

Update from FHWA: Continuing Resolution

On October 2nd, 2021 Congress passed the Surface Transportation Extension Act of 2021, allowing for limited funding of FHWA programs through October 31. The Extension Act specifically directs that FHWA shall not distribute FY 2022 apportionments to States before October 15. In addition, it provides FY 2022 formula obligation limitation based on the FY 2021 obligation limitation level at a percentage determined by the duration of the extension. This percentage is 8.49 percent (31 days covered in the extension divided by 365 days). A formula obligation limitation notice is expected to be issued during the week of October 18th.

Below, are excerpts from a memorandum issued by the FHWA CFO, Brian Bezio, regarding the impacts of the CR.

Funding for FHWA programs

Please note that obligations and reimbursements through Current Bill cannot be processed in FMIS until the system opens on October 8, 2021.

Apportioned programs subject to annual formula limitation. Notices apportioning FY 2022 contract authority pursuant to the extension of the Federal-Aid Highway Program, showing the sequestration of applicable contract authority, and providing obligation limitation under the Extension Act will be posted at <https://www.fhwa.dot.gov/fastact/funding.cfm>. The Obligation Limitation Notice will include each State's formula obligation limitation; this limitation applies to all programs that were charged to the formula obligation limitation in FY 2021. The Apportionment Notice and Sequestration Notice will not be issued before October 15, as the Extension Act specifically directs that FHWA shall not distribute FY 2022 apportionments to States before such date. The Obligation Limitation Notice will be issued as soon as possible, with a target to issue the Notice during the week of October 18.

Allocated Programs subject to annual limitation. Due to the short duration of the Extension Act, HCF will only distribute carryover funding to non-formula Federal-Aid Highway Programs that must obligate funding for administrative expenses and other critical needs. Carryover funding for Infrastructure for Rebuilding America (INFRA) grants will be provided subject to the amount available under the obligation limitation in the Extension Act. Note that FY 2019 INFRA funds must be obligated by the end of FY 2022 since the funding expires on September 30, 2022 and will no longer be available for obligation after that date. Programs that need to obligate funding during the period of the Extension Act should contact the Office of Budget.

Programs exempt from limitation. There is no limitation on the obligation of funds exempt from the Federal-Aid obligation limitation. This includes Emergency Relief funding, as well as a portion of the funds available to each State under the National Highway Performance Program (NHPP). Please note that these funds are subject to the FY 2022 sequestration (see the Notice, which will be posted at <https://www.fhwa.dot.gov/fastact/funding.cfm>).

Programs with carry-over, no-year limitation. Carryover balances of program funds with special no-year limitation (e.g., Appalachian Development Highway System provided under the Federal-Aid Highway Program in the SAFETEA-LU authorization act and prior) may be obligated.

Programs with carry-over, multi-year limitation. Carryover balances of unused, multi-year obligation authority for research, Intelligent Transportation Systems (ITS) program, and other special limitation

programs will be made available in full for obligation. This includes carryover balances for the Advanced Technology and Congestion Management Technology Deployment (ATCMTD) program and the Surface Transportation System Funding Alternatives (STSFA) program.

Emergency Relief and Disaster Recovery

Both program and GOE funding will be provided under the Extension Act to support emergency relief and disaster recovery efforts.

New and carryover Emergency Relief program funding—both from the Highway Trust Fund and the General Fund—will be made available during the Extension Act since this funding is not subject to the obligation limitation. Of note, Division B of the Extending Government Funding and Delivering Emergency Assistance Act appropriates \$2.6 billion in FY 2022 from the General Fund for the Emergency Relief program.

Other Programs

Funding repurposed from earmarks. Earmarks repurposed in FY 2019 must be obligated by the end of FY 2022 since the funding expires on September 30, 2022 and will no longer be available for obligation after that date. The Office of Budget will continue to process State requests made in FY 2021 to repurpose certain funds originally earmarked for specific projects. Divisions will be notified when their State's request has been processed and the repurposed funding is available in FMIS for obligation. The CR does not extend this provision.

Highway Infrastructure Programs funds. Carryover of Highway Infrastructure Programs funds appropriated in FY 2019, FY 2020, and FY 2021 are available for obligation in full since they are from the General Fund and not subject to any limitation on obligations. This includes both the remaining unobligated balances of the formula funding and allocated funding for the Puerto Rico Highway Program, the Territorial Highway Program, the Nationally Significant Federal Lands and Tribal Projects program, etc. Carryover advices will be provided for the unobligated Highway Infrastructure Programs balances of allocated funding. Note that FY 2019 Highway Infrastructure Program funds with 4-year period of availability must be obligated by the end of FY 2022, since the funding expires on September 30, 2022, and will no longer be available for obligation after that date.

We do not plan to distribute new FY 2022 funding for the Highway Infrastructure Programs under the CR. Instead, we will wait until FY 2022 Highway Infrastructure Programs funding, if any, is enacted in full-year appropriations. This may be reevaluated if we receive additional guidance from the Department or the Office of Management and Budget.

TIGER & BUILD. TIGER VII funds will cancel on September 30, 2022 and will no longer be available for obligation or expenditure. In addition, all funding for BUILD 2020 must be obligated by the end of FY 2022 since the funding expires on September 30, 2022 and will no longer be available for obligation after that date.

For all other programs not subject to lapse and not specifically covered above, obligations are limited to unobligated balances as of September 30, 2021, upon the receipt of an allotment.

Funding Transfers

There are no restrictions to funding transfers under the CR.