

DATE: April 11, 2018
TO: Interested Parties
FROM: William E. Hamilton
RE: Allocation of Federal Aid to Local Road Agencies

Background – Federal Surface Transportation Funds

Federal “surface transportation” programs, include highway programs, public transportation programs, and rail passenger programs. These programs are established and defined in the U.S. Code—specifically, 23 U.S. Code (Highways), 49 U.S. Code (Transportation). These programs are carried out largely in partnership with state governments. In particular, the federal-aid highway program is mainly a program of federal aid made available to states for specific authorized programs and activities.

Programs established under 23 U.S. Code and 49 U.S. Code are periodically reauthorized under multi-year authorizing acts. These authorizing acts also establish funding targets for authorized programs. The current federal-aid surface transportation authorizing act is called *the FAST Act*.¹

The following apportioned federal-aid highway programs are authorized under *the FAST Act*: the National Highway Performance Program (NHPP), the Surface Transportation Block Grant Program (STBG, formerly Surface Transportation Program), Highway Safety Improvement Program (HSIP), which includes Railway-Highway Crossings, Congestion Mitigation and Air Quality Improvement Program (CMAQ), Metropolitan Planning, and a National Highway Freight Program (NHFP).

The following links are to Federal Highway Administration (FHWA) *FAST Act* fact sheets:

<https://www.fhwa.dot.gov/fastact/factsheets/appportionmentfs.cfm>

<https://www.fhwa.dot.gov/fastact/legislation.cfm>

<https://www.fhwa.dot.gov/fastact/factsheets/stbgfs.cfm>

Federal-aid Highway Program and State Government

FAST Act funding for highway programs is made available to the states in various program categories. States are responsible for administering the federal aid programs in accordance with federal requirements.

Because a number of federal-aid eligible roads in Michigan are under the jurisdiction of local road agencies (county road commissions, cities, and villages), Section 10o of Public Act 51 of 1951 (MCL 247.660o) requires that an average of 23% to 27% of certain major federal aid program categories be allocated for local road agency projects. There is no required amount or percentage allocation to any particular local road agency.

It may be helpful to contrast the way federal funds are made available to road agencies in Michigan with the way state motor fuel and vehicle registration tax revenue is distributed. Under the provisions of Act 51, all 83 road commissions and 533 cities and villages receive a monthly distribution from the Michigan

¹ *The FAST Act* is largely a series of amendments to 23 U. S. Code and 49 U.S. Code and generally can't be read as a stand-alone document. The act only makes sense when read in conjunction with 23 U.S. Code and 49 U. S. Code. The Federal Highway Administration publishes Fact Sheets that provide a practical method of identifying key provisions of the act.

Transportation Fund (MTF)—the main collection and distribution fund for motor fuel and vehicle registration tax revenue. These local road agencies have broad authority to spend their MTF money for local road and street programs, including routine maintenance.

Federal-aid highway program funds are not *distributed* in the same way that MTF funds are *distributed* under Act 51. Federal funds are *made available* within categorical programs for certain qualified projects—generally only for capital construction or preservation projects (not routine maintenance) and only for roads and bridges meeting certain criteria. As a result, not all cities and villages have streets that meet the criteria.

In addition, local road agencies do not receive federal funds and then decide how to spend them. The federal-aid highway program is a reimbursement program. Only after an eligible project is approved—following a federally mandated planning process—and the local agency makes eligible project expenditures does federal aid reimburse the local agency for those expenditures.

MDOT and Local Road Agencies

The Michigan Department of Transportation (MDOT) provides administrative and technical support to local agencies to ensure that the development of local federal-aid projects follows federal requirements. In addition, the department advertises and awards local federal-aid project construction contracts on behalf of local road agencies; local federal-aid projects follow the same competitive bidding process as state trunkline projects. Contractor payments and other local project costs are processed through the department's contractor payment and federal-aid billing systems.

Allocation of Federal Funds to Local Road Agencies

As required by federal law, the federal-aid highway programs are administered in urbanized areas by the applicable metropolitan planning organization (MPO). In southeast Michigan, the program is administered by the Southeast Michigan Council of Governments (SEMCOG), a voluntary association of local governments (counties, cities, townships, villages, and school districts) within the seven-county area of Southeast Michigan. SEMCOG was organized in 1968, under the authority of Public Act 281 of 1945.

As noted above, the federal-aid highway program makes funds available to states. Act 51 establishes a 23% to 27% set-aside for local agency federal aid projects but does not further suballocate to specific local road agencies. While some federal-aid highway categorical programs provide for the suballocation of funds within a state by population, federal law generally does not support suballocation of federal funds to political jurisdictions within a state. However, in administering the local federal aid program, some MPOs effectively suballocate federal aid to local road agencies by establishing federal aid “targets” by jurisdiction.

MDOT, working within the directives of federal law and Act 51 requirements, identifies the amount of federal aid highway funds, by category, available for local road agency programs in urbanized areas. Within the metropolitan Detroit urbanized area, SEMCOG establishes federal aid “targets” for local road agencies within the region. Local “federal aid committees,” working within the target figures, then identify and rank projects according to various criteria (pavement condition rating, average daily traffic, etc.). The highest priority projects are proposed for consideration, approval, and inclusion in the region's Transportation Improvement Plan (TIP).

The proposed projects must be fundable within the federal aid “target.” In other words, the TIP must be “fiscally constrained.” Projects can be included in the TIP only if an actual funding source is identified.

Note that a local road agency's federal target figure is just that—a target. Again, unlike the MTF revenue distribution to local road agencies, the federal funds represented by the target figure do not belong to

the road agency when the target is established—there is no entry in the agency’s financial records. The target figure is to assist local agencies in programming a federal-aid capital construction program. If a local agency is unable to develop an eligible project, the MPO may shift funding to another agency to ensure that all available federal funds for that year are spent.

Detroit/Wayne County

The above-described process is more complicated in the SEMCOG region than in the other out-state urbanized areas. In the tri-county Lansing region, for example, there is only one federal aid committee composed of representatives of the three counties and various component local units. In the SEMCOG region there are separate federal aid committees in each county as well as a separate “committee” for the city of Detroit.

This process is further complicated by the fact that Wayne County has jurisdiction for certain federal aid eligible roads within the municipal boundaries of the city of Detroit.

Federal Aid Highway Funds Relation to the State Budget

Activities related to the allocation of federal-aid highway funds, and the federal-aid project planning process, are generally independent of the state appropriations process. Federal-aid highway funds shown in the annual state transportation budget are based on MDOT estimates of available federal obligation authority; the actual amount is often unknown during budget development—it may not be known until well into the state fiscal year.

The annual state budget simply provides MDOT with state appropriation authority to spend federal funds. The state budget does not determine the amount of federal funds available to spend or the allocation by program category.

Federal funds are appropriated in several programmatic line items in the transportation budget, including information technology, transportation planning services, and design and engineering services, as well as state trunkline road and bridge construction. As MDOT makes eligible expenditures, it charges those expenditures to federal funds appropriated in those line items, and is in turn reimbursed by federal funds.

The state budget also includes the line item, *Local federal aid road and bridge construction*. This line item is actually simply a marker to represent federal funds available to local road agencies. This appropriation does not determine the actual amount available to local agencies or direct the amount available to particular local agencies.