



U.S. Department
of Transportation

**Federal Highway
Administration**

Notice

Subject:

**ADVANCE NOTIFICATION OF FEDERAL-AID HIGHWAY FUNDS
TO BE APPORTIONED ON OCTOBER 1, 2022**

Classification Code

Date

Office of Primary Interest

N4510.869

June 30, 2022

HCFB-10

1. **What is the purpose of this Notice?**

- a. As required by section 104(e) of title 23, United States Code (U.S.C.), this Notice is to notify States of the anticipated amounts of funds to be apportioned for Fiscal Year (FY) 2023 under 23 U.S.C. 104. The anticipated apportionment amounts are subject to change before issuing the certificate of apportionment, which is effective on October 1, 2022.
- b. This Notice also provides the procedures for States to opt out of the Recreational Trails Program and the procedures for the Governor of a land border State to designate up to 5 percent of the State's FY 2023 Surface Transportation Block Grant (STBG) Program (Any Area) funds for use on border infrastructure projects.

2. **What are the anticipated FY 2023 apportionments?** The following table shows the FY 2023 anticipated apportionment amounts effective on October 1, 2022. The table shows the anticipated apportionments of the National Highway Performance Program (NHPP), STBG, Highway Safety Improvement Program (HSIP), Railway-Highway Crossings Program, Congestion Mitigation and Air Quality Improvement (CMAQ) Program, Metropolitan Planning Program, National Highway Freight Program, Carbon Reduction Program, and Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation Formula Program.

3. **Are certain States subject to potential withholdings or transfers?** Currently, the States that are listed under the following requirements are subject to potential withholdings or transfers on October 1, 2022. Note that States subject to penalties under 23 U.S.C. 148(g) and 23 U.S.C. 119(f) will be notified directly by the applicable program office.

a. **Use of Safety Belts and Motorcycle Helmets – 23 U.S.C. 153**

Funds subject to 2 percent transfer to the State's Highway Safety Program under 23 U.S.C. 402: NHPP, STBG, and CMAQ Program.

New Hampshire

Note: To avoid a transfer on October 1, 2022, the National Highway Traffic Safety Administration must receive from the State by September 30, 2022, a certification that it has achieved a seat belt use rate of not less than 50 percent.

b. Open Container Requirements – 23 U.S.C. 154

Funds subject to 2.5 percent transfer to the State's Highway Safety Program under 23 U.S.C. 402 or use for HSIP under 23 U.S.C. 148: NHPP and STBG.

Alaska, Connecticut, Delaware, Hawaii, Louisiana, Maine, Mississippi, Missouri, Ohio, Puerto Rico*, Tennessee, Virginia, and Wyoming

c. National Minimum Drinking Age – 23 U.S.C. 158

Funds subject to 8 percent withholding: NHPP and STBG.

Puerto Rico*

d. Repeat Offenders – 23 U.S.C. 164

Funds subject to 2.5 percent transfer to the State's Highway Safety Program under 23 U.S.C. 402 or use for HSIP under 23 U.S.C. 148: NHPP and STBG.

Alaska, California, Colorado, Hawaii, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico*, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, and Wyoming

Note: States that do not have complying laws may be eligible to establish compliance with 23 U.S.C. 164 by submitting a certification pursuant to 23 Code of Federal Regulations 1275.5. To avoid a penalty on October 1, 2022, such States are encouraged to submit their certification by August 15, 2022.

4. **Are there obligation controls?** Yes. The obligation limitation associated with the funds transferred pursuant to 23 U.S.C. 153, 23 U.S.C. 154, and 23 U.S.C. 164 is subject to obligation controls in force at the time of the transfer.

5. What are the requirements of the Recreational Trails Program set-aside?

- a. **Participation in the Recreational Trails Program set-aside:** Section 133(h)(5) of title 23, U.S.C., provides for a set-aside from each State's Transportation Alternatives funding for the Recreational Trails Program (RTP). The amount of the set-aside is equal to each State's FY 2009 apportionment for the RTP. Each

* Puerto Rico Highway Program funds are not apportioned. Section 165 of title 23, U.S.C., states that, for the purpose of imposing penalties, such funds will be treated as being apportioned under 23 U.S.C. 104(b) and 144 (as in effect for FY 1997) in the same proportions as Puerto Rico's FY 1997 apportionments. Funds treated as being apportioned for the National Highway System, STBG, and Interstate maintenance program shall be deemed to have been apportioned 50 percent for NHPP and 50 percent for STBG, for purposes of imposing penalties.

State subject to the set-aside must comply with the provisions for the administration of the RTP under section 206 of title 23, U.S.C., and must return 1 percent of the set-aside funds to the Secretary for administration of the RTP under section 133(h)(5)(B) of title 23, U.S.C.

The Federal Highway Administration (FHWA) will process the return of the 1 percent of the set-aside funds for administration automatically and may complete the return on an incremental basis consistent with the obligation controls in force at the time of the action (i.e., when operating under a continuing resolution, a proportional amount equal to the obligation authority will be transferred).

- b. **Procedures to opt-out of the RTP set-aside:** Section 133(h)(6)(A) of title 23, U.S.C., allows a State to opt out of the RTP set-aside. In order to opt out of the set-aside, a State must inform FHWA of its decision to opt out no later than 30 days prior to apportionments being made for a fiscal year. Since apportionments for FY 2023 will be effective on October 1, 2022, a State must make notification of its decision to opt out by September 1, 2022.

Any State that desires to opt out of the RTP set-aside for FY 2023 shall notify FHWA via e-mail, with a letter signed by the Governor or the Governor's designee accompanying the opt out notification, to FHWA Office of Budget's official mailbox (BudDiv@dot.gov) no later than September 1, 2022.

- c. **Effect of not opting out by deadline:** If a State does not affirmatively opt out by September 1, 2022, FHWA will apply the RTP set-aside to a State's Transportation Alternatives funding and 1 percent of the RTP set-aside amount will be returned to the Secretary for administration as provided in paragraph a.

6. What are the procedures for the Governor of a land border State to designate up to 5 percent of the State's FY 2023 Surface Transportation Block Grant Program (Any Area) funds for use on border infrastructure projects?

- a. Pursuant to section 1437(a) of the Fixing America's Surface Transportation (FAST) Act, after consultation with relevant transportation planning organizations, the Governor of a State that shares a land border with Canada or Mexico may designate for a fiscal year not more than 5 percent of the STBG (Any Area) funds made available to the State under section 133(d)(1)(B) of title 23, U.S.C., for border infrastructure projects eligible under section 1303 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act.
- b. For the purposes of this provision, land border States are: Alaska, Arizona, California, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

- c. Pursuant to section 1437(c) of the FAST Act, before making a designation, the Governor shall certify that the designation is consistent with transportation planning requirements under title 23, U.S.C.
- d. In order to make a designation, the Governor of a land border State must inform FHWA of the decision to designate funds no later than 30 days prior to the first day of the fiscal year for which the designation is being made. Therefore, notification of the decision to designate funds must be made by September 1, 2022. Note that any designation made for FY 2022 funds will not be carried over for FY 2023 funds; a new designation must be made for FY 2023 funds if the Governor elects to do so.

Any Governor of a land border State that desires to designate a portion of the State's FY 2023 funds distributed under section 133(d)(1)(B) of title 23, U.S.C., for use on border infrastructure projects shall notify FHWA via e-mail, with a letter signed by the Governor or the Governor's designee indicating the designated percentage of funds to be set-aside (up to 5 percent) under this provision, to FHWA Office of Budget's official mailbox (BudDiv@dot.gov) no later than September 1, 2022.

7. What action is required?

- a. Division Administrators must ensure that this Notice is provided to State departments of transportation (State DOT). The State DOTs should also share this Notice with the State's Office of the Governor regarding the designation that may be made under section 1437 of the FAST Act.
- b. A State shall notify FHWA **no later than September 1, 2022**, of any decision to opt out of the RTP set-aside for FY 2023.
- c. The Governor of a land border State shall notify FHWA **no later than September 1, 2022**, of any decision to designate up to 5 percent of the State's FY 2023 STBG (Any Area) funds for use on border infrastructure projects.



Stephanie Pollack
Deputy Administrator

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

N4510.869

**ADVANCE NOTICE OF ANTICIPATED FEDERAL-AID HIGHWAY PROGRAM APPORTIONMENTS FOR FY 2023
(before post-apportionment set-asides; before penalties; before sequestration)**

<u>State</u>	<u>National Highway Performance Program</u>	<u>Surface Transportation Block Grant Program</u>	<u>Highway Safety Improvement Program¹</u>	<u>Railway- Highway Crossings Program</u>	<u>CMAQ Program</u>	<u>Metropolitan Planning</u>	<u>National Highway Freight Program</u>	<u>Carbon Reduction Program</u>	<u>PROTECT Formula Program</u>	<u>Apportioned Total</u>
Alabama	579,911,188	282,118,956	60,709,896	5,047,891	12,678,546	4,137,301	26,837,581	25,155,607	28,603,728	1,025,200,694
Alaska	369,961,506	179,981,273	40,725,993	1,225,000	30,584,181	3,051,054	17,737,109	16,048,330	18,248,101	677,562,547
Arizona	530,127,169	257,899,704	56,928,631	3,184,003	57,655,536	7,873,868	25,881,847	22,996,057	26,148,164	988,694,979
Arkansas	393,074,478	191,225,422	40,558,894	4,012,944	13,685,480	2,311,874	18,314,633	17,050,934	19,388,133	699,622,792
California	2,509,055,207	1,220,621,452	267,883,226	16,625,715	515,763,217	67,323,616	129,833,554	108,838,746	123,757,453	4,959,702,186
Colorado	388,510,343	189,005,031	40,380,445	3,673,853	47,007,154	7,116,558	19,131,793	16,852,949	19,163,010	730,841,136
Connecticut	357,774,294	174,052,360	39,191,387	1,377,663	49,168,932	6,210,022	17,767,064	15,519,669	17,646,975	678,708,366
Delaware	122,441,504	59,566,137	12,658,992	1,225,000	12,960,595	2,397,721	5,983,834	5,311,314	6,039,344	228,584,441
Dist. of Col.	116,007,949	56,436,300	11,929,473	1,225,000	11,226,908	2,388,258	5,644,257	5,032,237	5,722,014	215,612,396
Florida	1,447,641,141	704,257,853	154,365,995	9,786,171	15,112,014	27,860,178	67,021,795	62,796,325	71,403,921	2,560,245,393
Georgia	953,072,869	463,657,071	99,217,741	8,853,916	75,516,153	10,454,520	45,675,052	41,342,756	47,009,675	1,744,799,753
Hawaii	123,304,076	59,985,766	12,756,802	1,225,000	11,512,423	2,353,247	5,982,959	5,348,731	6,081,890	228,550,894
Idaho	212,670,665	103,461,404	22,158,241	1,957,093	14,240,955	2,178,612	10,117,728	9,225,309	10,489,837	386,499,844
Illinois	1,019,504,733	495,975,275	104,297,702	11,306,853	122,356,739	22,959,914	50,292,860	44,224,462	50,286,382	1,921,204,920
Indiana	705,709,922	343,318,341	72,077,044	7,945,421	52,363,109	7,042,893	33,706,151	30,612,552	34,808,665	1,287,584,098
Iowa	373,097,590	181,506,935	36,594,112	5,712,490	12,553,242	2,669,034	17,384,864	16,184,368	18,402,787	664,105,422
Kansas	286,003,650	139,136,911	25,863,193	6,567,578	10,576,174	2,620,968	13,367,712	12,406,374	14,106,937	510,649,497
Kentucky	505,559,635	245,947,930	53,413,066	3,913,786	15,225,167	3,408,723	23,503,503	21,930,357	24,936,387	897,838,554
Louisiana	534,730,432	260,139,129	56,145,542	4,489,070	12,721,244	5,785,015	24,827,324	23,195,739	26,375,217	948,408,712
Maine	135,289,675	65,816,599	14,044,928	1,295,955	11,443,952	2,478,760	6,529,829	5,868,647	6,673,072	249,441,417
Maryland	426,438,026	207,456,337	45,847,478	2,507,549	59,675,971	9,330,973	21,257,534	18,498,190	21,033,768	812,045,826
Massachusetts	423,402,206	205,979,452	45,375,232	2,635,554	70,483,942	12,095,567	21,484,233	18,366,501	20,884,028	820,706,715
Michigan	761,748,497	370,580,350	78,221,774	8,155,065	82,248,200	13,934,218	37,244,408	33,043,414	37,572,730	1,422,748,656
Minnesota	482,174,828	234,571,538	48,142,593	6,532,589	35,815,145	6,152,488	23,066,714	20,915,962	23,782,948	881,154,805
Mississippi	367,297,700	178,685,368	37,894,762	3,754,173	12,468,620	2,288,174	17,108,461	15,932,779	18,116,711	653,546,748
Missouri	716,403,356	348,520,552	75,232,319	6,002,705	26,196,634	6,994,139	33,488,038	31,076,416	35,336,111	1,279,250,270
Montana	307,785,070	149,733,277	32,835,249	2,065,380	16,545,382	2,419,123	14,513,778	13,351,217	15,181,291	554,429,767
Nebraska	216,646,750	105,395,716	20,680,406	3,885,788	11,433,822	2,230,188	10,224,569	9,397,785	10,685,954	390,580,978
Nevada	258,317,639	125,668,041	27,996,301	1,295,075	36,196,970	4,417,164	12,844,978	11,205,400	13,649,629	496,232,332
New Hampshire	120,403,596	58,574,723	12,427,908	1,225,000	11,501,846	2,127,176	5,844,628	5,222,913	5,938,826	223,266,616
New Jersey	698,022,621	339,578,573	75,226,592	3,924,188	115,686,714	16,751,337	35,319,463	30,279,089	34,429,494	1,349,218,071
New Mexico	276,732,212	134,626,482	29,522,426	1,857,031	12,684,234	2,165,825	12,990,298	12,004,195	13,649,629	496,232,332
New York	1,164,879,205	566,697,991	125,456,165	6,632,817	203,596,992	33,603,427	59,377,110	50,530,571	57,456,880	2,268,231,158
North Carolina	772,579,357	375,849,417	80,349,321	7,255,660	56,960,416	7,827,005	36,893,317	33,513,240	38,106,955	1,409,334,688
North Dakota	184,776,387	89,891,215	17,035,319	3,917,004	11,692,027	2,259,210	8,782,209	8,015,300	9,113,971	335,482,642
Ohio	970,046,325	471,914,429	100,560,381	9,435,945	106,421,845	15,587,504	47,416,042	42,079,036	47,846,880	1,811,308,387
Oklahoma	483,301,945	235,119,865	49,113,491	5,689,498	13,064,500	3,479,189	22,434,609	20,964,854	23,838,542	857,006,493
Oregon	372,982,729	181,451,058	39,036,077	3,257,501	21,561,328	4,870,831	17,680,956	16,179,386	18,397,121	675,416,987
Pennsylvania	1,196,691,744	582,174,362	128,512,104	7,184,193	116,139,929	17,453,559	58,039,637	51,910,547	59,026,012	2,217,132,087
Rhode Island	161,704,782	78,667,191	17,111,167	1,225,000	11,592,052	2,498,805	7,736,219	7,014,491	7,975,979	295,525,686
South Carolina	509,502,362	247,866,014	52,970,748	4,803,181	14,558,680	4,238,405	23,687,281	22,101,386	25,130,860	904,858,917
South Dakota	209,794,289	102,062,086	21,191,187	2,597,987	13,633,173	2,377,830	9,975,872	9,100,536	10,347,962	381,080,922
Tennessee	628,838,253	305,921,312	65,928,470	5,377,296	41,167,705	6,468,501	29,892,172	27,277,984	31,017,022	1,141,888,715
Texas	2,897,557,834	1,409,622,730	307,588,477	20,973,888	193,966,801	34,914,051	137,989,216	125,691,360	142,920,082	5,271,224,439
Utah	258,907,605	125,955,051	27,454,275	1,903,998	14,358,723	4,360,441	12,283,291	11,230,992	12,770,443	469,224,819
Vermont	148,345,437	72,168,051	15,596,313	1,225,000	13,165,332	2,820,798	7,179,322	6,434,985	7,317,038	274,252,276
Virginia	749,091,026	364,422,661	79,981,787	4,959,785	61,036,012	10,172,979	35,997,223	32,494,354	36,948,409	1,375,104,236
Washington	496,969,156	241,768,778	51,934,660	4,418,093	41,067,988	9,852,711	23,980,501	21,557,716	24,512,668	916,062,271
West Virginia	329,005,799	160,056,875	35,174,500	2,132,408	15,917,981	2,290,505	15,458,985	14,271,738	16,227,989	590,536,780
Wisconsin	563,361,759	274,067,883	57,585,953	6,295,247	30,449,012	6,151,965	26,616,411	24,437,719	27,787,438	1,016,753,387
Wyoming	191,074,667	92,955,243	20,441,503	1,225,000	11,580,923	2,127,338	9,062,245	8,288,509	9,424,629	346,180,057
Apportioned Total	29,008,231,188	14,112,112,470	3,044,326,241	245,000,000	2,587,220,620	446,883,562	1,401,411,169	1,258,330,028	1,430,811,405	53,534,326,683

¹ Reflects \$3,500,000 takedown for safety-related programs.