

Stat. 1946, related to certification acceptance, prior to repeal by Pub. L. 105-178, title I, § 1601(a), June 9, 1998, 112 Stat. 255.

AMENDMENTS

2020—Subsec. (d)(2)(A). Pub. L. 116-159 substituted “\$600,000,000” for “\$500,000,000” and “2021” for “2020” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

§ 118. Availability of funds

(a) **DATE AVAILABLE FOR OBLIGATION.**—Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the Mass Transit Account) to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(b) **PERIOD OF AVAILABILITY.**—Except as otherwise specifically provided, funds apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

(c) **OBLIGATION AND RELEASE OF FUNDS.**—

(1) **IN GENERAL.**—Funds apportioned or allocated to a State for a purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

(2) **RELEASED FUNDS.**—Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be—

(A) credited to the same class of funds previously apportioned or allocated to the State for the project; and

(B) immediately available for obligation.

(3) **NET OBLIGATIONS.**—Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this subsection shall be recorded and reported as net obligations.

(d) Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 897; Pub. L. 89-574, § 7(a), Sept. 13, 1966, 80 Stat. 768; Pub. L. 94-280, title I, § 117(a), May 5, 1976, 90 Stat. 436; Pub. L. 95-599, title I, § 115(a), Nov. 6, 1978, 92 Stat. 2697; Pub. L. 96-106, § 5(a), Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, § 115, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §§ 114(a)-(c), (e)(2)-(4), 115, Apr. 2, 1987, 101 Stat. 150-153; Pub.

L. 102-240, title I, § 1020, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 102-388, title IV, § 409, Oct. 6, 1992, 106 Stat. 1565; Pub. L. 105-178, title I, §§ 1106(c)(1)(B), 1107(b), 1226(b), June 9, 1998, 112 Stat. 136, 137; Pub. L. 105-206, title IX, § 9003(a), July 22, 1998, 112 Stat. 837; Pub. L. 109-59, title I, §§ 1111(a), 1501(b), Aug. 10, 2005, 119 Stat. 1171, 1235; Pub. L. 112-141, div. A, title I, § 1519(b)(1)(B), (c)(4), formerly (c)(5), July 6, 2012, 126 Stat. 575, renumbered § 1519(c)(4), Pub. L. 114-94, div. A, title I, § 1446(d)(5)(B), Dec. 4, 2015, 129 Stat. 1438.)

Editorial Notes

AMENDMENTS

2015—Subsec. (b). Pub. L. 114-94 amended Pub. L. 112-141, § 1519(c). See 2012 Amendment note below.

2012—Subsec. (b). Pub. L. 112-141, § 1519(c)(4), formerly § 1519(c)(5), as renumbered by Pub. L. 114-94, § 1446(d)(5)(B), designated par. (2) as subsec. (b), struck out “(other than for Interstate construction)” after “this title”, and struck out former par. (1) relating to interstate construction funds and heading of former par. (2) which read “OTHER FUNDS”.

Subsecs. (c) to (e). Pub. L. 112-141, § 1519(b)(1)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c) which related to set asides for interstate discretionary projects.

2005—Subsec. (c)(1). Pub. L. 109-59, § 1111(a), substituted “\$100,000,000 for each of fiscal years 2005 through 2009” for “\$50,000,000 in fiscal year 1998 and \$100,000,000 in each of fiscal years 1999 through 2003”.

Subsec. (d). Pub. L. 109-59, § 1501(b), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Any Federal-aid highway funds released by the final payment on a project, or by the modification of the project agreement, shall be credited to the same program funding category previously apportioned to the State and shall be immediately available for expenditure.”

1998—Subsec. (b). Pub. L. 105-178, § 1226(b)(1), as added by Pub. L. 105-206, § 9003(a), struck out “; Discretionary Projects” after “Availability” in heading.

Subsec. (c). Pub. L. 105-178, § 1107(b), reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text related to set asides for interstate discretionary projects, including set asides for construction projects and for 4R projects.

Subsec. (d). Pub. L. 105-178, § 1106(c)(1)(B), which directed the redesignation of subsec. (e) as (d) and the striking out of former subsec. (d), was executed by redesignating the subsec. (e) added by Pub. L. 105-178, § 1226(b)(2), as (d), and striking out former subsec. (d), to reflect the probable intent of Congress. Former subsec. (d) read as follows: “In addition to amounts otherwise available to carry out this section, an amount equal to the amount by which the unobligated apportionment for the Interstate System in any State is reduced under section 103(e)(4) of this title on account of the withdrawal of a route or portion thereof on the Interstate System, which withdrawal is approved after the date of enactment of this subsection, shall be available to the Secretary for obligation in accordance with subsection (b)(1) of this section.”

Subsec. (e). Pub. L. 105-178, § 1106(c)(1)(B)(ii), redesignated subsec. (f) as (e). Subsec. (e) as added by Pub. L. 105-178, § 1226(b)(2), redesignated (d), to reflect the probable intent of Congress.

Pub. L. 105-178, § 1226(b)(2), as added by Pub. L. 105-226, § 9003(a), which directed the addition of subsec. (e) and the striking out of former subsec. (e), was executed by adding subsec. (e) and striking out the former subsec. (e) as in effect before the redesignation of subsecs. (e) and (f) as (d) and (e), respectively, by Pub. L. 105-178, § 1106(c)(1)(B)(ii), to reflect the probable intent of Congress. Former subsec. (e) read as follows: “The total payments to any State shall not at any time during a current fiscal year exceed the total of all appor-

tionments to such State in accordance with section 104 of this title for such fiscal year and all preceding fiscal years.”

Subsec. (f). Pub. L. 105-178, § 1106(c)(1)(B)(ii), redesignated subsec. (f) as (e).

1992—Subsec. (b)(1). Pub. L. 102-388 substituted “construction in a State (other than Massachusetts)” for “construction in a State” and “after October 1, 1989” for “before October 1, 1989”.

1991—Subsec. (a). Pub. L. 102-240, § 1020(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “On and after the date that the Secretary has certified to each State highway department the sums apportioned to each Federal-aid system or part thereof pursuant to an authorization under this title, or under prior Acts, such sums shall be available for expenditure under the provisions of this title.”

Subsec. (b). Pub. L. 102-240, § 1020(a), added subsec. (b) and struck out former subsec. (b) which contained provisions relating to periods of availability of non-Interstate funds, Interstate construction funds, and funds for resurfacing, restoring, rehabilitating and reconstructing Interstate System, and provisions deeming obligation of funds as equivalent to expenditure and relating to effect of release of funds.

Subsec. (c)(1). Pub. L. 102-240, § 1020(b)(1), (2), substituted “1992” for “1983” and “\$100,000,000” for “\$300,000,000”.

Subsec. (c)(2). Pub. L. 102-240, § 1020(b)(3), added par. (2) and struck out former par. (2) which read as follows: “SET ASIDE FOR 4R PROJECTS.—Before any apportionment is made under section 104(b)(5)(B) of this title, the Secretary shall set aside \$200,000,000 for obligation by the Secretary in accordance with subsection (b)(3) of this section and subject to section 149(d) of the Federal-Aid Highway Act of 1987.”

Subsec. (d). Pub. L. 102-240, § 1020(c), substituted “(b)(1)” for “(b)(2)”.

Subsec. (f). Pub. L. 102-240, § 1020(d), struck out “on a Federal-aid system” after “roads”.

1987—Pub. L. 100-17, § 114(e)(2), substituted “Availability of funds” for “Availability of sums apportioned” in section catchline.

Subsec. (b). Pub. L. 100-17, § 114(e)(3)(A), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, § 114(e)(3)(B), (D), inserted heading and aligned par. (1) with par. (2) as amended.

Subsec. (b)(2). Pub. L. 100-17, § 114(a), amended par. (2) generally, revising and restating as subpars. (A) to (F) provisions formerly contained in an undivided paragraph.

Subsec. (b)(3). Pub. L. 100-17, § 114(c), amended par. (3) generally, revising and restating as subpars. (A) to (D) provisions formerly contained in an undivided paragraph.

Subsec. (b)(4). Pub. L. 100-17, § 114(e)(3)(C), (D), inserted heading and aligned par. (4) with par. (2) as amended.

Subsec. (c). Pub. L. 100-17, § 114(b), (e)(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, substituted “Subject to section 149(d) of the Federal-Aid Highway Act of 1987, such amount” for “Such amount” in par. (1), added par. (2), and aligned par. (1) with par. (2).

Subsec. (f). Pub. L. 100-17, § 115, inserted “and the Commonwealth of Puerto Rico” after “the State of Alaska”.

1983—Subsec. (b). Pub. L. 97-424, § 115(a), designated existing provisions as pars. (1) through (4), in par. (2) as so designated, substituted “for projects on the Interstate System (other than projects for which sums are apportioned under section 104(b)(5)(B)) in accordance with the following priorities: First, for high cost projects which directly contribute to the completion of an Interstate segment which is not open to traffic; and second, for projects of high cost in relation to a State’s apportionment. Sums may only be made available under this paragraph in any State” for “to any other State applying for such funds for the Interstate Sys-

tem,” after “available by the Secretary”, struck out former cl. (1), which had required readiness to obligate funds within one year of the date the funds are made available, redesignated former cls. (2) and (3) as (A) and (B), respectively; and in par. (3) as so designated, struck out “and any amounts so apportioned remaining unexpended at the end of such period shall lapse” after “such sums are authorized”, inserted provision relating to the disposition of funds not obligated within the prescribed time period, and inserted further provision that sums made available under this paragraph shall remain available until expended.

Subsecs. (c) to (f). Pub. L. 97-424, § 115(b), added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively.

1979—Subsec. (b). Pub. L. 96-106 substituted “shall continue to be available for expenditure in that State for a period of two years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period shall lapse” for “remaining unexpended at the end of the period of its availability shall lapse”.

1978—Subsec. (b). Pub. L. 95-599 substituted provisions relating to the availability of funds until the end of the fiscal year for provisions relating to the availability of funds until two years after the close of the fiscal year and substituted provisions establishing requirements for eligibility for funds for provisions calling for immediate reapportionment of unexpended funds.

1976—Subsec. (b). Pub. L. 94-280, in revising text, provided for a separate three year period of availability of sums apportioned to a Federal-aid system (other than the Interstate System), increased from the previously applicable two year period; continued the existing two year period for sums apportioned to the Interstate System; substituted provision for reapportionment of sums, apportioned to the States for the Interstate System under section 104(b)(4)(A), under section 104(b)(5)(A) of this title and for lapse of sums apportioned to the Interstate System under section 104(b)(4)(B) of this title for prior provision for reapportionment of sums, apportioned to the States for the Interstate System under section 104(b)(4) and (5), under section 104(b)(5) of this title; and substituted provisions deeming there to be an expenditure of sums apportioned to a Federal-aid system if a sum equal to the total of the sums apportioned to the State for the fiscal year and previous fiscal years is obligated for prior provision deeming an expenditure to exist if a sum equal to the total of the sums apportioned to the States for the fiscal year and previous fiscal years is covered by formal project agreements providing for the expenditure of funds authorized by each Act which contains provisions authorizing the appropriation of funds for Federal-aid highways.

1966—Subsec. (d). Pub. L. 89-574 added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-94, div. A, title I, § 1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B) is effective as of July 6, 2012, and as if included in Pub. L. 112-141 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L.

105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–106, § 5(b), Nov. 9, 1979, 93 Stat. 797, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to all amounts apportioned under [former] section 104(b)(5)(B) of title 23, United States Code, for the fiscal year 1978 and for subsequent fiscal years.”

USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS

Pub. L. 109–59, title I, § 1603, Aug. 10, 2005, 119 Stat. 1248, provided that:

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ELIGIBLE FUNDS.—

“(A) IN GENERAL.—The term ‘eligible funds’ means excess funds or inactive funds for a specific transportation project or activity that were—

“(i) allocated before fiscal year 1991; and

“(ii) designated in a public law, or a report accompanying a public law, for allocation for the specific surface transportation project or activity.

“(B) INCLUSION.—The term ‘eligible funds’ includes funds described in subparagraph (A) that were allocated and designated for a demonstration project.

“(2) EXCESS FUNDS.—The term ‘excess funds’ means—

“(A) funds obligated for a specific transportation project or activity that remain available for the project or activity after the project or activity has been completed or canceled; or

“(B) an unobligated balance of funds allocated for a transportation project or activity that the State in which the project or activity was to be carried out certifies are no longer needed for the project or activity.

“(3) INACTIVE FUNDS.—The term ‘inactive funds’ means—

“(A) an obligated balance of Federal funds for an eligible transportation project or activity against which no expenditures have been charged during any 1-year period beginning after the date of obligation of the funds; and

“(B) funds that are available to carry out a transportation project or activity in a State, but, as certified by the State, are unlikely to be advanced for the project or activity during the 1-year period beginning on the date of certification.

“(b) AVAILABILITY FOR STP PURPOSES.—Eligible funds shall be—

“(1) made available in accordance with this section to the State that originally received the funds; and

“(2) available for obligation for any eligible purpose under section 133 of title 23, United States Code.

“(c) RETENTION FOR ORIGINAL PURPOSE.—

“(1) IN GENERAL.—The Secretary [of Transportation] may determine that eligible funds identified as inactive funds shall remain available for the purpose for which the funds were initially made available if the applicable State certifies that the funds are necessary for that initial purpose.

“(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

“(d) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary [of Transportation] may, on the request by a State—

“(1) obligate the funds for any eligible purpose under section 133 of title 23, United States Code; or

“(2)(A) deobligate the funds; and

“(B) reobligate the funds for any eligible purpose under that section.

“(e) APPLICABILITY.—

“(1) IN GENERAL.—Subject to paragraph (2), this section applies only to eligible funds.

“(2) DISCRETIONARY ALLOCATIONS; SECTION 125 PROJECTS.—This section does not apply to funds that are—

“(A) allocated at the discretion of the Secretary [of Transportation] and for which the Secretary has the authority to withdraw the allocation for use on other projects; or

“(B) made available to carry out projects under section 125 of title 23, United States Code.

“(f) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

“(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds obligated, or deobligated and reobligated, under subsection (d), the eligible funds—

“(A) shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which this Act is enacted; and

“(B) except as provided in paragraph (2), shall be subject to the requirements of title 23, United States Code, that apply to section 133 of that title, including provisions relating to Federal share.

“(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

“(A) section 133(d) of title 23, United States Code, shall not apply; and

“(B) the period of availability of the eligible funds shall be determined in accordance with this section.

“(g) REPORT.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], and annually thereafter, the Secretary [of Transportation] shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing any action taken by the Secretary under this section.

“(h) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act [see Tables for classification] or title 23, United States Code, should be available for obligation for transportation projects and activities in the same geographic region for which the eligible funds were initially made available.”

§ 119. National highway performance program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a national highway performance program under this section.

(b) PURPOSES.—The purposes of the national highway performance program shall be—

(1) to provide support for the condition and performance of the National Highway System;

(2) to provide support for the construction of new facilities on the National Highway System; and

(3) to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the National Highway System.

(c) ELIGIBLE FACILITIES.—Except as provided in subsection (d), to be eligible for funding ap-