and relocation assistance. To proceed with ROW acquisition the Sponsor will send a Supplemental Agreement, the ROW 353c\(^{21}\) form (including both incidental and acquisition costs), and a letter requesting the balance of ROW funds. Once this has been complete the RLPL will give Authorization to Proceed.

ROW clearance must be obtained prior to construction. For all projects NYSDOT has full responsibility for determining whether ROW is clear for construction.

In accordance with 23 CFR 630.112 (c) (1)\(^{23}\) if the actual construction of a transportation project on an acquired ROW is not undertaken by the close of the 20th fiscal year following the fiscal year in which the project is authorized, the NYSDOT must repay to the FHWA the sum or sums of federal funds paid. A Sponsor may request through NYSDOT a time extension beyond the 20-year limit, and the FHWA may approve this request if it is considered reasonable.

A Right of Way Clearance Certificate must be completed for each project, even if ROW is not being acquired. The certificate describes the current status of the ROW for the project.

3.5.1.4 Construction

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\(^{20}\) 10 year PE requests should be processed by the RLPL, in conjunction with MO Program Management Bureau, utilizing the previously approved FHWA template.


Construction activities eligible for reimbursement include: construction inspection and support services; the actual cost to construct the project including appurtenant facilities, demolishing or relocating buildings; utility or railroad work which is part of the construction of the project; and settling contract disputes.

Construction inspection includes: supervising and inspecting construction activities; testing construction materials; and taking measurements and preparing pay estimates. Construction support services include: preparing field change sheets; interpreting design concepts, plans and specifications; and approving shop drawings. Consultant selection for construction inspection and support services seeking federal aid reimbursement must meet federal requirements (see Chapter 6).

Betterment work, i.e., improving existing facilities beyond their present condition and outside of the project scope, is not eligible for federal reimbursement. An example of a betterment might be a street reconstruction where the city wants to replace its water lines concurrently. Waterline replacement is an eligible expense if necessitated by the project. When reconstructing the street would not impact the water lines, replacing them would be considered a “betterment,” not reimbursable by the FHWA. There may be an exception for reimbursement of betterments from pre-disaster constraints and standards under the ER Program (contact the RLPL for details).

Construction work is not eligible for reimbursement if performed prior to the federal authorization date. A request for construction authorization must include contract bid documents, i.e., plans, specifications, engineer’s estimate (PS&E) and all federal contract requirements. Chapter 12 provides information on the content of contract bid documents. Construction must be authorized by FHWA before the Sponsor may advertise for bids on a contract (23 CFR 635.24). A project advertised before authorization is not eligible for federal reimbursement.

Project construction contracts should be closed within a reasonable timeframe after all required work and applicable administrative actions (e.g. reporting and final billings) have been completed (see Chapter 15 Section 15.6). Effective project management requires coordination of activities among all units and functions up to and including closeout. A project is considered complete when the work is accepted and the contractor is released from responsibility on the project. All reports and final bills must be received within 90 days of work completion unless FHWA or NYSDOT has granted a time extension. Each party should have completed its construction contract closeout actions for Federal awards no later than six months after work acceptance and one year after receipt and acceptance of all required final reports. (See Chapter 17 for SLA closeout which occurs after the contract closeout.)

The sponsor must promptly refund any balances of unobligated cash that FHWA or NYSDOT paid in advance. See OMB Circular A-129 and see §200.345, Collection of Amounts Due, for requirements regarding unreturned amounts that become delinquent debts.

3.5.2 Activities Not Eligible for Federal Reimbursement

Activities not eligible for federal reimbursement include:

- Work outside the highway right-of-way without special permits or ROW acquisition.25

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25 Exceptions to this rule are certain federal aid eligible projects such as off-road trail projects.
• Work outside the limits of the project unless necessary to implement project traffic control, etc. [Work performed outside the NEPA limits of the project may jeopardize federal funding for the project (see chapter 7)].
• Betterments which are not currently part of the project. Example: payment for excess sizing of sanitary sewer adjustment for future development or replacing sewer leads which is not a result of the construction activity proposed. (In such cases, the additional cost over replacement-in-kind should be borne by the owner of the facility or property.)
• Adjustment of private facilities, e.g., signs, fences, lawn sprinklers, etc., unless covered as a part of a right-of-way agreement or permit.
• Specifying use of proprietary items, unless:
  a) Suitable numbers of other proprietary items or generic items are allowed.
  b) NYSDOT certifies the proprietary item is essential for synchronization with existing highway facilities or no equally suitable alternate exists.
  c) The proprietary item approval is for experimental purposes.
  d) FHWA finds it is in the public interest to specify a proprietary item.
• Excessively expensive treatments which do not appear to be in the public interest. (This could include expediting the project for a questionable purpose or proposing the use of extravagant roadway treatments or street side appurtenances.)
• Significant hauling or transportation charges for salvaged items delivered to agency garages or storage sites for use on future non-federal projects.
• Non-conforming construction work resulting from substandard details, designs determined to be undesirable, or items discontinued because of poor performance. (Examples: 3’ sidewalks, A588 guiderails, salt susceptible roadside plantings.)
• Items which are the responsibility of others, such as the relocation of utilities located within the ROW, relocation of public facilities outside their corporate limits, accident damage which is the responsibility of others (driver, owner, insurance company, etc.)
• Work done by an unapproved subcontractor.
• Sponsor force account work which is not approved as cost effective.
• Contract claims and settlements, unless NYSDOT is made aware of the details of the claim at an early stage and coordination of effort with the contracting agency can be can be established.
• Items which should typically be considered maintenance work by the owner agency. (Examples include: snow plowing, trash removal, and mowing roadsides.)

3.6 PROJECT MANAGEMENT

NYSDOT operates under a master FHWA/NYSDOT MAP-21 Stewardship and Oversight Agreement. This agreement between FHWA and NYSDOT is required by United States Code and formalizes the delegated responsibilities and agreements to address how the Federal-aid highway program will be administered by NYSDOT.

All recipients of Federal-aid are subject to all federal requirements. Sound project management and internal controls ensures proper use of federal funds. Each project’s Project Management Plan (PMP) is used as a determination of performance goals of a project having dates of expected/eventual completion. PMPs are a living document to be used as an expected timeline for accomplishments/deliverables. When significant developments affect the scheduled performance, the Sponsor must inform the RLPL with an updated PMP. The sponsor should include any problems, delays, or adverse conditions that will impair meeting the goals, and disclose actions taken, contemplated and any assistance needed to resolve the situation. The

26 http://www.fhwa.dot.gov/federalaid/stewardship/
Sponsor is also required to report on favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

The *Obligation Funds Management Guide* defines FHWA’s expectations and internal control requirements for sound funds management including authorization, inactive obligations, audit, and project closeout. The emphasis is on a proactive approach to funds management that ensures timely reviews and aligns obligations with current project costs. FHWA, NYSDOT, and the Local Public Agency sponsors all play an important funds management role and effective communications between these partners is required for success. Projects that stall during development are most often faced with reduced scope or increased costs, so ongoing monitoring can prevent schedule performance issues, cost escalation, and, possibly, the de-obligation and loss of federal funds.

### 3.6.1 Inactive Projects

FHWA regulation 23 CFR 630.106 requires NYSDOT to review inactive projects with unexpended federal obligations on a quarterly basis. The objective of this regulation is to provide greater assurance that the amounts of federal funds obligated on a project reflect the current cost estimate and to assure funds no longer needed are de-obligated in a timely manner. Inactive projects are defined as federal aid projects for which expenditures have not been charged against federal funds for 12 months or more from the date of federal authorization. Federal funds obligated for a project will be de-obligated/withdrawn within 90 days of a determination to reflect the current cost estimate, unless the sponsor can prove that work was done and an associated bill is coming. **If a reimbursement request has not been submitted within 12 months and the project is de-obligated or withdrawn, work completed after that date is NOT reimbursable.** This should be treated as a STOP WORK ORDER. For the work to be federally reimbursable, the project would have to be re-obligated before work is continued. **The Sponsor is responsible for costs incurred during this period.** The Sponsor is responsible for submitting a bill no less than every six (6) months, as stated in the State and Local Agreement.

SLAs address billing requirements and each project will need to keep an up to date PMP. Budgets for each phase must be established and managed. For example, PE costs should be reasonable for the phase of the work to eliminate fraud, waste, or abuse and avoid administrative actions required to adjust funds. Inactive projects equate to an improper obligation and can result in additional imposed specific award conditions for non-compliance, and/or unilateral de-obligation of funds,

### 3.6.2 Remedies for Non-Compliance

If the Sponsor fails to comply with Federal statues, regulations, SLA, or the terms and conditions of a Federal award, NYSDOT (RPPM) may impose additional conditions beyond typical monitoring as specified in section 3.6.2.1. If NYSDOT (RPPM) determines that

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28 To provide for an adequate margin of error, NYSDOT is requiring submission of reimbursement requests at 6-month minimum intervals.

29 Projects for which federal funds have been de-obligated are those on which some expenditures have been made and can usually have funding restored upon receipt of the next reimbursement request; projects for which federal funds have been withdrawn are those on which no expenditures have been made and may require a STIP action to have funds restored.
noncompliance cannot be remedied by imposing those additional conditions, NYSDOT (RPPM) may take one or more actions, as defined in section 3.6.2.2. Persistent failure to comply may prompt the FHWA to issue a Federal Aid Ineligibility Notice (FAIN) with the potential for loss or recapture of federal funds expended, as explained in section 3.6.2.3.

3.6.2.1 Additional Specific Award Conditions for Non-Compliance

NYSDOT (RPPM) may impose, as needed, additional specific award conditions, as described in 2 CFR 200.207 Specific Conditions, under the following circumstances:
- NYSDOT’s review of risk posed by the Sponsor based on criteria in 2 CFR 200.205
- History of failure to comply with the general or specific terms and conditions
- Failure to meet the expected performance goals (PMP) as described in 2 CFR 200.210
- Or, when a Sponsor is not otherwise responsible

NYSDOT (RPPM) must notify the Sponsor as per section 2 CFR 200.207c when additional specific award conditions are imposed, and include the following:
- nature of the additional requirements
- reasons why they are being imposed
- nature of the action needed to remove the additional requirements
- time allowed for completing the actions if applicable
- method for requesting reconsideration of the additional requirements

The specific condition, as defined in 2 CFR 200.207b, may include items such as the following:
- withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance
- requiring additional, more detailed financial reports
- requiring additional project monitoring
- requiring the sponsor to obtain technical or management assistance
- establishing additional prior approvals

3.6.2.2 Failure of Compliance with Additional Conditions Imposed

If the Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with federal requirements, the Sponsor will not be reimbursed for ineligible activities within the affected contracts. If the NYSDOT (RPPM) determines that noncompliance cannot be remedied by imposing additional conditions, NYSDOT (RPPM) can take one or more of the following actions, as appropriate in the circumstances, as per 2 CFR 200.338, with additional discussion with Main Office Local Programs Bureau:
- Temporarily withhold cash payments pending correction of the deficiency by the Sponsor
- Disallow all or part of the cost of the activity or action not in compliance
- Wholly or partly suspend or terminate the Federal award (see 2 CFR 200.339-342)
- Initiate suspension or debarment proceedings as authorized by 2 CFR 180 and NYSDOT regulations.
- Withhold further Federal awards for the project or program
- Take other remedies that may be legally available.
Reasons for an ineligibility determination could be:

- Issuance by the FHWA of a FAIN subsequent to a process review or an audit (see Section 3.6.2.3).
- NYSDOT project review which finds noncompliance with State or federal laws and regulations
- Absence of a Plan of Action\(^{30}\) (POA) for Scour Critical Bridges as required by 23 CFR 650(c)\(^{31}\) National Bridge Inspection Standards (NBIS) (See NYSDOT’s website)
- Failure to comply with American with Disabilities Act (ADA) Requirements and ADA Transition Plan development (see Chapter 13)

If activities undertaken as part of a federally funded project are determined to be ineligible for federal or State funds subsequent to reimbursement, NYSDOT (RPPM) will send a request for repayment to the Sponsor specifying the amount of the repayment and reason for it. The Sponsor will be expected to comply or respond to the request for repayment within the time specified. Failure to repay will result in NYSDOT reducing its financial participation in any other transportation projects it may have ongoing with the Sponsor. If the Sponsor has no other ongoing transportation projects in which NYSDOT participates, NYSDOT will petition the Office of the State Comptroller to reduce State aid or another State grant the Sponsor may be receiving and apply that amount to the outstanding deficit. Sponsors will also be required to repay any Marchiselli Program or other State aid which was used as a local match. For Non-Governmental Organizations a civil repayment process will be pursued.

3.6.2.3 Federal-aid Ineligibility Notice (FAIN)

A Federal Aid Ineligibility Notice (FAIN) (FHWA 1367) is a notification by the FHWA that items and costs have been identified as ineligible for Federal-aid reimbursement. These items and costs may be revealed through process reviews, project inspections, audits or other information gathering which brings the situation to FHWA’s attention. FHWA may also use a FAIN to justify assessment of a penalty against the State or its sub-recipient (Sponsor) for non-compliance with federal laws and regulations in connection with a federally-aided transportation project.

For each item or project which receives a FAIN, the FHWA Division Office provides a reason for the ineligibility determination. Once issued, the NYSDOT Accounting Bureau must act on the FAIN by immediately reimbursing or crediting to the FHWA the federal aid dollars specified for the identified project.

For FAINs issued on locally administered federal aid transportation projects, the NYSDOT Main Office Local Programs Bureau (MO-LPB) will review the FAIN, and, in conjunction with the FHWA, the Sponsor, appropriate NYSDOT program areas and Regions will determine the appropriate course of action to address the findings in the FAIN. Specifically, NYSDOT will take the following actions:

- RLPL will provide a copy of the FAIN to the Sponsor or local entity responsible for the project subject to the FAIN.
- MO-LPB and RLPL will develop a corrective action plan to address the ineligible activities or process violations identified by FHWA.

\(^{30}\)http://www.fhwa.dot.gov/engineering/hydraulics/bridgehyd/poa.cfm
Once sufficient action has been identified to address the concerns noted in the FAIN, MO-LPB and the RLPL will assess, in consultation with the Sponsor and NYSDOT program areas and Regions, whether there is sufficient information and documentation to appeal the FAIN.

If NYSDOT appeals the FAIN, the MO-LPB in conjunction with Regions will submit the appeal to FHWA, along with the necessary support documentation.

If NYSDOT chooses not to appeal the FAIN or if the appeal is denied, NYSDOT, thru the RLPL, will instruct the Sponsor to reduce its next reimbursement request to the NYSDOT by the gross amount of the FAIN. If full reimbursement has already been made, RLPL will request the Sponsor repay the amount of the FAIN.

If NYSDOT chooses not to appeal the FAIN but the Sponsor or contractor wants to, it is within their rights to do so, even if NYSDOT disagrees. The Sponsor or contractor should appeal through the MO-LPB as a conduit to FHWA. FHWA prefers this, as it also affords NYSDOT an opportunity to formally express its opinion relative to the appeal.

FAINs have and can occur in all phases of the project. Any non-compliant activity can result in a financial penalty. Examples of activities that have lead to FAINs in the past are lack of Good Faith Effort documentation for DBE compliance, lack of documentation during the construction phase, etc.

3.7 FEDERAL AID PROGRAMS AND ELIGIBILITY

MAP-21 restructures core highway formula programs. Activities carried out under some existing formula programs – the National Highway System Program, the Interstate Maintenance Program, the Highway Bridge Program, and the Appalachian Development Highway System Program – are incorporated into the following new core formula program structure:

- National Highway Performance Program (NHPP)
- Surface Transportation Program (STP)
- Congestion Mitigation and Air Quality Improvement Program (CMAQ)
- Highway Safety Improvement Program (HSIP)
- Railway-Highway Crossings (set-aside from HSIP)
- Metropolitan Planning

It creates two new formula programs:

- Construction of Ferry Boats and Ferry Terminal Facilities – replaces a similarly purposed discretionary program.
- Transportation Alternatives (TA) – a new program, with funding derived from the NHPP, STP, HSIP, CMAQ and Metropolitan Planning programs, encompassing most activities funded under the Transportation Enhancements, Recreational Trails, and Safe Routes to School programs under SAFETEA-LU.
MAP-21 creates a new discretionary program – Tribal High Priority Projects (THPP) – and continues the following current discretionary programs:

- Projects of National and Regional Significance (PNRS)
- On-the-Job Training Supportive Services
- Disadvantaged Business Enterprise (DBE) Supportive Services
- Highway Use Tax Evasion (Intergovernmental enforcement projects)
- Work Zone Safety Grants

It also eliminates most current discretionary programs:

- Delta Region Transportation Development
- Ferry Boats Discretionary
- Highways for LIFE Demonstration Program
- Innovative Bridge Research and Deployment
- Interstate Maintenance Discretionary
- National Historic Covered Bridge Preservation
- National Scenic Byways
- Public Lands Highway Discretionary
- Railway-Highway Crossing Hazard Elimination in High Speed Rail Corridors
- Transportation, Community, and System Preservation
- Truck Parking Pilot Program
- Value Pricing Pilot Program (no additional funding, but authority remains)

The above listed active federal programs are used to fund planned projects, except for the Emergency Relief Program (ER). For the ER Program, funds are requested for eligible federal aid highways and roads after they have sustained serious damage from a natural disaster or a catastrophic failure from an external cause. Federal requirements for the ER program vary from the other federal aid programs (see ER Program). For instance, emergency repair work to open roads for traffic and preliminary engineering may be initiated without prior authorization.

Projects currently funded by programs extant under SAFETEA-LU and prior surface transportation acts but eliminated by MAP-21, including “earmarked” High Priority Projects (HPP) and Transportation Improvement Program (TIP) projects, will be progressed under the established guidelines until such funds are exhausted.

When an authorization act establishes a program, the legislation sets ground rules under which the program operates, including: (1) the amount of funds available to the program for each fiscal year; (2) a description of how those funds are to be distributed; (3) the time frame during which the funds may be used (period of availability), and (4) a listing of eligible activities. These can be changed by subsequent authorization acts as well as by other legislation. Additional details on eligibility and procedure are available through the NYSDOT Regional Local Project Liaison (RLPL). There is information on project eligibility and the associated federal funding shares in *A Guide to Federal Aid Programs and Projects*.

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3.7.1 National Highway Performance Program (NHPP)

The NHPP is intended for investment in the National Highway System (NHS). The NHS is composed of rural and urban roads serving major population centers, international border crossings, intermodal transportation facilities, and major travel destinations. It includes the Interstate System, all principal arterials and border crossings on those routes, highways that provide motor vehicle access between the NHS and major intermodal transportation facilities and the network of highways important to U.S. strategic defense (STRAHNET) and its connectors to major military installations.

The NHPP is authorized at an average of $21.8 billion per year to support the condition and performance of the NHS, for the construction of new facilities on the NHS, and to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the NHS.

MAP-21 establishes a performance approach for maintaining and improving the NHS. The USDOT will establish the minimum standards for Interstate pavement conditions, which may vary by geographic region, for Interstate and NHS pavements, NHS bridge conditions, and Interstate and NHS system performance, as well as establish performance measures. States are required to develop a risk- and performance-based asset management plan for the NHS, which must be reviewed and recertified every four years, to improve or preserve asset condition and system performance. States further are required to devote resources to improve the conditions until the established minimum is meet or exceeded. Projects located on local Federal-aid roads which cross over NHS highways may be eligible for NHPP funding.

Eligible projects include:

- Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvements of NHS segments.
- Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of NHS bridges and tunnels.
- Construction, rehabilitation, or replacement of existing ferry boats and facilities, including approaches that connect road segments of the NHS.
- Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the NHS, and construction of a transit project eligible for assistance under chapter 53 of title 49, if the project is in the same corridor and in proximity to a fully access-controlled NHS route, if the improvement is more cost-effective (as determined by a benefit-cost analysis) than an NHS improvement, and will reduce delays or produce travel time savings on the NHS route and improve regional traffic flow.
- Bicycle transportation and pedestrian walkways.
- Highway safety improvements on the NHS.
- Capital and operating costs for traffic and traveler information, monitoring, management, and control facilities and programs.
- Infrastructure-based ITS capital improvements.
- Environmental restoration and pollution abatement.
- Control of noxious weeds and establishment of native species.
- Environmental mitigation related to NHPP projects.
• Construction of publicly owned intracity or intercity bus terminals servicing the NHS.

For a complete list of eligible project types, see the MAP-21 Fact Sheets webpage on the FHWA website.

The federal government reimburses 80% of all the eligible costs of constructing or improving a federal aid project using NHPP funds.

3.7.2 Surface Transportation Program (STP)

MAP-21 continues the STP, providing an annual average of $10 billion in flexible funding that may be used by States and localities for projects to preserve or improve conditions and performance on any Federal-aid highway, bridge projects on any public road, facilities for non-motorized transportation, transit capital projects and public bus terminals and facilities.

Most current STP eligibilities are continued, with some additions and clarifications. Activities of some programs that are no longer separately funded are incorporated, including transportation enhancements (replaced by “transportation alternatives” which encompasses many transportation enhancement activities and some new activities), recreational trails, ferry boats, truck parking facilities, and Appalachian Development Highway System projects (including local access roads). Explicit eligibilities are added for electric vehicle charging infrastructure added to existing or included in new fringe and corridor parking facilities, and projects and strategies that support congestion pricing, including electronic toll collection and travel demand management strategies and programs.

Fifty percent (50%) of a State's STP funds are to be distributed to areas based on population (suballocated), with the remainder to be used in any area of the State. Consultation with rural planning organizations, if any, is required. A special rule is provided to allow a portion of funds reserved for rural areas to be spent on rural minor collectors, unless the USDOT determines this authority is being used excessively.

Set-asides from the State’s STP apportionment are (1) a proportionate share of funds for the State’s Transportation Alternatives Program (TAP). (The set-aside for Transportation Enhancements is eliminated.); (2) 2% for State Planning and Research (SPR) and (3) off-system bridges, an amount not less than 15% of the State’s FY 2009 Highway Bridge Program apportionment (may not be taken from amounts suballocated based on population).

STP funds may be used for projects on any roads which are on or off the NHS. The eligible roads are collectively referred to as federal aid routes. Eligible projects include:

• Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways, including designated routes of the Appalachian Development Highway System (ADHS) and local access roads under 40 USC 1450134.

• Replacement, rehabilitation, preservation, protection, and anti-icing/deicing for bridges and tunnels on any public road, including construction or reconstruction necessary to accommodate other modes.

• Construction of new bridges and tunnels on a federal-aid highway.

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• Inspection and evaluation of bridges, tunnels and other highway assets as well as training for bridge and tunnel inspectors.
• Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities used to provide intercity passenger bus service.
• Carpool projects, fringe and corridor parking facilities and programs, including electric and natural gas vehicle charging infrastructure, bicycle transportation and pedestrian walkways, and ADA sidewalk modification.
• Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, mitigation of hazards caused by wildlife, railway-highway grade crossings.
• Highway and transit research, development, technology transfer.
• Capital and operating costs for traffic monitoring, management and control facilities and programs, including advanced truck stop electrification.
• Surface transportation planning.
• Transportation alternatives -- newly defined, includes most transportation enhancement eligibilities. (See separate “Transportation Alternatives” section of this chapter)
• Transportation control measures.
• Development and establishment of management systems.
• Environmental mitigation efforts (as under National Highway Performance Program).
• Intersections with high accident rates or levels of congestion.
• Infrastructure-based ITS capital improvements.
• Environmental restoration and pollution abatement.
• Control of noxious weeds and establishment of native species.
• Congestion pricing projects and strategies, including electric toll collection and travel demand management strategies and programs.
• Recreational trails projects.
• Construction of ferry boats and terminals.
• Border infrastructure projects.
• Truck parking facilities.
• Surface transportation infrastructure modifications within port terminal boundaries, only if necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.
• Construction and operational improvements for a minor collector in the same corridor and in proximity to an NHS route if the improvement is more cost-effective (as determined by a benefit-cost analysis) than an NHS improvement and will enhance NHS level of service and regional traffic flow.

For a complete list of eligible project types, see the MAP-21 Fact Sheets webpage on the FHWA website.

The federal government reimburses 80% of all the eligible costs of constructing or improving a federal aid project using STP funds.

3.7.3 Transportation Alternatives Program (TAP)

MAP-21 establishes a new program to provide for alternative transportation projects, including many that were previously eligible activities under separately funded programs. The TAP replaces the funding from pre-MAP-21 programs including Transportation Enhancements, Recreational Trails, and Safe Routes to School, wrapping them into a single funding source. Some scenic byway type projects, such as turnouts, overlooks, and viewing areas will be
eligible under TAP, although the National Scenic Byways program was not reauthorized under MAP-21.

Fifty percent (50%) 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% available for use in any area of the State.

TAP funds are administered by NYSDOT. States administer the Recreational Trails Program (RTP) through a designated State agency or agencies, which may or may not be the State DOT. Funds suballocated to urbanized areas over 200,000 must be on the MPO TIP. The MPO, through a competitive process, selects the projects in consultation with the State from proposed projects submitted by eligible entities. Funds suballocated to small urban areas and rural areas will be administered by the State. The State, through a competitive process, selects the projects from proposed projects submitted by eligible entities.

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; 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

Eligible program categories include the following:

- Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation
- 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
- Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users
- Construction of turnouts, overlooks, and viewing areas
- Community improvement activities, including:
  - inventory, control, or removal of outdoor advertising;
  - historic preservation and rehabilitation of historic transportation facilities;
  - vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control;
  - archaeological activities relating to impacts from implementation of a transportation project eligible under 23 USC.
- 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; or
  - reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.
• In addition to defined Transportation Alternatives (as described above), the following projects or activities are eligible:
  o The Recreational Trails Program under 23 USC 206.
  o The Safe Routes to School program under §1404 of SAFETEA–LU.
  o Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways

TAP funds are awarded through periodic solicitations of candidate projects. Past solicitations have occurred on two or three year cycles. When solicitations are planned the schedule is posted on the NYSDOT website. The TAP Guidebook\(^\text{35}\) explains in detail the application and selection processes. A fillable application will be available on the NYSDOT TAP website.

The federal government will reimburse up to 80% of all the eligible costs of constructing or improving a federal aid project using TAP funds. The amount and percentage of the federal contribution are determined at the time of application approval and remain capped for the life of the project.

3.7.3.1 Recreational Trails Program

The Recreational Trails Program (RTP) is a grant based program which provides funds to develop and maintain recreational trails and trail-related facilities for both non-motorized and motorized use. MAP-21 ended the RTP as a standalone program, incorporating it as a component of the TAP. The RTP Program is administered by the NYS Office of Parks, Recreation and Historic Preservation\(^\text{36}\), on behalf of NYSDOT. Projects are solicited and selected based on project applications that are submitted to OPRHP where they are reviewed, rated, and ranked by region and funding category. Each project has funding and project criteria that it must meet in order to be determined eligible. It is encouraged that Grantees (Sponsors) reach out to their OPRHP regional grant representative so that a more competitive application is developed.

Once a project has been selected, OPRHP sends a recommendation to FHWA for pre-approval verifying that the funding and eligibility criteria have been met. Once pre-approval is granted, projects are then requested to be placed on the TIP/STIP through NYSDOT. OPRHP requests FHWA phase authorizations through NYSDOT. RTP projects are generally simple, following the IPP/FDR Design Report in the NYSDOT Project Development Manual (PDM). FHWA deemed NEPA was non-delegable by State Agencies to sub-recipients. It is NYSDOT’s role to oversee OPRHP, their adherence to Federal aid requirements, and give environmental concurrence.

3.8 CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM (CMAQ)

The purpose of CMAQ (23 USC 149)\(^\text{37}\) is to help meet the requirements of the Clean Air Act. CMAQ projects are designed to reduce congestion and improve air quality for areas that do not meet the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter (nonattainment areas) and for former nonattainment areas that are now in compliance (maintenance areas). This is generally accomplished by reducing transportation-related ozone precursors [volatile organic compounds (VOCs) and nitrogen oxides], carbon monoxide and particulate matter emissions by reducing single occupant vehicle usage, using alternative fueled vehicles or engines, and improving traffic flow.

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\(^{36}\) [http://parks.ny.gov/grants/recreational-trails/default.aspx](http://parks.ny.gov/grants/recreational-trails/default.aspx)

Funds may be used for transportation projects likely to contribute to the attainment or maintenance of a national ambient air quality standard, with a high level of effectiveness in reducing air pollution, and be included in the Metropolitan Planning Organization's (MPO's) current transportation plan and transportation improvement program (TIP) or the current state transportation improvement program (STIP) in areas without an MPO.

Eligible projects must show an air quality benefit and include the following activities:

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

Other activities which a Sponsor demonstrates can achieve CMAQ objectives will be considered by the NYSDOT and FHWA.

The CMAQ program has new performance-based features. The FHWA is tasked with developing national performance measures for use in assessing traffic congestion and on-road mobile source emissions. States are required to establish targets for meeting these performance measures. Each MPO with a transportation management area of more than one million in population representing a nonattainment or maintenance area is required to develop and update biennially a performance plan to achieve air quality and congestion reduction targets.

The federal share for CMAQ projects is usually 80% for projects off the Interstate System and 90% on the Interstate system but can also be 100% for certain types of projects, e.g. car/vanpool projects, priority control systems for emergency vehicles and transit vehicles and traffic control signalization.

3.9 EMERGENCY RELIEF PROGRAM (ER)

The FHWA Emergency Relief (ER) program\(^3\) is intended to assist Sponsors in covering the extraordinary costs of repairing damage to eligible facilities caused by natural disasters or

\(^3\)https://www.dot.ny.gov/programs/emergency-relief
www.fhwa.dot.gov/specialfunding/er/guide.cfm
catastrophic failures to external causes. Eligibility is based on Functional Classification. Eligible facilities are Interstates, principal arterials, minor arterials, urban collectors and rural major collectors. **Rural Minor Collectors, Local Urban and Local Rural facilities are not eligible for ER funds, but may be eligible under the FEMA Public Assistance (PA) program** administered by New York State Division of Homeland Security and Emergency Services (DHSES). (Municipalities with damage that may be potentially FEMA-eligible should contact the DHSES.) Examples of natural disasters include floods, hurricanes, earthquakes, tornadoes, tidal waves, severe storms, or landslides. An example of a catastrophic failure would be the sudden collapse of a bridge struck by a barge.

ER funds may be used to reimburse costs of both Emergency and Permanent repairs. The ER program provides 100% reimbursement for Emergency repairs when performed within 180 days of the event. Reimbursement for Permanent repairs is 90% on Interstates and 80% for non-interstate facilities. All work completed after 180 days of the event is considered permanent work and reimbursed at the lower rate. Construction of permanent repairs must be **started** by the end of the second federal fiscal year following the year in which the disaster occurred. In order for a toll facility (e.g., the NYS Thruway Authority) to participate in the ER Program, the toll facility authority must have an executed toll agreement with FHWA.

Emergency repairs are those made during and immediately after a disaster in order to:

- Restore essential traffic
- Minimize the extent of damage
- Protect surviving facilities.

Prior authorization is not required to begin Emergency repairs. Preliminary engineering for a permanent repair may also begin without authorization. Emergency repairs are normally performed by Force Account (direct performance of highway construction work by the Sponsor, by use of labor, equipment, materials, and supplies furnished by the entity accomplishing the work and used under their direct control.) A Sponsor may use the workforce of another entity to supplement its own workforce, so long as the supplemental workforce is under the Sponsor’s direct control. Per 23 CFR 635.204(b), FHWA approval of Force Account work is not required. Emergency Repairs may be performed by Solicited Contract or by Negotiated Contract [23 CFR 668.105(i)]

Often, emergency repair work, such as debris removal, can be performed more efficiently through the deployment of pre-established emergency repair contracts. Such contracts should be competitively bid, and must comply with all applicable Federal-aid contracting requirements at the time of the disaster.

Examples of emergency repairs include:

- Establishing closures and emergency detours.
- Removing debris
- Replacing a washed-out culvert pipe and backfilling with appropriate material
- Installing a temporary bridge
- Placing rip-rap to prevent further scour at a damaged location

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Permanent repairs are usually those made after emergency repairs and are meant to restore the facility to its pre-disaster condition. Prior authorization of PE is required, unless the permanent repairs are performed simultaneously as part of the emergency repairs. Permanent repairs must be accomplished by contract awarded by competitive bidding, unless the Sponsor demonstrates some other method is cost effective as described in 23 CFR 635.204 and must comply with all applicable Federal-aid contracting requirements at the time of the disaster.

Examples of permanent repairs include:

- Restoring pavement surfaces
- Replacing a destroyed bridge
- Replacing signs, guardrail, fences, and other highway appurtenances
- Landscaping and final site cleanup

After a qualifying event, the Sponsor must contact their regional NYSDOT office. Applications for ER funds are submitted through NYSDOT. Eligible expenditures are those for design, right-of-way (ROW) acquisition, and Emergency and Permanent repairs.

Additional program guidance on the ER Program will be included in this manual as a new Chapter 18 in the future.

3.10  HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)

MAP-21 continued the Highway Safety Improvement Program (HSIP), created under SAFETEA-LU and described in 23 USC 148 as a data-driven, strategic approach to improving highway safety. The HSIP has several major program features. Funds are set aside from the State’s HSIP apportionment for (1) railway-highway crossings, (2) a proportionate share of State’s Transportation Alternatives Program (TAP) and 2% for State Planning and Research (SPR). Separate FHWA Fact Sheets are available for each of these programs. The set-aside for the High Risk Rural Roads Program (HRRR) was discontinued.

Highway Safety Improvement Program funds are used to correct or improve a hazardous road location or address some other highway safety problem. To obligate funds for this program, according to 23 USC 148, a state must develop and implement a Strategic Highway Safety Plan (SHSP), produce a program of projects or strategies to reduce safety problems, evaluate the plan on a regular basis, and submit an annual report to the USDOT Secretary.

The HSIP contains special rules regarding the following two safety concerns:

High Risk Rural Road (HRRR) Safety: A HRRR is any rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated SHSP. If the fatality rate on such roads increases over the most recent 2-year period for which data are available, in the next fiscal year the State must obligate for this purpose an amount at least equal to 200% of its FY 2009 HRRR set-aside.

Older drivers: If fatalities and serious injuries per capita for drivers and pedestrians over age 65 increases during the most recent 2-year period for which data are available, a State is required to incorporate strategies focused on older drivers and pedestrians in the next SHSP update.

The federal share is typically 90%, subject to a sliding scale adjustment, but can be 100% for certain improvements listed in 23 USC 120(c).

3.10.1 Railways-Highway Crossings Program

The purpose of the Railways-Highway Crossings Program is to reduce the number of fatalities and injuries at public highway-rail grade crossings through the elimination of hazards or the installation/upgrade of protective devices at crossings. The FHWA Office of Safety emphasizes the importance of maintaining current and accurate highway-rail grade crossing inventories.

States are required to conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices and establish and implement a schedule of projects for this purpose. At a minimum this schedule should provide signs for all railway-highway crossings. [23 USC 130(d)]

The policy for the development and implementation of a comprehensive HSIP is outlined in 23 CFR 924. States, among other things, are required to:

- Collect and maintain a record of accident, traffic, and highway data, including, for railroad-highway grade crossings, the characteristics of both highway and train traffic.
- Institute a process for determining the relative hazard of public railroad-highway grade crossings based on a hazard index formula.
- Institute a process for conducting engineering studies of hazardous locations, sections, and elements to develop highway safety improvement projects as defined in 23 USC 101(a); and
- Institute a process for establishing priorities for implementing highway safety improvement projects.

3.11 SOURCES TO MATCH FEDERAL AID

3.11.1 Flexible Match

The Federal Aid Highway Program has traditionally required recipients of federal highway funds to contribute toward the total cost of a project. Historically, federal law placed limits on the types of contributions which can satisfy the matching requirement and the sources of those contributions. Cash contributed by a Sponsor could satisfy the matching requirement, while other types and sources of funding for federally-assisted transportation projects may simply reduce the total project cost. The standard matching requirement would continue to apply to the remaining project cost.

Provisions in the National Highway System Act (NHS Act) and subsequent federal authorization acts (TEA-21, SAFETEA-LU) introduced new flexibility in the Federal-aid Highway Program by allowing certain public donations of cash, materials, and services to satisfy the non-federal matching requirement. These legislative changes, known collectively as flexible match

42 [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+23USC120](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+23USC120)
provisions, increase a Sponsor’s ability to fund its projects. Flexible match may include non-monetary contributions, also known as in-kind or soft match.

Most flexible match opportunities now available were authorized initially under the NHS Act and are codified in 23 USC 323.46 TEA-21 broadened (and SAFETEA-LU and MAP-21 continued) flexible matching options by expanding the opportunity to match federal highway funds with other types of federal funds. These changes are codified principally in 23 USC 120.47 Any federal aid project for which a non-federal match is required may employ some form of flexible match, though it is necessary for the Sponsor to obtain approval for use of flexible match from the RLPL before the phase for which the match will be used begins. Flexible match is useful in cases where a public or private partner (e.g., a sponsor of a new industrial park) has a clear interest in seeing a given project advance and is willing to make a contribution toward the project's construction. Any project employing flexible match must comply with all federal aid requirements.

Most of the conditions related to the use of flexible match concern the types of contributions eligible to offset the standard non-federal matching requirements. The critical part of this eligibility determination is the combination of the source of the contribution (private, local, State, or federal) and the nature of the contribution (cash, materials, land, services, buildings or equipment). For flexible match, the costs and services need to be directly attributable to the federal aid project. Table 3-1, Eligibility for Credit against Non-Federal Match, lists the basic requirements for determining whether or not a given non-federal contribution can satisfy federal aid matching requirements under the flexible match provisions.

The fair market value of the non-monetary contributions discussed in Table 3-1 must be determined and documented in order for the credit to be applied as non-federal match. Also, the value of the public or private contribution must be included in the total project cost; it cannot both reduce the cost of the project and be credited towards the required non-federal share of the remaining project cost.

The first step in using flexible match is for a Sponsor to identify the non-federal funds, materials, property, services or eligible federal grant funding which could be applied to a given federal aid transportation project. Once NYSDOT approves the use of those contributions to offset non-federal matching requirements, federal aid highway funds can be obligated for the remaining federal share of project costs. As part of this process, it is essential to document the value of any non-monetary contributions during the approval process. Donations, except donations of land, must be made after the date the project receives FHWA authorization of federal funding but prior to approval of the final reimbursement request. Land may be donated anytime during project development. For the donation of services, materials or complete project elements to be considered for the non-federal match it must be made after federal authorization of the phase for which the services, materials or elements are being donated, e.g., construction services to be donated as a soft match will only count as soft match if made after the construction phase has been authorized. Table 3-2, Federal-to-Federal Matching Opportunities, displays the conditions to be met for use of other federal funds to satisfy the federal aid highway matching requirements. The left column lists sources of federal grant funds which may be used to match the FHWA administered federal funds (right column).

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47 http://us-code.vlex.com/vid/sec-federal-share-payable-19205125
3.11.2 Marchiselli Program

The Municipal Streets and Highway Program, commonly referred to as the Marchiselli Program, was created as a means of assisting municipalities in financing the non-federal share of federally aided transportation projects. Under the program, Municipal Sponsors progressing projects on local highway systems through a federal aid highway program may be eligible for State reimbursement of up to 75% of the non-federal share. The Marchiselli Program is the primary State aid matching program for locally administered FHWA-funded projects.

**Marchiselli Program funding is subject to annual appropriation in the State budget.**

Marchiselli Program funds may only be used for construction, reconstruction or improvement of local highways, bridges or highway-railroad grade crossings off the State Highway System. Eligible project phases include scoping, design, right-of-way incidentals, right-of-way acquisition, and construction (including construction supervision and inspection). NYSDOT reviews proposed Marchiselli Program projects to ensure compliance with eligibility criteria and appropriateness of the project. The following is required for all Marchiselli Program activities:

- Project must be eligible to receive Federal-aid and must be included on the federally-required Statewide Transportation Improvement Program (STIP).
- Sponsor must be a Municipality (County, City, Town or Village).
- Project must have a ten (10) year minimum service life.
- Proposed work must fall under one of the eligible project types.

Eligible projects must be located within the municipal highway or street right-of-way (ROW).

NYSDOT encourages each municipality to develop a comprehensive transportation plan to address their infrastructure needs.

**Eligible project types:**

- Street and highway resurfacing, rehabilitation, reconstruction and construction.
- Bridge demolition, replacement, rehabilitation, reconstruction and construction.
- Sidewalks and curbs on highway or bridge projects.
- Shared use paths and pedestrian bridges, including sidewalk connections relating directly thereto.
- Pedestrian/bicycle paths when such facilities are located within an existing highway or street (ROW).
- Signs, signals, and lighting on eligible highway or bridge projects.
- Drainage systems on eligible highway or bridge projects.

**Ineligible project types:**

- Recreational Pedestrian/bicycle paths regardless of location.
- Parking lots (regardless of purpose).
- Bus shelters or other transit structures.
- Mobile or portable traffic management or monitoring systems which are not dedicated for use exclusively on a specific local road, bridge, or at-grade railroad crossing.
- Betterments.

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• Interest costs on bonded indebtedness for eligible projects.

• Projects funded with monies from the Emergency Relief Program, Safe Routes to School Program (SRTS), and Transportation Enhancement Program (TEP). This will also apply to the Transportation Alternatives Program (TAP), created under Moving Ahead for Progress in the 21st Century (MAP-21), which supersedes TEP and SRTS.

• Federal discretionary program funding and earmarks made available through the High Priority Projects Program (HPP) and the Transportation Improvements (TI) Program authorized in SAFETEA-LU or its successors.

**Period of Availability**

Any federally-aided municipal transportation project approved by NYSDOT to receive Marchiselli funding must be initiated pursuant to an executed State-Local Agreement (SLA) within two years of State authorization by the NYSDOT subject to State appropriation of funds. Failure to execute the aforementioned agreement will result in rescission of the initial State commitment for such project phase(s). Furthermore, any project approved by the State for Marchiselli funds with an executed SLA which has not proceeded under the current phase under agreement within two years of the authorization will be rescinded unless a waiver is obtained from NYSDOT. Sponsor may re-apply through the RLPL for Marchiselli funding when the project is ready to advance, but there is no guarantee of funds still being available.

NYSDOT is implementing these limitations on the period of availability to ensure that locally-administered projects are delivered on time and within scope and available funds. These funds are intended to stimulate the State’s economy. NYSDOT will provide technical assistance to municipalities, including project tracking support. Sponsors must inform NYSDOT immediately of changes in project scope, schedule and cost for Marchiselli-approved activities. Failure to do so may impact a Sponsor’s eligibility for future Marchiselli funding.

**Presentation of Municipal Projects on the Federally-Required TIP/STIP**

New federally-aided municipal transportation projects must appear on the federally required TIP and STIP with a 100% local match (non-State). As State Marchiselli funds are considered part of the local match identified on TIPs and STIP a modification to the TIPs and STIP are not required when Marchiselli funds are identified for a project.

3.11.3 **Consolidated Local Street and Highway Improvement Program (CHIPS)**

CHIPS\(^\text{49}\) provides State funds to eligible municipalities to support the construction and repair of highways, bridges, highway-railroad crossings, and other facilities which are not on the State highway system. CHIPS funds may be used as the local match on federally funded street or highway capital projects having a 10 year minimum service life.

In order to be eligible for CHIPS funding, the project must:

- be undertaken by a municipality;
- be for highway-related purposes; and

• have a service life of 10 years or more with normal maintenance or be one of the following resurfacing project subsets where the service lives are less than 10 years:
  o microsurfacing;
  o paver placed surface treatment;
  o single course surface treatment involving chip seals or oil and stone; or
  o double course surface treatment involving chip seals or oil and stone.

Eligible work:
• Highway resurfacing and reconstruction
• Bridge/culvert rehabilitation and replacement
• Traffic control devices
• Other types of work such as that for guiderail, shoulder, drainage, channelization, transportation storage or maintenance buildings, mass transportation commuter parking facilities owned by a municipality, etc.

Ineligible work:
• Operation and maintenance activities such as pothole repairs, crack sealing, snow removal, brush and weed control, street cleaning, highway planning studies, administrative activities (including administering CHIPS) not associated with a specific CHIPS capital project and purchase of materials not associated with a specific CHIPS capital project.
• State highways, including locally-maintained State highways in cities.
• Municipally-owned parking lots or garages which are not linked to a transit purpose.
• Sanitary sewers, water lines, and other utilities which are not impacted by a highway or bridge reconstruction project.
• Pedestrian/bicycle access features outside the highway ROW.
• Amounts paid by a locality for interest or indirect costs (e.g., costs of issuance) on local bonds or notes issued to finance eligible project costs.

CHIPS reimbursement payments are issued by the OSC on June 15, September 15, December 15, and March 15, or as soon thereafter as funds become available for such payments.

3.11.4 Other Potential Match Sources

Another possible fund source for local match is Legislative Initiatives commonly known as Member Items. NYSDOT does not coordinate or initiate these appropriations; however, NYSDOT administers those made available through NYSDOT. Sponsors should contact their representatives in the State Legislature for any applicable Member Item funding.

New York State Multi-Modal funds cannot be used as a match for Federal-aid highway, bridge, and aviation projects, as it is prohibited by State law. Multi-Modal funds may be used to match Federal-aid on otherwise qualified railroad, port and fixed ferry facility modal projects only (see Chapter 4).
3.12 REFERENCES

FEDERAL LAWS AND REGULATIONS
Intermodal Surface Transportation Efficiency Act (ISTEA)
Transportation Equity Act for the 21st Century (TEA-21)
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
Moving Ahead for Progress in the 21st Century (MAP-21)
National Highway System Act
Uniform Act (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970)
Clean Air Act
American with Disabilities Act (ADA) of 1990
Robert T. Stafford Disaster Relief and Emergency Assistance Act (FEMA)
State and Local Assistance Act
HUD Community Development Block Grants (Housing and Community Development Act of 1974)
Public Works Employment Act of 1976
Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988
23 USC 101(a)
23 USC 120
23 USC 120(c)
23 USC 130(d)
23 USC 148
23 USC 206
23 USC 323
40 USC 14501
2 CFR 180
2 CFR 200
23 CFR 630
23 CFR 635
23 CFR 650
23 CFR 668
23 CFR 710
23 CFR 924

STATE LAWS AND REGULATIONS
Chapter 330 of the Laws of New York of 1991
New York State Highway Law, Section 10-c
### Table 3-1 Eligibility for Credit against Non-Federal Match

<table>
<thead>
<tr>
<th>Donation</th>
<th>Source</th>
<th>Eligible</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funds</td>
<td>Private</td>
<td>Yes</td>
<td>• Funds must be received during the period between project approval and submittal of final voucher</td>
</tr>
<tr>
<td></td>
<td>State</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Local Government</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Land (ROW)</td>
<td>Private</td>
<td>Yes</td>
<td>• Property acquired in accordance with the Uniform Act</td>
</tr>
<tr>
<td></td>
<td>State</td>
<td>Yes</td>
<td>• Fair market value of property must be determined</td>
</tr>
<tr>
<td></td>
<td>Local Government</td>
<td>Yes</td>
<td>• Value must be included in total project cost</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Property may be donated anytime during project development</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Donation does not influence environmental assessment</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Property has not been previously acquired with federal funds</td>
</tr>
<tr>
<td>Materials</td>
<td>Private</td>
<td>Yes</td>
<td>• Invoiced value of material must be determined</td>
</tr>
<tr>
<td></td>
<td>State</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Local Government</td>
<td>Yes</td>
<td>• Invoiced value of material must be determined</td>
</tr>
<tr>
<td>Services</td>
<td>Private</td>
<td>Yes</td>
<td>• Sponsor must document the market value of services</td>
</tr>
<tr>
<td></td>
<td>State</td>
<td>Limited</td>
<td>• Publicly contributed services may only count toward match for Transportation Alternatives Program projects</td>
</tr>
<tr>
<td></td>
<td>Local Government</td>
<td>Limited</td>
<td></td>
</tr>
</tbody>
</table>
Table 3-2 Federal-to-Federal Matching Opportunities

<table>
<thead>
<tr>
<th>Source of Federal Grant Funding</th>
<th>Eligible Categories of Highway Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Land Management agencies, including but not limited to:</td>
<td>Federal highway projects funded under the following program categories:</td>
</tr>
<tr>
<td>• U.S. Forest Service</td>
<td>• National Highway Performance Program</td>
</tr>
<tr>
<td>• Bureau of Indian Affairs</td>
<td>• Surface Transportation Program</td>
</tr>
<tr>
<td>• Bureau of Reclamation</td>
<td>• Congestion Mitigation and Air Quality Improvement Program</td>
</tr>
<tr>
<td>• Bureau of Land Management</td>
<td>• Recreational Trails Program</td>
</tr>
<tr>
<td>• National Park Service</td>
<td>• Scenic Byways Programs (providing access to Federal or Indian Lands)</td>
</tr>
<tr>
<td>• Numerous military agencies</td>
<td></td>
</tr>
</tbody>
</table>

Authorized in 23 U.S.C. 120(k)

<table>
<thead>
<tr>
<th>Federal Lands Highway Program</th>
<th>Federal highway projects funded under the programs shown above and serve or provide access to federal or Indian lands, except Scenic Byways</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorized in 23 U.S.C. 120(l)</td>
<td></td>
</tr>
</tbody>
</table>

Federal programs with special legislative authorization to match other federal funds, including funds provided under:

- State and Local Assistance Act
- HUD Community Development Block Grants
- Public Works Employment Act of 1976
- Delaware and Lehigh Navigation Canal National Heritage Corridor Act of 1988

Any federal aid highway project except projects funded under the ER Program.