

U.S. Department of Transportation

SUPPORTING STATEMENT

Federal Share Flexibility Pilot Program

OMB Control No.

Introduction: This is to request the Office of Management and Budget (OMB) approve a 180 day clearance for the information collection entitled, Federal Share Flexibility Pilot Program (FSFPP). The Office of the Secretary of Transportation (OST), in close collaboration with the Federal Highway Administration, provides financial assistance to State Department of Transportation (State DOT) agencies.

- Responding to the collection is voluntary and is required to obtain or retain a benefit.
- Responders are State DOTs.
- The collection is an application for participation in the FSFPP.
- The information is collected prior to the submission deadline.
- The information will be received by the FHWA.
- The purpose of the collection is to receive applications for the FSFPP from State DOTs.

This request supports the FY 2022 – 2026 DOT Strategic Plan, including the six strategic goals of:

1. Safety
2. Economic Strength & Global Competitiveness
3. Equity
4. Climate & Sustainability
5. Transformation
6. Organizational Excellence

Part A. Justification.

1. Circumstances that make collection of information necessary:

Section 11107 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), amended Section 120(l) of Title 23, United States Code (U.S.C.) to require the establishment of a FSFPP not later than 180 days after the date of enactment of the BIL. In accordance with 23 U.S.C. 120(l), selected States in the pilot are allowed to determine the Federal share on an individual project that is more than 0 percent and up to 100 percent as long as the average annual Federal share of all participating

projects does not exceed the average of the maximum Federal share of those projects if those projects were not carried out under the pilot program.

FHWA requests information from applicants in the form of an application. The application will assist FHWA in selecting State DOTs to participate in the FSFPP.

Application Stage

The following guidelines have been established for the FSFPP:

- (a) Up to 10 State DOTs may participate in the pilot.
- (b) The pilot will run for 4 years starting October 1, 2022 and ending September 20, 2026.
- (c) The Federal share will be determined based on the following criteria:
 - (1) Determined based on project, multiple projects, or program basis.
 - (2) Maximum Federal share for an individual project under the pilot is 100 percent.
 - (3) Minimum Federal share for an individual project under the pilot is greater than 0 percent (i.e., any project authorized under the pilot cannot be 0 percent).
 - (4) The average annual Federal share of the total cost of all projects authorized under this pilot shall not exceed the average of the maximum Federal share of those projects if those projects were not carried out under the pilot.
- (d) The pilot can include the following programs:
 - (1) National Highway Performance Program (NHPP) (23 U.S.C. 119).
 - (2) Surface Transportation Block Grant (STBG) (23 U.S.C. 133).
 - (3) Highway Safety Improvement (HSIP) (23 U.S.C. 148).
 - (4) Congestion Mitigation and Air Quality Program (CMAQ) (23 U.S.C. 149).
 - (5) National Highway Freight Program (NHFP) (23 U.S.C. 167).
 - (6) Carbon Reduction Program (CRP) (23 U.S.C. 175).
 - (7) Subsection (c) eligible activities of the Promoting Resilient Operations for Transformative, Efficient, and Cost saving Transportation (PROTECT) program (23 U.S.C. 176).
- (e) Participating State DOT Requirements:
 - (1) Submit an application in accordance with the instructions.
 - (2) Have in place adequate financial controls to allow the State DOT to determine the average annual Federal share requirements under the pilot.

Grant Agreement Stage

Selected State DOTs participating in the FSFPP must enter into a grant agreement for each project under the FSFPP. The grant agreement is an agreement between FHWA and the recipient. In the grant agreement, the recipient must describe the project that FHWA agrees to fund and confirm the project meets all eligibility requirements for participation in the FSFPP.

Annual Reporting Stage

State DOTs participating in the FSFPP must prepare and report annually on projects authorized under the FSFPP. The reporting requirements will include a certification

that the average annual Federal share of the total cost of all projects authorized under this pilot does not exceed the average of the maximum Federal share of those projects if those projects were not carried out under the FSFPP.

2. How, by whom, and for what purpose is the information used:

The information collected will be used by FHWA.

FHWA will continue to use the information collected in the application phase to evaluate proposals and make decisions to select participants for the FSFPP.

3. Extent of automated information collection:

The Department will receive applications either electronically via email or hard copy via mail carriers, upon approval from OMB.

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. FHWA protects such information from disclosure to the extent allowed under applicable law. In the event FHWA receives a Freedom of Information Act (FOIA) request for the information, FHWA will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

4. Efforts to identify duplication:

The information collected from recipients is program specific and the information is not available other than from the recipients. The information will be used to monitor projects on an annual basis.

5. Efforts to minimize the burden on small businesses:

Applications for participation in the FSFPP are State DOTs. No recipients are business organizations, small or otherwise.

6. Impact of less frequent collection of information:

If the information requested in the reports is not collected, the Department will not be able to evaluate pilot progress in accordance with 23 U.S.C. 120(l). The annual collection of financial data ensures that the use of Federal funds can be appropriately monitored.

7. Special circumstances:

All information collected is consistent with the guidelines in 5 CFR 1320.6.

8. Compliance with 5 CFR 1320.8:

This 180-day clearance is requested pursuant to 5 CFR 1320.8(d)(4).

9. Payments or gifts to respondents:

No payment is made to respondents, other than remuneration to successful FSFPP recipients. The remuneration to recipients are in the form of reimbursements up to the authorized Federal share of the project costs.

10. Assurance of confidentiality:

There is no assurance of confidentiality regarding these submissions.

11. Justification for collection of sensitive information:

None of the information is of a sensitive nature.

12. Estimate of burden hours for information requested:

<u>Requirements</u>	<u># of Submissions</u>	<u>Burden hours per Submission</u>	<u>Total Burden hrs</u>
<u>Application Stage</u>			
Applications	10	40	400
<u>Grant Agreement Stage</u>			
Requests for information related to signing grant agreements or letters of no prejudice	0	0	0
<i>Total</i>	<i>10</i>		<i>400</i>
<u>Project Management Stage</u>			
Annual Reports	10	10	100
Total Annual Submissions for all 4 Years	40	10	400
<i>Total</i>	<i>40</i>		<i>400</i>
Grand Total	50		800

All burden hour estimates are based on: an estimated review of all the requirements associated with the FSFPP and discussions with appropriate FHWA staff.

Estimate of the cost to respondents:

There is a wide variance in the level of effort required by recipients to comply with the Project Management Stage reporting requirements. A majority of reports, however, will be simple and straightforward.

Application Stage

We estimate that it takes approximately 40 person-hours to read the Notice of the FSFPP and compile an application package. Since FHWA expects to receive approximately 10 applications, the total hours required are estimated to be 400 hours (40*10 hours) on a one-time basis. Although various personnel are involved in the development of an application, the average salary is estimated to be \$55 per hour. This is based on the average project manager salary in the local government sector of \$55 (Bureau of Labor Statistics). Therefore, the cost to the respondents is computed at \$22,000 (400 hours x \$55 = \$22,000).

Grant Agreement Stage:

We estimate that it takes no additional time to respond to FHWA requests for more information in negotiating the grant agreements.

Project Management Stage:

We estimate that it takes approximately 10 person-hours to develop and submit an annual FSFPP progress report to FHWA for review. Based on program participation requirements, FHWA expects to receive 10 annual reports per year. The total hours required are estimated to be 100 hours annually (10 hours x 10 reports = 100 hours). Although various personnel are involved in the development of an application, the average salary is estimated to be \$55 per hour based on the average project manager salary in the local government sector. Therefore, the annual cost to the respondents is computed at \$5,500 (100 hours x \$55 = \$5,500). Approximately the same costs will be incurred for the project management stage during each of the 4 years of the FSFPP. Therefore, the total project management costs for participants in the FSFPP is \$22,000 (\$5,500 x 4 yrs = \$22,000).

The grand total annual cost to respondents for the application, grant negotiation, program management and evaluation stages is \$44,000.

13. Estimate of total annual costs to respondents:

There is no additional cost beyond that shown in items 12 and 14.

14. Estimate of cost to the Federal government:

The cost is calculated as follows:

Application Stage:

FHWA will review the applications to assess FSFPP eligibility and merit and to provide information for the discretionary decision-making process prior to the selection of FSFPP participants.

We estimate that the average grade level of the reviewers located in the Washington-Baltimore-Arlington area is GS-14/step 5, paid at approximately \$69 per hour. Each application will require approximately 4 person-hours of review as an overall average. Since we expect to evaluate 10 applications, the cost to the Federal Government is \$2,760 (4 hours x 10 applications = 40 hours x \$69 = \$2,760).

Grant Agreement Stage:

FHWA does not expect to incur any additional time in approving a grant application under the FSFPP.

Project Management Stage:

Individuals managing projects throughout FHWA vary from GS-11 to GS-14; however, in looking at the averages it can take a reviewer located in the Washington-Baltimore-Arlington area GS-13/step 5 (average salary, \$58 per hour) about one hour per report to review. There will be approximately 10 report submissions annually. The cost to the federal Government is \$580 (1 hr. x 10 submissions = 10 hours x \$58 = \$580), annually. The same costs will be incurred over the 4 years of the FSFPP resulting in a total project management stage cost of \$2,320 (4 yrs x \$580 = \$2,320).

The grand total annual cost to the Federal Government for the application, grant negotiation, program management and evaluation stage is \$3,340 as shown in the table below:

Project Stages	Cost to the Federal Government
Application Stage	\$2,760
Grant Agreement Stage	\$0
Project Management Stage	\$580
The grand total	\$3,340

15. Explanation of program changes or adjustments:

The purpose of this request is to approve collection of information related to the application and implementation of the FSFPP. An application template is under development to reduce the burden on applicants and to reduce the burden on the review process. It is anticipated that this revised template will be available for the FY23 application process.

16. Publication of results of data collection:

Publication of results is not required.

18. Exceptions to certification statement:

No exceptions are stated.

DRAFT

EXHIBIT A

23 U.S.C. §120(l) Federal Share Flexibility Pilot Program

(1) ESTABLISHMENT.—

Not later than 180 days after the date of enactment of the Surface Transportation Reauthorization Act of 2021, the Secretary shall establish a pilot program (referred to in this subsection as the “pilot program”) to give States additional flexibility with respect to the Federal requirements under this section.

(2) PROGRAM.

(A)In general. - Notwithstanding any other provision of law, a State participating in the pilot program (referred to in this subsection as a “participating State”) may determine the Federal share on a project, multiple-project, or program basis for projects under any of the following:

- (i)** The national highway performance program under section 119.
- (ii)** The surface transportation block grant program under section 133.
- (iii)** The highway safety improvement program under section 148.
- (iv)** The congestion mitigation and air quality improvement program under section 149.
- (v)** The national highway freight program under section 167.
- (vi)** The carbon reduction program under section 175.
- (vii)** Subsection (c) of the PROTECT program under section 176.

(B)Requirements. -

- (i)**Maximum federal share. - Subject to clause (iii), the Federal share of the cost of an individual project carried out under a program described in subparagraph (A) by a participating State and to which the participating State is applying the Federal share requirements under the pilot program may be up to 100 percent.
- (ii)**Minimum federal share. - No individual project carried out under a program described in subparagraph (A) by a participating State and to which the participating State is applying the Federal share requirements under the pilot program shall have a Federal share of 0 percent.
- (iii)**Determination. - The average annual Federal share of the total cost of all projects authorized under a program described in subparagraph (A) to which a participating State is applying the Federal share requirements under the pilot program shall be not more than the average of the maximum Federal share of those projects if those projects were not carried out under the pilot program.

(C)Selection. -

- (i)**Application. - A State seeking to be a participating State shall—
 - (I)** submit to the Secretary an application in such form, at such time, and containing such information as the Secretary may require; and
 - (II)** have in place adequate financial controls to allow the State to determine the average annual Federal share requirements under the pilot program.
- (ii)**Requirement. - For each of fiscal years 2022 through 2026, the Secretary shall select not more than 10 States to be participating States.