U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: INFORMATION: National Electric Vehicle Infrastructure Formula Program Guidance (Update)

Date: June 2, 2023

From: Derrell Turner /s/
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Refer To: HEPN1

To: Division Administrators

The purpose of this memorandum is to provide updates to the National Electric Vehicle Infrastructure (NEVI) Formula Program Guidance. The attached guidance supersedes the guidance that was issued on February 10, 2022.

On November 15, 2021, the President signed into law the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), (Pub. L. 117-58), which established the NEVI Formula Program. The program was authorized under Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of the BIL. On February 10, 2022 the Federal Highway Administration (FHWA) issued initial NEVI Formula Program Guidance providing background information, funding eligibilities, and program guidance for implementation of these historic investments in electric vehicle (EV) charging infrastructure that will help build a convenient, affordable, reliable, and equitable national network of EV chargers.

Under the NEVI Formula Program, each State is required to submit an EV Infrastructure Deployment Plan (Plan) on an annual basis that describes how the State intends to use its apportioned NEVI Formula Program funds in accordance with this guidance. No NEVI Formula Program funds for a fiscal year shall be obligated by a State until FHWA approves that State's updated Plan for such fiscal year, although staffing and other activities related to the development of a Plan will be eligible for reimbursement (in accordance with 2 CFR Part 200) utilizing previous fiscal year funding or advance construction.

Plans must be submitted to the Joint Office of Energy and Transportation (Joint Office) not later than August 1 of each year and the Federal Highway Administration (FHWA) will approve eligible updated Plans by September 30 of the prior fiscal year.

States also must comply with the National Electric Vehicle Infrastructure Standards and Requirements (title 23 of the Code of Federal Regulations (CFR) 680), effective 3/30/23. These Standards specify technical aspects of chargers, including connector types, power levels, minimum number of charging ports per station, minimum uptime (reliability standards), and payment methods; data submittal requirements; workforce requirements for installation, operation, or maintenance by qualified technicians; interoperability of EV charging infrastructure; traffic control devices and signage; network connectivity; and publicly available information.

The Joint Office will continue to play a key role in the implementation of the NEVI Formula Program. Much like the formalized partnership between the U.S. Departments of Transportation and Energy, FHWA Division Offices should encourage State departments of transportation to coordinate directly with their State energy agencies in the development and update of Plans and in implementation of the NEVI Formula

Program. The Joint Office will provide direct technical assistance to States and FHWA Division offices to update their Plans. Such requests for technical assistance should be directed to the Joint Office at DriveElectric.gov.

Unless noted in this guidance, the NEVI Formula Program shall be administered as if apportioned under chapter 1 of title 23, United States Code. As such, program administration questions regarding the implementation of the NEVI Formula Program, such as those regarding eligibility, financial management, non-Federal share, contracting and procurement, or other title 23 requirements, should be directed to FHWA.

Attachment:

National Electric Vehicle Infrastructure Formula Program Guidance

National Electric Vehicle Infrastructure Formula Program

Bipartisan Infrastructure Law
Program Guidance
Federal Highway Administration June 2, 2023

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

OVERVIEW

This memorandum provides updates and changes to the NEVI Formula Program guidance issued February 10, 2022. The February 10, 2022 guidance is superseded by this guidance. The guidance provides information on expectations for updated Plans, funding eligibilities, and program administration guidance for the historic investments in Electric Vehicle[1] (EV) charging infrastructure made in the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58 (Nov. 15, 2021).

The BIL makes the most transformative investment in EV charging in United States (U.S.) history that will accelerate progress towards a convenient, affordable, reliable, and equitable national network of EV chargers[2]. This national network will:

- Accelerate equitable adoption of EVs, including for those who cannot reliably charge at home.
- Reduce transportation-related greenhouse gas emissions and help put the U.S. on a path to net-zero emissions by no later than 2050.
- Position U.S. industries to lead global transportation electrification efforts and help create family-sustaining union jobs that cannot be outsourced.

The BIL includes a total of up to $7.5 billion in dedicated funding to help make EV chargers accessible to all Americans for local to long-distance trips. That $7.5 billion is comprised of a $5 billion formula program and a $2.5 billion discretionary grant program:

1. **National Electric Vehicle Infrastructure (NEVI) Formula Program.** The $5 billion NEVI Formula Program will provide dedicated funding to States to strategically deploy EV charging infrastructure and establish an interconnected network to facilitate data collection, access, and reliability. Initially, funding under this program is directed to designated Alternative Fuel Corridors (AFCs)[3] for electric vehicles to build out this national network, particularly along the Interstate Highway System. When the national network is fully built out, funding may be used on any public road or in other publicly accessible locations. Ten percent of the NEVI Formula Program will be set-aside each fiscal year for the Secretary of Transportation to provide discretionary grants to help fill gaps in the national network. A separate process for these "gap-filling" grants will be established in future guidance.

2. **Charging and Fueling Infrastructure Discretionary Grant Program.**[4] The $2.5 billion discretionary grant program, which was announced on March 14, 2023, is further divided into two distinct $1.25 billion grant programs to support EV charger deployment. These discretionary grant programs will ensure charger deployment meets the Biden-Harris Administration priorities such as supporting rural charging, building resilient infrastructure, climate change, and increasing EV charging access in underserved and overburdened communities ("disadvantaged communities"):

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1 All-electric vehicles (EVs), also referred to as battery electric vehicles, use a battery pack to store the electrical energy that powers the motor. EV batteries are charged by plugging the vehicle in to an electric power source. For the purposes of this guidance, EVs include passenger cars and light trucks, unless otherwise noted.

2 More information describing electric vehicle infrastructure can be found at: Alternative Fuels Data Center: Developing Infrastructure to Charge Electric Vehicles (energy.gov)

3 National Electric Vehicle Charging and Hydrogen, Propane, and Natural Gas Fueling Corridors (23 U.S.C. § 151(a)-(e)).

4 National Electric Vehicle Charging and Hydrogen, Propane, and Natural Gas Fueling Corridors (23 U.S.C. § 151(f)).

- **Corridor Grant Program.** This program will strategically deploy publicly accessible EV charging infrastructure and hydrogen, propane, and natural gas fueling infrastructure along designated AFCs.

- **Community Grant Program.** This program will strategically deploy publicly accessible EV charging infrastructure and hydrogen, propane, and natural gas fueling infrastructure in communities.

This program guidance is focused specifically on the NEVI Formula Program.

The BIL requires the Secretary of Transportation to establish a deadline by which States shall develop and submit a State EV Infrastructure Deployment Plan (Plan) that describes how the State intends to use its apportioned NEVI Formula Program funds in accordance with this guidance. [5] All 52 initial Plans were submitted to the Joint Office of Energy and Transportation (Joint Office) by the established due date of August 1, 2022. The Federal Highway Administration (FHWA) reviewed and approved the initial Plans by September 27, 2022.

Updated Plans for each fiscal year must be submitted by August 1 of the prior fiscal year. Timely Plans will be reviewed and approved (or rejected) by September 30 (of the prior fiscal year) to be ready for implementation for the following fiscal year. While each State DOT must annually submit a Plan to the Joint Office describing how that State DOT intends to use funds distributed under the NEVI Formula Program, FHWA recognizes that certain sections of the Plan may not change from year to year. As such, beginning with the FY 2024 Plan (due on August 1, 2023), State DOTs are permitted to annually submit an updated Plan that incorporates and identifies relevant additions and modifications made since the prior year's Plan approval. States are encouraged to satisfy the annual Plan submission requirement by submitting a more streamlined Plan update, to the extent practicable. However, if changes have been made corresponding to a particular section of the prior year's Plan, the State DOT should clearly identify what has changed.

No State may obligate its apportioned NEVI Formula Funds for EV charging infrastructure projects for a particular fiscal year until that State's updated Plan has been submitted[6] to the Joint Office and approved by FHWA. Staffing and development of the Plan will be eligible for reimbursement (in accordance with 2 CFR Part 200) using prior year funding or under advance construction. See Section III for additional information about the State EV Infrastructure Deployment Plans.

Because NEVI Formula Program funds are directed to designated AFCs to build out a convenient, affordable, reliable, and equitable public charging network until a State's corridors have been deemed by the Secretary to be "fully built out", States should first prioritize investments along the Interstate Highway System. States should review their designated AFCs and consider designating additional corridors, particularly any undesignated interstates, as part of the upcoming round of Request for Nominations for AFCs.[7]

These programs will support the Justice40[8] Initiative which establishes a goal that at least 40% of the

[5] Paragraph (2) under the Highway Infrastructure Program heading in title VII of division J of BIL, states that "a State shall provide a plan to the Secretary, in such a form and such a manner that the Secretary requires."
[6] The development of the Plans is an eligible expense as a direct cost for use of the NEVI Formula Program funds
[7] For additional information about the sixth round of Request for Nominations for Alternative Fuel Corridors, please see: Alternative Fuel Corridors - Environment - FHWA (dot.gov)
[8] OMB, "Interim Implementation Guidance for the Justice40 Initiative," M-21-28 (July 20, 2021) available at M-21-28 (whitehouse.gov)

benefits of federal investments in climate and clean energy infrastructure are distributed to disadvantaged communities. This does not mean, however, that 40% of all charging infrastructure funded under this program must be located in disadvantaged communities. See Section VI for additional information.

This guidance has been developed by FHWA in coordination with the Joint Office and is intended to provide general guidance to FHWA Division Administrators and State departments of transportation (DOTs) related to implementation of the NEVI Formula Program. The FHWA and Joint Office have worked closely together to implement the NEVI BIL provisions. State DOTs should coordinate closely with their State energy and environmental departments, among others, on the implementation of the NEVI Formula Program and to develop their State EV Infrastructure Deployment Plans. See Section III-B for additional information about this consultation.

I. NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI) FORMULA PROGRAM

The NEVI Formula Program is authorized under Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of the BIL, which was signed into law on November 15, 2021.

The purpose of the NEVI Formula Program is to "provide funding to States to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability."[9] To be effective, the EV charging infrastructure deployed under this program must provide a seamless customer experience for all users through a convenient, affordable, reliable, and equitable national EV charging network.

The State EV Infrastructure Deployment Plans created and updated under the NEVI Formula Program are the building blocks that will facilitate this national EV charging network. This national EV charging network will provide EV users with the confidence that they can travel long distances and expect reliable access to EV charging stations when needed, while also recognizing the unique needs of different regions and communities.

The BIL required FHWA to develop a set of minimum standards and requirements for EV charging infrastructure which can be found here: 23 CFR 680. These regulations are effective as of March 30, 2023 and States must comply with them for the implementation of NEVI Formula Program projects.

All funds associated with the NEVI Formula Program shall be administered as if apportioned under chapter 1 of title 23, United States Code, which encompasses requirements for States to receive Federal-aid funding.

II. FUNDING FEATURES

A. AUTHORIZATION LEVELS

The BIL appropriates a total of $5.0 billion for the NEVI Formula Program over the period of fiscal years 2022 through 2026. Table 1 shows the NEVI Formula Program levels by fiscal year.

	BIPARTISAN INFRASTRUCTURE LAW (BIL)				
Fiscal Year	2022	2023	2024	2025	2026
Advance Appropriation (General Fund)	$1.000 B	$1.000 B	$1.000 B	$1.000 B	$1.000 B

[9] Under the NEVI Formula Program, the term "State" is given the same meaning as in section 101 of title 23, United States Code. Under 23 U.S.C. 101(a)(27), State means any of the 50 States, the District of Columbia, or Puerto Rico.

B. NEVI FORMULA PROGRAM[10]

Type of Budget Authority

- Current and advance appropriations from the General Fund.

Period of Availability

- Available until expended.

Pre-Apportionment Set-Asides

- For FY22 only, the BIL sets aside up to $300 million for the Departments of Transportation and Energy to establish a Joint Office, which among other activities, is tasked with helping to formulate NEVI Formula Program guidance, best practices, and to provide vision, technical, and other assistance to States and localities in the planning and implementation of a national EV charging network, while also supporting additional transportation electrification efforts in the Federal government.
- For each year of FY22-26, after the set-aside listed above, the BIL sets aside 10 percent of EV Formula funding for grants to States and localities that require additional assistance to strategically deploy EV charging infrastructure, as determined by the Secretary of Transportation.
- The BIL allows FHWA to use up to 1.5 percent of annual NEVI Formula Program funds for FHWA's operations and administration.

Distribution of Funds

- FHWA will distribute NEVI Formula Program funding (net of the pre-apportionment set-asides described above) among States, including the District of Columbia and Puerto Rico on a formula basis. Under the formula, each State receives a share of program funding equal to the State's share of the combined amount that FHWA distributes in—
  - Federal-aid highway apportionments; and
  - Puerto Rico Highway Program funding.
- This funding is not subject to any limitation on obligation.

C. FEDERAL SHARE AND STATE/LOCAL MATCH REQUIREMENTS

The Federal cost-share for NEVI Formula Program projects is 80 percent. Private and State funds can be used to provide the remaining cost-share. NEVI Formula Program funds can be spread further by combining them with other eligible USDOT funding for EV charging infrastructure projects, such as the Congestion Mitigation and Air Quality Improvement (CMAQ) Program, if the eligibility requirements are met for both programs and the total Federal cost-share does not exceed 80 percent. Generally, projects funded by the NEVI Formula Program can use in-kind match in a similar manner as any project funded under 23 U.S.C.

See also "DOT Funding and Financing Programs with EV eligibilities" table in Federal Funding is Available for Electric Vehicle Charging Infrastructure On the National Highway System for more information.

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[10] See FHWA NEVI Formula Program distribution table at: Bipartisan Infrastructure Law - 5-year National Electric Vehicle Infrastructure Funding by State | Federal Highway Administration (dot.gov)

D. SPECIFIC FUNDING REQUIREMENTS

Statutory Requirements Associated with Alternative Fuel Corridors

- "Any EV charging infrastructure acquired or installed with NEVI Formula Program funds shall be located along a designated Alternative Fuel Corridor."[11]
  - States should prioritize the use of NEVI Formula Program funding for EV charging infrastructure along the Interstate Highway System.
  - As infrastructure must be located along designated corridors, States should review designated AFCs and consider adjusting nominations for corridors, prioritizing the Interstate Highway System first.
  - States may also use NEVI Formula Program funding elsewhere on designated corridors along the National Highway System, as necessary, to ensure a convenient, affordable, reliable, and equitable national network.

- "If a State determines, and FHWA certifies[12], that the designated AFCs for electric vehicles in the State are fully built out, then the State may use funds provided under the NEVI Formula Program for EV charging infrastructure on any public road or in other publicly accessible locations that are open to the general public or to authorized commercial motor vehicle operators from more than one company."[11]
  - As of the publication of this guidance, no State has yet been certified as fully built out.
  - See Section V-C for more information.

- "All funding distributed under the NEVI Formula Program shall be for projects directly related to the charging of a vehicle and only to support EV charging infrastructure that is open to the general public or to authorized commercial motor vehicle operators from more than one company."[11]
  - See Section IV-A for more information.

Contracting with Private Entities

- Funds made available under the NEVI Formula Program may be used to contract with a private entity for acquisition, installation, and operation and maintenance of publicly accessible EV charging infrastructure and the private entity may pay the non-Federal share of the cost of a project funded. States should demonstrate a contracting strategy that makes maximal efficient use of Federal funding while meeting the requirements of 23 U.S.C.
  - FHWA anticipates that in most instances States will elect to contract with private entities for the installation, operation, and maintenance of EV charging infrastructure.
  - Subject to contract terms, ownership of EV charging infrastructure does not need to revert to the State when a State elects to contract with a private entity to install, operate, or maintain EV charging infrastructure.

Transferability to Other Highway Formula Programs

- States are prohibited from transferring NEVI Formula Program funding to other highway formula programs. [13]

[11] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL
[12] As delegated by the Secretary of Transportation
[13] Paragraph (2) under the "Highway Infrastructure Program" heading in title VIII of division J of BIL.

III. STATE EV INFRASTRUCTURE DEPLOYMENT PLANS

A. PLAN REQUIREMENTS AND DEADLINES

Plan Process

- Under BIL, each State was required[14] to develop a Plan in accordance with the NEVI Program Guidance released on February 10, 2022, and to submit their first Plan not later than August 1, 2022 to the Joint Office.[15]
- This updated NEVI guidance was developed to assist States in updating their Plans. Updated Plans will, once again, be submitted to the Joint Office. States are highly encouraged to use the template found at DriveElectric.gov. Updated Plans will be due on August 1 of the prior fiscal year.
- States should work directly with the Joint Office during Plan updates and to remedy any issues with their Plans before submitting final updated Plans. Technical assistance provided by the Joint Office in coordination with FHWA is intended to help ensure Plans will comply with all Program Guidance and requirements.
- FHWA will work with the Joint Office to review Plans and FHWA will notify each State if their fiscal year Plan is approved for implementation and obligation not later than September 30 of the prior fiscal year.
- No NEVI Formula Program funds shall be obligated by a State until FHWA has approved[16] that State's Plan; however, the development and/or update of the Plan, including reasonable and necessary staffing, is an eligible[17] reimbursable expense as a direct cost for use of the NEVI Formula Program funds. These costs can be funded out of prior year funds or under advance construction. See Section VI for further guidance on technical assistance offered to assist States in Plan preparation.
- All approved Plans should be publicly accessible via the State DOT's website and compliant with Section 508 of the Rehabilitation Act.
- If a State fails to submit a Plan consistent with this guidance[18] for a particular fiscal year by August 1, of the prior fiscal year, or if FHWA determines that a State has failed to take action to carry out its Plan, FHWA may withhold or withdraw, as applicable, funds made available under the Program for the fiscal year from the State and award such funds on a competitive basis[19] to local jurisdictions within the State for use on projects that meet the eligibility requirements outlined in this guidance. FHWA will notify and consult with a State at least 90 days before making such a determination and identify actions the State can take to remedy deficiencies.
- FHWA will provide notice to a State on the intent to withhold or withdraw funds not less than 60 days before withholding or withdrawing any funds, during which time the States shall have an opportunity to appeal directly to the Secretary. If funds cannot be fully awarded to local jurisdictions within the State, the funds will be distributed among other States (except States for which funds for the FY have been withheld or withdrawn) in the same manner as funds distributed for that FY except that the ratio shall be adjusted to exclude States for which funds for that FY have been withheld or withdrawn.

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[14] Paragraph (2) under the "Highway Infrastructure Program" heading in title VIII of division J of BIL states that "a State shall provide a plan to the Secretary, in such form and such manner that the Secretary requires"

[15] Plan should be submitted in both Word and pdf formats and should be compliant with Section 508 of the Rehabilitation Act.

[16] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL states that "a State shall provide a plan to the Secretary, in such form and such manner that the Secretary requires"

[17] Under the cost principles at 2 CFR part 200.

[18] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL states that "a State shall provide a plan to the Secretary, in such form and such manner that the Secretary requires".

[19] Further information regarding a competitive process would be provided in a Notice of Funding Opportunity.

B. PLAN FORMAT

A recommended template for the updated Plans can be found at DriveElectric.gov and FHWA's NEVI Website.

Plans shall[20] include all the necessary information required for FHWA to determine that the Plan satisfies the NEVI Formula Program requirements found in Paragraph (2) under the "Highway Infrastructure Program" heading in title VIII of division J of the BIL. Updated Plans may meet this requirement by supplementing information provided through previously approved Plans. Plans should be developed through consideration of this guidance and specifically Section IV. All Plan exhibits and attachments should clearly identify what area of the Plan the document supports.

While each State DOT must annually submit a Plan to the Joint Office describing how that State DOT intends to use funds distributed under the NEVI Formula Program, FHWA recognizes that certain sections of the Plan may not change from year to year. As such, beginning with the FY 2024 Plan, State DOTs are permitted to annually submit an updated Plan that incorporates and identifies relevant additions and modifications made since the prior year's Plan approval. States are encouraged to satisfy the annual Plan submission requirement by submitting a more streamlined Plan update, to the extent practicable. However, if changes have been made corresponding to a particular section of the prior year's Plan, the State DOT should clearly identify what has changed.

Introduction
This section of the Plan should introduce the Plan development process to include a discussion of topics such as the Plan's study area and the dates of the analysis and adoption.

This section of the Plan should also address the following, as applicable:

- If only certain sections of the Plan are updated from the prior fiscal year, the introduction should identify sections with modifications, along with a succinct summary of updates.

State Agency Coordination
The Plan should describe how the State DOT has coordinated with the State's energy and/or environment department in the development and approval of the Plan. The Plan should address any steps the State's DOT has taken or plans to take to maximize opportunities to utilize U.S.-made EV supply equipment.

This section of the Plan should also address the following, as applicable:

- States should identify and discuss any memoranda of understanding (MOUs) or other agreement entered into with another State agency to help administer the NEVI Program.
- States should identify and discuss relevant interagency working groups that have been established in support of NEVI.

Public Engagement
This section should discuss the statewide public engagement on EV charging infrastructure. This section should discuss the involvement of particular stakeholder groups in the Plan's development to include the general public, governmental entities, federally recognized Tribes, labor organizations, private sector/industry representatives, utilities, representatives of the transportation and freight logistics industries, state public transportation agencies, and urban, rural, and underserved or disadvantaged

[20] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL states "a State shall provide a plan to the Secretary, in such form and such manner that the Secretary requires".

communities. States are strongly encouraged to engage stakeholders and communities to ensure the deployment, installation, operation, and use of EV charging infrastructure achieves equitable and fair distribution.

This section of the Plan should also address the following:

- Per 23 CFR 680.112 (d) States must include a community engagement outcomes report and include a description of the community engagement activities conducted as part of the development and approval of their most recently-approved Plan, including engagement with disadvantaged communities.
- States should also include specific information regarding engagement with Tribal communities.
- States should also identify and discuss outcomes from engaging with utilities.
- States should discuss how they will engage communities or ensure that third-party entities contracted to install EV charging infrastructure will engage communities, where EV charging infrastructure will be sited.
- See Questions and Answers for best practices surrounding public engagement for the development/update of the Plan.

Plan Vision and Goals

The Plan should describe how it supports a convenient, affordable, reliable, and equitable statewide and national EV network. The Plan should describe how the State intends to use the funds distributed under the NEVI Formula Program to carry out the Program in each fiscal year in which funds are made available. The Plans should be updated on an annual basis to reflect the State funding plans for that fiscal year. Each State should provide 5-year goals for the duration of the program that include at least one outcome- oriented goal with a quantitative target. This section of the Plan should also identify the overall vision and goals specific to the geography, demographics, and network of the State as consistent with the NEVI Formula Program.

This section of the Plan should also address the following, as applicable: States should indicate changes in strategic direction, goals, or milestones outlined in Plans from prior fiscal years. States are also encouraged to discuss their strategy for utilizing NEVI funds once EV alternative fuel corridors are certified as "fully built out".

Contracting

FHWA anticipates that in most instances States will contract with private entities for the installation, operation, and/or maintenance of EV charging infrastructure funded in whole or in part through the NEVI Formula Program. The Plan should detail whether the State intends to contract with third-party entities, and if so, how the State will ensure that those entities deliver EV charging infrastructure in a manner that leads to efficient and effective deployment against Plan goals. This section should also include a strategy for achieving efficient delivery and deployment and ongoing operation and maintenance. A contracting strategy that makes maximal efficient use of Federal funding will be an important consideration for approval of State Plans. This section should also discuss how States will ensure that third-party entities contracted to install, operate, or maintain EV charging infrastructure will engage communities where EV charging infrastructure will be installed. Plans should also include a discussion of how the State will or did include opportunities for small businesses as provided at 23 U.S.C. 304.

This section of the Plan should also address the following:

- States should include the number, status, and timelines for existing and upcoming State Request for Proposals (RFPs), Request for Qualifications (RFQs), or contract awards.
- States should identify contracts awarded and include the type of contract mechanism used (public-private partnership design-build-operate-maintain, design-build, indefinite

delivery/indefinite quantity, or others). States should identify RFP/contract provisions utilized/to be utilized to promote competitive bids and cost containment.
- States should identify if contracts used scoring methods for equity and Justice40 topics.
- States should include information on how they are ensuring compliance with 23 U.S.C., 23 CFR 680, and all applicable requirements under 2 CFR 200.

Civil Rights
This section of the Plan should discuss how the State planning and implementation will ensure compliance with State and Federal civil rights laws, including title VI of the Civil Rights Act and accompanying USDOT regulations, the American with Disabilities Act, and Section 504 of the Rehabilitation Act.

Title VI of the Civil Rights Act of 1964 mandates that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Key activities to effectively address title VI concerns may include: conducting meaningful public participation and engagement throughout the project planning and development process, and evaluating the impacts and benefits of programs in light of the demographics of affected communities, to avoid disparate impacts and provide equitable access to benefits.

States must ensure compliance with State and Federal civil rights laws pertaining to individuals with disabilities, e.g., the American with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act (Section 504) including applicable accessibility standards adopted by DOT in its regulations at 49 CFR Parts 27 and 37 and by DOJ in its regulations at 28 CFR Parts 35. The existing ADA standards address many aspects of accessibility for buildings and sites applicable to EV charging stations but do not specifically address EV charging stations. To address this gap, in July 2022, the U.S. Access Board issued *Design Recommendations for Accessible Electric Vehicle Charging Stations*[21]. Charging stations should be designed and constructed according to the Access Board's Recommendations to demonstrate ADA compliance and optimize usability for persons with disabilities.

This section of the Plan should address the following, as applicable: States should indicate changes in civil rights compliance considerations outlined in Plans from prior fiscal years, including changes to address compliance with minimum standards for EV charging infrastructure under 23 CFR 680.

Existing and Future Conditions Analysis
This section should identify the existing conditions within the study area at the time of the Plan creation. It should include the best available information regarding the State's geography and terrain as it pertains to its EV charger deployment vision and challenges, current and future temperature and precipitation patterns, industry/market conditions (to include an overview of the existing state of EV charging, current and projected EV ownership, the location of existing EV charging, and a discussion of the roles of DC Fast Charging stations), public transportation needs, freight and other supply chain needs, grid capacity necessary to support additional EV charging infrastructure, electric utilities that service the study area, land use patterns, travel patterns, EV charging infrastructure, information dissemination about the EV charging station availability. This section should also include a discussion on known risks and challenges for EV deployment. For further guidance on the technical assistance offered for analysis, see Section VI in this document.

This section of the Plan should also address the following:

[21] EV Charging Stations Guidance (access-board.gov)

- States should provide information on AFC designations, including information from the most recent round of nominations, such as descriptive maps and tables.
- States should clearly identify whether each of the existing stations are or will meet all of the relevant minimum requirements for EV charging infrastructure identified in 23 CFR 680 (these include 23 CFR 680.104, 23 CFR 106(b), 23 CFR 680.106(c), 23 CFR 680.106(d), 23 CFR 680.106(e), 23 CFR 680.106(f), 23 CFR 680.106(g), 23 CFR 680.106(h), 23 CFR 680.106(i), 23 CFR 680.106(k), 23 CFR 680.106(l), 23 CFR 680.108, 23 CFR 680.110, 23 CFR 680.114, and 23 CFR 680.116).
- The State should also indicate their intent to count each existing station towards a determination of fully built out status (see Section V-C).

EV Charging Infrastructure Deployment

This section should discuss EV charging infrastructure installations and associated policies to meet the vision and goals of the Plan. While the Plan does not need to include a list of exact EV charging infrastructure locations, it should provide as much detail as practicable on the location of the planned infrastructure (when known, to include the street address) and it should include an overall strategy for installations along designated corridors that prioritizes build out along the Interstate Highway System. Components of this section should include information about planned new EV charging infrastructure deployment location types, as well as existing EV charging infrastructure locations planned for upgrade or expansion. Plans should also identify which utility's territory the planned installations or upgrades are located in.

The section should also include a map, preferably also available online, and corresponding table of the corridors that are planned for EV charging infrastructure installation or upgrade as well as the approximate timing and priority for deploying EV chargers along each of these corridors to meet fully built out determination. The Joint Office can provide assistance to States to help develop these maps. Specifically, maps should include:

1. Approximate locations of planned EV charging infrastructure;
2. Approximate locations of existing EV charging infrastructure along those corridors, specifically noting existing EV charging infrastructure targeted for upgrade or improvement to meet the requirements of the NEVI programs.

This section should also identify the source of non-federal funding for EV charging infrastructure deployments. It can include both immediate and longer-term actions but should identify actions to build out AFCs, particularly those along the Interstate Highway System. It should also include actions that will be taken after the build out of the State's AFCs has been accomplished, including ensuring that any portions of the Interstate Highway System not part of the designated AFCs for electric vehicles will be fully built out. Funding topics covered should include funding amounts and sources (including the NEVI Formula Program at a minimum), use of public-private partnerships, and information about EV charging infrastructure ownership.

The overarching goal of the NEVI Formula Program is a seamless national EV charging network, so the Plan should also address how a State will coordinate and connect regionally with other States and adjoining networks specifically in instances where an existing AFC terminates at the state border.

This section of the Plan should also address the following:

- In order to describe how a State plans to use their NEVI funding, this section should include details about the specific stations under construction and future stations. Information about stations under construction should identify known characteristics of those stations under

construction at the time of Plan approval. Information provided about future stations should illustrate characteristics about those stations that are anticipated to go under construction after Plan approval. Characteristics describing each station should illustrate the general anticipated location of the charging stations, the anticipated number of ports at each charging station, and the anticipated year that each station will be operational.

- States should also indicate how many additional stations and ports (those stations that are not operational at the time of plan approval) the State estimates are planned to reach fully built out status, and the estimated timeframe when the State anticipates reaching fully built out status (see Section V-C)

Implementation

Implementation considerations should include EV charging operations and maintenance programs, and EV charging infrastructure data collection and sharing. The Plan should identify installation, maintenance, and ownership responsibilities for the charging infrastructure and take into account how those roles will ensure the long-term sustainability of the station. The Plan should also demonstrate how the implementation will promote strong labor, safety, training, and installation standards as well as opportunities for the participation of small businesses, including minority-owned and women-owned small businesses. The Plan should also address emergency and evacuation needs, snow removal and seasonal needs, and ways for EV charging to support those needs. The Plan should also describe strategies for resilience for operation during emergencies and extreme weather.

This section of the Plan should also address the following, as applicable: States should indicate changes in implementation considerations outlined in Plans from prior fiscal years, including changes to address compliance with minimum standards for EV charging infrastructure under 23 CFR 680.

Equity Considerations

The Plan should be developed through engagement with rural, underserved, and disadvantaged communities and stakeholders, including relevant suppliers and contractors, and describe how the Plan reflects that engagement.

Many of the burdens from the transportation and energy systems have been historically and disproportionately borne by disadvantaged communities. Unequal distribution of benefits from the transportation and energy systems has prevented disadvantaged communities and minority-owned and women-owned businesses from realizing equitable benefits from these systems, while other historic barriers to transportation have made facilities inaccessible to individuals with disabilities. For these reasons, the NEVI Formula Program will emphasize equity considerations at its inception to avoid exacerbating existing disparities in the transportation system and to develop a convenient, affordable, reliable, and equitable charging experience for all users.

NEVI Formula Program investments in EV charging infrastructure have the potential to:

- Improve clean transportation access through the location of chargers;
- Decrease the transportation energy cost burden by enabling reliable access to affordable charging;
- Reduce environmental exposures to transportation emissions;
- Increase parity in clean energy technology access and adoption;
- Increase access to low-cost capital to increase equitable adoption of more costly, clean energy technologies like EVs and EV chargers;
- Increase the clean energy job pipeline, job training, and enterprise creation in disadvantaged communities;
- Increase energy resilience;

- Provide charging infrastructure for transit and shared-ride vehicles;
- Increase equitable access to the electric grid; and
- Minimize gentrification-induced displacement result from new EV charging infrastructure.

Plans should be developed through engagement with rural, underserved, and disadvantaged communities to ensure that diverse views are heard and considered throughout the planning process, and to ensure that the deployment, installation, operation, and use of EV charging infrastructure achieves equitable and fair distribution of benefits and services. Plans should reflect this engagement.

Plans should explain how the State will deliver projects under the NEVI Formula Program that, consistent with E.O. 14008 and the Interim Justice40 Guidance[22] issued by the White House and USDOT, target at least 40 percent of the benefits towards disadvantaged communities. Consistent with the Justice40 Interim Guidance, USDOT and USDOE have developed an EV Charging Justice40 Mapping Tool[23] that States are encouraged to utilize during the development of their Plans.

This section of the Plan should also address the following:

- States should indicate changes in equity considerations outlined in Plans from prior fiscal years, including changes to address compliance with minimum standards for EV charging infrastructure under 23 CFR 680.
- States should include an updated discussion related to how the State is adhering to the goal outlined in the Justice40 Initiative as a part of Executive Order 14008 in the use of the NEVI Formula Program. See Questions and Answers for best practices surrounding consistency with E.O. 14008 and the Interim Justice40 Guidance[24]

Labor and Workforce Considerations

This section of the Plan should consider the training, experience level, and diversity of the workforce that is installing and maintaining EV charging infrastructure which will create new opportunities for workers in the electrical and other construction trades, while also creating work for the skilled incumbent workforce around the country. To ensure safety and high- quality delivery, each Plan should consider the training and experience level of the workforce that is installing and maintaining EV charging infrastructure. This includes a discussion in the Plan describing how a State shall ensure that the workforce is trained in high quality training programs like the Electric Vehicle Infrastructure Training Program (EVITP) or otherwise comply with the qualified technician requirements in 23 CFR 680.106(j).

To help meet the workforce needs of the NEVI Formula Program, each Plan should also consider steps that will grow and diversify their local workforce. This includes utilizing innovative contracting approaches authorized by law to maximize job creation and economic benefits for local communities. This also includes taking proactive steps to encourage broader participation among women, Black, Latino, Asian American Pacific, Indigenous, and other underrepresented groups in the development of those workforces. States should also consider how they can expand registered apprenticeships and invest in entry-level training programs like quality pre-apprenticeship programs. Consistent with Justice40[25], States should also consider how disadvantaged communities will benefit from this added job growth. Plans

[22] Section 219 of Executive Order 14008, Tackling the Climate Crisis at Home and Abroad and OMB, "Interim Implementation Guidance for the Justice40 Initiative," M-21-28 (July 20, 2021) available at M-21-28 (whitehouse.gov)
[23] Electric Vehicle Charging Justice40 Map (arcgis.com)
[24] Section 219 of Executive Order 14008, Tackling the Climate Crisis at Home and Abroad and OMB, "Interim Implementation Guidance for the Justice40 Initiative," M-21-28 (July 20, 2021) available at M-21-28 (whitehouse.gov)
[25] M-21-28 (whitehouse.gov)

should describe how the qualified technician requirements under 23 CFR 680.106(j) will be reflected in a State's contracting and procurement strategies.

Strong labor, training, and installation standards will help produce a nationwide network of 500,000 EV chargers by 2030 that provides a convenient, reliable, affordable, and equitable charging experience for all users. See 23 CFR 680.106(j) for applicable minimum requirements for qualified technicians.[26] See also Questions and Answers for best practices surrounding labor and equitable workforce considerations.

This section of the Plan should address the following, as applicable: States should indicate changes in labor and equitable workforce considerations outlined in Plans from prior fiscal years. At a minimum, this should include a discussion of how the State will ensure that the workforce installing, maintaining, and operating chargers has appropriate licenses, certifications and trainings in compliance with 23 CFR 680.106(j). Plans should also discuss how these qualified workforce requirements are enforced through the State's NEVI contracting and procurement strategies.

Physical Security & Cybersecurity

This section of the Plan should discuss how the State will address physical security and cybersecurity in accordance with 23 CFR 680.106(h). Physical security strategies may include topics such as lighting; siting and station design to ensure visibility from onlookers; driver and vehicle safety; video surveillance; emergency call boxes; fire prevention; charger locks; and strategies to prevent tampering and illegal surveillance of payment devices. Cybersecurity strategies may include the following topics: user identity and access management; cryptographic agility and support of multiple Public Key Infrastructures (PKIs;); monitoring and detection; incident prevention and handling; configuration, vulnerability, and software update management; third-party cybersecurity testing and certification; and continuity of operation when communication between the charger and charging network is disrupted. The Plan should identify considerations when software updates are made to ensure the station or vehicle is not compromised by malicious code, or that a vehicle infects other stations during future charges.

This section of the Plan should address the following, as applicable: States should indicate changes in how physical and cybersecurity were addressed in Plans from prior fiscal years, including changes to address compliance with minimum standards for EV charging infrastructure under 23 CFR 680.

Program Evaluation

This section of the Plan should describe the State's schedule and plan for evaluating performance in achieving its 5-year goals and vision. Evaluation of the effectiveness of this plan should include monitoring performance metrics, such as EV charging infrastructure usage, EV charging infrastructure reliability, customer satisfaction, equitable distribution and access to EV charging infrastructure within the State, greenhouse gas emissions, or other metrics that support creating a national network. This should include an assessment of a State's efficient use of Federal funding, measured by the amount of charging leveraged per Federal dollar.

Other evaluation indicators a State might consider:

- Program benefits, such as job creation, EV adoption, improved access to EV charging infrastructure, and benefits to underserved communities.
- Program success in creating charging infrastructure that is convenient, affordable, reliable, and equitable.
- Program progress, in terms of the quantity of funds distributed, number of funding recipients, the time required to construct new charging stations, and the number of charging stations constructed.

[26] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL.

This section of the Plan should also address the following, as applicable: States should provide a summary and assessment of the performance of EV chargers based on data submitted to the Joint Office in compliance with 23 CFR 680.112 (see Section V-B for more information).

Discretionary Exceptions

As part of the development and approval of State Plans, and in very limited circumstances, a State may submit a request for discretionary exceptions from the requirement that charging infrastructure is installed every 50 miles along that State's portion of the AFC within 1 travel mile of the AFC, as provided in the AFCs request for nominations criteria. Requests will not be considered or accepted for exceptions from other Program requirements. Requests will also not be considered or accepted for exceptions from regulatory requirements under 23 CFR 680. For example, exception requests will not be considered for the minimum number of charging ports (23 CFR 680.106(b)) or minimum power level (23 CFR 680.106(d)) requirements.

All approved exceptions will be supported by a reasoned justification from the State that demonstrates the exception will help support a convenient, affordable, reliable, and equitable national EV charging network. Exception requests must be clearly identified and justified in State Plans. Additional coordination with FHWA and the Joint Office may be necessary before any exception is approved. Exceptions will be approved on a case-by-case basis and will be adjudicated prior to approval of a Plan. Exception requests to the 50-mile criteria, even if previously considered, must be submitted on an annual basis until a State has been deemed fully built out. Granted exceptions to the 1-mile criteria are permanent and should be noted in the Plan. Once deemed fully built out, all granted exceptions will become permanent.

Discretionary exceptions should only be requested to ensure consistency across the national network and will be granted sparingly. During first year of Plan reviews, a total of 29 discretionary exceptions were approved. Examples that may support an exception include charging in disadvantaged communities, rural areas, or where grid capabilities are limited. See DriveElectric.gov or FHWA's NEVI resources webpage for a template to request discretionary exceptions.

This section of the Plan should address the following, as applicable: States should identify any new exception requests to the 1-mile criteria being submitted as well as all requests, new or recurring, to the 50-mile criteria. States should also note any previously granted exception requests from prior years.

IV. PROJECT ELIGIBILTY PROVISIONS

A. PROJECT ELIGIBILITY

NEVI Formula Program funds are restricted to projects that are directly related to EV charging infrastructure that is open to the public[27] or to authorized commercial motor vehicle (see 23 CFR 658.5) operators from more than one company.[28]

[27] Publicly accessible means the equipment is available to the public without restriction. A station that is not maintained or restricts access only to customers, tenants, employees, or other consumers is not publicly accessible. Please note that while hydrogen, propane, and natural gas fueling infrastructure are not eligible under the NEVI Formula Program, these additional fuels are eligible under the Corridor Charging Grants and the Community Charging Grants (23 U.S.C. § 151).

[28] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL.

See also Questions and Answers for detailed responses to questions about project eligibility. In general, NEVI Formula Program funds may be used for:

Acquisition and Installation
The acquisition and installation of EV charging infrastructure to serve as a catalyst for the deployment of such infrastructure and to connect it to a network to facilitate data collection, access, and reliability.

- The NEVI Formula Program funds can be utilized to install new chargers, to upgrade existing chargers, or to add additional charging infrastructure along designated AFCs.
- The installation of EV charging equipment is typically considered to be a construction improvement, not an operational improvement.
- Eligible acquisition and installation costs include costs directly related to light-duty, medium-duty, and heavy-duty EV charging infrastructure such as:
    - New charging stations
    - Upgrades to existing charging stations
    - On-site distributed energy resources (DERs). (Renewable energy generation and storage, such as on-site solar panels, would be considered directly related, and therefore would be eligible.)
    - On-site electric service equipment
    - Permanently attached connectors and/or connector adapters
    - Traffic control devices and signage

Operating Assistance
Operating assistance for costs allocable to operating and maintaining EV charging infrastructure acquired or installed under this program, for a period not to exceed five years.

- Operating assistance under the NEVI Formula Program is available only for those charging stations for which NEVI Formula Program funds have first been used for acquisition or installation, including upgrades.
- It is anticipated that such operating assistance may be needed at some locations with lower utilization but that are key to having a contiguous, national network and to address equity issues in both rural and urban areas where current levels of EV ownership make such lower utilization more likely and potentially increases operating cost burden on EV charging infrastructure owners and network operators. Other locations will not need this assistance for a commercial entity to run and operate. States should focus NEVI Formula Program funding for operating assistance to only those locations that most require operating assistance that will ensure a contiguous, national network or to address equity issues in rural and urban areas where current levels of EV ownership make lower utilization more likely. Funding decisions should be reviewed as the network matures.
- Where NEVI Formula Program funds are used for operating assistance, this operating assistance shall not exceed five years.

Development Phase Activities
Development phase activities relating to the acquisition of stations and equipment as well as installation of EV charging infrastructure.

- Development phase activities include planning (including the development of the Plan), feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities.
- While no NEVI Formula Program funds shall be obligated by a State until FHWA has approved that State's Plan for each fiscal year, the development of the Plan, including reasonable and necessary staffing, is an eligible reimbursable expense as a direct cost for use of the NEVI Formula Program funds.
- These costs can be funded with prior year NEVI Formula Program funding, or State DOTs can

create an agreement with FHWA for Advance Construction (AC) prior to getting the NEVI obligation approved for the cost of the Plan and then request conversion of the AC project to obligate NEVI Formula Program funds and seek reimbursement for eligible costs. Any costs incurred by a State DOT prior to the AC authorization would not be eligible for reimbursement. State DOTs should be aware that Plans progressed under non-NEVI funds would not be eligible for later conversion to NEVI Formula Program funds.

- As with other activities funded under title 23, U.S.C., funds can be used for drafting environmental documents and studies, preliminary engineering, and related work. NEVI funds cannot be used for final design and construction for site installations until the NEPA review is completed.
- Costs for planning and permitting of on-site distributed energy resource (DER) equipment (e.g., solar arrays, stationary batteries) that are directly related to the charging of a vehicle are eligible for reimbursement. These costs should only be considered if they will lead to lower costs to consumers, greater EV charging station reliability, and if they do not substantially increase the timeline for completing an EV charging station project. States should consult with Public Utility Commissions and electric utilities to understand regulations and policies restricting the use of DERs at EV charging stations, as well as incentive programs. States are encouraged to consider the magnitude of these costs and explore whether costs could be covered by electric utilities or other programs other than the NEVI Formula Program. The Joint Office of Energy and Transportation is available help States better understand and assess the inclusion of DERs at EV charging station locations.
- This includes community outreach and participation, including with rural, Tribal, and disadvantaged communities, to facilitate equitable and accessible deployment of EV charging infrastructure.

Traffic Control Devices and On-Premise Signage

The acquisition or installation of traffic control devices located in the right-of-way to provide directional information to EV charging infrastructure acquired, installed, or operated under the NEVI Formula Program. Off-premise signs to provide information about EV charging infrastructure acquired, installed, or operated under the NEVI Formula Program.

- Traffic control devices shall be consistent with the Manual on Uniform Traffic Control Devices (MUTCD) under 23 CFR 655 and on-site signage shall be consistent with the Outdoor Advertising Control regulations under 23 CFR 750.
- This includes accessible signage that directs drivers to an EV charging station location and signage that provides information at the EV charging station location.

Data Sharing

Data sharing about EV charging infrastructure to ensure the long-term success of investments.

- This includes, to the extent practicable, costs related to the specific data sharing requirements of this program as well as costs of data sharing on all chargers and charging activities on the EV network.
- NEVI Formula Program funds can be used for data sharing activities including those activities required under 23 CFR 680 to ensure the long-term success of program investments.
- See also Section V-B.

Mapping and Analysis Activities

Mapping and analysis activities to evaluate in an area in the United States designated by the eligible entity,

- the locations of current and future EV owners
    - This includes identifying disadvantaged communities with the greatest disparity of EV investments and estimating the benefits to disadvantaged communities in alignment with

Justice40.

- to forecast commuting and travel patterns of EVs and the quantity of electricity required to serve EV charging stations
    - This includes modelling both the existing and projected future travel patterns of EVs and the corresponding electric service readiness needed to address these travel patterns.
    - This also includes forecasting public transportation electrification needs.
- to estimate the concentrations of EV charging stations to meet the needs of current and future EV drivers
    - NEVI Formula Program funding can be used to analyze the locations of potential charging station as well as the appropriate power level and quantity of charging stations.
- to estimate future needs for EV charging stations to support the adoption and use of EVs in shared mobility solutions, such as micro-transit and transportation network companies
    - NEVI Formula Program funding can be used for the portion of shared mobility studies that address the role of EV integration into shared mobility solutions.
- to develop an analytical model to allow a city, county, or other political subdivision of a State or a local agency to compare and evaluate different adoption and use scenarios for EVs and EV charging stations.
    - Modeling scenarios can include Federal land management agencies, public transportation agencies, and economic development authorities.
    - State DOTs may wish to review Section VI on Technical Assistance in this document to better understand whether they should undertake these mapping and analysis functions themselves or obtain assistance from the Joint Office.

Program Administration
Administrative costs are an eligible expense under the NEVI Formula Program; however, direct and indirect cost allocation for reimbursement must follow 2 CFR part 200. General program administration to include staffing costs without the use of an approved indirect cost rate are not eligible costs for reimbursement under the NEVI Formula Program. As is required with all uses of NEVI Formula Program costs, use of funds for program administration are restricted to projects that are directly related to EV charging infrastructure that is open to the public[29] or to authorized commercial motor vehicle operators from more than one company.[30]

Workforce Development
Workforce development activities for NEVI Formula Program projects are eligible so long as they are directly related to the charging of an electric vehicle. These costs must be allowable, allocable, and reasonable in accordance with 2 CFR part 200.

B. USE OF PROGRAM INCOME

For purposes of program income or revenue earned from the operation of an EV charging station, the State DOT shall ensure that all revenues received from operation of the EV charging facility are used for only those items identified in 23 CFR 680.106(m). Per 2 CFR 200.307, any income or revenue received during the period of performance (POP) shall be deducted from the total allowable costs of Federal funds used on the project to determine the net allowable costs, at the Federal share applied.

Any net income from revenue from the sale, use, lease, or lease renewal of real property acquired shall be

[29] Publicly accessible means the equipment is available to the public without restriction. A station that is not maintained or restricts access only to customers, tenants, employees, or other consumers is not publicly accessible.
[30] Paragraph (2) under the Highway Infrastructure Program heading in title VIII of division J of BIL.

used for title 23, United States Code, eligible projects.

Refer to 23 CFR 680.106(m) for regulations on the use of program income.

C. CONSIDERATIONS FOR THE STRATEGIC DEPLOYMENT OF EV CHARGING INFRASTRUCTURE BY STATES

This program guidance is specifically intended to assist States in developing their Plans for the strategic deployment of EV charging infrastructure with consideration given to nine specific areas as required by the BIL. Guidance for each of these specific considerations is provided below and organized under each applicable excerpt from the BIL.

States should develop their Plans under the NEVI Formula Program consistent with these considerations and with the overarching goal for construction, installation, or upgrade of EV charging infrastructure to be completed not later than six months from procurement. Any State seeking a discretionary exception should document those exceptions in the Plan (see Section III-B and "discretionary exception" section of the State Plan template).

(1) the distance between publicly available EV charging infrastructure

- EV charging infrastructure should be conveniently and safely located as close to Interstate Highway System and highway corridors as possible and in general no greater than 1 mile from interchange exits or highway intersections along designated corridors.
    - The 1 mile should be measured as the shortest driving distance from the Interstate Highway System exit or highway intersection to the proposed station at the time of the proposal. Stations on public lands in close proximity to the corridor (including Federal lands) may be prime siting locations and should be considered in a Plan.
    - Exceptions from the no greater than 1 mile from the Interstate Highway System or highway requirement may be made where there is no electrical service or business activity within 1 mile of the interchange exit or highway. States should work with the Joint Office during the development of their Plan to identify and attempt to resolve any exception requests. That exception process is explained in Section III-B.
- New EV charging infrastructure locations should be spaced a maximum distance of 50 miles apart along designated corridors (including planned stations and existing stations, with both conforming to 23 CFR 680), unless a discretionary exception has been granted.
    - In initial planning and during the development of their Plans, States should also consider existing stations that substantially meet the minimum standards and requirements to be published in their spacing plans and work to upgrade and expand the capacity of these stations.
    - 50 miles should be measured as the distance between EV charging stations that meet "fully built out" requirements while traveling along AFCs in any logical direction

(2) connections to the electric grid, including electric distribution upgrades; vehicle-to-grid integration, including smart charge management or other protocols that can minimize impacts to the grid; alignment with electric distribution interconnection processes, and plans for the use of renewable energy sources to power charging and energy storage

- EV charging infrastructure should provide power for EV charging regardless of time of day or time of year in a manner that supports a robust and reliable network. Specifically, stations should be designed to:
    - Achieve a high-level of reliability (>97 percent required for each port as per 23 CFR 680.116(b));
    - Mitigate adverse impacts to the electric grid;

        - Maintain cost of charging at a price that is reasonable (for example, comparable to competitive market);
        - Minimize demand charges or other fixed utility fees; and
        - Provide high speed charging for travelers on the Interstate Highway System and AFCs.
    - EV charging infrastructure design should include consideration of the following:
        - Equipment that connects EV charging stations to the electric grid must be directly related to the charging of a vehicle.
        - Accessibility.
        - Fire protection and other traffic safety features.
        - The inclusion of distributed renewable energy resources (e.g. solar arrays, energy storage) and electric distribution and switching equipment where practicable.
        - The use of station-level load management or smart charge management in a transparent manner that can encourage grid stability and reduce costs to EV charging station users.
        - Plan for futureproofing that allows expansion for growing demand and higher power levels.
    - States should work with applicable federal, State and local permitting agencies to identify and streamline permitting processes for EV charging infrastructure installation, including energy storage and renewable energy generation, to support operations.
    - States should also work with local utilities, transmission and distribution operators, and public utility commissions to identify and streamline the planning and approval of grid connections for EV charging infrastructure, including energy storage and renewable energy generation, to support operations.

(3) the proximity of existing off-highway travel centers, fuel retailers, and small businesses to EV charging infrastructure acquired or funded under this paragraph in this Act

- States should consider locations at or immediately adjacent to land uses with publicly accessible restrooms, drinking water, appropriate lighting, and sheltered seating areas such as travel centers, food retailers, convenience stores, visitor centers on Federal lands, small businesses with an Americans with Disabilities Act (ADA) accessible pathway between the EV charging infrastructure and the front door of the identified establishment, and other comparable facilities.
- States should also consider design features that encourage safety through environmental design, such as requiring that chargers be visible to passersby and unobstructed from the view of the street by buildings, other utilities, or large landscaping features.

(4) the need for publicly available EV charging infrastructure in rural corridors and underserved or disadvantaged communities

- The distribution of EV charging infrastructure across a State should specifically target locations and benefits to rural areas, underserved and overburdened communities, and disadvantaged communities, including Tribal lands, through analysis of existing service to these areas in a State.
    - This includes:
        - Prioritizing access of EV charging infrastructure to serve rural, underserved and disadvantaged communities.
        - Identifying gaps in existing service and charging station availability to rural, underserved, and disadvantaged communities in the State.
        - Planning to distribute NEVI Formula Program funds to benefit rural, underserved, and disadvantaged communities in the State.
        - Targeting at least 40 percent of the benefits towards disadvantaged communities in accordance with Justice40.
        - Engaging stakeholders from rural, tribal, underserved, and disadvantaged communities.
- For further guidance, see Section III-B in this document for a discussion of Equity considerations.

(5) the long-term operation and maintenance of publicly available EV charging infrastructure to avoid

stranded assets and protect the investment of public funds in that infrastructure

- EV charging infrastructure should be maintained in good working order and in compliance with all requirements under 23 CFR 680.
- EV charging infrastructure should be operated and maintained with a focus on public road safety, including, the provision of adequate lighting, fire protection, and other traffic safety features. Potential conflicts with non-motorized and public transportation travel in multi- modal corridors should be addressed through safe design and countermeasures.
- EV charging infrastructure should use charging network providers with demonstrated experience or capability for at least the entire 5-year in-service requirement with plans to keep the stations in service beyond the availability of NEVI Formula Program funds.
- Owners of NEVI Formula Program funded EV charging infrastructure should provide reasonable plans and guarantees for maintaining the chargers, related equipment, and overall charging locations in good working order.

(6) existing private, national, State, local, Tribal, and territorial government EV infrastructure programs and incentives

- Decisions about siting, construction, installation, operation, and maintenance should involve consultation with relevant stakeholders to coordinate existing EV charging infrastructure programs and incentives. The involvement of relevant private entities, Federal, State, local, Tribal and territorial governments will allow for the identification of opportunities for States to leverage the NEVI Formula Program funds in concert with other funding/deployment programs including those managed by other agencies.
- EV charging programs and grid management is often addressed by both State departments of transportation and/or State energy offices, so Plans under this program should be carefully coordinated across both groups.
- States should consult with entities including:
  - Metropolitan Planning Organizations and Regional Transportation Planning Organizations;
  - Counties and cities, including coordination with existing EV charging programs;
  - State departments of energy, including Clean Cities Coalitions[31] , as applicable
  - State environmental protection agencies;
  - State economic development agencies;
  - State public utility commissions;
  - State weights and measurement agencies;
  - State and Federal land management agencies;
  - State manufacturing extension partnerships;
  - State department of motor vehicles;
  - State department of commercial motor vehicles;
  - Responsible emergency/disaster preparedness functions in the State;
  - Tribal governments;
  - Electric utilities and transmission and distribution owners and regulators;
  - Electric vehicle service providers;
  - Public transportation agencies;
  - Port and freight authorities;
  - Community-based organizations, environmental justice and environmental protection organizations, small business associations, Chambers of Commerce; labor organizations, and private entities; and
  - Other appropriate parties.
- For further guidance, see Section III in this document for a discussion of Plans.

[31] Clean Cities Coalition Network: Clean Cities Coalition Locations (energy.gov)

(7) fostering enhanced, coordinated, public-private or private investment in EV charging infrastructure

- The purpose of public funding is not to discourage private investment, but instead to catalyze additional private investment and supplement and fill gaps to provide a convenient, affordable, reliable, and equitable national EV charging network.
- States are encouraged to develop programs with cost-share requirements or incentives to leverage private investment in EV charging and maximize the impact of NEVI Formula Program funding. Cost-share and incentive programs can be powerful tools for optimizing infrastructure deployment by providing States the opportunity to partner with existing EV infrastructure providers without bearing additional risk of upfront funding prior to deployment and diminishing the risk of half-built or stranded assets.
- The involvement of relevant private sector and industry representatives throughout the development and deployment of the Plan should allow for the identification of EV charging market opportunities and challenges, along with potential solutions to address them. Coordinated planning across private and public investments is necessary to provide a seamless and convenient national network.
- States should consult with entities including:
    - Private sector EV charging infrastructure owners and network operators;
    - Vehicle manufacturers;
    - Unions and other labor organizations;
    - Utilities;
    - Real estate industry groups;
    - Minority- and women-based organizations;
    - Freight industry groups;
    - Relevant environmental justice, equity, environmental protection, and other community advocacy organizations;
    - EV industry organizations and EV advocacy groups, as applicable;
    - Gas station owners and operators;
    - Taxicab commissions and ridesharing companies;
    - Emergency management and public safety agencies; and
    - Other appropriate parties.
- For further guidance, see Section III in this document for a discussion of Plans.

(8) meeting current and anticipated market demands for EV charging infrastructure, including with regard to power levels and charging speed, and minimizing the time to charge current and anticipated vehicles

- Stations should be designed to provide at least four Combined Charging System (CCS) ports capable of simultaneously charging four EVs. Station power capability should be no less than 600 kW (supporting at least 150 kW per port simultaneously across four ports) for charging.
- Maximum charge power per DC port should not be below 150 kW and should consider design and construction practices that allow for 350kW or greater charging rates through future upgrades.
- Power sharing across ports should be permitted so long as it does not reduce the maximum output per port below 150 kW. For stations with ports above 150kW, States should support station design that facilitate power sharing across ports.
- Station designs should also consider the potential for future expansions needed to support the electrification and charging demands of medium- and heavy-duty trucks, including station size and power levels.
- Stations should be designed to allow for future upgrades and updates to power levels and number of chargers, to the extent possible and within reason. The Joint Office will publish best practices for EV charging infrastructure construction that will seek to allow flexibility in future upgrades.
- After a State has determined, and the Secretary of Transportation has certified, that the State's designated AFCs for electric vehicles are fully built out, that State will have additional flexibility to

determine the type and location of any additional EV charging infrastructure installed, operated, and maintained under NEVI Formula Program. See Section V-C for information about Fully Built Out Certification.

(9) any other factors, as determined by the Secretary

- Consumer Protection: States should consider how they will safeguard purchasers of goods and services against defective products, excessive costs, and deceptive or fraudulent business practices.
- Cybersecurity: States should consider cybersecurity needs of the electrical grid, station, vehicles, and customers using EV charging infrastructure.
- Emergency Evacuation Plans: States should consider emergency and evacuation needs, including how they will support overall emergency evacuation plans along roadways. Plans should also account for growing number of EVs using designated evacuation routes.
- Environmental siting/permitting considerations: During site selection, States should consider locations within a previously disturbed or developed area. In most instances, EV charging station are eligible for a categorical exclusion under the National Environmental Policy Act (NEPA). States should consider the appropriate level of review under NEPA and other environmental laws, regulations, and Executive Orders (see sub-bullets below) including, but not limited to, the Clean Water Act, National Historic Preservation Act, Section 4(f), and Executive Orders 12898, 14096, 11988, and 13690.
    - Developing the Plan will qualify for an environmental categorical exclusion (CE) under 23 CFR 771.117(c)(1) as an activity that does not lead directly to construction. The installation of EV charging infrastructure is a separate activity(s) that will require its own environmental approval.
    - As installation of EV charging infrastructure is generally the type of action that would not be expected to result in significant environmental impacts, several CEs may be applicable including those found at 23 CFR 771.117(c)(2, 19, 22, and 23) and (d), depending on the scope of the action and the CE's conditions. We encourage states to rely on their programmatic CE agreements, when applicable, to accelerate the delivery of these projects.
    - Before a CE determination can be applied to an action, the action must be analyzed to determine whether there are unusual circumstances present that would require further analysis to determine whether the CE classification is appropriate (see 23 CFR 771.117(a-b)).
    - An exemption to Section 106 of the National Historic Preservation Act[32] was published on November 2, 2022 releasing all federal agencies from the Section 106 requirement to consider the effects of their undertakings involving the installation and placement of electric vehicle supply equipment, provided specific conditions outlined in the exemption are met. The Lead Federal Agency makes the determination as to whether the Section 106 exemption applies. A project sponsor should review the conditions outlined in the exemption and coordinate with the Lead Federal Agency. The standard Section 106 consultation process can be followed in the event that the exemption is determined not applicable.
- States should also consider how they will complete permitting and environmental review processes to support operations within six months of obligating funds. For example, additional efficiencies can be achieved when multiple EV charging infrastructure projects are planned within a particular geographic area or under similar circumstance. In such cases, programmatic analyses can be used to analyze the common effects associated with a suite of projects in order to avoid having to perform analysis of those effects in each unique case and to streamline documentation.
- We encourage the State DOTs to use their existing CE checklists to help identify if an EV charging station project qualifies for a CE. There are other web-based tools such as NEPAssist

[32] About the Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment (EVSE) | Advisory Council on Historic Preservation (achp.gov)

that can help with initial screening of potential impacts. Resilience: States should consider the potential impacts of climate change and extreme weather events, including through the use of currently available USDOT tools and resources to assess the vulnerability and risk of planned and existing EV charging stations and the development, deployment, and monitoring of resilience solutions. States should also consider the location of existing and proposed EV charging infrastructure with respect to the Federal Flood Risk Management Standard, as well as how climate change may affect the floodplain, and construct EV charging infrastructure consistent with the Federal Flood Risk Management Standard, to the extent consistent with law. States should consider opportunities to add redundancy and improve the overall resilience of the national network of EV charging stations.
- Terrain: States should consider geographic terrain and snow removal and other seasonal needs.
- Other factors may be addressed in future guidance.

D. MINIMUM STANDARDS AND REQUIREMENTS FOR PROJECTS IMPLEMENTED UNDER THE NEVI FORMULA PROGRAM

All applicable requirements under chapter 1 of title 23, United States Code, and 2 CFR part 200 apply to the administration of these funds. Regulations for compliance with minimum standards and requirements for EV charging infrastructure are contained in 23 CFR 680.

V. PROGRAM ADMINISTRATION

A. TRACKING NEVI FORMULA PROGRAM FUNDS

The FHWA's Chief Financial Officer has established program codes in the Fiscal Management Information System (FMIS) to track State investments of NEVI Formula Program funds. States shall accurately reflect these NEVI Formula Program obligations as they record project data in the FMIS. In addition, projects funded under the NEVI Formula Program should utilize FMIS improvement type 63.

B. DATA SHARING

As of March 30, 2023, States should refer to 23 CFR 680 which regulates the minimum standards and requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) Formula Program. Data sharing requirements are contained within three sections of 23 CFR 680, including Section 680.106(a) *Procurement process transparency for the operation of EV charging stations*, Section 680.112 *Data Submittal*, and Section 680.116(c) *Third-party data sharing.* States are required to ensure that this data is submitted or made available to the public as described in 23 CFR 680 whether directly or via their subrecipients and/or contractors.

To facilitate the standardization and collection of the data submittals required under 23 CFR 680.112, the Joint Office is establishing a data platform where the data must be submitted. To assist users in submitting data, the JO will publish a data input template and a data dictionary that will define the data attributes and structure as well as user manuals that will inform how to format the data and assist users in submitting the required data. Information about the data platform and the supporting documents will be found on DriveElectric.gov.

C. BUILD OUT CERTIFICATION

A primary objective of the NEVI Formula Program is to establish a national network for EV charging.

Initially, funding under this program is directed to designated AFCs towards this objective.

Until FHWA certifies that a State's AFC network is fully built out, NEVI Formula Program funding for construction purposes shall only be used along designated AFCs to construct new EV charging infrastructure and to upgrade existing EV charging infrastructure. As of the publication of this guidance, no State has yet been certified as fully built out.

Fully Built Out Criteria

In a State that is fully built out, every designated AFC for EV charging must meet the following criteria:

1. Stations are spaced along all designated EV AFCs at a maximum distance of 50 miles apart and within 1 mile of the designated roadway, except where exceptions have been granted. (See Section III-B for information about discretionary exceptions). All creditable stations must:
    - be publicly accessible[33]
    - include at least four 150kW Direct Current Fast Chargers with CCS ports
    - be capable of simultaneously charging four EVs at 150kW or above at each port, with a minimum station power capability at or above 600kW
    - meet the minimum standards and requirements as described in 23 CFR 680.104, 23 CFR 106(b), 23 CFR 680.106(c), 23 CFR 680.106(d), 23 CFR 680.106(e), 23 CFR 680.106(f), 23 CFR 680.106(g), 23 CFR 680.106(h), 23 CFR 680.106(i), 23 CFR 680.106(k), 23 CFR 680.106(l), 23 CFR 680.108, 23 CFR 680.110, 23 CFR 680.114, and 23 CFR 680.116
2. Any point along the corridor must be connected via an AFC to a station in each logical direction so that the gap is no more than 50 miles.
3. All creditable stations are operational. While working to fully build out AFCs, States are encouraged to engage communities to begin planning activities beyond their AFCs.
4. All corridor termini must have a station located within 25 miles.
    - If the continuation of the corridor is not designated as an AFC by the adjacent state, then this corridor should be considered a terminus at the state border (e.g. there must be a station located within 25 miles of the state border.)
    - If a designated corridor extends beyond a state's border into an adjacent state, the 50-mile spacing must be maintained along the designated corridor (e.g. one state may have a station greater than 25 miles from their border if the adjacent state has a station along that same corridor less than 25 miles from their border in a manner that maintains the overall 50-mile spacing). If a designated corridor changes names or highway designation along the corridor, this is not considered a corridor terminus.

Fully Built Out Certification Process

In order to have a determination reviewed by FHWA and the Joint Office, States should submit a letter determining their status as fully built out with accompanying maps, tables, and data:

- An overall map of the State highlighting that all designated AFC corridors meet the fully built out criteria.
- Maps of individual designated AFC corridors showing the location of each station and the distance between stations and from the corridor
- A table identifying each station as identified on the corresponding maps. The table should detail and verify all of the information needed to make a fully built out determination (see "Fully Built

[33] Publicly accessible means the equipment is available to the public without restriction. A station that is not maintained or restricts access only to customers, tenants, employees, or other consumers is not publicly accessible.

Out Criteria" preceding). The Joint Office will be available to provide technical assistance to States, however certification rests with FHWA.
- Optionally, States may submit accompanying Geographic Information Systems (GIS) data to include both the designated corridors and the station information

States are encouraged to submit for certification at the same time as their annual Plan submissions.

Flexibility after Build Out Certification
"If a State determines, and FHWA certifies[34], that the designated AFCs for electric vehicles in the States are fully built out, then the State may use funds provided under the NEVI Formula Program for EV charging infrastructure on any public road or in other publicly accessible locations that are open to the general public or to authorized commercial motor vehicle operators from more than one company."

- Publicly accessible locations may include public parking facilities, parking at public buildings, public transportation stations, Park-and-Rides, public schools, public parks, private parking facilities available for public use, and visitor centers and other public locations on Federal Lands.
- If the Secretary certifies a State's determination that its AFCs for electric vehicles are fully built out, that certification will apply to obligation of all remaining NEVI Formula Program funding authorized through FY 2026. This certification should not be construed as implying that additional State, local, or private sector investment is not necessary or encouraged.
- Stations do not need to be funded by the NEVI Formula Program to be counted towards a fully built out determination, but they must meet the "Fully Built Out Criteria" identified in this section.
- All 1-mile and 50-mile exception requests are considered permanent with a fully built out certification.

VI. TECHNICAL ASSISTANCE/TOOLS

The Joint Office plays an important role by providing direct technical assistance and support to States as they pursue the implementation of their EV Infrastructure Deployment Plans and has continued to coordinate closely with FHWA Division Offices and FHWA headquarters program offices to provide technical and program-related answers and guidance to the states on a variety of areas and topics.

Additionally, after a State has determined, and the Secretary of Transportation has certified, that the State's designated Alternative Fuel Corridors for electric vehicles are fully built out, the State will have additional flexibility to determine the type and location of any additional EV charging infrastructure installed, operated, and maintained under NEVI Formula Program. This will provide an opportunity to expand the Joint Office's technical assistance and support to communities and tribal nations in adopting and expanding EV charging to ensure that they have convenient and affordable access to riding and driving electric.

Recognizing that States and local governments may be at different stages in their EV charging infrastructure development, the Joint Office will provide technical assistance to States as they achieve a convenient, affordable, reliable, and equitable national network of EV chargers, regardless of where they are in the electric charging deployment process.

As part of a suite of technical assistance resources, the Joint Office connects stakeholders with technical information, lessons learned, tools and critical data. These resources, developed by USDOE,

[34] As delegated by the Secretary of Transportation

USDOT, national laboratories, and other key partners, will expand over time to help transportation stakeholders deploy electric vehicle (EV) charging infrastructure. These resources can be found on the Joint Office's driveelectric.gov website:

- Technical Assistance
- States & Communities
- Tribal Nations
- Modeling, Equity and Climate Impact Tools
- Contacting the Joint Office

VII. ADDITIONAL INFORMATION

If you have questions about this program guidance, please contact Diane Turchetta (Diane.Turchetta@dot.gov), Will Stein (William.Stein@dot.gov) or Suraiya Motsinger (Suraiya.Motsinger@dot.gov).

For additional guidance on other Bipartisan Infrastructure Law and Federal-aid Highway Programs, please see FHWA's Bipartisan Infrastructure Law website