

Statutory References:

23 U.S.C. 147; 23 U.S.C. 129(c); SAFETEA-LU Sections 1101(a)(13) and 1801; Division A, Title XII of the Recovery Act

Funding:

Fiscal Year	2005	2006	2007	2008	2009	Recovery Act	2010
Total Authorization	\$38M	\$55M	\$60M	\$65M	\$67M	\$60M	\$67M
NHS Set-Aside	\$20M	\$20M	\$20M	\$20M	\$20M		\$20M

SAFETEA-LU provided \$38 million in fiscal year 2005 and an increasing amount in each of fiscal years 2006 through 2009 for the construction of ferry boats and ferry terminals in accordance with 23 U.S.C. 147. Under the provisions of SAFETEA-LU section 1102(f), Redistribution of Certain Authorized Funds, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the FBD program, but are redistributed to the States by formula as STP funds. In addition, under the provisions of 23 U.S.C. 147(d), \$20 million of the available funding in each of fiscal years 2005 through 2009 shall be set aside for marine highway systems that are part of the NHS for use by the States of Alaska (\$10 million), New Jersey (\$5 million), and Washington (\$5 million). After applying the obligation limitation and then setting aside the \$20 million for Alaska, New Jersey and Washington, the remaining funds are available for funding projects.

For fiscal year 2010, Surface Transportation Extension Act of 2010 extended this program and set-aside at the same level as 2009. For fiscal year 2011, it provides funding until December 31, 2010 at 1/4th the amount provided in 2009.

Federal Share:

In accordance with 23 U.S.C. 147(b), the Federal share of the costs for any project eligible under this program is 80 percent. 23 U.S.C. 120(h) provides for up to 100% Federal share for the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. The Federal share for projects awarded from the Recovery Act funds may be up to 100%.

Obligation Limitation:

The FBD funds are subject to obligation limitation. The obligation limitation reduces the available funding for the program under the provisions of SAFETEA-LU section 1102(f) discussed above. Obligation limitation does not apply to projects awarded through the Recovery Act.

Eligibility:

As specified in 23 U.S.C 147(a), this program is for the construction of ferry boats and ferry terminal facilities in accordance with 23 U.S.C. 129(c). FBD funds are available for construction/improvement to ferry boats or ferry boat terminals where:

- It is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.

The operation of the ferry is on a route classified as a public road within the State and which has not been designated as a route on the Interstate System. Projects under this subsection may be eligible for both ferry boats carrying cars and passengers and ferry boats carrying passengers only.

- The ferry boat or ferry terminal facility is publicly owned or operated or majority publicly owned if the Secretary determines, with respect to a majority publicly owned ferry or ferry terminal facility, that such ferry boat or ferry terminal facility provides substantial public benefits.

- The operating authority and the amount of fares charged for passage on such ferry shall be under the control of the State or other public entity, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance and repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return. Control by a public entity means that the public entity establishes or approves the route and has oversight of the schedule, public access, safety, etc., for the ferry. Also the public entity must approve fares and verify that it is within the requirements for the program. In the case of a private ferry operator, the public entity would have a contract or other formal agreement with the operator to establish this control. This applies to the entire ferry service and not limited to where the funds are to be used, i.e., the boat or the terminals.
- Ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise any territory of the United States) or between adjoining States or between a point in a State and a point in the Dominion of Canada. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise any territory of the United States, operations between a point in a State and a point in the Dominion of Canada, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.
- The set-aside discretionary funds for marine highway systems for use by the States of Alaska, New Jersey and Washington are available for the construction or refurbishing of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the NHS as set forth in 23 U.S.C. 147(d).
- Additional requirements are applied to the Recovery Act funding. Please refer to the Recovery Act project solicitation for details.

Projects Designated by Congress

Congress has designated certain FBD funding for specific projects that they list in the Statement of Managers that accompanies the annual transportation appropriations act. For FY 2008, 2009 and 2010, Congress did not include any provision to exempt these projects from eligibility requirements; therefore, the project must be fully eligible for the program. The proposed work in the application submitted by the State must fall within the description of the designated project, as listed in the Statement of Managers to receive the funding identified. For designated projects from previous fiscal years, please contact the Office of Program Administration for requirements.

SELECTION CRITERIA:

Projects Not Designated by Congress

Statutory criteria are found in 23 U.S.C. 147(c): "The Secretary shall give priority in the allocation of funds under this section to those ferry systems, and public entities responsible for developing ferries, that—

1. provide critical access to areas that are not well-served by other modes of surface transportation;
2. carry the greatest number of passengers and vehicles; or
3. carry the greatest number of passengers in passenger-only service."

FHWA has not established regulatory criteria for selection of FBD projects; however, FHWA will consider the following additional factors in the evaluation of candidates for this program:

- Expedient completion of project - Consideration is given to requests that will expedite the completion of a viable project. This means a project's ability to expeditiously complete usable ferry boat or terminal facilities within the limited funding amounts available. This program is intended for construction rather than for initial funding of a project that is dependent on future commitments of additional funding before a usable project can be completed.
- State priorities - For States that submit more than one project, consideration is given to the individual State's priorities.
- Leveraging of private or other public funding - Because the annual requests for funding far exceed the available FBD funds, commitment of other funding sources to complement the requested FBD funding is an important factor.
- Amount of FBD funding - The requested amount of funding is a consideration. Realizing the historically high demand for funding under this program, modest sized requests for funding that would allow more States to receive funding under this program are given added consideration.
- National geographic distribution of funding within the FBD program - Consideration is given to selecting projects over time among all the States competing for funding.

- Congressional direction or guidance - Often Congress specifies in the legislative process that funding be designated for specific projects. This congressional intent is honored provided that the designated projects meet the statutory eligibility criteria for the program.

Projects Designated by Congress

Congress may designate FBD funding for specific projects that they list in the Statement of Managers in the conference report that accompanies the annual transportation appropriations act. The projects designated by Congress are selected for FBD funding provided the proposed work in the application submitted by the State falls within the description of the designated project, as listed in the Statement of Managers, and the project is eligible for the program. Congress may establish a provision in the annual transportation appropriations act that declares these listed projects eligible for FBD funding “notwithstanding any other provision of law.” This did not occur for 2008, 2009 or 2010 projects.

Solicitation Procedure:

Projects Not Designated by Congress

The process begins with a memorandum sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects by States (or territories) for funding. This solicitation is also to be posted on FHWA’s website at <http://www.fhwa.dot.gov/discretionary>. The FHWA division offices provide the solicitation request to the State transportation departments (STD), who are the agencies that submit the applications for this program. The STD coordinates with local agencies within the State to develop viable candidate projects, and submits the candidate applications with priorities identified to the FHWA division office. After the division office has reviewed the submission and ensured that the submission and all applications meet the requirements, it sends the submission and applications to the Office of Program Administration in Headquarters. The specific timetable for the solicitation process is provided in the solicitation memorandum.

The candidate project applications are reviewed and evaluated by the Office of Program Administration, and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made.

Projects Designated by Congress

When Congress fully designates all available FBD funding for specific projects in the conference report that accompanies the annual transportation appropriations act, FHWA does not solicit for applications from the STD until after passage of the annual appropriations act. At that time, when the extent of the congressional designating of funds is known, applications will be solicited only for those designated projects. If a significant amount of funds remains available after consideration of designated projects, a solicitation for new projects may occur.

Submission Requirements:

Projects Not Designated by Congress

Only STDs may submit applications for funding under this program. The STD is responsible to collect, review, and submit all applications for local and other State agencies to the appropriate FHWA division office. The following information must be included to properly evaluate the candidate projects. *Those applications that do not include these items are considered incomplete and will not be considered* in the evaluation and selection process. The division office must submit the applications by electronic mail in *MS Word* format. Applications should be limited to *four (4)* pages, excluding attachments.

1. **State** or U.S. territory in which the project is located.
2. **County** or similar jurisdiction in which the project is located.
3. **U.S. Congressional District No.(s)** in which the project is located. This is the U.S. Congressional District, *not* the State district.
4. **U.S. Congressional District Member’s and Senators’ Names**. This is the U.S. Congressional District representative and Senators, *not* the State legislature.
5. **Project Title** - This should be a very short project description that readily identifies the project, or is commonly used to describe the facility or project.
6. **Project Location (Service Termini and Ports)** – Describe the ferry boat operation including the terminal locations, public road connections and name of the water crossing. A statement must be included for ferry boat operations carrying motorized vehicles, describing the link in the roadway system, including the *functional classification* of the

route connected by the ferry and whether that route is part of the National Highway System. Clearly identify any "passenger only" ferry service, and explain how the ferry service is linked to public transportation or is part of a transit system and is a fixed route. Provide the distance by highway route to the next available crossing of the water body. Indicate if the project is part of an existing link or service, or if it is new service. Also identify if the ferry operates in domestic, foreign or international waters.

7. **Ownership/Operation** – Provide a statement specifying how one or more of the following applies to the proposed project:
 - a. The boat or terminal is publicly owned. The term "publicly owned" means that the title for the boat or terminal must be vested in a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality.
 - b. The boat or terminal is publicly operated. The term "publicly operated" means that a public entity operates the boat or terminal.
 - c. The boat or terminal is "majority publicly owned" (as opposed to publicly owned). This means that more than 50 percent of the ownership is vested in a public entity. If so, does it provide substantial public benefits? *Documentation of substantial public benefits, concurred in by the division office, is required for ferry facilities that are in majority public ownership.*
8. **Controlling Public Entity** – Provide the name of the public (governmental) entity which controls the operating authority *and* the amount of fares charged for passage on such ferry. This is applicable to all projects. Not-for-profit organizations do not qualify. Control of a privately operated ferry would be typically in the form of a contract with the public entity. Confirm with a statement that all revenues derived from the fares for passage are only applied to actual and necessary costs of operation, maintenance and repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return. See eligibility previously discussed for more details.
9. **Current and Future Traffic** – Provide a general description of the type and nature of traffic, both current year and future (projected 5 years) annual number of vehicles and/or passenger carried, on the ferry route, if available. The general description should include information on year-round or seasonal service; days of operation; commuter, recreational or visitor ridership; and traffic generators and attractions. Describe how the project is anticipated to affect future use of the ferry.
10. **Proposed Work** – Describe the scope of work that is to be completed with these funds under this particular request, and whether this is a complete project or part of a larger project.
11. **Total Project Cost:** Estimated total cost to complete the project. For a new ferry, a completed project would result in an operational ferry with appropriate terminal facilities.
12. **Amount of Federal FBD Funds Requested** – Provide the amount of FBD funds being requested (the maximum Federal share for this program is 80 percent except as noted). The State may request less than the maximum Federal share, committing a larger portion of State or local funds. If the State is willing to accept partial funding, that should be clearly indicated with specific amounts identified, noting how the partial funding would affect the schedule. Partial funding along with the commitment of other funds (see item 13) will be used to determine leveraging of funds, and allow funding to more projects, since the requests typically far exceed the funding available.
13. **Commitment of Other Funds** – Indicate the amounts and sources of any private or other public funding being provided as part of this project used specifically for establishing or improving the ferry operation. Only indicate those amounts of funding that are firm commitments from the entity controlling the funds.
14. **Previous FBD Funding** – Indicate the amount and Federal fiscal year of any previous FBD funds received for this project, terminals or ferry boats operating on this route or transit system. Only include previous FBD funds, not other funding sources.
15. **Future Funding Needs** – Indicate the estimated future funding needs for the ferry to be operational, including vessels and terminals, if known. Also, provide estimated time schedules for implementing future projects.
16. **Project Purpose & Benefits** – Each State's request for ferry boat discretionary funds must describe the project purpose and benefits. Particular attention should be given to how the completion of the proposed project will benefit the transportation network. Other benefits may include improved public safety, economic development, community enhancement, etc. Include a statement as to why it is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.
17. **Project Administration** - Indicate whether the project is being administered by the State transportation agency, a county or other local jurisdiction, or another Federal agency.
18. **Project Schedule** – The anticipated project schedule (assuming the requested FBD funding is provided) is required. The schedule should show how the work will be commenced in the next 12 months, and the anticipated completion date of the work, including information on when the ferry service would be operational. Applications should only be submitted for projects that are ready to advance if the minimum partial funding request is met.

If the State desires to submit *additional information, such as maps, pictures, copies of support letters etc.*, those items must be submitted either as an e-mail attachment in PDF format (total size no larger than 2 megabytes per email) or by hard copy to the FHWA division office, who will submit them to the Office of Program Administration. This additional information should be identified by the State and Project Title that matches items 1 and 5 of the electronic

application. These additional items *are not required*. A map of the project location is requested showing nearest alternative crossings. Any support letters should be addressed and sent to the Federal Highway Administrator.

Projects Designated by Congress

Only STDs may submit applications for funding under this program. The STD is responsible to collect, review, and submit all applications for local and other State agencies to the appropriate FHWA division office. The following information (13 items) must be included to properly evaluate the candidate projects. Those applications that do not include these items are considered incomplete and award may be delayed. The division office must submit the applications by electronic mail in *MS Word* format.

1. **State** or U.S. territory in which the project is located.
2. **County** or similar jurisdiction in which the project is located.
3. **U.S. Congressional District No(s)**, in which the project is located. This is the U.S. Congressional District, *not* the State district.
4. **U.S. Congressional District Member's and Senators' Names**. This is the U.S. Congressional District representative and Senators, not the State legislature.
5. **Project Designation (Title)** - This should be the description of the project as listed in the Statement of Managers in the conference report accompanying the annual appropriations act. Include the year the project was designated.
6. **Project Location (Service Termini and Ports)** – Describe the ferry boat operation including the terminal locations, public road connections and name of the water crossing. A statement must be included for ferry boat operations carrying motorized vehicles, describing the link in the roadway system, including the *functional classification* of the route connected by the ferry and whether that route is part of the National Highway System. Clearly identify any "passenger only" ferry service, and explain how the ferry service is linked to public transportation or is part of a transit system. Indicate if the project is part of an existing link or service, or if it is new service. Also identify if the ferry operates in domestic, foreign or international waters.
7. **Ownership/Operation** – (23 U.S.C. 129(c)(3)) Specify which of the following apply:
 - a. The boat or terminal is publicly owned. The term "publicly owned" means that the title for the boat or terminal must be vested in a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality.
 - b. The boat or terminal is publicly operated. The term "publicly operated" means that a public entity operates the boat or terminal.
 - c. The boat or terminal is "majority publicly owned" (as opposed to public owned). This means that more than 50 percent of the ownership is vested in a public entity. If so, does it provide substantial public benefits? *Documentation of substantial public benefits, concurred in by the division office, is required for ferry facilities that are in majority public ownership.*
8. **Controlling Public Entity** – Provide the name of the public (governmental) entity which controls the operating authority *and* the amount of fares charged for passage on such ferry. This is applicable to all projects. Not-for-profit organizations do not qualify. Control of a privately operated ferry would be typically in the form of a contract with the public entity. Confirm with a statement that all revenues derived from the fares for passage are only applied to actual and necessary costs of operation, maintenance and repair, debt service, negotiated management fees, and, in the case of a privately operated toll ferry, for a reasonable rate of return. See eligibility previously discussed for more details.
9. **Proposed Work** – Describe the scope of work that is to be completed under this particular request with these funds, and whether this is a complete project or part of a larger project. Please ensure that the proposed work falls within the description of the designated project (Item 5 above). Unless specifically waived by congress, the proposed work must be eligible for the program.
10. **Total Project Cost**: Estimated total cost to complete the proposed phase of the project.
11. **Amount of Federal FBD Funds Requested** – Indicate the *amount of Federal FBD funds being requested*. This should be the amount designated by Congress in the Statement of Managers. States should be aware that, with the required reductions to the FBD funding, the actual award amounts may be less than these designated amounts.
12. **Project Purpose & Benefits** – Each State's request for ferry boat discretionary funds must describe the project purpose and benefits. Particular attention should be given to how the completion of the proposed project will benefit the transportation network. Other benefits may include improved public safety, economic development, community enhancement, etc. Include a statement as to why it is not feasible to build a bridge, tunnel, combination thereof, or other normal highway structure in lieu of the use of such ferry.
13. **Project Schedule** – The anticipated project schedule is required, including anticipated contract award and proposed project completion, including information on when the ferry service would be operational. Provide a timeframe when it is anticipated that these funds would be obligated.

If the State desires to submit *additional information, such as maps, pictures, copies of support letters etc.*, those items must be submitted either as an e-mail attachment in PDF format (total size no larger than 2 megabytes per email) or

by hard copy to the FHWA division office, who will submit them to the Office of Program Administration. This additional information should be identified by the State and Project Title that matches items 1 and 5 of the electronic application. These additional items *are not required*. Any support letters should be addressed and sent to the Federal Highway Administrator, who is the official ultimately responsible for selecting projects for funding.

Announcement of Awards / Allocation of Funds

After the applications are received and projects are selected for funding, it is required that Congress be notified before the funds are allocated to the States. When this Congressional notification process is completed, the Office of Program Administration will issue an announcement by email to all FHWA division offices, announcing the FBD projects that will be funded and the amount of funding for each project. The list of awarded projects will also be published on FHWA's website.

At that time, STDs may request that funds be allocated for any awarded projects for which the funds are ready to be obligated. The State transportation agency shall send an email to the FHWA division office indicating the project, the amount requested for allocation, and the date by which the funds will be obligated. That request will be provided to the Office of Program Administration which will issue the allocation memorandum within a few days of receiving the allocation request. Awarded projects can be found at <http://www.fhwa.dot.gov/discretionary/fbmemos.cfm>.