



Transportation Liaison
**COMMUNITY
OF PRACTICE**

Establishing a Transportation Liaison Program



A How-To Guide for Agencies Interested in Getting Started

Prepared for:
U.S. Department of Transportation
Federal Highway Administration
Office of Project Development and Environmental Review



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Summary

This guidebook offers information on establishing liaison positions (dedicated staffing) in resource and regulatory agencies to accelerate project delivery and improve environmental review processes.

Authority for transportation agencies and other public entities to fund liaison positions in other agencies is provided in 23 U.S.C. 139(j).¹ This authority provides that the “Secretary may allow a public entity receiving financial assistance from the Department of Transportation ... to provide funds to Federal agencies (including the Department), State agencies, and Indian Tribes participating in the environmental review process for the project or program.” This authority only applies to activities that “directly and meaningfully contribute to expediting and improving permitting and review processes.” Eligible activities include:

- planning activities that precede the initiation of the environmental review process,
- activities directly related to the environmental review process,
- dedicated staffing,
- training of agency personnel,
- information gathering and mapping, and
- the development of programmatic agreements.

Historically, recipients of Title 23 funding have most often used the provisions of 23 U.S.C. 139(j) to establish liaison positions in resource and regulatory agencies, which then accomplish allowable activities. This guidebook focuses on the establishment of liaisons because it is the most frequent use of section 139(j). The Federal Highway Administration (FHWA) Division Offices have environmental and planning professionals who can provide information on other activities that a transportation agency or other public entity might fund under the authority of 23 U.S.C. 139(j), as well as on the required FHWA approval for section 139(j) agreements that do not use Title 23 funds.

This guidebook assists agencies interested in designing and establishing a Transportation Liaison Program and helps agencies realize the benefits transportation liaisons can provide. These benefits include the alignment of policies and procedures, improvement in communication and coordination, and the contribution of environmental and regulatory expertise to the planning and decision-making process. FHWA designed this guidebook for agencies to learn about liaison programs as a way to attain these benefits and achieve accelerated transportation project delivery.

The guidebook draws from examples and interpretations of Title 23-funded liaison agreements under the *Fixing America's Surface Transportation (FAST) Act* Section 1304 (Pub. L. 114-94). The guidebook also serves as updated guidance for liaison agreements entered into under the authority of 23 U.S.C. 139(j) and supersedes FHWA's 2006 guidance titled “Interagency Guidance: Transportation Funding for Federal Agency Coordination Associated with Environmental Streamlining Activities.” It incorporates findings from a [FHWA-sponsored study](#) on State department of transportation (State DOT) funded liaison positions, recommends actions for agencies interested in establishing liaison programs, and identifies “deliverables” or results that agencies can aim to produce after completing a particular stage of developing a liaison program. This guidebook is organized into seven stages that provide useful suggestions that may be followed when establishing an effective full-time or part-time liaison program. Each stage also showcases a series of questions and answers to support various recommended activities, as well as examples from current liaison programs.

For the purposes of this guidebook, a State DOT is used as the example of the public entity providing the funds and a Federal resource agency is used as the example of the entity receiving the

¹ Another authority, added by the FAST Act (Pub. L. 114-94) (December 1, 2015) and applicable when a public entity receives financial assistance from the U.S. Department of Transportation for one or more projects, is codified at 49 U.S.C. 307.

funds under 23 U.S.C. 139(j). The examples all involve using Title 23 funds to pay for the liaison. Guidance provided in this document is limited to liaison agreements entered into under the authority of 23 U.S.C. 139(j). The requirements of a liaison agreement entered into under different authority will determine whether these steps and best practices are applicable to such an agreement.

While the information in this guidebook may be useful to other types of entities considering liaison agreements, and possibly to other types of funding situations as referred to in [Appendix C](#), FHWA encourages those entities to consult with the appropriate lead agency about requirements applicable to their specific situations.

Benefits of Transportation Liaison Programs

Transportation liaisons can offer a range of benefits to State DOTs, including those noted below. Before establishing a transportation liaison program, a State DOT should first consult its FHWA Division Office to determine the best course of action for the State's transportation needs.

Increased predictability and reduced time frames

Turnaround times, level of service improvements, and improved workflows provide assurances in the project delivery process for State DOTs. State DOTs often find that having liaisons provides consistency and predictability for delivering programs. If a State knows it will receive a fast response from a liaison (e.g., receiving a permit in an average of 45 days), it can more accurately plan the project development process.

Set expectations

The ability of the State DOT to establish priorities for the liaison position helps ensure the liaison can expedite priority projects needed by the State DOT in a timely manner.

Improved work processes

The liaison serves as a single point of contact through which the State DOT and resource agency interface, which is often faster and more reliable than having to coordinate across multiple staff.

Dedicated staff to create familiarity

Funding a liaison inherently improves the resource agency's familiarity with the State DOT's project delivery process. As the liaison reviews the State DOT's projects, attends coordination meetings, and interacts with State DOT staff, he or she begins to learn the details of the State's project delivery program. As more projects come to the liaison for review, he or she can provide deeper insights on best practices that the State DOT should consider, or else highlight roadblocks or other issues to be avoided.

Responsiveness and communication

When a liaison is more responsive to the State's questions and requests, the State DOT sees the resource agency's level of service as improved. Many liaisons coordinate informally on a daily or weekly basis with their State DOT and resource agency counterparts via phone calls, emails, and even site visits, and more formally through regularly scheduled in-person meetings.

Improved coordination and strengthened relationships

State DOTs often find that their liaison programs result in better coordination and relationships with resource agencies. In traditional transportation project delivery processes, project managers are usually the only ones communicating with resource agencies and only at specific points throughout the process. Having dedicated transportation liaisons allows for much more open, frequent communication. Liaison programs can also allow for State DOT and resource agency staff to better understand the mission and work processes of the other agency.

Opportunities for collateral duties

Liaison agreements may allow for transportation liaisons to undertake a variety of collateral duties—beyond reviewing transportation projects—that also contribute to accelerating project delivery. Liaisons often deliver trainings to State DOT staff in areas relevant to their agency's mission and may occasionally conduct site visits and field work. In addition, liaisons may develop programmatic approaches to further advance project delivery.

Background and Legislative History for 139(j) Liaison Agreements

In recent years, State and Federal agencies have faced increased demand and limited resources to deliver transportation projects. Starting in the early 1990s, State DOTs and metropolitan planning organizations (MPOs), began to recognize the benefits that funding staff positions at resource and regulatory agencies² could provide, including reduced timelines for project reviews and improved interagency partnerships. Funding staff positions became more widespread with the enactment of section 1309(e) of the *Transportation Equity Act for the 21st Century* (TEA-21) (Pub. L. 105-178) in 1998. Under TEA-21, States could use Title 23 funds to establish staff positions at resource and regulatory agencies as a way to help meet deadlines associated with environmental review and permitting processes.

Transportation Liaisons

Transportation liaisons most often are State or Federal resource and regulatory agency staff that help State DOTs and their transportation agency partners expedite environmental reviews of transportation projects.

In 2005, Congress enacted the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) (Pub. L. 109-59) to reauthorize TEA-21. Section 6002 of SAFETEA-LU, as codified at 23 U.S.C. 139(j), expanded the authority to States provided under TEA-21 by allowing States to enter into voluntary, interagency, and/or intergovernmental agreements with Federal agencies (including the United States Department of Transportation [USDOT]), State agencies, and Indian Tribes to expedite and improve the review of transportation projects receiving financial assistance under Title 23. Such agreements may establish transportation liaison programs.

State DOTs often establish liaison positions to work with resource and regulatory agencies to deliver a project(s).³ In addition, involving liaisons in transportation-related activities—from planning and permitting to establishing programmatic agreements—encourages early coordination and resolution of issues among agencies. By working with both State DOTs and resource and regulatory agencies, transportation liaisons support and regularly contribute to FHWA initiatives that seek to accelerate project delivery.

In October 2009, FHWA sponsored a State Transportation Liaisons Funded Positions Study, which assessed the current state-of-the-practice of State transportation liaison programs. In addition, FHWA completed [a study](#) in July 2019 that evaluated the effectiveness and benefits of a funded liaison program in accelerating project delivery. The studies surveyed States with transportation liaison programs of various size and duration and provided recommendations based on their experiences. The FHWA continues to support and provide tools for States to expand transportation liaison programs nationwide.

² Resource agencies are typically located at both the Federal and State levels. Federal resource agencies include the agencies responsible for Federal policies related to the conservation or preservation of natural or cultural resources, such as the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service. State resource agencies often include State departments of natural environment or conservation and State historic preservation offices. Resource agencies are separate from regulatory agencies, such as the U.S. Army Corps of Engineers or U.S. Coast Guard, which manage regulatory requirements that may pertain to permitting and delivery of transportation projects.

³ This document focuses on the use of liaison agreements between State transportation departments and resource and regulatory agencies because those are the most common type of transportation liaison agreement. However, this guidance applies to any liaison agreement between a public entity and an entity eligible to receive funding, as defined in section 139(j).

In 2012, the *Moving Ahead for Progress in the 21st Century Act (MAP-21)* (Pub. L. 112-141) continued authorization for Title 23-funded transportation liaisons and, under section 1307 (codified at 23 U.S.C. 139(j)(6)), specifically required States and Federal agencies receiving funding for dedicated staffing to prepare a memorandum of understanding (MOU) describing projects and priorities or a process to identify projects and priorities that will be addressed by the funding. Section 1304(i) of the FAST Act amended that provision to require an agreement (not specifically an MOU) establishing projects and priorities, or a process to identify projects and priorities, for all liaison arrangements funded under the statute. Parties must execute the written agreement prior to approval of funding.

FAST Act Changes to 139(j) Agreements

In 2015, section 1304(i) of the FAST Act expanded the types of entities that can provide liaison funding. The FAST Act made the authority available to “public entities receiving financial assistance from the Department of Transportation” under Title 23 or Chapter 53 of Title 49. Usually, for FHWA, the public entity is a State DOT. The entity receiving the funds from the public entity may be a Federal or State agency or Indian Tribe.

The FAST Act also added language that clarifies how the funds may be used by the public entities. Funds “may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program.”

The FAST Act also expanded the types of funds that may be used for section 139(j) purposes by removing the reference to the use of Title 23 funds. Section 139(j)(1)(A) reads: “The Secretary may allow a public entity... to provide funds to Federal agencies (including the Department), State agencies, and Indian Tribes participating in the environmental review process for the project or program.” Examples of additional funding sources are listed in [Appendix C](#).

Under the FAST Act amendments, FHWA approval is required whenever the Section 139(j) authority is used, even if funding for the section 139(j) activities comes from a non-Title 23 source.

The FAST Act maintained the requirement to establish the projects and priorities to be addressed by the use of the funds, but removed the requirement that entities enter into a MOU to establish these priorities. The FAST Act allows any agreement mechanism to be used.

Stages of Establishing a Transportation Liaison Program

The following process flow diagram presents recommended stages that can assist in the development of an effective transportation liaison program. Stages required by statute are starred, though each stage may have some associated statutory requirements. Each section of the guidebook addresses one of these stages in detail.

Stage 1: Assessing the Need

- Identify the need for a liaison program qualitatively and quantitatively.
- Establish a baseline assessment of current activities and associated customary time requirements.
- Identify how the program would expedite and improve the permitting and review processes for projects or programs.
- **Deliverable: Shared understanding or statement of need and priorities for a liaison program among all parties.**

Stage 2: Gaining Leadership and Funding Support

- Engage agency leadership.
- Engage peers in other States and agencies with liaison programs.
- Consider possible funding sources, funding procedures, and related requirements.
- **Deliverable: Proposal with proposed funding sources and applicable requirements for liaison program.**

Stage 3: Designing a Liaison Program

- Hold regular, in-person meetings.
- Determine liaison term length.
- Determine grade level or level of expertise.
- Develop job description.
- Set expectations.
- Identify performance measures.
- Consider centralized versus decentralized management.
- Identify necessary training and training topics.
- Define the process for setting priorities and expectations.
- Create reporting requirements.
- **Deliverables: Program design description; proposed work plan for liaison program.**

Stage 4: Formalizing Liaison Agreements*

- Finalize the program terms, process, and expectations.
- Confirm FHWA approval of liaison agreement is consistent with section 139(j).
- **Deliverable: Signed liaison agreement between the State DOT and the resource agency.**

Stage 5: Implementing and Managing the Program

- Hire liaison(s).
- Manage the liaison program.
- **Deliverables: Position description and job announcement for hiring and procedures for periodic updates and reviews of the liaison program.**

Stage 6: Evaluating Program Outcomes

- Evaluate performance measures.
- Conduct a monitoring study.
- Address results.
- **Deliverable: A process to produce a formal report of accomplishments due at regular reporting periods.**

Stage 7: Revising or Renewing Existing Agreements*

- Review existing agreement.
- Include processes, projects, and priorities in agreement.
- **Deliverable: Revised and/or renewed liaison agreement to reflect current Federal requirements, projects, and priorities.**

Introduction

Questions addressed in this introduction include:

- What are a liaison's roles and responsibilities?
- Why should my agency consider a liaison position?
- How many liaisons traditionally serve in a State?

Transportation liaisons facilitate the environmental review and permitting processes for transportation projects and may support programmatic and/or transportation planning activities. In addition, FHWA directly funds National Transportation Liaisons through Federal interagency agreements. Those liaisons help coordinate activities between FHWA and resource and regulatory agencies at the national level. The national liaisons may also serve as resources for liaisons within their agencies who work in State or regional offices.

A transportation liaison's goal is to facilitate an efficient review process by improving response time to the State DOT and providing input on transportation projects early in the planning, environmental, and permitting processes.

Liaisons serve as primary points of contact between a State DOT and resource agency, which can help increase a State DOT's familiarity with common issues and terminology and build strong, cross-agency working relationships. Early coordination and communication also alert the State DOT to possible environmental issues so the agency can avoid or minimize impacts prior to submitting a project for review. Liaisons help the State DOT maintain consistent project timelines, conduct reviews in a timely manner, and develop processes to identify and implement priorities. Overall, liaisons help the State DOT improve environmental outcomes, saving time and money. Many State DOTs have their own transportation liaison programs, which differ in size by State. Larger States or States with many transportation projects underway may find it useful to maintain several liaison positions. States determine the number of liaisons based on project delivery needs; there is no set number. In some instances, such as with resource agency districts that cover more than one State, States may elect to pool resources to fund a position that serves more than one State DOT. Liaisons may serve in funded or non-funded capacities. Funded liaisons typically receive State or Federal funding. Resource agencies may also maintain, at agency expense, staff whose assignments allow them to serve in an informal liaison role to manage transportation activities and perform permitting and environmental reviews. In such cases, the resource agency decides what level of effort such liaisons will provide, which may be constrained by the agency's resources.

Common Liaison Activities

- Communication among FHWA, State DOTs, and resource agencies
- Development of mitigation banking instruments
- Establishment of programmatic agreements
- Permit processing and project delivery
- Research and mapping activities
- Technical expertise and document review related to environmental regulatory requirements, including:
 - Bald and Golden Eagle Protection Act
 - Clean Water Act (Sections 401, 402, and 404)
 - Endangered Species Act (ESA) (Section 7)
 - Fish and Wildlife Coordination Act
 - Magnuson-Stevens Fishery Conservation and Management Act (MSA) (Essential Fish Habitat)
 - Migratory Bird Treaty Act
 - National Environmental Policy Act (NEPA)
 - Bridge clearance requirements
 - State and local regulations and procedures
- Assistance with transportation planning
- Tribal and Section 106 coordination

Transportation Liaisons Support Programmatic Agreements

Programmatic agreements (PA) are a type of interagency agreement that may be used to expedite transportation project reviews and implementation. Transportation liaisons often provide support to State DOTs and resource agencies in developing and establishing PAs.

What is a PA? How does it differ from a transportation liaison agreement required under 23 U.S.C. 139(j)?

A PA is a formal document that outlines a process or processes relating to consultation, review, and compliance with one or multiple Federal laws. PAs accelerate the processes for routine environmental activities required for common types of transportation projects. PAs also establish procedures for environmental review requirements that comply with Federal laws. Agencies often use PAs for frequent activities with a similar scope so they can review and deliver a program more efficiently on a larger scale than they can project by project.

A typical Title 23-funded transportation liaison agreement formally establishes an interagency or intergovernmental agreement between a State DOT and Federal or State agency or a Federally recognized Indian Tribe to fund a transportation liaison position. The agreement defines roles, responsibilities, and expectations of the agencies involved. Agreements to pay for dedicated staffing under section 139(j) must list specific projects and priorities, and/or establish the process to identify or change projects and/or priorities using the funding. A liaison agreement establishes funding pathways to establish the liaison program and address the scope of work for the liaison. However, a liaison agreement does not define generally applicable environmental review processes the way a PA would.

How are PAs used?

Agencies can use PAs for a variety of subjects. Common types of PAs relate to Section 106 consultations, Section 4(f) programmatic evaluations, ESA Section 7 consultations, and synchronization agreements for meeting NEPA and section 404 of the Clean Water Act (NEPA/404) requirements.

What are the benefits of PAs?

A PA establishes consistent processes for State DOTs and resource agencies, which lead to accelerated project delivery. A PA may identify specific roles and responsibilities for the partners involved, which may include FHWA. Use of PAs increase predictability by providing consistency, clear expectations, and standards for processes, deliverables, and timelines. Through the PA development process, agencies may develop stronger and more productive working relationships because implementing the PAs can build partnerships, identify potential obstacles, and facilitate collectively agreed-upon solutions.

How do transportation liaisons support PAs?

Transportation liaisons possess the expertise and knowledge to guide the development of a PA and provide feedback on its progress. Depending on workloads and program requirements and priorities, transportation liaisons may review materials and facilitate discussions to help agencies determine needs and opportunities for PAs. A State DOT and resource agency may establish project processing timeframes or procedures in a liaison agreement, but should consider including such provisions in a PA or other type of agreement if they wish the provisions to apply to other entities such as FHWA.

What are some examples of PAs?

Statewide Section 106 PAs are in place in approximately 40 States. Section 106 PAs often allow State DOTs to conduct all or some Section 106 review on behalf of FHWA Division Offices, which helps reduce review periods. For example, the Kentucky Transportation Cabinet, U.S. Fish and Wildlife Service, and FHWA collaborated to establish a Programmatic Biological Assessment and Programmatic Conservation MOU for the Indiana bat, an endangered species with extensive habitat in Kentucky. Colorado uses a synchronized process for meeting NEPA and Section 404 of the Clean Water Act (NEPA/404) to coordinate activities for infrastructure projects in the State. Transportation liaisons in the field and FHWA's National Transportation Liaisons lent their knowledge and time to develop these agreements.

Understanding Similarities and Differences between Programmatic Agreements and Transportation Liaison Agreements

Programmatic Agreement (PA)	Transportation Liaison Agreement
Purpose	
<ul style="list-style-type: none"> To establish procedures for environmental review requirements that comply with Federal laws. To increase efficiency in project review by focusing on a program scale. 	<ul style="list-style-type: none"> To establish and fund an agreement for a transportation liaison program. To lay out the roles and responsibilities of the parties entering into the agreement and the role of the liaison program.
Use	
<ul style="list-style-type: none"> Often subject-based and relates to expediting different environmental review and permitting processes such as Section 106 consultations, Section 4(f) programmatic evaluations, ESA Section 7 consultations and biological assessments, and synchronization processes for meeting National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act (NEPA/404) requirements. Typically does not establish staff or liaison positions. 	<ul style="list-style-type: none"> Serves as the formal agreement between the State DOT and resource agency to establish and fund a transportation liaison program. Explains how the transportation liaison program will help expedite environmental reviews and articulates the roles and responsibilities of the transportation liaison positions. Lists specific projects and priorities, and/or details the process to identify or change projects and/or priorities for the liaison program.
Benefits	
<ul style="list-style-type: none"> Outlines consistent review procedures for routine environmental activities required for common types of transportation projects. Provides clear expectations and standards for processes, deliverables, and timelines. Promotes standardized procedures to allow work to progress more efficiently while improving predictability of permitting conditions. Helps agencies leverage limited staff and resources effectively. Fosters strong working relationships between agencies, including agencies that are not a party to a liaison agreement. 	<ul style="list-style-type: none"> Formally establishes a liaison program. Finalizes the number of funded liaison positions, funding amounts, and funding sources. Outlines performance measures and reporting requirements for expected outcomes. Lists expectations and standards for processes, deliverables, and timelines. Fosters strong working relationships between agencies.

While PAs and transportation liaison agreements are both types of interagency agreements, agencies use these mechanisms to accelerate project delivery in different ways. A PA uses a subject-based approach to establish programmatic procedures for complying with Federal or State requirements. A transportation liaison agreement serves as the formal commitment between a State DOT and resource agency to establish and fund a staff-specific liaison position that will expand the resource agency's capacity.

Stage 1: Assessing the Need

Questions addressed in this stage include:

- **How can an agency begin to assess the need for a liaison position?**
- **Which agencies should be involved in assessing the need for a liaison position?**
- **How can agencies work together to identify if a liaison program would improve the permitting process?**

The first steps in establishing a transportation liaison program are to determine if the State DOT needs a liaison and then to work with the corresponding FHWA Division Office to formulate a plan that meets Section 139(j) requirements. The State DOT and resource agency will be the parties to the liaison agreement, and they should regularly communicate and discuss the benefits and challenges of creating a liaison program. Engaging the FHWA Division Office in these discussions is useful because FHWA shares responsibility for the environmental review process, and early coordination can help ensure the liaison agreement meets Section 139(j) requirements. During this assessment period, the State DOT should conduct a qualitative assessment to determine its need for a liaison program, considering its process challenges or issues and potential improvements that a liaison position could bring. The State DOT may consider the following questions when deciding whether a liaison program would support its business activities and project outcomes:

- **Are there increasing work demands and other factors that impact the ability to provide deliverables or feedback within expected timeframes?**
- **How do the State DOT, the resource agency, and FHWA currently interact? Is there potential for improved relationships among the parties?**
- **Do new work processes present a need or opportunity for closer collaboration among the State DOT, the resource agency, and FHWA?**
- **Does the State DOT currently have access to technical experts or require additional expertise to comply with environmental regulations under Federal and State laws?**
- **Would the addition of a dedicated staff member help expedite resource agency reviews of State DOT projects, programmatic approaches, or transportation planning activities, and/or better address State DOT concerns?**
- **Do the State DOT and resource agency require additional support in particular areas (e.g., planning, permitting, review, and consultation requirements; adoption of a programmatic rather than project-by-project approach; other specialized services such as archaeological services)?**

After performing a qualitative assessment of the need for a liaison program, the parties may benefit from a quantitative assessment based on metrics they can use to track progress going forward. Metrics may vary by agency. For example, to develop a basic quantitative analysis, the resource agency should identify its customary review time for projects as a baseline. Customary time for a review should be based on best available data or should reflect the best estimate of the agency based on its historical experience. Another option is to estimate the percentage of staff time spent on environmental and permitting reviews for State DOT projects relative to other activities. The

State DOT should collect data to establish a baseline assessment of current and projected workload demands. When developing this baseline quantitative assessment, the parties may include data from the resource agency or from all districts or locations in order to obtain a comprehensive perspective of needs and opportunities. The State DOT can later use this assessment to justify the need for a liaison, demonstrate how the liaison program expedites and improves environmental reviews (as required under Section 139(j)), and monitor and track program performance.

Data for the assessment may focus on elements such as:

- **Current processing time and cost for issuing consultations or permits**
- **Number of permits required within a specified timeframe**
- **Past performance data on State DOT permitting processes**
- **Number of hours spent working on transportation projects**

Before establishing a liaison program, the State DOT and resource agency should understand and agree on the need and expected results for the program, and seek input from the FHWA Division Office. The State DOT and resource agency should address the question of whether to fund a position to work exclusively on State priority projects or to fund one or more part-time positions on a project-specific basis. Funding levels that do not result in increased staffing levels for the resource agency are generally unable to achieve accelerated project delivery goals and may not satisfy Section 139(j) requirements, as the FAST Act added a requirement that funds must “support activities that directly and meaningfully contribute to expediting and improving permitting and review processes” (23 U.S.C. 139(j)(1)(B)). The agencies can then document their agreement by developing a statement of need that reflects common goals and objectives. Either the State DOT or resource agency may initiate these liaison program discussions or may collaboratively engage in these discussions. Before moving forward with a liaison program, the State DOT and resource agency should consider alternative solutions to expediting environmental reviews (e.g., service contracts, dispute resolution procedures, or process improvements). Focusing on qualitative and quantitative needs can help the State DOT make informed decisions about next steps.

Assessing Liaison Program Needs Over Time

Many State DOTs first established their transportation liaison programs in the late 1990s, following the passage of TEA-21. At that time, many State DOTs were experiencing challenges with environmental and permitting reviews for transportation projects, with lengthy and inconsistent reviews that resulted in unpredictable schedules. Having transportation liaison programs allowed the State DOTs to ensure that their projects were prioritized for review, with greater consistency and predictability in the project delivery process. For example, one State DOT established a liaison program for ESA Section 7 consultations due to high demand and a two-and-a-half year backlog. Informal Section 7 consultations took an average of 22 days versus 111 days before the liaison program was established.

Many early adopters of transportation liaison programs continue to use such programs today. They regularly assess their programs to make adjustments so that the programs continue to address their needs. Adjustments may include establishing a liaison position with a new resource agency partner, increasing or decreasing the number of liaisons with a particular resource agency, or not renewing an existing liaison agreement. State DOTs often use performance measures to track and monitor their liaison programs to help demonstrate benefits, justify continued use, or serve as a starting point for engaging resource agency partners should changes be needed.

By the end of Stage 1, you should have:

- **A shared understanding or statement of need and priorities for a liaison program among all parties.**

Stage 2: Gaining Leadership and Funding Support

Questions addressed in this stage include:

- How can an agency encourage buy-in from leadership and management?
- Where can an agency find information and best practices about other liaison programs?
- What funding sources should an agency consider when establishing a liaison program?

Gaining support for a transportation liaison program often requires more than qualitative assessments and quantitative data. Stakeholders may want to see specific examples of when a liaison program improved transportation project outcomes or streamlined the environmental and permitting process. Upper-level administrator and stakeholder support is invaluable for obtaining backing and assistance for a transportation liaison program. In addition, agencies should understand funding options for liaison agreements and requirements associated with funding options.

→ Engage agency leadership.

When presenting a liaison program proposal, the State DOT and resource agency should first highlight benefits and results from existing programs across the country. Some examples may include increased predictability or reduced project timelines. The State DOT may also highlight Federal Executive Orders and Presidential Memoranda that focus on accelerating project delivery and encouraging environmental stewardship and efficiency when conducting permitting and review processes. The State DOT should also refer to related State requirements and guidance.

→ Engage peers in other States and agencies with liaison programs.

A State DOT interested in establishing a liaison program or learning about the benefits that liaisons provide may wish to connect with peers through regional networks to collect information and examples. FHWA Division Offices are also good resources for a State DOT interested in learning more about establishing a liaison program for its State. In addition, [FHWA's National Transportation Liaisons](#) can provide information about liaison programs for Federal resource and regulatory agencies.

→ Consider 139(j) funding sources and requirements.

A State DOT considering establishing a liaison program should first consult with its FHWA Division Office to discuss funding options. Section 139(j) has specific requirements related to funding. Pursuant to Section 139(j), "Assistance to Affected State and Federal Agencies," FHWA may allow a State, or other public entity receiving financial assistance under Title 23 or Chapter 53 of Title 49 to provide funding for additional resources to Federal agencies, including State DOTs, State agencies, and Federally recognized Indian Tribes participating in the environmental review process for a project or program. Section 139(j) authorizes the use of funds "only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program" and not for customary project reviews.

If a State DOT wants to rely on 23 U.S.C. 139(j) for the legal authority to fund a liaison position, then the arrangement is subject to FHWA approval and it must satisfy all the requirements of that section.

- **Agreement.** The State DOT and the resource agency receiving the liaison funding need to document the terms and conditions of the liaison arrangement into a written agreement required under 23 U.S.C. 139(j)(6) for several reasons:
 - **Projects and Priorities.** Under Section 139(j)(6), the State and any resource agency that will receive funds under the authority of Section 139(j) must establish the projects and priorities that will be addressed by the use of the funds, and/or establish the process by which projects and priorities will be identified throughout the term of the agreement. Inclusion of this information in all liaison agreements is a requirement of agreements authorized under 139(j)(6). The State DOT and resource agency are the agencies required to establish projects and priorities.
 - **Customary time for review.** FHWA must determine whether the liaison arrangement meets 139(j) requirements that the agreement will contribute to through expediting and improving permitting and review process activities (23 U.S.C. 139(j)(1)(B); see 23 U.S.C. 139(j)(4) - (5)). This means that the funding should supplement, not serve in place of, the resource agency's existing resources for reviewing projects or programs. To accomplish this, the agreement should outline the resource agency's baseline staffing for project reviews; define the need for additional capacity; identify additional resources needed (staff positions, travel, etc.); and describe work the liaison staff will perform. For example, the State DOT will need to demonstrate how the additional resources (e.g., a liaison position) would facilitate smoother and faster review processes through improved coordination and communication, explain why the resource agency cannot accomplish projects within time limits with current resources, and describe the steps that will be taken pursuant to the agreement to reduce the customary time for environmental reviews. These criteria apply to both project-specific agreements and agreements focused on program-level activities, such as process improvements or development of programmatic approaches.
 - **Signatories.** When a regulatory agency or FHWA Division Office wants FHWA to be a signatory party to the agreement, the FHWA Division Office must have the FHWA Office of the Chief Counsel review the proposed agreement. An exception may occur when the parties wish to have a limited-purpose signature block for FHWA to evidence FHWA's concurrence that the agreement satisfies 139(j) requirements. The FHWA Division Office may sign the agreement for the purpose of showing consistency with Section 139(j) without any need for the document to be reviewed by the FHWA program office or FHWA counsel. FHWA Division Offices considering signing a liaison agreement for other purposes should consult with the FHWA Office of Project Development and Environmental Review and the FHWA Office of the Chief Counsel.
- **Funding Sources.** The FAST Act expanded the types of funds that may be used for Section 139(j) beyond Title 23. Other funding sources are available and States may use them in conjunction with or instead of Title 23 (see [Appendix C](#)). States may also utilize State funding sources and procedures for liaison programs. Some

liaison programs other than those authorized under 23 U.S.C. 139(j) may require other types of State funding matches or specify that funds may not come solely from the State DOT.⁴ Funding agreements using any Federal funds must comply with Federal and State contracting and finance laws and procedures, including applicable parts of 2 Code of Federal Regulations (CFR) part 200. Regardless of funding source, Federal resource and regulatory agencies may have their own authorities for receiving funds, or limitations on funding, and State DOTs should coordinate early in the process to determine the receiving agencies' requirements.

- **Title 23 Funding.** Any liaison agreements using any Title 23 funds are subject to Title 23 contracting and procurement requirements. FHWA will use the liaison agreement as part of the documentation needed to authorize Title 23 funds. FHWA will apply cost principles in [2 CFR part 200](#) when determining whether costs are allowable under a Title 23-funded liaison agreement. Section 132 of Title 23 allows FHWA to transfer a State's Title 23 funds to a Federal agency in anticipation of work that the Federal agency undertakes in connection with a Federal-aid project. Such transfers, which can be used for Section 139(j) agreements, are subject to FHWA's [Order 4551.1, "Fund Transfers to Other Agencies and Among Title 23 Programs."](#) Under advance payment arrangements, the resource agency returns any excess funds, left at the end of the agreement, to the State. States also may use the typical Title 23 reimbursement process for liaison agreements. If a State DOT chooses to fund a liaison agreement using the authority provided in 23 U.S.C. 139(j), but the State does not use Federal-aid highway funds, then Federal contracting and procurement requirements do not apply.
- **Authorization of Title 23 funds and notice to proceed.** Title 23 funds are not obligated, and expenses cannot be incurred under a Section 139(j) liaison agreement, until (1) FHWA approves the liaison agreement as meeting Section 139(j) requirements; and (2) FHWA transfers funds under 23 U.S.C. 132 (an option for Federal agencies), or executes a project agreement with the State DOT and authorizes the funding in FHWA's accounting system.⁵ Funding authorizations by FHWA should reference the agreement between the State DOT and resource agency, so that the purposes for which the authorized funds can be spent are clear. Authorization of funds by FHWA not only allows the parties to start to incur costs against the obligated funds, but also serves as FHWA's approval of the agreement as complying with the requirements of Section 139(j). The State DOT and resource agency should determine whether any additional documentation is needed for the State DOT to contract with the resource agency and process liaison funding through the State financial system (e.g., obligate funds and authorize work to proceed, and make payments to the resource agency).
- **Allowable and not allowable uses.** Under Section 139(j), States may only provide funding in the amounts needed for Federal and State agencies or

⁴ Other statutory authorities may have different match requirements. See Appendix C for additional information.

⁵ FHWA is the approving authority for liaison agreements under Section 139(j); States cannot assume responsibility for FHWA's approval under Section 106(c) (assumption by States of responsibilities of the Secretary), Section 326 (assignment of categorical exclusion responsibilities), or Section 327 (assignment of all NEPA responsibilities) of Title 23.

Federally recognized Indian Tribes to meet the time limits established for environmental reviews. States may not use funds to pay the ordinary costs of project reviews, because they can only use them for expediting a review. States may not use funds to increase Congress' general appropriation for an agency's normal operating expenses. Acceptance and use of funding by a resource agency constitutes a representation by the resource agency that the requested level of service or activity is above and beyond what typically could be provided as a part of regular operations funded under the agency's general appropriation. Work performed on other matters cannot be paid for under Section 139(j). For example, if an agency assigns an employee to help expedite environmental reviews on highway projects, but the employee also works on other matters, there must be a method in place to track and document time spent on Section 139(j) eligible work. The reimbursement under the liaison agreement will be limited to only a prorated portion of the employee's salary based on the amount of time spent on work related to highway environmental reviews. If the work will affect multiple projects, the costs must be prorated across those projects.

Agencies should fully review funding and procurement requirements and funding sources before establishing liaison programs.

By the end of Stage 2, you should have:

→ A proposal that includes proposed funding sources and applicable requirements for a liaison program.

Stage 3: Designing a Liaison Program

Questions addressed in this stage include:

- **What are the elements of an effective liaison program?**
- **What are best practices in designing a liaison program?**
- **How can an agency provide ongoing support to liaison programs to ensure success?**

The design of a transportation liaison program should be oriented toward improved outcomes while accommodating the needs and preferences of the agencies involved. A tailored approach can help align the program with agency practices and policies and provide the framework for a successful program.

There are many factors to consider when designing a liaison program. Some best practices include the following:

- **Hold regular, in-person meetings to strengthen working relationships between agencies.**

To facilitate ongoing communication, State DOTs find it helpful for their liaisons to meet on a regular basis at or near transportation agency offices. Both the State DOT and resource agency should also coordinate in between meetings to ensure liaison activities remain focused on achieving goals identified in the liaison agreement. If travel costs become prohibitive, regular conference calls or videoconferences can serve as alternatives to in-person meetings.

- **Determine liaison term length.**

Some liaisons are contract positions but most are Federal employees on permanent or term appointments. Liaisons can be part-time, full-time, or for on-call services. The length of the liaison position may depend on the number of years that the resource agency or State DOT can fund the position; however, the length of a liaison position may influence the types of candidates that apply. Agencies should be mindful of the implications of using term positions for liaison programs. Federal term positions limit the length of time an employee can stay in the liaison position to not more than four years. After four years of service, a term employee may have to go through the competitive selection and hiring process to retain his/her position, or complete a break in service for a certain period of time. Longer-term positions and full-time positions are more likely to attract highly qualified candidates and allow for staff continuity and consistent program support.

Designing a Liaison Program: Factors to Consider

- Office location of liaisons
- Term length
- Grade level or level of expertise
- Expectations for responsibilities, workload, and chain of command, and performance measures for program outcomes
- Centralized versus decentralized management
- Training topics
- Project prioritization process
- Dispute resolution
- Reporting requirements for the State DOT and resource agency

→ **Determine grade level or level of expertise.**

While lower-level liaison positions require less funding, more experienced or senior-level employees may provide additional benefits, such as increased knowledge and larger professional networks. A State DOT should consider basing the grade level desired on the quantity and type of workload involved. A lower-grade level is appropriate for smaller, routine application processing. A State DOT with many new construction projects or complex work may need a liaison at a higher-grade level. The development of PAs as a liaison activity may require a higher-grade level employee because the liaison may be involved in negotiations that depend on technical expertise.

→ **Develop a job description.**

It may be helpful to develop a job description before signing a liaison agreement to aid in determining how the parties will implement the liaison program. In addition to technical expertise, the job description should list the required applicant skills and qualities necessary to be an effective transportation liaison. These may include:

- **Written and verbal communication skills and the ability to facilitate discussions and coordination between parties that may have differing agendas or priorities;**
- **Strong diplomatic, mediation, and conflict resolution skills to engage productively in difficult situations;**
- **Experience in transportation or community planning and project development, conflict resolution, and in the procedures of the resource agency; and**
- **Effective time management skills and the ability to manage large, diverse teams.**

→ **Set expectations.**

The State DOT and resource agency should work together to identify expectations for the liaison position, including the required workload and oversight, chain of command, and the program's performance measures for achieving outcomes. Setting and documenting these expectations can help foster discussion among the agencies involved and focus the liaison's workload as the liaison agreement is developed. A common expectation is that the liaison will serve as a single, consistent point of contact to facilitate communication between the State DOT and resource agency and within the resource agency. The State DOT and resource agency may also wish to identify the points of contact within their agencies that will be responsible for managing the liaison program.

→ **Identify performance measures.**

Performance measures should be developed early in the process and focus on the program's success because the individual liaison will be accountable to his or her home agency's performance expectations. Agencies may find that existing performance standards for related processes may also suit the liaison agreement. Provisions can be created to ensure impartial decision-making is maintained, such as requiring a regulatory agency supervisor to sign off on all permit applications reviewed by the liaison before approval. If PA development is part of the liaison's responsibilities, milestones for completing the document may also be included.

Measures may follow one or more of the categories below:

- **Effectiveness:** *The degree to which deliverables and work output conformed to requirements.*
- **Efficiency:** *How well the deliverables and work output were completed with minimum resource cost.*
- **Quality:** *The degree to which a product or activity met signatory parties' expectations.*
- **Timeliness:** *Whether a deliverable or activities were completed correctly and on time.*

- **Productivity:** *The value added to the process compared with the labor and capital expended.*

Examples of potential performance measures for liaison programs include:

- **Attendance at planning and pre-project meetings;**
 - **Timeliness of documents and requests for concurrence; and**
 - **Number of trainings provided.**
- **Consider centralized versus decentralized management.**
An agency should determine whether a centralized or decentralized management structure works best. When making this decision, an agency should consider the size of the liaison program, the potential to coordinate efforts among the regional and central offices, and staff capacity to manage the program. In a centralized structure, a resource agency liaison program coordinator manages all liaison positions throughout the State. In a decentralized approach, each liaison position is assigned to a specific manager or office location within the State. Because a liaison may report to multiple supervisors, selecting points of contact is critical.
- **Identify necessary training and training topics.**
Given his or her subject-matter expertise on resource agency processes (e.g., permitting, natural resources, etc.), a liaison can be a valuable source of training for State DOT staff. Likewise, the liaison may also train his or her resource agency colleagues on transportation planning and project development processes. Technical training, networking events, and conferences can in turn help the liaison stay current on emerging trends and build skills and knowledge about the transportation field, including concepts, terminology, and requirements related to transportation project development.
- **Define the process for setting priorities and expectations for program outcomes.**
As mentioned earlier, regular meetings between the State DOT and the resource agency are recommended to establish upcoming priorities and review workload, though agencies with strong working relationships may use an informal process to prioritize projects. The resource agency should also understand internal requirements for establishing a liaison position (e.g., annual reporting, higher level review). In all cases, the agencies should communicate frequently and discuss prioritized tasks and projects so that all parties can effectively manage resources and workloads. In addition, the agencies should discuss ways to resolve issues in the planning and scoping stages, where environmental issues can be resolved most readily and efficiently.
- **Create reporting requirements.**
Annual or quarterly reports, along with regular interagency/intergovernmental meetings, provide regular qualitative feedback and quantitative assessments about a liaison program's performance. The reporting requirements provide a regular opportunity for the State DOT and resource agency to review and adjust tasks as needed to keep making progress toward desired goals and outcomes.

After considering these factors, the State DOT and the resource agency should jointly prepare a description and work plan for the liaison program that discusses the elements of the proposed program. Developing these documents will help establish the liaison agreement.

By the end of Stage 3, you should have:

- **A program description and proposed work plan for your liaison program.**

Stage 4: Formalizing Liaison Agreements

Questions addressed in this stage include:

- What is the required process for formalizing an agreement for a liaison program under Section 139(j)?
- What are the components of a liaison agreement?
- Can a liaison agreement be updated to reflect new needs and priorities?

In the past, State DOTs and resource agencies have used various mechanisms to establish their liaison programs. Since State laws regarding interagency and intergovernmental agreements differ, State DOTs and resource agencies should consult their legal counsel on the language of liaison agreements, particularly regarding funding provisions, to ensure that they are appropriate. Under 23 U.S.C. 139(j)(6), parties to liaison programs must establish the projects and priorities to be addressed through the use of the Title 23 funds.

Establishing a Liaison Agreement

An MOU or other form of liaison agreement must be initiated to support the establishment of a transportation liaison program under the authority established in 23 U.S.C. 139(j). The parties to a liaison agreement are the State DOT or other public entity and the entity receiving the liaison funding (e.g., the resource agency). These parties will always be

signatories to the agreements because the resource agency is agreeing to provide a specified level

Using Title 23 Funding for Transportation Liaison Programs

In opting to use Title 23 funds per Section 139(j), FHWA recommends State DOTs take the following steps:

- Contact their FHWA Division Administrator early in the process, to discuss the proposed liaison agreement and applicable Section 139(j) requirements.
- Develop the liaison agreement with the regulatory or resource agency, with technical assistance from FHWA.
- Document how the funds will lead to more efficient environmental reviews. This includes describing additional resources needed (such as staff) and the activities that would be accomplished through use of the funds. Fully identify how these resources would enable the agency to reduce the customary time for environmental reviews on transportation projects in a direct and meaningful way. The best practice is to include this information in the liaison agreement, but the State DOT has the option of using a separate document that is submitted to FHWA as part of the request for approval of the liaison agreement.
- Ensure the liaison agreement addresses the funding sources, how payments are made, and the length of the agreement (period for performance).
- Submit a request to the FHWA Division Administrator to approve the liaison agreement. The request should include a copy of the liaison agreement containing the provisions approved by the State DOT and Federal resource or regulatory agency.
- Execute the FHWA-approved liaison agreement.
- Submit the signed agreement to FHWA and request a funds transfer under 23 U.S.C. 132 or authorization of Title 23 funds under a project agreement.
- Draft and execute any additional documentation required to permit the transfer or payment of funds between the State DOT and the Federal resource or regulatory agency in accordance with State and Federal requirements.

of effort in return for funding from the State DOT. FHWA is not normally a party to the agreement because FHWA does not undertake any responsibility for the performance of the agreement's scope of work, which is developed by the resource agency and the State DOT. Typically, if the State DOT, resource agency, and FHWA Division Office wish to jointly document their commitments to cooperate with each other during the environmental review process, they should consider the use of a separate programmatic agreement or the use of a project-specific coordination plan. These can mirror relevant provisions of the liaison agreement between the State DOT and the resource agency, such as timelines and procedures for processing reviews.

The liaison agreement is signed by the State DOT and the resource agency after both parties have agreed to the terms of the proposed program description and scope of work, and after the appropriate FHWA Division Administrator has approved the liaison agreement as complying with Section 139(j) (see fifth bullet, in the text box, "Using Title 23 Funding for Transportation Liaison Programs," above). The liaison agreement formally establishes the liaison program and finalizes the number of funded positions, as well as the funding amounts and sources.

The parties should attempt to minimize the potential for misunderstanding by defining and documenting the roles and responsibilities to which they are committing themselves. This means the parties should agree on terms and conditions, such as objectives of the liaison arrangement; details governing the hiring and management of the liaison; amount and sources of funding and any funding contingencies; financial procedures for the transfer of funds or reimbursement of costs; how services will be documented and charged against the funding; timing of billing and payment; financial and general close-out; length of the arrangement; dispute resolution; reporting requirements; and any conditions for renewal or extension, modification, and termination. Before drafting and signing its first liaison agreement, an agency may find it helpful to review best practices relating to existing liaison agreements in the same State or in peer States. Most importantly, the liaison agreement must identify the projects and priorities to be addressed by the funds and/or detail the process for establishing projects and priorities for a liaison program, as required by Section 139(j)(6). The liaison agreement should outline performance measures and reporting requirements for expected outcomes. The liaison agreement should also reference or attach existing relevant cooperative, interagency, and/or intergovernmental agreements or Federal, State, and local plans that complement the working relationships between the agencies involved.

The State DOT and the resource agency may decide to list their responsibilities in the liaison agreement, so that expectations are clearly outlined regarding each agency's support for the liaison position and contributions to program outcomes. Best practices in drafting

Flexible Naming Conventions for Liaison Agreements

Under 23 U.S.C. 139(j)(6), as amended by the FAST Act, State DOTs may determine the type of agreement they wish to use for their transportation liaison programs. The only requirement is that the agreement be in place prior to funding and establishing the program. While most State DOTs use MOUs to establish their liaison programs, agencies also use:

- Agency operating and funding agreements
- Collection agreements
- Consulting services agreements
- Cooperative agreements
- Interagency requests for State agency services
- Intergovernmental agreements
- *Intergovernmental Personnel Act* agreements (see 5 CFR part 334)
- Interpersonnel Memoranda of Agreement (MOAs)
- Personal service contracts
- Reimbursement agreements

When formalizing their agreements, State DOTs may wish to consult their FHWA Division Offices to confirm proper procedures and obtain technical assistance if desired.

a liaison agreement include addressing the topics discussed among agencies in [Stage 3](#). The agreement should also indicate whether funding for the liaison will include the benefits and overhead of a full-time position or if it is reserved only for services provided.

A detailed agreement outline with sample language is contained in [Appendix A](#).

Future Updates

Liaison agreements may occasionally require updating and should be reviewed periodically to ensure that they continue to meet agencies' needs and are consistent with applicable law. Language about negotiation and amendment procedures may be included in the initial agreement. This allows the agreement to be viewed as an ongoing collaboration between the State DOT and the resource agency, rather than a one-time cooperative effort. If the agencies later decide to continue or update an existing agreement, having a renegotiable agreement in place can help expedite the renewal process.

Liaison programs typically exist longer than one year, and agencies often establish liaison agreements for extended periods of time (e.g., five years). The agreement should be written to provide a flexible structure that also allows the liaison program to adapt to changes (such as new staff) over time, without the need for new agreements. Some changes, like establishing new priorities, may require formal modifications to the agreement.

An agency should sign a liaison agreement only after carefully considering and identifying expectations, priorities, and responsibilities for itself and the liaison(s), and after agreeing on methods for monitoring performance of the liaison program with its partner agencies. This framework supports the development of an effective but flexible liaison program that encourages continued partnerships.

By the end of Stage 4, you should have:

→ A signed liaison agreement between the State DOT and the resource agency.

Stage 5: Implementing and Managing the Program

Questions addressed in this stage include:

- What steps should an agency take after signing a liaison agreement?
- What are best practices for liaison hiring?
- How can an agency manage a successful liaison program?

Providing meaningful assistance to a State DOT and resource agency is a critical element of a successful transportation liaison program. The liaison program should have detailed work descriptions in place so that the State DOT, resource agency, and liaison understand the liaison's work priorities and workload expectations. The State DOT and liaison should also initiate regular, recurring meetings to accommodate changing priorities and discuss expectations and responsibilities.

Hiring the Liaison

Once agencies have signed a liaison agreement and finished the contracting process, the next step is to find and hire qualified liaisons. The State DOT and resource agency can use the detailed program description created in [Stage 3](#) to inform their hiring process.

In the hiring phase, it is important to balance the needs of multiple agencies. Agencies should work together to determine the extent to which the State DOT should be involved in the hiring process. Consulting the State DOT before making an offer of employment can help contribute to a positive working relationship. In periods of transition, or in the event that limited funding is available, creative management practices such as temporarily reassigning a resource agency employee may help maintain an ongoing relationship between the State DOT and resource agency, minimizing workflow disruptions. Agencies may also decide to allow a full-time liaison to delegate transportation-related tasks within their agency.

Building Strong Relationships through Liaison Programs

State DOTs and resource agencies find that liaison programs result in improved coordination, stronger relationships, and streamlined work processes, all of which help advance overall project delivery activities. Having dedicated transportation liaisons often allows for more open, frequent communication between the State DOT and resource agency.

Many State DOTs and resource agencies have found that identifying coordination processes or responsibilities within the liaison agreement itself ensures that all parties understand and agree to the expectations involved. These processes or responsibilities may include attending monthly in-person meetings; communicating regularly, whether via e-mail or telephone; or specifically designating the liaison as the single point of contact between the State DOT and resource agency. Many agencies also include dispute resolution clauses in their agreements in the event they are ever needed.

Having a liaison well-engaged with both the State DOT and resource agency allows for stronger relationships and trust, which can then create new opportunities with multiple benefits. State DOTs may seek liaison expertise to develop related areas, such as programmatic agreements, or may ask a liaison to step in quickly when an urgent priority arises. A liaison program may come to feel as "business as usual" for the agencies over time as a result.

At the start of the liaison program, the State DOT and resource agency should establish a single, consistent point of contact within each agency to facilitate communication about the work that will be performed by the liaison position and communicate expectations. This may be particularly important for the State DOT, where the point of contact can also promote the benefits of the liaison to the agency's overall mission of delivering an efficient, cost-effective transportation program. The State DOT and resource agency may often view the liaison as the appropriate primary point of contact for coordination.

Managing the Liaison Program

After a liaison is hired, the State DOT and resource agency should continue to focus on strengthening relationships and clearly defining work priorities. Successful management of a liaison program includes practices such as:

→ **Regularly resolving issues between parties to the agreement.**

Liaison agreements should outline the types of information sharing and collaboration that are expected of the liaison and recommend that the liaison develop strategies to improve and streamline practices. The agreement should outline an agreed-upon approach (e.g., formal mediation, informal communications) to resolve any disputes that may arise among the parties. The liaison may also provide training to the State agency regarding the procedures and requirements of the liaison's home agency to prevent misunderstanding and build trust among the parties. The liaison's role and involvement in partner agency activities should be made explicit in the agreement.

→ **Involving the liaison in transportation planning activities.**

Integrating the liaison into the transportation planning process can support more efficient regulatory reviews and more coordinated project development and delivery. When preparing the liaison agreement, the State DOT and resource agency can discuss expectations for the liaison's role in transportation planning activities. The agreement may formally require or encourage the liaison to engage in planning tasks that aim to improve coordination. A liaison may participate in project- or planning-related activities such as reviews of regional transportation and public participation plans produced by the State's metropolitan planning organizations, development of long-range planning tools, and corridor planning. Liaison participation in these activities can help to better align transportation projects with environmental regulations and goals from the outset, resolving potential issues early and reducing project revisions in later project development stages.

By the end of Stage 5, you should have:

- **A position description and job announcement for hiring and procedures for periodic updates and reviews of the liaison program.**

Stage 6: Evaluating Program Outcomes

Questions addressed in this stage include:

- How can an agency evaluate liaison programs and outcomes?
- What are the typical expected outcomes for a liaison program?
- How can a liaison program and liaison agreement respond and adjust to performance measure outcomes?

Evaluating the outcomes of a liaison program requires considering the benefits and challenges associated with implementing the overall liaison program and reaching specific benchmarks. Performance evaluations can demonstrate the effectiveness of a liaison program in terms of accelerating project review and delivery.

The State DOT and the resource agency should set a mutually agreed-upon, regular reporting period. The resource agency should submit a formal evaluation report to the State DOT, allowing for program tracking and adjustment. The process for developing this report and evaluating program outcomes includes the following steps:

→ **Evaluate performance measures.**

As outlined in [Stage 3](#), performance measures can help the State DOT and the resource agency identify how their liaison program is meeting objectives and expectations for specific tasks and in reaching desired program outcomes. Regular discussions about the status of performance metrics may be helpful in readjusting measures to account for unexpected factors or shifts in work priorities (such as if a new liaison program must work through a backlog of permit requests). Any measures included in an individual liaison's performance assessment should be based upon outcomes or outputs that he or she controls.

→ **Conduct a monitoring study.**

A monitoring study, which can build upon the initial baseline assessment to make the case for a liaison program, can also help an agency track performance. Measures included in the study can include comparisons between current and past activities, as well as results from monitoring the program's progress in reaching outcomes. An agency can easily track the liaison program's initial impacts in terms of goals or standards achieved.

→ **Address results.**

An agency may use annual or quarterly reports to show overall findings and demonstrate a continued need for a liaison program. Reporting requirements and regular, formal reports will help an agency effectively show how a liaison has met or exceeded—or needs to improve to meet—the performance measures. Regular reporting may also demonstrate a need to modify the agreement, such as modifying workload priorities, performance measures, and/or the number of liaisons needed to meet desired performance measures and/or workload priorities. Regularly tracked and reported results demonstrate accountability and encourage broader support for and recognition of the program. Such information can also help other agencies interested in establishing a liaison program learn about the responsibilities and benefits involved.

By the end of Stage 6, you should have:

- A process to produce a formal report of accomplishments due at regular reporting intervals.

Stage 7: Revising or Renewing Existing Agreements

Questions addressed in this stage include:

- **When does an existing liaison agreement need to comply with Section 139(j)(6)?**
- **How can an existing liaison agreement be renewed or revised to reflect current Federal requirements? How can it be appropriately ended?**
- **What are some best practices for revising or renewing a liaison agreement?**

Prior to enactment of MAP-21, there was no requirement under Section 139(j) to document the funding and liaison services arrangement between the public entity funding the arrangement and the agency receiving the funding. A requirement for a memorandum of agreement (MOA) was added as Section 139(j)(6), by MAP-21 Section 1307. That provision was amended by Section 1304 of the FAST Act. FHWA determined that arrangements entered into prior to the effective dates of those acts would not be required to meet the requirements of Section 139(j)(6) until those arrangements were revised (i.e., the scope of work changed, or new funds were added) or renewed.

When renewing a liaison agreement, the State DOT and the resource agency should first jointly review the existing agreement and determine whether it specifically discusses projects and priorities, which are required elements under 23 U.S.C. 139(j)(6). Existing agreements that do not address these elements must be updated. During the review, discussions should also focus on agency expectations as well as ways to track and monitor performance of the liaison program and liaison personnel. Elements of the liaison agreement that address a dispute resolution process or early coordination may refer to 23 U.S.C. 139(h)(6). Liaison programs with a focus on programmatic mitigation plans may also reference 23 U.S.C. 169(a) (Programmatic Mitigation Plans) in the liaison agreement.

In some instances, a State DOT may elect not to renew a liaison agreement and instead end its liaison program with a resource agency. In these cases, the State DOT and resource agency may evaluate a liaison's performance and meet to share feedback. Reasons for ending a liaison program can vary. Programs may end if there is no longer a need for the liaison position (e.g., the position is tied to a specific project) or if there are performance concerns or other issues. If advance payment of Federal-aid highway funds was made to the resource agency, the State must account for costs and refund the Federal-aid program, per 23 U.S.C. 132(c).

FHWA recognizes the need for flexibility in developing agreements for transportation liaison programs. FHWA encourages the development of agreements that can be long-standing, continuously effective over time, and can be easily updated as changes occur. Shifts in projects and priorities can then be documented, tracked, and accounted for without requiring signing a new agreement.

By the end of Stage 7, you should have:

- **A revised and/or renewed liaison agreement that reflects current Federal requirements, including projects and priorities.**

Conclusion

Transportation liaisons offer many benefits to State DOTs and State and Federal resource or regulatory agencies. From expediting environmental and permitting reviews to facilitating communication among agencies, there are many advantages to using a transportation liaison. Liaisons improve the project development process, thereby delivering better infrastructure solutions. They can help agencies achieve more consistent project timelines and provide technical expertise early in the transportation planning process. As a result, liaisons can provide cost- and time-savings for agencies.

The seven stages detailed in this guidebook offer a process for agencies to use in developing an effective liaison program.

This process begins with assessing the need for liaison positions, encouraging stakeholder buy-in, and thoroughly designing the framework for a program. Once agencies have identified the need for a position, obtained support from leaders and senior officials, and developed mutual goals, agency staff can then move forward to formalize a liaison agreement. During the duration of the liaison program agreement, agencies party to the agreement should remain in regular contact to monitor and assess the performance of the liaison program and evaluate outcomes. The liaison agreement should be designed to allow for revision and adjustment to respond to changing priorities or innovations in efficiency. Renewing an existing agreement provides opportunities for agencies to meet the requirements of current Federal requirements and to reconsider components of the agreement to ensure its ongoing and future effectiveness.

In determining the need for a liaison program, an agency should consider connecting with peers in relevant agencies across the country to discuss best practices and examples of liaison programs in action. This guidebook's appendices provide additional resources and contact information for agencies interested in establishing a liaison program. [Appendix A](#) provides a detailed outline of a liaison agreement with sample text taken from existing Title 23-funded agreements. FHWA's [Transportation Liaison Community of Practice](#) also offers a forum—designed for liaisons, liaison managers, and State DOT staff—to share information and resources. Ultimately, collaboration and information sharing are key to promoting liaison best practices, supporting liaison programs, and realizing more efficient and cost-effective transportation project delivery.

Appendix A: Liaison Agreement Outline with Example Language

FHWA designed this outline to help agencies learn more about establishing transportation liaison agreements. The information presented in this outline is general in nature to support a wide variety of audiences.

This outline introduces and describes different sections that may be included in a liaison agreement. The outline aims to provide an overview of the main components of a typical liaison agreement and also includes example language for text that may be used in each section. FHWA intends for the outline to be general, so that parties entering into agreements can modify the content to their specific needs. Example language included in the outline has been drawn from liaison agreements used by various States over the years since Congress first authorized such agreements. This material reflects revisions to 23 U.S.C. 139(j) contained in Public Law 114-94, FAST Act (Dec. 4, 2015; 129 Stat. 1312). Federal, State, or other applicable funding mechanisms and contracting requirements are not specifically discussed in this document. Documentation relating to those topics should be developed in coordination with the financial and legal offices of the signatory parties. State DOTs should consult their FHWA Division Office for procedures and processes specific to their entity or State when considering the establishment of a transportation liaison agreement.

Public entities receiving financial assistance under Title 23 or chapter 53 of Title 49 may utilize the authority in 23 U.S.C. 139(j) to establish liaison agreements. Usually, for FHWA, the “public entity” is a State DOT, but may include local transportation agencies such as metropolitan planning organizations. This document discusses only those situations where Title 23 funds are used to fund the agreements and the examples involve Title 23 funding. For the purposes of this document, a State DOT is used as the example for public entity, and a Federal resource agency (the “resource agency”) is used as the example of the entity receiving the funds from the public entity as authorized by 23 U.S.C. 139(j).

I. Agreement Title

This section includes the type of agreement being used (e.g., MOU, MOA, cooperative agreement) and lists the parties to the agreement (“signatory parties”) as well as the general purpose of the agreement (e.g., prioritize Title 23-funded transportation project reviews).

Example:

MEMORANDUM OF UNDERSTANDING

Between _____

And _____

to _____

for _____

II. Parties

This section lists the signatory parties to the agreement. This will be the State DOT and the resource agency for the purposes of this outline, but signatory parties are not limited to the State DOT and resource agency. Because the purpose of the agreement is to specify the terms, conditions, and commitments between the State DOT and the resource agency, FHWA should not be a signatory party to the agreement. This is because FHWA does not undertake any responsibility for the performance of the agreement’s scope of work, which is developed by the resource agency and the State DOT.⁶ The agreement may include a signature block for FHWA for the limited purpose of documenting FHWA’s approval of the agreement as consistent with Section 139(j).

Example:

The parties to this agreement are the *State DOT* and the *resource agency*.

III. Purpose/Preamble

This section describes the purpose and goal(s) of the agreement between the parties. The description should be clear about how the agreement will meet the purpose, goals, and requirements of Section 139(j).

⁶ If the public entity, receiving entity, and FHWA Division Office wish to jointly document their commitments to cooperate with each other during the environmental review process, they should consider the use of a separate programmatic agreement, or the use of a project-specific coordination plan. These can contain provisions that describe relevant provisions of the liaison agreement between the public entity and the receiving entity, such as timelines and procedures for processing reviews.

Example A:

The purpose of this agreement is to:

- a. Set forth responsibilities of the signatory parties;
- b. Foster multi-agency coordination;
- c. Improve predictability of project reviews, reduce risks, and accelerate project reviews;
- d. Achieve timely design and implementation of adequate, safe, environmentally sound, and economical highway improvements; and
- e. Facilitate the environmental permitting and review process.

Example B:

This agreement between the *State DOT* and the *resource agency* sets forth the responsibilities of the signatory agencies (parties) relative to priority review of highway program development with the goal of achieving timely planning, design, and implementation of safe and economical highway improvements while also assuring such planning, design and implementation is sensitive to [*fill in area(s) of responsibility (e.g., protection of natural resources)*] for which the *resource agency* is responsible under Federal statute and regulation.

IV. Recitals

This section tells the “story” surrounding the purpose of the agreement, the current state of permitting and review practice for Title 23-funded projects and programs, and related statutory authorities. Agreements typically have several “Whereas” statements and end with a “Now, therefore” statement.

Example (for agreement using Section 139(j) authority):

WHEREAS, 23 U.S.C. 139(j) allows for the use of Title 23 funds by a public entity to expedite and improve permitting and review processes, including planning, approval, and consultation processes for projects or programs;

WHEREAS, the *State DOT* recently has substantially increased the number of Title 23-funded highway construction projects that need to be reviewed pursuant to Federal statutes and regulations;

WHEREAS, the *State DOT* has indicated that, due to staff resource constraints, it is currently unable to provide priority review, consultation, and permitting decisions for the increased number of Title 23-funded transportation projects/construction projects pursuant to its responsibilities;

WHEREAS, the parties have determined that supplemental staffing and liaison positions would accelerate the project review process, enhance coordination, and streamline consultation and permit review on Title 23-funded highway construction projects;

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties agree as follows.

V. Responsibilities and Coordination Process to Expedite Reviews

This section identifies the roles, responsibilities, and commitments of the signatory parties to specific actions that will result in expedited permitting and reviews. These responsibilities are typically divided by each signatory. This section may also discuss steps for coordination after a project is submitted for review, including target response times. The signatory parties should develop these steps together and base them, to the extent possible, on the needs of all parties to the agreement. The procedures, review timeframes, and other commitments agreed to by the signatory parties then could be used in subsequent project coordination plans for the State DOT's projects, as well as in programmatic agreements applicable to the State DOT's projects.

State DOT Responsibilities

The typical roles and responsibilities of the State DOT relate to payment, funding, and administration of the liaison program agreement. The State DOT also has responsibility for identifying projects and priorities as part of the liaison's workload, facilitating meetings to discuss and determine these projects and priorities, and obtaining FHWA approval for the Section 139(j) agreement.

Example A (a State DOT transfers advance funds to a Federal agency under 23 U.S.C. 132):

The State DOT shall:

1. Identify the projects and priorities funded under this agreement as required under 23 U.S.C. 139(j)(6).
2. Hold meetings with the *resource agency* to update the projects and priorities listed in section X of this agreement at least X times each calendar year. New or revised priorities shall be determined as provided in section X and documented through an addendum to this agreement.
3. Program transportation projects.
4. Transfer funds, in advance, to the *resource agency* for the costs contemplated by this agreement. Costs for liaison staffing may include:
 - i. Salary and benefits;
 - ii. Travel, training, and per diem at Federal Government rates as needed to support the agreement;
 - iii. Equipment, allocated consistent with cost allocation provisions in 2 CFR part 200; and
 - iv. Overhead rate of *[fill in rate]* as incurred by the *resource agency*.
5. As provided in section X of this agreement, the *resource agency* will provide the State with an account of expenditures at least once every X months. If the *State DOT* point of contact agrees with *resource agency*'s account of expenditures as submitted, an approval will be transmitted to the *resource agency* project manager within X working days. If the *State DOT* point of contact disagrees with the submittal, a meeting to clarify the account of expenditures will be requested within X working days. In the event of a disagreement over the account of expenditures, the two parties pledge to negotiate in good faith towards reconciliation of the disputed amount.

Example B (funded through reimbursement process):

The State DOT shall:

1. Hold meetings as necessary with the *resource agency* to establish projects and priorities and evaluate work performed under the agreement. New or revised projects and priorities shall be documented through an addendum to this agreement. Initially, the *State DOT* and the *resource agency* will hold monthly meetings to discuss coordination of expedited review process. After a reasonable start-up period, the scheduling of these meetings may be changed at the discretion of the *resource agency* and *State DOT* Project Managers.
2. Costs for liaison staffing may include:
 - i. Salary and benefits;
 - ii. Travel, training, and per diem at Federal Government rates as needed to support the agreement;
 - iii. Equipment, allocated consistent with cost allocation provisions in 2 CFR part 200; and
 - iv. Overhead rate of *[fill in rate]* as incurred by the *resource agency*.
3. As provided in section _____X_____ of this agreement, the *resource agency* will invoice the *State DOT* at least once every _____X_____ months. Each invoice will contain sufficient detail to show the time and costs to be paid pursuant to this agreement. In the event of a disagreement over an invoice, the two parties pledge to negotiate in good faith towards reconciliation of the disputed amount.

Resource Agency Responsibilities

The typical responsibilities of the resource agency divide equally between activities involving the process of establishing and maintaining a liaison program and activities involving the funding of the program.

Example A (advance funds transferred by State DOT to resource agency under 23 U.S.C. 132):

The resource agency shall:

1. Consult with the *State DOT* on qualifications needed to carry out liaison duties and coordinate on the position description and the knowledge, skills, and abilities defined for recruiting the position. Coordinate job interviews for liaison staff and consult on the selection of the liaison staff with the *State DOT*. Since the position will be *resource agency* staff, final selection of candidates rests with the *resource agency*.
2. Hold meetings as necessary with the *State DOT* to establish priorities and evaluate work performed under this agreement. New or revised priorities shall be documented through an addendum to this agreement.
3. Participate in agency scoping activities for transportation projects, as needed.
4. Provide early input on proposed transportation project alternatives, as needed.
5. Review and provide comments on systems-level planning and procedure documents, as needed.
6. Provide written technical assistance comments, recommendations, concurrences, and non-concurrences pursuant to Federal statutes for transportation projects based on the order of priority established by the *State DOT*.
7. Submit a monthly summary of: 1) a list of projects and activities worked on by the liaison, 2) the amount of liaison time spent working on these projects and activities, and 3) summary of monthly expenditures, including receipts.
8. Supplement the work done on the *State DOT's* projects by its existing staff with additional work by a qualified professional employee. The supplemental staff will serve as a liaison as detailed in Appendix _____ X _____, and the *resource agency* will use funds provided under this agreement to pay the allowable costs of the individual's salary, associated benefits, specified overhead rate¹, and training; and to reimburse travel expenses in accordance with the Federal travel regulations at 41 CFR Chapter 301, which are incorporated into this agreement by reference.
9. Ensure that the supplemental liaison staff shall keep daily time records identifying time spent working on *State DOT* projects. These records shall account for 100 percent of the time worked by the supplemental liaison staff that directly and meaningfully contributes to expedited reviews of transportation projects. In addition, the *resource agency* shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this agreement and produce such records for examination by the *State DOT* or FHWA. The *resource agency* shall keep records substantiating hours and costs billed pursuant to this agreement for a period of at least _____ X _____ years after the final billing is submitted. These records shall be subject to audit by the *State DOT*, FHWA, or other Federal or State agencies, as appropriate on request.

Example A Continued:

10. In the event of disagreement over statements of expenditure, the agencies shall negotiate in good faith towards reconciliation of the disputed amount, and the resource agency shall continue working on transportation projects throughout the negotiations (other example language: [until the dispute is resolved] and/or [as long as current advance State payment is sufficient to cover costs]).
11. After approval of the final statement of expenditures for performance of this agreement, which liquidates the transferred funds obligation under this agreement, the resource agency will transfer back any unexpended funds to the State DOT.

Example B (funded through reimbursement process):

The resource agency shall:

1. Supplement the staff who work on the *State DOT*'s projects by _____ X full-time position(s) as described in this agreement.
2. Maintain a [*insert position title (i.e., staff biologist)*] meeting the professional standards described in Attachment _____ X), who currently processes *State DOT* projects on a routine basis, and use the funds provided under this agreement to add capacity to expedite reviews. The *resource agency* will invoice the *State DOT* for the costs of salaries and associated benefits and indirect costs for the supplemental liaison position at the approved rate of X percent and reimburse reasonable travel expenses in accordance with the Federal travel regulations at 41 CFR Chapter 301, which is incorporated into this agreement by reference.
3. The *resource agency* agrees to provide the *State DOT*, State, Legislative Auditor, FHWA, or their authorized agents access to any records necessary to determine compliance with this agreement. The *resource agency* agrees to retain records supporting this agreement until the later of these two dates: (1) _____ X years after the date of *State DOT* approval of the last statement of expenditures under this agreement, or (2) the final decision on any claim, litigation, or exception relating to this agreement brought by the *State DOT* or a third party.

FHWA Approval Under 139(j)

FHWA should not be a party to liaison agreements. If the State DOT wishes to have FHWA sign the agreement to signify the agreement complies with 23 U.S.C. 139(j), FHWA may execute a signature block limited to that purpose. If the FHWA Division Office wishes to be a party to a liaison agreement or sign a liaison agreement for any other purpose, such as to signify FHWA's intention to cooperate with expedited project review activities established under this agreement, consistent with FHWA's obligations under Federal law, the Division Office should consult with the FHWA Office of Project Development and Environmental Review and the FHWA Office of Chief Counsel. If the State DOT, resource agency, and FHWA Division Office wish to jointly document their commitments to cooperate with each other during the environmental review process, they

should consider the use of a separate programmatic agreement, or the use of a project-specific coordination plan.

Example:

FHWA has determined this agreement conforms to the requirements of 23 U.S.C. 139(j).
Signed this ___ day of _____, 20__.

[Division Administrator's Name]
Division Administrator, [*Name of FHWA Division*]

Coordination Process

Typically, the agreement describes the steps for the State DOT when submitting a request for the liaison's review of a transportation project and the steps the resource agency will take after the request is received. The signatory parties should develop these steps together and base them, to the extent possible, on the needs of all parties to the agreement. Timeframes should be agreed upon by both parties and should be flexible, while still resulting in expedited permits and reviews as required by Section 139(j). The liaison agreement may address timelines and coordination efforts involving FHWA. FHWA may provide technical assistance on appropriate milestones and time periods.

Example A:

1. The *resource agency* and *State DOT* will review existing interagency coordination processes and formulate recommendations to streamline procedures and increase efficiency. A review will be conducted within X months of the initiation of the agreement to evaluate progress made towards these goals.
2. After a request for a transportation project review is submitted to the *resource agency*, the following will occur:
 - a. The *resource agency* will review the project for completeness and will respond to the *State DOT* within X business days as to whether the project is complete and has sufficient information for the *resource agency* to conduct its review.
 - b. If a transportation project lacks sufficient information for the *resource agency* to review, the *resource agency* will notify the *State DOT* and FHWA in writing or electronic mail that the project lacks sufficient information to complete review. Included in this notification, the *resource agency* will provide the type of information that is needed to conduct its review.
 - c. The *State DOT* will provide the needed information to the *resource agency* to conduct its review provided it is information that is available or obtainable and applicable to the *resource agency* action.
 - d. After the *resource agency* has received a complete transportation project proposal/application for review, the *resource agency* will provide its comments, recommendations, concurrence or non-concurrence to the *State DOT* and FHWA within X calendar days. The parties may agree to a longer timeframe where a project is identified by both parties as “complex.”
 - e. The *resource agency* will provide a preliminary response to the *State DOT* on most environmental documents and return preliminary comments to the *State DOT* within X days of submission to include a status update on the expected level of complexity and the estimated future action that will be needed on the permit.
 - f. If the number of projects submitted to the *resource agency* for review exceeds the *resource agency* staff’s capacity to complete reviews of all projects in the X -day review time period, the *resource agency* will coordinate with the *State DOT* to prioritize workload and to determine which projects should have an extended response timeframe.
3. For general inquiries sent to the *resource agency* from FHWA or the *State DOT*, or for general inquiries from the *resource agency* to the *State DOT*, a response to the inquiry will be made within X working days.
4. The parties agree to meet all timeframes within this agreement. If a trend develops where timeframes are not met, the parties shall meet to determine how timeliness can be achieved. The *State DOT* and *resource agency* will hold monthly meetings, as needed, to discuss the priority transportation projects. Other agencies, including FHWA, will be invited as appropriate.

Example B:

One purpose of this agreement is to achieve measurable improvements to existing processing times for *State DOT* actions authorized by [type of review]. The *resource agency* will reach a decision on [type of review] within X days, unless otherwise required by Federal regulation or statute.

The *resource agency* will meet all timelines established by regulation for [type of review] unless the parties agree to an exception. The *resource agency* will reach a decision on [type of review] within X days, unless otherwise required by Federal regulation or statute, or the parties agree to an extension.

VI. Projects and Priorities

Prior to a State DOT providing funds for dedicated staffing at a resource agency, the resource agency and the State DOT shall enter into an agreement that establishes the projects and priorities to be addressed by the use of the funds (23 U.S.C. 139(j)(6)). This requirement replaces the more limited MAP-21 provision, which was in effect from October 1, 2012, until the effective date of the FAST Act on October 1, 2015. The MAP-21 version of Section 139(j)(6) required transportation liaison program agreements only when a State provided funding to a Federal agency, and the section applied only to the use of Title 23 funds for the agreements.

FHWA interprets both the MAP-21 and FAST Act provisions as applicable to existing liaison agreements when an existing agreement is revised or renewed. Accordingly, liaison agreements for which Title 23 funds were obligated prior to the effective date of the applicable Section 139(j)(6) requirement, and any liaison agreements funded through non-Title 23 sources prior to that date, must comply with Section 139(j)(6) when they are revised, renewed, amended, or updated in any way (including when the scope of work is changed or new funds are added). At that time, the parties must enter into an agreement that identifies the specific projects and priorities to be addressed by the funding, and/or the process to identify or change projects and/or priorities. This requirement may be satisfied by including the required information in a legally binding MOU, MOA, or other form of agreement. Revised or renewed agreements require FHWA approval.

Example:

1. The signatory parties recognize that, under 23 U.S.C. 139(j)(6), this agreement must establish the projects and priorities to be addressed by the use of Title 23 funds, and/or the process to identify or change projects and/or priorities during the term of this agreement.
2. *Drafting Option 1 (initial projects and priorities known at time of agreement):* The signatory parties agree that the funding provided under this agreement shall be used for the projects and priorities described in Appendix X . The parties agree that Appendix X may be modified by the mutual agreement of the parties, through the execution of an addendum.

Drafting Option 2 (projects and priorities not known at time of agreement):

The signatory parties agree no salary or related costs for liaison services under this agreement may be incurred until the signatory parties execute an addendum to this agreement, which shall become part of Appendix X and establishes the projects and priorities to be addressed by the use of Title 23 funds. The signatory parties agree that the list of projects and priorities thereafter may be modified by mutual agreement through the execution of a subsequent addendum.

3. If the current and/or projected workload of priority projects and activities exceeds the *resource agency's* ability to provide the services specified in this agreement, the *resource agency* will consult with the *State DOT* regarding an adjustment of priorities or supplementation of funds.
4. If the *State DOT* fails to identify or update its priority projects and activities within X days after notice from the *resource agency* that such action is needed, the *resource agency* will establish its own priorities in accordance with the objectives of this agreement.
5. In addition to identifying priority projects and activities, the *State DOT* will make a reasonable effort to provide the *resource agency* with information on other projects that may affect the *resource agency* workload and staff availability (e.g., schedules for draft or Final Environmental Impact Statements).

VII. General Terms

General terms may include agreement length; terms for modification, extension, or termination; general requirements such as anti-discrimination clauses; continuation of existing responsibilities for the signatory parties; points of contact or project managers; consistency with other agreements; and funding. The State DOT also has responsibility for identifying projects and priorities as part of the liaison's workload as well as responsibility for facilitating meetings to discuss and determine these projects and priorities.

Duration of Agreement

Example:

The length of this Agreement shall run for a period of X months/years from the date of signature of the last signing party unless extended or terminated, in writing, as provided in this agreement.

Modification and Extension

Example:

This agreement may be modified, amended, or extended by the mutual written agreement of all the signatory parties. Such changes require an FHWA determination that the changes comply with 23 U.S.C. 139(j).

Termination

Example:

This agreement may be modified, amended, or extended by the mutual written agreement of all the signatory parties. Such changes require an FHWA determination that the changes comply with 23 U.S.C. 139(j).

Conflict Resolution

Example:

The signatory parties agree to use conflict resolution procedures as described in Appendix X .

Required Federal/State Clauses

Federal and State laws require inclusion of a variety of provisions relating to issues such as civil rights, procurement, and conflicts of interest. The parties should consult their contracting and legal officials to identify the provisions appropriate to their proposed liaison agreement. For example, contract provisions will vary depending on the source of funding and how the funding is handled. If the agreement is between a Federal resource agency and a State DOT (or a subrecipient of the State), and the agreement will use Title 23 funds, the State may request use of 23 U.S.C. 132 transfer or reimbursement authorities. In other situations, under 2 CFR part

200.300, the State DOT will determine whether the proposed agreement is characterized as a non-competitive procurement or subaward.⁷ Each of these approaches has its own procedures and required terms and conditions. In addition, FHWA will apply the cost principles in 2 CFR part 200 to liaison agreements funded under Title 23, where applicable, and will be guided by those principles in other cases. Both regulations define which costs are allowable and the types of costs that have to be allocated.

Effect on Existing Responsibilities

Example A:

Nothing in this agreement abrogates the agencies' obligations or duties to comply with their respective regulations, statutes, or policies.

Example B:

This agreement neither expands nor is in derogation of the powers and authorities vested in the signatory parties by applicable laws, statutes, regulations, or Executive Orders; nor does it modify or supersede any other applicable interagency agreements in effect as of the date of this agreement except as otherwise expressly stated in this Agreement.

Example C:

This agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity, by a party against the United States, the State of X , their agencies, officers, or any person.

Example D:

Any information furnished to the resource agency under this agreement may be subject to the Freedom of Information Act (5 U.S.C. 552).

Example E:

Any information furnished to the *State DOT* under this agreement may be subject to the State public records laws.

Points of Contact

Signatory parties may wish to consider listing the points of contact for the State DOT and the resource agency in this agreement.

⁷ Direct recipients other than the State follow the provisions in 2 CFR part 200.318-200.326.

Example:

State DOT Point of Contact: _____

Resource agency Point of Contact: _____

Other Agreements

Example:

This agreement does not preclude the signatory parties from entering other agreements relative to their respective roles and responsibilities; however, any other agreements shall be consistent with this agreement.

Funding

Liaison program agreements often have a section on funding as one of the general terms. This funding clause focuses specifically on funding terms, from the dates of payment to the maximum funding cap for the agreement. In all cases, please consult your FHWA Division Office before establishing an agreement or for specific questions relating to FHWA funding requirements in your State.

Example A (a State DOT transfers advance funds to Federal agency under 23 U.S.C. 132):

1. The *State DOT* shall upon execution of this agreement by all parties, and by subsequent request from the *resource agency*, provide the *resource agency* estimated payments in advance for activities pursuant to this agreement, to cover the costs identified in this agreement. The first installment, anticipated payment in year [fill in year], shall be pro-rated to account for the costs to be incurred for the remainder of the Federal fiscal year. The second installment payment shall be made on October 1, [fill in year], for expenses to be incurred in the following Federal fiscal year. The third installment payment will be made October 1, [fill in year]. The fourth and last installment payment, equivalent to the amount necessary to complete the remainder of the term of this agreement, shall be made on October 1, [fill in year]. The total State funding for the term of this agreement shall not exceed the maximum cap of \$_____X_____ per year as detailed in Attachment _____X_____. The *resource agency*] shall submit expenditure statements detailing charges to the funds to the *State DOT* at least every _____X_____ days so that the *State DOT* may verify the use of the advanced funds by the *resource agency* is consistent with applicable cost principles and this agreement. After approval of the final expenditure statement for performance of this agreement, which liquidates the transferred funds obligation under this agreement, the *resource agency* will transfer back any unexpended funds.
2. This agreement is contingent on the transfer of funds by the *State DOT* or *FHWA* at the request of the *State*. This agreement does not document the obligation of funds between the Parties. Any obligation of funds in support of this agreement will be accomplished by the funding entity, using procedures appropriate for that entity. The obligation of funds is subject to the availability of appropriated funds.

Example B (funded through reimbursement process):

1. The total *State DOT* funding for the term of this agreement shall not exceed the maximum cap of \$_____X_____ per year, or \$_____X_____ in total, as detailed in Attachment _____X_____. The *resource agency* shall submit payment invoices to the *State DOT* at least _____X_____ days prior to the requested payment dates so that the invoice can be approved by the *resource agency* and paid by the requested date. Invoices not submitted on time, or submitted with the incorrect or incomplete information, will require additional time to process and pay and may not be paid by the requested date.
2. This agreement is contingent on the obligation of funds by the *State DOT* and by FHWA. This agreement does not document the obligation of funds between the parties. Any obligation of funds in support of this agreement will be accomplished by the funding entity, using procedures appropriate for that entity. The obligation of funds is subject to the availability of appropriated funds.

VIII. Appendices

Parties may use appendices to describe details relating to terms and conditions contained in the main body of the agreement. In such cases, the provision in the main body of the agreement describes the basic requirement and references the appendix or attachment containing detailed information. This practice can help keep the main body of the agreement concise. For example, if the agreement requires liaison staff to have certain minimum qualifications,⁸ the main body of the agreement may describe the basic requirements and reference a detailed description of the required qualifications in an appendix or attachment. Similarly, the main body of the agreement may describe the process the parties will use to establish the projects and priorities to be addressed by the funding, and reference an appendix or attachment containing a detailed list of such projects and priorities. Parties often use appendices to describe recommended training and tools for improving the effectiveness of liaison duties relevant to the agreement. Appendices may also include budget details and cost estimates. Many State DOTs find it useful to define a process for evaluating the effectiveness of the liaison relationship to determine if the goals of the agreement are being met and/or if there is room for improvement. Tracking effectiveness through standardized measures is one way to accomplish this. Parties may pick and choose from the examples below, or add other details based on their specific agreement.

Effectiveness Tracking through Standardized Measures

This example shows an appendix used to describe a series of standardized measures for tracking the effectiveness of the liaison program and goals for improved timelines. These measures assess the ability of the liaison to directly and meaningfully contribute to expediting and improving project planning and delivery. Measures may be rated as “excellent,” “good,” or “needs improvement” and are assessed annually.

⁸ Minimum qualifications are required under law for some types of positions and may be desirable in all cases to help ensure the liaison has knowledge, skills, and abilities to perform as expected. For Federal positions, the Office of Personnel Management’s [General Schedule Qualification Standards](#) establishes minimum qualifications for all Federal job series. For positions in State Historic Preservation Offices, the Secretary of the Interior’s Professional Qualification Standards (36 CFR part 61) describe the recommended minimum qualifications for liaisons who review undertakings in accordance with Section 106 of the National Historic Preservation Act.

Example:				
Standardized Measures for Tracking Effectiveness of the Transportation Liaison Program				
Target measures for the transportation liaison program:	Quantitative Measures	Scoring of Quantitative Measures	Qualitative Measures	Scoring of Qualitative Measures 1=poor, 2=good, 3=excellent (circle one)
Comments and/or Concurrence	Timeliness (respond in X days)	___ days (average response time)	Substance	1 2 3
			Constructiveness	1 2 3
			Completeness	1 2 3
Technical Assistance Meetings and Field Reviews	Attendance percentage	___% (attendance percentage)	Level of contribution (if applicable)	1 2 3
			Benefits of technical assistance	1 2 3
Permit Review	Response time	___ days (average response time)	Proactiveness at coordinating concerns with State DOT/resource agency	1 2 3
Responsiveness	Timeliness for scheduling meetings, returning calls	___ days (average response time)	Customer service	1 2 3
Communication and interagency coordination	Number of coordination meetings held	___ meetings held	Generate ideas and suggest solutions to issues	1 2 3
			Resolve problems through dialogue at the staff level	1 2 3

Training Courses

This appendix presents a list of training courses that the signatory parties may wish to have the liaison take during the term of the liaison agreement. Example courses are noted below.

Example:

Course Names

- National Highway Institute (NHI) Course 142052: Introduction to NEPA and Transportation Decisionmaking
- NHI Course 142059: Effective Communications in Public Involvement
- NHI Course 151051: Highway Program Funding: An Overview
- FHWA [Section 4\(f\) Tutorial](#)
- U.S. Army Corps of Engineers - The Proponent Sponsored Engineer Corps Training (PROSPECT) Regulatory Courses
- Wetlands Delineation Course (offered by several different entities, depending on region)
- U.S. Fish and Wildlife Service National Conservation Training Center: Interagency Consultation for Endangered Species ([CSP3116](#))
- U.S. Fish and Wildlife Service National Conservation Training Center: Innovative Approaches to Wildlife/Highway Interactions ([CSP7089](#))
- The Conservation Fund Conservation Banking Training Course

Budget Request/ Budget Estimate

This appendix shows a budget request and estimate for the liaison program. It breaks the budget down into salary, benefits, overhead, equipment, and estimated travel for each year of the agreement, subject to the cost principles in 2 CFR part 200 (for Title 23-funded agreements) and as agreed upon by the signatory parties. This example may be modified to fit the legal requirements, needs, and accounting structures of the parties to the agreement.

Example:

Description	Amount
Salary	\$x
Benefits	\$x
Travel	\$x
Training	\$x
Overhead	\$x
TOTAL	\$x

Professional Qualifications for Transportation Liaisons

This appendix lists required professional qualifications for transportation liaisons. In general, the parties may want to include working knowledge of various Federal statutes; experience in engineering, biology, natural resources, or other related environmental science; and the ability to travel. As appropriate, the liaison agreement may state that certifications, licenses, and/or degrees must be presented to demonstrate minimum qualifications. For some types of positions, Federal law specifies professional requirements.

Example:

Professional Standards for Liaison

One (1) specialist with experience and/or education in engineering, biology, natural resources, or other related environmental science. Working knowledge of Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual for the Identification and Delineation of Wetlands is essential. In addition, the ability to travel, occasionally overnight, is mandatory.

Work Responsibilities of Transportation Liaisons

This appendix lists the specific responsibilities and tasks of the transportation liaisons and supplements the general description of the liaison's work in the main body of the agreement. These tasks may include: participation in interagency meetings, reviewing transportation plans and programs, providing permitting review, participating in the development and implementation of written guidance, and conducting document reviews and drafting agency responses within the specified time frames.

Transportation Projects and/or Priorities Process

Section 139(j)(6) of Title 23 requires that State DOTs and resource agencies establish the projects and priorities to be addressed by use of the funds. Parties could use these types of tables in an appendix to list specific projects and priorities.

Example:

Projects and Activities

Project Name	Project Location	Coordination Type/ Anticipated Activities	Agency Lead	Staff Lead

Example:

Priority Projects and Activities

- A. Synchronization (NEPA/404) MOU projects (XXX Active as of XXX)
- B. Participating agency projects (XXX Active as of XXX)
- C. Projects with coordination needed (XXX Active as of XXX)
- D. Activities improving the link between planning- and project-level analysis (to be determined by State)

Conflict Resolution Process

Parties to a liaison agreement may wish to use an appendix to outline detailed steps in a conflict resolution process for when issues arise between signatory parties. Parties typically agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. If informal measures of dispute resolution fail to solve the dispute, parties may refer the dispute for resolution to an appropriate forum in accordance with Federal or State laws. State DOTs may want to consider separate processes for conflict resolution on a project-by-project basis or on the program level as a whole.

These examples detail conflict resolution on a project-by-project basis. Please note that these examples are general and project-oriented in nature and are not drawn from a liaison agreement. However, the examples demonstrate a way to address conflict resolution processes as part of a formal agreement and aim to resolve issues at the staff level. In considering conflict resolution provisions for a liaison agreement, parties should be mindful that some agencies are required to follow their own conflict resolution procedures. When considering conflict resolution procedures for broader project or programmatic coordination agreements that include FHWA, it is also important to consider that 23 U.S.C. 139 contains conflict resolution procedures that may apply.

Example A:

The *State DOT* and the *resource agency* will participate in any additional consultation necessary to resolve, whenever possible, the concerns that have been raised. Either agency may initiate this process as soon as a potentially conflicting issue is identified. The goal of the conflict resolution process is to resolve technical and/or policy issues at the staff level. The four steps in the process are briefly described below:

Step 1: Interagency review meeting/caucus of working staff to address technical issues. A report of the results would go into the interagency review meeting minutes.

Step 2: Separate meetings with working staff and/or first-level managers to address technical issues.

Step 3: Meeting with all involved agencies at staff level or first-level manager of interagency managers to address technical or policy issues. It is anticipated that all technical issues would be resolved at this level.

Step 4: Meeting of executives to address highly complex or controversial policy issues.

Each agency has expertise and authority in particular areas. The conflict resolution procedure does not eliminate an agency's right to make a final determination about an issue within its jurisdiction without reaching resolution with other agencies on that issue.

Example B:

While the conflict resolution process will likely be used most often to resolve issues associated with environmental/regulatory process concurrence points, either agency may request that the process be initiated to resolve any issue when an impasse has been reached. Depending on the nature of the conflict, it may be appropriate to involve other agencies (i.e., other interested environmental agencies, local governments, etc.). The process outlined below indicates, by example, how the parties envision the process to work in resolving issues relating to the environmental/regulatory concurrence process.

1. After reviewing a draft concurrence/comment package prior to a formal interagency review presentation, the *resource agency* identifies an issue that would prevent it from concurring. The resource agency notifies the *State DOT* of the issue via email, no later than X weeks prior to the formal presentation. This notification should specify whether any additional information is needed and should also specifically request time to caucus at an upcoming monthly interagency review meeting, if necessary. The *State DOT* then works to address these concerns at the upcoming interagency review meeting.
2. After the formal interagency review presentation, a caucus session may be convened (if requested) as the initial phase in the conflict resolution process. Following the caucus, the results should be reported before conclusion of the interagency meeting, along with a determination of whether resolution was achieved. If resolution was not achieved, the agencies should specify what information is required to resolve the issue to their satisfaction and whether the process should be escalated further.
 - If resolution of the issue was achieved, the *State DOT* circulates the final version of the concurrence/comment package to the resource agency within X weeks of the interagency review meeting, updated to include any supplemental information requested at the meeting.
 - If resolution of the issue was not achieved (i.e., the *State DOT* is unable to address agency comments on the preliminary package), the cover letter transmitting the formal package will indicate the reason why this information has not been furnished and may include a request by the *State DOT* to initiate the next step of the conflict resolution process.
3. Within X weeks of receipt of the formal concurrence/comment package, if the resource agency does not concur, it sends formal written correspondence to the *State DOT*, specifying issues still preventing concurrence and identifying any additional information needed to resolve the issue(s). The letter should also document that the next step in the conflict resolution process has been initiated and request that a meeting with appropriate agencies be scheduled.
4. A meeting of appropriate working staff and/or first-level managers from the agencies in conflict is scheduled (within X days of receipt of a written or verbal request) and additional information is developed for presentation at the meeting.
5. At least X days prior to the meeting, the *State DOT* provides an agenda outlining the purpose of the meeting, issues to be discussed, and any new information that will be provided in response to the *resource agency's* requests.
6. At the conclusion of the meeting, the participants should recommend elevating any issues still in dispute to subsequent phases in the conflict resolution process. Minutes of the meeting should be prepared and distributed by the *State DOT* within X days of the meeting, which reflect any agreements reached, any issues still outstanding, and concluding recommendations for further action (if required).

Example B (continued):

8. Should the conflict continue to remain unresolved, the issue(s) will be elevated through subsequent meetings between the interagency managers, using the same procedure previously outlined, until a resolution of the issue(s) has been agreed upon.

Appendix B: Additional Resources

To learn more about current activities, explore best practices and examples, and share in transportation liaison-related discussions, please visit the Transportation Liaison Community of Practice (CoP) Website at:

<http://environment.fhwa.dot.gov/liaisonCOP/>.

FHWA Contacts

If you have additional questions about FHWA's Transportation Liaison Program or the Transportation Liaison CoP, please contact LiaisonCoP@dot.gov or visit:

https://www.environment.fhwa.dot.gov/env_initiatives/liaisonCOP/liaisoncontacts.aspx

National Transportation Liaisons

The FHWA directly funds National Transportation Liaisons at a variety of Federal agencies. For the most up-to-date contact information for National Transportation Liaisons, please visit:

https://www.environment.fhwa.dot.gov/About/contacts_agencyLiaisons.aspx

Other resources include:

- "State Transportation Liaison Funded Positions Study." FHWA Office of Project Development and Environmental Review. October 2009.
https://www.environment.fhwa.dot.gov/Pubs_resources_tools/publications/fundedPositionsReport/report.aspx
- "Study on the Effectiveness and Benefits of Transportation Liaisons." FHWA Office of Project Development and Environmental Review. July 2019.
https://www.environment.fhwa.dot.gov/env_initiatives/liaisonCOP/documents/Liaison_Effectiveness_Study.aspx
- FHWA's Eco-Logical Program:
http://www.environment.fhwa.dot.gov/ecological/eco_entry.asp
- FHWA's Environmental Review Toolkit:
<http://environment.fhwa.dot.gov/index.asp>
- FHWA's Planning and Environmental Linkages:
<http://environment.fhwa.dot.gov/integ/index.asp>

Appendix C: Related Legislation and Authorities

I. LEGISLATIVE AUTHORITIES

Cost-reimbursement dedicated staffing agreements can be implemented using the following Title 23 authorities, as applicable:

A. Efficient environmental reviews for project decision-making, 23 U.S.C. 139

(j) Assistance to Affected State and Federal Agencies. -

- (1) IN GENERAL. –
 - (a) AUTHORITY TO PROVIDE FUNDS. – The Secretary may allow a public entity receiving financial assistance from the Department of Transportation under this title or chapter 53 of title 49 to provide funds to Federal agencies (including the Department), State agencies, and Indian tribes participating in the environmental review process for the project or program.
 - (b) USE OF FUNDS. – Funds referred to in subparagraph (A) may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project or program.
- (2) ACTIVITIES ELIGIBLE FOR FUNDING. – Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, activities directly relate to the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.
- (3) USE OF FEDERAL LANDS HIGHWAY FUNDS. – The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.
- (4) AMOUNTS. – Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.
- (5) CONDITION. – A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.
- (6) AGREEMENT. – Prior to providing funds approved by the Secretary for dedicated staffing at an affected agency under paragraphs (1) and (2), the affected agency and the requesting public entity shall enter into an agreement that establishes the projects and priorities to be addressed by the use of the funds.

B. Payments on Title 23-funded Projects Undertaken by a Federal Agency, 23 U.S.C 132

- (a) In General. - In a case in which a proposed title 23-funded project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the State may-
 - (1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or
 - (2) make such deposit with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.
- (b) Reimbursement. - On execution with a State of a project agreement described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a)(2).
- (c) Recovery and Crediting of Funds. - Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

II. OTHER STATUTORY AUTHORITIES AND COST REIMBURSEMENT MECHANISMS

This section lists other statutory authorities that State transportation agencies and Federal resource agencies have used to enter into liaison agreements for the purposes of accelerating the environmental review process and cost-reimbursement. Please note that agencies other than State DOTs have lead responsibility for interpreting and implementing the following statutes. Any reimbursable agreements relying on these authorities should be developed in consultation with the appropriate agency having primary responsibility.

Title 23 funds may be available to fund these types of agreements if they meet the requirements of 23 U.S.C. 139(j) or 49 U.S.C. 307, and they benefit the Federal-aid highway program consistent with 31 U.S.C. 1301(a) (application of appropriations). If a Federal agency has legal authority to charge a State for direct work on a Title 23-funded project, then the costs can be charged by the State to the project as direct project costs (consistent with cost principles in 2 CFR part 200) and eligible costs can be reimbursed to the State at the eligible Federal share. Parties should consult with the appropriate FHWA Division Office to determine whether an agreement meets requirements for the use of Title 23 funding.

State transportation agencies and Federal agencies should address the question of whether to fund a position to work exclusively on State priority projects or to fund one or more part-time positions on a project-specific basis. Funding levels that do not result in increased staffing levels for Federal resource agencies are generally unable to achieve accelerated project delivery goals. If accelerated project delivery goals are not met, the position would not meet Section 139(j) authority requirements.

A. The Fish and Wildlife Act of 1956 (16 U.S.C. 742(e) and (f)(a)(4))

The U.S. Fish and Wildlife Service (USFWS) uses the Fish and Wildlife Act of 1956 to authorize the USFWS's use of another agency's funds. The Act states that the *"Secretary may request and secure the advice or assistance of any department or agency of the Government in carrying out the provisions of this Act, and any such department or agency which furnishes advice or assistance to*

the Secretary may expend its own funds for such purposes, with or without reimbursement from the Secretary as may be agreed upon between the Secretary and the department or agency.” (Section 742(e)(c))

B. The Intergovernmental Cooperation Act (31 U.S.C. 6505) and [OMB Circular A-97](#)

Several Federal agencies have implemented liaison agreements with State DOTs using this authority.

The Intergovernmental Cooperation Act authorizes Federal agencies to provide specialized or technical services to State and local governments. Under Section 6505:

(a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training, activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when -

- (1) written request is made by the State or local government; and*
- (2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.*

C. Water Resources Development Act (WRDA) of 2000, as amended

The U.S. Army Corps of Engineers (USACE) uses Section 214 of WRDA 2000, as amended (Section 214, 33 U.S.C. 2352), to authorize USACE to accept funds from non-Federal public entities to expedite permit reviews. Under Section 214:

- (3) *LIMITATION FOR PUBLIC-UTILITY AND NATURAL GAS COMPANIES.*
 – The authority provided under paragraph (2) to a public-utility company, natural gas company, or railroad carrier shall expire on the date that is 10 years after June 10, 2014.
- (4) *EFFECT ON OTHER ENTITIES.* – To the maximum extent practicable, the Secretary shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation (in the Corps district in which the project or activity is located) of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section.
- (5) *GAO STUDY.* – Not later than 4 years after Jun 10, 2014, the Comptroller General of the United States shall carry out a study of the implementation by the Secretary of the authority provided under paragraph (2) to public-utility companies, natural gas companies, and railroad carriers, including an evaluation of the compliance with the requirements of this section and, with respect to a permit for those entities, the requirements of applicable Federal laws.
- (b) *EFFECT ON PERMITTING.* –
- (1) *IN GENERAL.* – In carrying out this section, the Secretary shall ensure that the use of funds accepted under sub-section (a) will not impact impartial decision making with respect to permits, either substantively or procedurally.
- (2) *IMPARTIAL DECISIONMAKING.* – In carrying out this section, the Secretary shall ensure that the evaluation of permits carried out using funds accepted under this section shall – (A) be reviewed by – (i) the District Commander, or the Commander’s designee, of the Corps District in which the project or activity is located; or (ii) the Commander of the Corps Division in which the District is located if the evaluation of the permit is initially conducted by the District Commander; and (B) utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.
- (c) *LIMITATION ON USE OF FUNDS.* – None of the funds accepted under this section shall be used to carry out a review of the evaluation of permits required under subsection (b)(2)(A).
- (d) *PUBLIC AVAILABILITY.* –
- (1) *IN GENERAL.* - The Secretary shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Secretary.
- (2) *DECISION DOCUMENT.* – The Secretary shall – (A) use a standard decision document for evaluating all permits using funds accepted under this section; and (B) make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.
- (3) *AGREEMENTS.* – The Secretary shall make all active agreements to accept funds under this section available on a single public Internet site.
- (e) *REPORTING.* –
- (1) *IN GENERAL.* – The Secretary shall prepare an annual report on the implementation of this section, which, at a minimum, shall include for each district of the Corps of Engineers that accepts funds under this section – (A) a comprehensive list of any funds accepted under this

section during the previous fiscal year; (B) a comprehensive list of the permits reviewed and approved using funds accepted under this section during the previous fiscal year, including a description of the size and type of resources impacted and the mitigation required for each permit; and (C) a description of the training offered in the previous fiscal year for employees that is funded in whole or in part with funds accepted under this section.

- (2) *SUBMISSION.* – Not later than 90 days after the end of each fiscal year, the Secretary shall – (A) submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the annual report described in paragraph (1); and (B) make each report received under sub-paragraph (A) available on a single publicly accessible Internet site.

The USACE has developed implementation guidance for agreements using Section 214. For more information, visit: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Section-214/>

D. 49 U.S.C. Section 307 – Improving State and Federal Agency Engagement in Environmental Reviews

When establishing liaison positions, agencies may wish to consider using 49 U.S.C. 307 instead of 23 U.S.C. 139(j). Before making this decision, agencies should review the statute and any implementing regulations or guidance issued by USDOT.⁹ 49 U.S.C. Section 307 states:

- (a) *IN GENERAL.*—
- (1) *REQUESTS TO PROVIDE FUNDS.*—A public entity receiving financial assistance from the Department of Transportation for 1 or more projects, or for a program of projects, for a public purpose may request that the Secretary allow the public entity to provide funds to Federal agencies, including the Department, State agencies, and Indian tribes participating in the environmental planning and review process for the project, projects, or program.
- (2) *USE OF FUNDS.*—The funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving permitting and review processes, including planning, approval, and consultation processes for the project, projects, or program.
- (b) *ACTIVITIES ELIGIBLE FOR FUNDING.*—Activities for which funds may be provided under subsection (a) include transportation planning activities that precede the initiation of the environmental review process, activities directly related to the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.
- (c) *AMOUNTS.*—A request under subsection (a) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to timely conduct the review.
- (d) *AGREEMENTS.*—Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under subsection (a), the

⁹ As of November 2018, USDOT has issued Interim Guidance titled "Application of 49 U.S.C. 307: Improving State and Federal Agency Engagement in Environmental Reviews," which can be found at https://cms.dot.gov/sites/dot.gov/files/docs/1312%20interim%20guidance_2.pdf

affected Federal agency and the requesting public entity shall enter into an agreement that establishes a process to identify projects or priorities to be addressed by the use of the funds.

(e) **GUIDANCE.**—

(1) **IN GENERAL.**—*Not later than 180 days after the date of enactment of this section, the Secretary shall issue guidance to implement this section.*

(2) **FACTORS.**—*As part of the guidance issued under paragraph (1), the Secretary shall ensure—*

(A) *to the maximum extent practicable, that expediting and improving the process of environmental review and permitting through the use of funds accepted and expended under this section does not adversely affect the timeline for review and permitting by Federal agencies, State agencies, or Indian tribes of other entities that have not contributed funds under this section;*

(B) *that the use of funds accepted under this section will not impact impartial decisionmaking with respect to environmental reviews or permits, either substantively or procedurally; and*

(C) *that the Secretary maintains, and makes publicly available, including on the Internet, a list of projects or programs for which such review or permits have been carried out using funds authorized under this section.*

(f) **EXISTING AUTHORITY.**—*Nothing in this section may be construed to conflict with section 139(j) of title 23.*

E. Intergovernmental Personnel Act of 1970 (IPA) and Revised Intergovernmental Personnel Act Mobility Program (5 CFR part 334)

The Intergovernmental Personnel Act Mobility Program provides for the temporary assignment of personnel between Federal, State, local, and Indian Tribal governments, institutions of higher learning, Federally funded research and development centers, and other eligible organizations. It offers additional flexibility for augmenting staffing available to Federal resource agencies to carry out their missions.

F. Examples of Activities Eligible for Funding Under these Mechanisms

1. IPA of 1970 (IPA)

A staff member from a Federal resource agency is detailed to a State DOT to help scope issues and conduct environmental analysis for its projects. Although the staff member remains a Federal employee, the State may reimburse the agency for all or part of the employee's salary and expenses. This increased attention and early involvement by the Federal resource agency should result in less time to resolve issues and a smoother review process. The Federal resource agency may be able to hire someone for the duration to "fill in," so there would not be a loss of the agency's ability to conduct its business.

A staff member from a State resource agency or from academia may serve as additional Federal resource agency staff to assist in scoping or review of State DOT projects. An IPA must be developed in accordance with the U.S. Office of Personnel Management's (OPM) regulations and guidance. For more information, please refer to the OPM Website at: <https://www.opm.gov/policy-data-oversight/hiring-information/intergovernment-personnel-act/>.

Assignments may be made up to two years (and may be extended) and conditions may be laid out regarding total length of mobility assignments, continuation of service agreements, certifications, and necessary agreements between the agencies.

2. Programmatic Agreements

Agreements between State DOTs and Federal resource agencies should consider whether the State seeks more intense Federal agency involvement for the purpose of (1) expediting a specific project or projects, (2) streamlining the overall approach to decision-making, or (3) some combination of these. Most State-Federal agreements to date have focused on Federal support of specific, priority projects, but State DOTs and Federal resource agencies are encouraged to consider the broad benefits of establishing agreed-upon approaches and standard operating procedures that can expedite future projects as well as those currently in the pipeline.

Determining the purpose and focus of the activities associated with expediting project delivery will also dictate the skills and experience level needed for the Federal agency staff working under the agreement. For example, if the State needs help with a mitigation plan for an endangered species affected by a road re-routing, a junior wildlife biologist could be brought in to develop that plan. Or, if the State primarily seeks technical assistance to help determine preferred corridors for future highway expansion, the Federal agency may provide a mid-level employee with the appropriate technical skills in environmental mapping. However, if the State wants to develop a programmatic agreement under which certain routine actions can be handled by the State rather than the Federal resource agency, the agency should consider hiring a higher-level employee who understands agency policy and legal requirements and can negotiate on behalf of the agency.