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Federal Funding Flexibility: Use of Federal Aid Highway Fund Transfers by State DOTs

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Slide #1: NCHRP 19-17 Federal Funding Flexibility: Use of Federal Aid Highway Fund Transfers by State DOTs

The Federal-Aid Highway Program (FAHP) represents one of the largest grant programs in the federal domestic budget. It is an umbrella term that refers to the combination of individual categorical and discretionary grant programs that have evolved over time since 1916 and is codified under Title 23 United States Code (U.S.C.). This study investigates recent experience with statutory features that allow recipients of formula grants to shift the authority to use federal funds from one FAHP category to another, and even into other modes.

This research project analyzed FAHP transfers over the period from federal fiscal year (FFY) 2013 to FFY2020, and investigated the practices and policies related to fund transfers through surveys, case studies, and transportation industry workshops. We focused on the recent past as the funding categories and their relative size over time have changed significantly and thus have a strong influence on the need for and use of fund transfer provisions. The research goal was to document use and build a better understanding of the reasons behind the current use of the fund transfer provisions. Based on the financial data that we analyzed, the use of fund transfers is widespread, with every state and the District of Columbia employing the flexibility provisions, at least to some degree. However, the practices are unique to each situation, reflecting the specific mission, scope, goals, funding, and program needs of individual states.

The purpose of this webinar is to provide an understanding of how and why these features have been used, the benefits to state departments of transportation (DOTs) and metropolitan planning organizations (MPOs), and to identify opportunities for optimizing their use.

Slide #2: Panel Members and Consultant Team

The research panel was chaired by Michelle Ho, from the Massachusetts Department of Transportation. Panel members included funding practitioners from around the country and support from FHWA and AASHTO. The consultant team wishes to express our gratitude for the engagement of the panel and for their insights and guidance throughout the project.

The consultant team was led by co-principal investigators, James Redeker of James Redeker Consulting, LLC and Scott Baker of AECOM. Each of the members contributed to the literature review, surveys, case studies, and workshops, adding their unique expertise and experiences regarding federal funding from the federal, state, and MPO perspectives.

This project was fortunate to have Dianne Schwager as our Senior TRB Program Officer, who provided consistent support and guidance throughout this project.

Slide #3: Study Approach

Let's start with an overview of the project scope and the research approach that was employed to identify key findings regarding federal highway fund flexibility.

We call your attention to the period of data analyses for this study, FFY2013-FFY2020. This period was chosen because each round of federal transportation funding legislation comes with unique program structures and requirements. Prior to this period, many of the funding flexibilities and program features were different than in the authorizations over this period. **Of note, the scope of this study preceded the Infrastructure Investment and Jobs Act, which was signed into law on November 15, 2021, so it does not address flexibility provisions contained in that program.**

The study included five research methodologies:

1. A comprehensive literature review was conducted of federal legislation, regulations, and guidance, as well as prior studies on federal highway funds transfer authority. The literature review focused on the history of transfer authority, how it evolved over the years and across legislations, and the current state of the transfer authority.
2. FHWA FMIS data from FFY2013 through FFY2020 was analyzed to focus on how states have exercised their transfer authority using FAHP funds. The research sought to identify how federal highway funds have been transferred among highway program categories and to other modal administrations, in particular to the FTA. The research also examined the potential correlation between funds transfers and the composition of highway funding by source (FHWA, state, and local), between funds transfers and risks of rescission and lapsing, and between funds transfers and unobligated balance of the previous fiscal year. The data analysis was conducted at both the national and state level. Comparison across states revealed differences among states in federal highway funds transfers, which informed the subsequent industry outreach.
3. As a first step in industry outreach, the research included a survey which was sent to the departments of transportation of all fifty states and the District of Columbia. The survey included questions about the practices of fund transfers, the transfer decision process, considerations behind the transfer decisions, benefits of transfers, and the perceived risks or opportunities. The survey received 38 responses from states and the District of Columbia.
4. Based on the data analysis results and the survey responses, and with the input from the Research Panel, five states and two MPOs were selected for more in-depth case studies. Interviews were conducted with the chief executive officers and/or the chief financial officers and the key policy and practice leaders of the state DOTs and MPOs. The case studies focused on understanding how and why transfer practices differ across the country.
5. Industry group workshops were conducted with the support of AASHTO, APTA, and AMPO respectively. Each of the workshops investigated the differences in the fund transfer authority and transfer practices among the participants.
 - An AASHTO workshop focused on funds transfer among FAHP categories and states' considerations behind the transfer decisions.

- An APTA workshop focused on funds transfer from FHWA to FTA and states' considerations behind the transfer decisions.
- Two AMPO workshops focused on the role of MPOs in funds transfer decisions and implementation.

The products from this study include a Final Report which is available from TRB at: www.trb.org/publications. The Final Report will also be available through AASHTO, APTA, and AMPO. This webinar is one of the additional dissemination methods for making this research available.

Slide 4: Goals of the Research

The focus of this webinar is to discuss the findings about the actual use of the funding transfer features. We will explore factual and institutional questions to build a better understanding of the use and effectiveness of flexibility features contained in statute.

Those who manage the nuts and bolts of Federal-aid funding and financing are uniquely knowledgeable in the provisions of 23 U.S.C. 126 and the basic tenants of “universal transferability” and other program features that apply to the FAHP. They are tools that practitioners may or may not take advantage of in managing their federal program accounts.

For those who may not be as familiar with the transfer features, we recognize that the structure of the components of the FAHP have changed over time, including the rationale for the individual programs and concerns by interests who have advocated for the individual programs.

This study provides a guide to:

- Obtain a current understanding of how and why flexibility features in the FAHP are being used;
- Explore both the use of features that allow shifts between FAHP categories and between FHWA and other programs or modes;
- Recognize the diversity in experience over time and across recipients;
- Better understand the participants in these decisions and their motivations for using, or not using, these features; and
- Identify benefits, challenges, and barriers in optimizing use of these features.

Slide 5: Annual Transfers Among Highway Programs

Based on the state DOT surveys, interviews, and case studies, the authority to transfer up to 50 percent of the apportionment among FAHP categories is perceived by grantees as an important benefit for states in administering FAHP funds. That authority provides tools for meeting and

balancing federal as well as state and local goals. The relevant FAHP categories eligible for funding transfers are:

- National Highway Performance Program NHPP
- Congestion Mitigation and Air Quality CMAQ
- Highway Safety Improvement Program HSIP
- Transportation Alternatives TA
- Surface Transportation Block Grant STBG, or STP under MAP-21
- National Highway Freight Program NHFP

While our analysis shows that a relatively small proportion of the total FAHP funds are transferred, the amount of funds transferred among program categories has steadily increased. Starting from approximately \$2.5 billion in FFY2013, the total transferred amount peaked at around \$4 billion in FFY2019 and dropped to \$3.2 billion in FFY2020.

To put this transfer process in perspective, the amount transferred grew from about 7 percent of total funding in FFY2013 to just over 8 percent in FFY 2020. The use of transfers has been relatively consistent nationally.

Slide 6: Transfers by Funding Source

Funds have been transferred out of all FAHP categories, but the relative amount transferred out varies substantially. The percentage of total apportionment transferred out ranges from less than 1 percent (STBG) to over 20 percent (TA). The percentage transferred out of NHPP, CMAQ, and HSIP exceeds 10 percent. The percentage transferred out of NHFP is around 7 percent. Since NHPP is the largest program category, fund transfers out of NHPP (about \$18 billion) are much greater than all the other program categories.

The general tendency we observed is to transfer funds from more restrictive categories to more flexible ones.

Slide 7: Funds Transferred by State

States transferred funds among FAHP categories to meet their unique needs. The states vary significantly in terms of how much FAHP funds they transferred among the funding categories, though all states transfer less than 30 percent of their total FAHP apportionment.

Here are a few observations to highlight:

- Pennsylvania is the only state that did not transfer any funding among FAHP categories, though FAHP funds have been transferred to FTA.
- Delaware, Kansas, and Wyoming transferred less than 1 percent of their apportioned funds and used about 1 percent of their transfer authority.
- District of Columbia, Maine, Mississippi, Nebraska, New Hampshire, Oregon, Utah, and Virginia transferred over 20 percent of their apportioned funds
- Maine, Mississippi, and Utah used over 25 percent of their apportionment, or 50 percent of their transfer authority.

Slide 8: Annual Transfers to FTA

During the study period (FFY2013-FFY2020), a total of \$14.6 billion was transferred out of FHWA programs and of that amount, 91 percent (\$13.3 billion) was transferred to FTA for administration of those funds.

The amount transferred from FHWA to FTA was relatively stable from FFY2013-FFY2018 with between \$1.2 to \$1.5 billion transferred each year. This represents 3.5 percent to 4.5 percent of total FHWA funding. These transfers increased sharply in FFY2019 when close to \$1.7 billion was transferred to FTA and dropped in FFY2020 when less than \$1.3 billion was transferred to FTA.

Slide 9: Funds Transferred to FTA by State

The infusion of FAHP funds to FTA programs is significant in that transit has been a major beneficiary of the fund transfers, with over \$13.3 billion transferred over eight years, or an average of \$1.66 billion annually. However, in most states, this is less than 4 percent of the total FHWA apportionments between FFY2013 and FFY2020. As this figure shows, only two states transferred 10 percent or more of their funds to FTA (California, New Jersey), with Oregon and Maryland with about 9 percent of funds transferred to FTA. Only nine states transferred more than 4 percent of their overall apportionment. Two states and the District of Columbia did not transfer any funds to FTA during this period.

Slide 10: State DOT Case Studies

Based on the data analysis results and survey responses and with the input from the Research Panel, five states and two MPOs were selected for more in-depth case studies to gain a more thorough understanding of their unique financial management and policy practices motivating the use of transfers.

Kansas

Kansas is one of several states that transferred less than 2 percent of FAHP funds among FAHP categories between FFY2013 and FFY2020.

Kansas transferred approximately 1 percent of its federal highway funds to FTA between FFY2013 and FFY2020. Transfers to FTA are done yearly by MPOs for both STBG and CMAQ funds, and the state transfers Metropolitan Planning funds every year to FTA.

FAHP funds that Kansas receives are mainly used for highways maintenance. State funds are used for capital improvement projects, in particular for system preservation and modernization. Kansas rarely transfers funds between FAHP categories, but when they are used, the major reason is to avoiding fund lapses.

Oregon

Oregon is among the several states that transferred over 20 percent of their FAHP funds among FAHP categories between FFY2013 and FFY2020.

Oregon is one of the states that transferred the highest percent (over eight percent) of their federal highway funds to FTA between FFY2013 and FFY2020. Transfers to FTA are done to ensure transit projects have consistent administrative and implementation requirements. The projects are delivered through the same process as regular FTA funds.

ODOT performs a review at the beginning of each year to determine which projects are slated for obligation and the funding eligibility. Based on that analysis, funding is shifted from one program category to another to provide the state with the most flexible options to fund projects.

ODOT has high levels of transfers from TA but provides local recipients with significant state funds for their programs with Keep Oregon Moving funding. The MPO plays a strong role in directing sub-allocated federal funds.

Pennsylvania

Pennsylvania was selected for a case study because PennDOT did not transfer any FAHP funds to other highway fund categories from FFY2013 – FFY2020. All transfers of FAHP funds were to FTA during this period.

Based on transit needs identified by MPOs, Pennsylvania regularly transferred highway funding to FTA, averaging about \$45 million per year during the study period. That allowed funding and projects to be administered by the modal agency that is most familiar with certain project types. PennDOT only transferred FAHP funds to FTA from 1997 through 2020.

In 2021, PennDOT recently transferred \$38 million of CMAQ funds to the STBG Program. The CMAQ funds were from the 'previous year' apportionments and helped PennDOT balance their

obligation needs with the project portfolio. This enabled PennDOT to close out the fiscal year and have a successful August redistribution. CMAQ funds are distributed to MPOs and rural planning organizations (RPOs) based on a formula allocation. The spending priorities are set locally. However, local agencies are often challenged to obligate and spend federal funds, so PennDOT decided to transfer the CMAQ funds to avoid lapses.

Historically, PennDOT transferred almost 50 percent of bridge funding to STP. This provided flexibility in the Construction Program and helped to fiscally manage projects that had both highway and bridge components. However, given Pennsylvania's high number of poor bridges the transfers drew criticism, including from the Office of Inspector General and the United States Government Accountability Office, so PennDOT ended the practice of transferring bridge funding.

PennDOT does not transfer funding from TA, NHFP, or Off System Bridges.

Transfers are managed by PennDOT to fund project priorities that are set by asset condition and performance criteria. While the MPOs participate in programming the State Transportation Improvement Program (STIP), they do not approve the actual transfers.

South Carolina

SCDOT was selected for a case study for several reasons. SCDOT maintains low to average transfers from the FAHP categories compared to the other states, has a low rate of transfers of federal highway funds to the FTA, and transfers a large percent of Transportation Alternatives (TA) funds to Surface Transportation Block Grant (STBG) Program.

SCDOT transferred approximately 9 percent of FAHP funds among FAHP categories between FFY2013 and FFY2020. During the same period, SCDOT did not transfer funds out of the other FAHP categories, including CMAQ, STBG, HSIP, and NHFP. SCDOT transfers a very small amount of FAHP funds (approximately 0.10 percent) to the FTA. Decisions to transfer FHWA funds to FTA are made by individual local MPO or COG boards.

SCDOT is required to sub-allocate approximately \$43M to Transit Management Associations (TMAs) annually out of the STBG program. SCDOT also sub-allocates an additional \$67M in STBG funds to non-TMAs. SCDOT does not transfer sub-allocated funds because the suballocation is a state-required distribution based on population.

SCDOT maintains a 10-year investment plan that includes federal and state revenues that coincide with its Transportation Asset Management Plan goals and objectives. Projects are planned and executed based on budgeted investment for each program. They have monthly Let Review meetings and bi-monthly Authorization Meetings to ensure that projects and programs are on track to meet investment goals. This visibility provides SCDOT the opportunity to manage programs to remain on schedule and budget.

Compared to most other state DOTs, SCDOT has a higher reliance on federal highway funds (as opposed to state and local sources), with nearly 40 percent of its total highway funds coming from the federal government. Availability of non-federal highway funds plays a limited role in SCDOT's decisions to transfer FAHP funds. Transfer decisions are mainly based on the need to keep the planned program of projects on schedule for authorization of the federal funds.

Utah

Utah is one of the most active states in using the fund transfer authority to transfer funds among FAHP categories. Utah transferred over 25 percent of their FAHP funds among FAHP categories between FFY2013 and FFY2020. UDOT transfers funds among FAHP categories on a regular basis as part of its annual programming activities. Fund transfer benefitted many statewide projects, such as pavement, safety, and Transportation Alternatives (TA) projects.

Starting from FFY2017, Utah has transferred 50 percent of funds out of NHPP every year to the general STBG program. UDOT does not usually transfer funds out of STBG. Between FFY2013 and FFY2020, Utah only transferred funds out of STBG in FFY2018 and FFY2019 to HSIP and CMAQ on a one-time basis. Off-System Bridges funds are managed by the Joint Highway Committee. Utah almost never transfers the Off-System Bridges funds. The Joint Highway Committee selects projects and the state manages the projects.

Starting from FFY2017, UDOT transferred 50 percent of the remaining TA funds (after the set-aside for the Regional Transportation Plan) to STBG every year. It then swapped state funds between the TA program and the state funded pavement preservation programs to provide the same amount of funding for TA projects while maximizing funding flexibility. Those projects are required to meet TA program standards and are enforced by local recipients.

Federal highway funds that UDOT receives are mainly used for maintenance, whereas state funds are typically used for capital improvement projects. Utah provides significant state funds for highways, ranging from \$800 million to \$1.2 billion a year. State funds are mainly from fuel tax and vehicle related sales tax. The department also receives dedicated sales tax revenue that is specifically programmed for the capacity projects. The state legislature may also authorize additional funding for significant capital projects for highways and earmarked specific projects.

Federal aid highway funds flow through the Metropolitan Planning Organizations (MPOs) to counties and municipalities. UDOT works with the four MPOs in the state in administering FAHP funds. The state shares additional FAHP funds with the MPOs besides the suballocated formula funds. Historically between \$60-88 million out of a total of \$370-390 million FAHP apportionment received by the state is shared with the MPOs. For the rural and small urban areas, the Joint Highway Committee Rural, made up of representatives from Utah counties and cities, select projects, for which federal funds will be allocated.

Utah Transit Authority (UTA) is the major transit operator in the state. The majority of the state population is covered by UTA's service area. UTA receives approximately \$60 - \$70 million

annually from FTA formula funds. Transfer of federal highway funds to FTA is directed by the MPOs. After the transfer, the MPOs manage the projects, with minimal state involvement.

UDOT's fund transfer decisions are motivated to meet state specific goals and needs, administrative efficiency, and the ability to fully utilize federal funds. The state transfers up to 50 percent of NHPP and TA funds to STBG, as the STBG program provides more flexibility in terms of project eligibility. UDOT begins its programming cycles with the intention of transferring funds from other FAHP categories into STBG. Since much of the Interstate improvements in the past decade involved capacity funding from the State, most of the federal funds have been used on non-Interstate projects. When possible, UDOT looks for opportunities to use NHPP on interstate projects to increase the amount of federal share on projects.

Slide 11: MPO Case Studies

Albany, New York (Capital District Transportation Committee)

The Capital District Transportation Committee (CDTC) is the MPO for three full counties (Albany, Rensselaer, and Schenectady), and parts of Saratoga County, New York. There are eleven cities, towns, and villages, with a total regional population of just over one million. The host agency for the MPO is the Capital District Transportation Authority (CDTA), the regional transit agency.

This MPO has been successful in getting NHPP and STBG Program-Flex funds programmed to Bus Rapid Transit (BRT) projects, a regional priority. This was done in an intensely competitive funding environment for highway funds.

The CDTC has no direct role in the fund transfer decisions that NYSDOT makes. However, CDTC policy priorities that are established in the regional planning process have been funded, in part through NHPP and STBG-Flex funds. The MPO has been effective in building the coalition of elected officials and others needed to support and fund regional priorities.

Historically, NYSDOT supported annual transfers of CMAQ funds to FTA to support CDTA's capital program. Due to statewide funding constraints, in recent years the CDTC region no longer receives CMAQ funds annually from NYSDOT to support transit. (Note: CMAQ funds were used for operating expenses for the new BRT line for the first year of service and for the Capital District Bikeshare Program.) This left a significant gap in what had been relatively stable transit funding in the CDTC region. The only other source of funds that CDTC controls is a portion of STBG funding. Currently the transit funding gap is being addressed by using STBG-Flex funds and NHPP funds for some projects.

Memphis, Tennessee (Memphis Urban Area Metropolitan Planning Organization)

The Tennessee DOT (TDOT) uses fund transfer authority almost every year and strives to fully utilize all available federal funds. TDOT finds transfers very useful for fully obligating the

federal program, facilitating programmatic goals, and collaborating with local and regional entities.

The only source of funds that TDOT tends to transfer at high levels is the CMAQ program where about 80 percent of the fund transfer authority was used, more than any state other than Georgia and Alaska. TDOT transfers funds from CMAQ and TA to NHPP, STBG-Metropolitan, and FTA for Memphis Area Transit Authority projects. From FFY2013 to FFY2020, TDOT did not transfer any funds at all from three programs: STBG-State, NHPP, and NHFP.

Of the different funding sources included in the Transportation Improvement Program (TIP), the Memphis MPO is responsible for selecting and programming projects under the STBG-Metropolitan and the TA Program. The selection and programming of projects funded by the NHPP, HSIP, STBG-State, CMAQ, and TA-State are the responsibility of TDOT and the Mississippi DOT. In addition, projects using the Advance Construction (AC) technique are identified in the TIP, which allows a state to initiate a project using non-federal funds while preserving eligibility for future federal-aid funds.

The MPO has been transferring funds from FHWA to FTA for the past several TIP cycles, and the Memphis Area MPO developed a timeline and a mechanism for tracking the status of projects and obligations through the life of the TIP. The MPO worked with FHWA and FTA along with the transit agency to develop this collaborative process.

Slide 12: Key Findings

The authority to transfer federal-aid highway funds, both among FAHP categories and to FTA, is widely used by states across the country, although a relatively small proportion of total funds are actually transferred. Transfer practices vary significantly from state to state, reflecting mission, scope, goals, funding, and program needs.

While states differ in their fund transfer practices, their transfer decisions were driven by several common considerations. First and foremost, fund transfer provides opportunities for states to pursue local policy goals while matching the federal national program structure and requirements. Second, fund transfers are a tool for effective financial management and importantly a means to avoid lapse of individual balances as well as overall obligation authority.

Generally, states transfer funds from the more restrictive program categories to more flexible program categories, with STBG receiving most funds transferred among FAHP categories. For states that transfer FHWA funds to FTA, CMAQ is the largest source of those transfers. Since transfer of FHWA funds to FTA is not subject to the 50 percent limit on apportionment transfers, many states transferred well over 50 percent of their CMAQ apportionment to FTA. As a result, transit agencies are major beneficiaries of highway fund transfers, receiving over \$13.3 billion during the study period.

Over time, the FAHP has broadened the eligibility under existing funding categories, which has reduced the pressure or need for transfers. The exception to that relates to funding recissions which are written into law.

Slide 13: Additional Findings

The process for executing transfers is unique by state, due in large part to local conditions and dynamics. One of those considerations relates to the capacity of local funding recipients to obligate and manage projects on schedule, which in some instances can lead to potential fund lapses. Several states have implemented a practice of “swapping” federal funds with state funds to facilitate funding and project execution. Some states also indicated that availability of local and matching funds have limited transfer flexibility.

Some states manage the transfers directly, while others have strong partnerships with MPOs that are critical to optimizing state-wide fund management. In some cases, funds are sub-allocated to MPOs where they distribute funds directly or through a competitive process. In other cases, MPO engagement in the development of project priorities and the STIP are integral to the transfer outcomes.

Some programs are designed to satisfy specific constituencies and thus are viewed as commitments exclusively for designated purposes. This can create resistance to transfers, particularly related to programs with strong advocates, including CMAQ, TA, Safety, and Bridge programs.

Slide 14: Considerations Impacting Transfers

There are several special considerations impacting transfer practices.

- Achieving performance targets may introduce complexity to transfer practices. For example, transfer of safety funds has been restricted in some states entirely, while in others there have been restrictions because targets have not been achieved. There are also some states where transfers have been limited related to Interstate pavement and bridge condition ratings that have not achieved federal targets.
- Maintaining a pipeline of projects designed and ready for federal funding was identified by a few states as a strategy to facilitate fund transfers. However, there is a wide range of practice ranging from maintaining no pipeline of ready projects to developing a sizeable list of projects ready to receive funding. Several states intentionally avoid development of projects early to avoid raising public and political expectations that may not ultimately be met.
- Transit related uses are not restricted or limited to transfers since transit eligibility is broad within highway programs. Ultimately, states choose whether to work with FHWA or FTA based on factors including the type of transit project, which administration has prior experience with the specific project, and interagency working relationships.

Slide 15: Looking Ahead: Future Research Under IIJA

There were several areas of interest that were generated during this study that may be suitable for additional research related to the IIJA:

- The significant increase in formula funding in IIJA for transportation may increase pressures to optimize funding within the program structure.
- New funding categories, priorities, and requirements have yet to fully play out and may introduce new challenges.
- The expansion of eligible recipients in IIJA, particularly to local agencies, may add complexity to project oversight and delivery.
- There is an expectation that specific transfer rules and limitations will be forth-coming from IIJA that might impact transfer provisions and limitations.

Slide 16: Thank You