

# National Electric Vehicle Infrastructure (NEVI) Formula Program Q&A

## NEVI Formula Program Questions and Answers

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 in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

### General Questions

#### **Question: Which authorities govern the National Electric Vehicle Infrastructure (NEVI) Formula Program?**

*Answer:*

The NEVI Formula Program is authorized under Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

#### **Question: Is a State department of transportation (State DOT) required to have an approved Electric Vehicle (EV) Infrastructure Deployment Plan (Plan) before using NEVI Formula Program funds?**

*Answer:*

Yes. Each State DOT must annually submit a Plan to the Joint Office of Energy and Transportation (Joint Office) describing how that State DOT intends to use funds distributed under the NEVI Formula Program. This Plan will be reviewed by the Joint Office and must be approved by the Federal Highway Administration (FHWA) before a State DOT can obligate NEVI Formula Program funds for any eligible purpose. However, in accordance with 2 CFR part 200, reasonable and necessary staffing and activities related to the development of the Plan, including development of the Plan itself, are eligible for reimbursement as a direct cost.

#### **Question: When must the first year's Plans be submitted to the Joint Office?**

*Answer:*

Each State DOT must submit their Plan for federal fiscal year 2022 (which will cover federal fiscal year 2023) to the Joint Office not later than August 1, 2022. Plans will need to be updated on an annual basis to reflect the State DOT funding Plans for that fiscal year.<sup>1</sup> The second round of Plans will cover federal fiscal year 2024.

#### **Question: When can State DOTs expect approval of Plans? Will NEVI funds be available immediately upon approval?**

*Answer:*

The NEVI Formula Program funds will be immediately available for State DOTs to obligate for eligible expenses upon the approval of their Plans by FHWA each year. For the first year of the program (FY22),

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<sup>1</sup>For further information, see NEVI Formula Program Guidance

[https://www.fhwa.dot.gov/environment/alternative\\_fuel\\_corridors/nominations/90d\\_nevi\\_formula\\_program\\_guidance.pdf](https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf)

FHWA will approve Plans or notify State DOTs if changes need to be made to their Plans not later than September 30, 2022.

**Question: New EV charging stations should be spaced 50 miles apart and within one mile of the Interstate exit or highway. Can States request exceptions from these requirements?**

*Answer:*

Yes, although exceptions will be granted under limited circumstances on a case-by-case basis, approved in conjunction with annual state plan certification. As part of the development and approval of Plans, a State DOT may submit a request for discretionary exceptions from the requirement that charging infrastructure is installed every 50 miles along designated Alternative Fuel Corridor highway and within 1 travel mile of the designated Alternative Fuel Corridor highway. A template for requesting such discretionary exceptions has been developed and is available on the Joint Office of Energy and Transportation website at <https://driveelectric.gov/technical-assistance/>. Discretionary exceptions against the 50-mile and 1-mile criteria may be considered for reasons related to grid capacity, geography, equity, and extraordinary cost, as explained further in the instructions for the discretionary exception template.

Exception requests may be submitted as a separate attachment to the Plan or the information requested in the template may be incorporated directly into the Plan. States are encouraged to submit a completed exception request to the Joint Office of Energy and Transportation for review and preliminary feedback in advance of Plan submittal. Exceptions to the 50-mile criteria will only be valid for the year of the plan being certified; exceptions to the 1-mile criteria will be permanent upon commissioning of the charging site. 50-mile exceptions will be revisited annually as conditions change and Plans are updated. Greater scrutiny will be applied to larger deviations from the distance requirements.

**Question: If a State DOT already has developed and issued a State-wide EV deployment plan, can this existing plan be used in place of the NEVI State EV Infrastructure Deployment Plan?**

*Answer:*

It depends. The NEVI Formula Program Guidance identified specific components which should be included and considered in the Plan; therefore, it is highly unlikely that a planning document that existed prior to the release of the NEVI Formula Program Guidance would address all of these components. If an existing deployment plan does contain all the specific components, then it may be used after being submitted for review and approval by FHWA. However, it is more likely that existing deployment plans would be valuable as a resource to begin the development of the State EV Infrastructure Deployment Plan. To ensure all specific components identified in the NEVI Formula Program Guidance are included, State DOTs are further encouraged to use the recommended plan template, available on the Joint Office's website at <https://driveelectric.gov/technical-assistance/>.

**Question: Is there technical assistance available for State DOTs to develop their Plans?**

*Answer:*

Yes. State DOTs are encouraged to work directly with the Joint Office during Plan development and remedy any issues with their Plans before submitting their final Plans. Technical assistance provided by the Joint Office is intended to help Plans comply with all program requirements and guidance. To access technical assistance, visit <https://driveelectric.gov/contact/>.

**Question: Can the State DOTs delegate the planning or implementation to other State agencies?**

*Answer:*

Yes. However, consistent with Title 23, United States Code, the State DOT is ultimately responsible for the NEVI Formula Program requirements, including any applicable Title 23 requirements, and will need to transmit the Plan to the Joint Office. This would not preclude a formalized relationship between other State agencies and the State DOT to administer the program and develop the Plan, as long as the State DOT retains the assumed responsibilities of the Secretary in accordance with 23 U.S.C. 106 and the FHWA/State DOT stewardship and oversight agreement. If a State DOT is planning to delegate planning or implementation to other State Agencies, consultation with FHWA division offices regarding specific requirements for the administration of programs under Title 23 is strongly recommended.

**Question: Where can the NEVI Formula Program funds be spent?**

*Answer:*

In general, NEVI Formula Program funds should be used for the acquisition and installation of electrical vehicle charging infrastructure to serve as a catalyst for the further deployment of such infrastructure.

The FHWA has established a national network of alternative fueling and charging infrastructure along National Highway System (NHS) corridors called Alternative Fuel Corridors (AFCs) and the NEVI Formula Program funds can be spent on those AFCs that are designated for EV charging. Projects along Interstates should be prioritized during the first year in order to create a reliable national network of EV charging stations. Designations of these AFCs are made through an annual nomination process released through a Request for Nominations. For more information on AFCs see:

[https://www.fhwa.dot.gov/environment/alternative\\_fuel\\_corridors/](https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/).

Note that the category of designation within the AFC program (Corridor Ready or Corridor Pending) has no bearing on eligibility for NEVI Formula Program use – all designated AFCs are eligible corridors for NEVI Formula Program projects. The NEVI Formula Program funds can be utilized to upgrade or add additional infrastructure on designated corridors. State DOTs should prioritize the use of the funding for EV charging stations along Interstates in order to meet the needs of those traveling long distance or for multiple hours at a time.

**Question: What if currently designated AFC corridors contain EV charging stations that do not match the requirements of the NEVI Formula Program?**

*Answer:*

State DOTs are encouraged to upgrade existing EV charging stations along designated AFCs to meet the criteria in the NEVI Formula Program Guidance and other program requirements and NEVI funds can be used for such upgrades.

**Question: Can NEVI Formula Program funding be used outside of designated AFCs?**

*Answer:*

No, not for deployment plans being submitted in 2022. NEVI Formula Program funding cannot be used outside of designated AFCs until the Secretary of Transportation certifies that the designated corridors in the States are fully built out, which will not occur during the first year of the NEVI Formula Program. Additional guidance will be issued in the future to establish the process by which the Secretary of Transportation will certify when AFCs are fully built out. As a reminder, State DOTs should prioritize the use of the funding for EV charging stations along Interstates in order to create a reliable national network.

**Question: Can NEVI Formula Program funding be used for EV infrastructure on Federal lands?**

*Answer:*

Yes. State DOTs may elect to partner with Federal land management agencies within their State and fund EV infrastructure as long as the AFC includes the location and the Federal lands facility complies with the AFC proximity requirement (e.g., location within one mile off an exit) or the location receives an exception from the proximity requirements.

**Question: Do Title 23 requirements apply to NEVI Formula Program projects?**

*Answer:*

Yes. All applicable requirements under chapter 1 of Title 23, U.S.C., and 2 CFR part 200 apply to the administration of these funds. Also, before funds are obligated, projects must be included on the relevant Statewide Transportation Improvement Program/Transportation Improvement Program (STIP/TIP) and long-range plans in accordance with 23 CFR part 450. For planning activities funded with NEVI Formula Program funds, State DOTs have the option of including the projects in the STIP/TIP or the State Planning and Research Work Programs/Unified Planning Work Program. Also, State DOTs must comply with all State and Federal environmental requirements, including the National Environmental Policy Act (NEPA) and with Title VI. As discussed below in the section on Permitting and Environmental Review, most EV charging stations will be eligible for a “categorical exclusion” (CE) under NEPA).

**Question: Do American with Disabilities Act (ADA) and Section 504 requirements apply to NEVI Formula Program projects?**

*Answer:*

Yes. EV charging stations must comply with ADA and Section 504 requirements and be accessible to and usable by individuals with disabilities, including those using wheelchairs or other assistive equipment. Key considerations include safety and ease of use. Specifically, designs for EV charging stations must ensure adequate space for exiting and entering the vehicle, unobstructed access to the EV charging stations, free movement around the EV charging stations and connection point on the vehicle, and clear paths and close proximity to any building entrances.

**Question: Can State DOTs contract with a private entity to install, maintain, and/or operate EV charging stations?**

*Answer:*

Yes. See Section II.D on page 12 of the NEVI Formula Program Guidance for more details on the use of contracts. 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. However, even when a private entity has such a contract, under Title 23, U.S.C., the State DOT remains responsible for compliance with the NEVI Formula Program requirements and any applicable Title 23 requirements.

**Question: For toll roads on the Interstate System that were constructed without Federal financial assistance made available under Title 23, U.S.C., does the use of NEVI Formula Program funds to construct EV charging stations federalize the toll road for purposes of Interstate access and the toll revenue use restrictions under 23 U.S.C. 129(a)(3)?**

*Answer:*

Yes, but only if the construction of the EV charging station with NEVI Formula Program Funds is located within the Interstate right-of-way (ROW). However, if the construction of the EV charging station is

located outside of the Interstate ROW and access is provided from another public road, then such toll road on the Interstate System is not federalized for purposes of 23 U.S.C. 129(a)(3).

**Question: What is a “commercial motor vehicle”?**

*Answer:*

The definition of “commercial motor vehicle” found at 23 CFR 658.5 is the most appropriate definition to use in relation to the NEVI Program.

**Question: Do Buy America requirements apply to the NEVI Formula Program?**

*Answer:*

Yes. Unless otherwise specified, all applicable requirements under Chapter 1 of title 23, U.S.C., apply to the use of NEVI Formula Program funds and funds made available under title 23, U.S.C. for projects for the construction of publicly accessible EV chargers, including Buy America requirements at 23 U.S.C. 313. In addition, the NEVI Formula Program is an infrastructure program subject to the Build America, Buy America Act (Pub. L. No 117-58, div. G §§ 70901–70927). It is also important to note that, as expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FHWA received significant feedback regarding compliance with Buy America through a Request for Information (RFI) published on November 29, 2021 (86 FR 67782) and a separate RFI specific to Buy America published on November 24, 2021 (86 FR 67115). The comment period for the Buy America RFI closed on January 10, 2022. The RFI was intended to gather information about the shifting manufacturing and assembly processes in the United States for EV chargers and the availability of EV chargers manufactured and assembled in the United States in compliance with Buy America. Continued review of the information received from this RFI may result in updated guidance or regulation, as appropriate.

*Eligible Expenditures*

**Question: What construction costs are eligible for reimbursement under the NEVI Formula Program?**

*Answer:*

All construction costs for NEVI Formula Program projects, as defined under 23 U.S.C. 101(a)(4), are eligible so long as they are directly related to the charging of an electric vehicle (EV). These costs must be allowable, allocable, and reasonable in accordance with 2 CFR part 200. To be considered directly related to the charging of vehicles, the item must be a necessary component in the EV charging station, be a necessary component to connect the EV charging station to the electricity source (or to supply power from the electricity source), provide eligible signage to direct EVs to the charging station, or provide information to EV users about use of the charging stations. This includes costs of new public EV charging stations, as well as upgrades to existing EV charging stations.

**Question: Are costs for on-site renewable energy generation and storage considered directly related to the charging of EV, and therefore eligible for reimbursement?**

*Answer:*

Yes, provided that the renewable energy generation or storage only transfers power to and from the EV charging station. Costs for planning, permitting, acquisition, and installation 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.

**Question: Can NEVI Formula Program funds be used for transformers and other on-site electrical equipment that is necessary to provide power to EV charging stations?**

*Answer:*

Yes. Costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear) are eligible. However, State DOTs are encouraged to consider the magnitude of these costs and explore whether they could be covered by electric utilities or other programs rather than the NEVI Formula Program.

**Question: Can NEVI Formula Program funds be used for electric grid equipment and upgrades?**

*Answer:*

Yes. Costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear) are eligible. Costs for minor grid upgrades are also eligible, provided the work is necessitated solely by the construction or upgrading of the EV charging station and participation in the upgrade does not exceed the allocable cost of the minimum upgrades needed to match the planned power requirements of the EV charging station. A minor grid upgrade is defined as the work necessary to connect a charging station to the electric grid distribution network; for example, extending power lines or upgrading existing power lines several miles. Finally, major grid upgrades, such as longer line extensions or upgrades, improvements to offsite power generation, bulk power transmission, or substations are ineligible.

State DOTs are encouraged to consider the magnitude of these costs and explore whether they could be covered by the electric utility or programs other than the NEVI Formula Program so as to minimize use of NEVI Formula funds for grid upgrades where possible. See the *Utility Planning* section below for additional information.

States are also encouraged to consult with the FHWA and the Joint Office of Energy and Transportation to determine if an exception to charging station siting requirements may be warranted or if there are additional viable alternatives.

**Question: Are repairs, upgrades, or replacement of existing EV charging stations eligible costs?**

*Answer:*

Yes, NEVI Formula Program funds may be used to repair, upgrade, or replace existing EV charging equipment (i.e., charging stations that were installed prior to the NEVI Formula Program) to meet NEVI Formula Program minimum standards and requirements. State DOTs are encouraged to consider other programs that may provide funding for these upgrade costs that could be used in conjunction with NEVI Formula Program funds in an effort to focus the majority of NEVI funds on maximizing the number of new EV charging stations.

**Question: Can NEVI Formula Program funds be used to update existing EV charging stations to meet Americans with Disabilities Act (ADA) requirements?**

*Answer:*

Yes.

**Question: Can NEVI Formula Program funds be used to support EV charging workforce development activities?**

*Answer:*

Yes. 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.

**Question: Can NEVI funds be used for pre-construction costs associated with environmental review and preliminary engineering?**

*Answer:*

Yes. 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.

**Question: Can NEVI Formula Program funds be used to purchase proprietary adaptors?**

*Answer:*

Yes, provided that the adapter is 1) directly or indirectly compatible with and ancillary to a permanently attached Combined Charging System (CCS) connector; 2) approved by the charger manufacturer to ensure consistency, safety and reliability; 3) fully integrated into the charger such that it cannot be removed from the site; and 4) otherwise complies with the NEVI Formula Program under the Highway Infrastructure Program heading in title VIII of division J of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58). All EV infrastructure projects under NEVI must be open to the general public or to authorized commercial motor vehicle operators from more than one company.

**Question: Can NEVI Formula Program funds be used to install, operate, and maintain EV charging stations for medium- and heavy-duty vehicles?**

*Answer:*

Yes, NEVI formula program funds can be used for light, medium, and heavy-duty electric vehicle charging infrastructure projects that meet NEVI program requirements. All EV infrastructure projects under NEVI must be open to the general public or to authorized commercial motor vehicle operators from more than one company.

*Operation and Maintenance Costs*

**Question: Are EV charging station operation and maintenance costs eligible reimbursements under the NEVI Formula Program?**

*Answer:*

Yes. The following operating costs are eligible although only for up to five years after the charging station is commissioned:

- Charging equipment lease fees, in the case that an EV charging station operator opts to lease rather than purchase charging equipment.
- Cellular network fees, internet service fees, or other similar fees necessary to provide communications between EV charging stations and charging network providers.
- Hardware and software maintenance and repair costs, including service agreements with third-party contractors and charging equipment manufacturers or warrantors.
- Other operating costs that are necessary and directly related to the charging of vehicles.

After five years, operating costs are no longer eligible reimbursements under the NEVI Formula Program. State DOTs are encouraged to prioritize uses of NEVI Formula Program funds for operation and maintenance costs at EV charging station locations that may have lower utilization (particularly in the near term) but are still necessary to ensure a contiguous, national network.

### Program Administration Costs

#### **Question: What program administration costs are eligible for reimbursement under the NEVI Formula Program?**

*Answer:*

Administrative costs are an eligible expense; however, direct and indirect cost allocation for reimbursement must follow 2 CFR part 200.

#### **Question: Are costs incurred by the State DOTs to develop their Plans an eligible expense for FY22 under the NEVI Formula Program?**

*Answer:*

Yes. However, NEVI funds are not available for obligation until after a Plan has been submitted and is approved by FHWA. 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.

#### **Question: Are there any limitations on program income or revenue from EV charging stations that are funded under the NEVI Formula Program?**

*Answer:*

Yes, for purposes of program income or revenue earned from the operation of an EV charging station, the State DOT should ensure that all revenues received from operation of the EV charging facility are used for—

- (i) debt service with respect to the EV charging station project, including funding of reasonable reserves and debt service on refinancing;
- (ii) a reasonable return on investment of any private entity financing the EV charging station project, as determined by the State DOT;
- (iii) any costs necessary for the improvement and proper operation and maintenance of the EV charging station, including reconstruction, resurfacing, restoration, and rehabilitation;
- (iv) if the EV charging station is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and
- (v) any other purpose for which Federal funds may be obligated under Title 23, United States Code.

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. In addition, per 23 U.S.C. 156, any net income from revenue received by the State DOT from the sale, use, lease, or lease renewal of real property acquired with NEVI Formula Program funds shall be used by the State DOT for Title 23, U.S.C., eligible projects.



## Utility Planning

### **Question: Are State DOTs required to consult with relevant electric utilities and utility regulators on their EV Infrastructure Deployment Plans?**

#### *Answer:*

Yes. State DOTs should consult with relevant electric utilities and utility regulators in the development of their Plans to ensure charging site viability, cost-effectiveness, and timeliness of deployment. These elements should be explicitly addressed in Plans, as well as the process for collaborative planning with electric utilities and utility regulators.

### **Question: What details should Plans include regarding consultation with and the role of electric utilities and utility regulators?**

#### *Answer:*

Plans should describe the expected nature and cost of necessary utility investments (e.g. line extensions, make-ready programs, & site improvements), as well as the State's planned approach for securing utility and other regulatory approvals necessary to support EV charging station operations within six months of procurement.

## Public Engagement

### **Question: How can State DOTs maximize participation and accessibility in public engagement activities?**

#### *Answer:*

State DOTs can maximize participation and accessibility using efforts including, but not limited to:

- Ensuring activities are fully accessible to all persons, including wheelchair accessibility, interpreters for the deaf, Computer Aided Real-time Transcription (CART). Materials should be provided in alternative format for people with vision loss or who are blind or have limited English proficiency.
- Providing reasonable public access to technical and policy information used in the development of the Plan;
- Providing adequate public notice of public involvement activities, including a reasonable opportunity to comment on proposed Plans;
- To the maximum extent practicable, ensuring that public meetings are held at convenient times and in convenient and accessible locations in close proximity to public transportation;
- To the maximum extent practicable, using visualization techniques to describe the proposed Plan and supporting studies;
- To the maximum extent practicable, making public information available in electronically accessible format and means, such as the World Wide Web, as appropriate, to afford reasonable opportunity for consideration of public information;
- Demonstrating explicit consideration of and response to public input during Plan development;
- Including a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households; and
- Providing for the periodic review of the effectiveness of the public engagement process to provide full and open access to all interested parties and revise the process, as appropriate.

### **Question: How should Plans reflect State DOTs public engagement activities?**

#### *Answer:*

Plans should describe the public engagement that took place during development of the Plan and any additional public engagement planned for the future. Successful Plans will describe how that engagement informed the development of the Plan.

## **Question: What kinds of stakeholders should be engaged during the planning process?**

*Answer:*

Potential stakeholders for public engagement may include:

- The general public;
- Governmental entities, including cities, local governments, and regional transportation and metropolitan planning organizations;
- State environmental protection agencies;
- State public utility commissions;
- State weights and measurement agencies;
- State and Federal land management agencies;
- State manufacturing extension partnerships;
- State department of motor and commercial motor vehicles;
- State departments of energy;
- State economic development agencies;
- Public transportation agencies;
- Port and freight authorities;
- State and local utilities;
- Electric utilities and transmission and distribution owners and regulators;
- Utility consumer advocates;
- Unions and labor organizations;
- Workforce training organizations;
- Clean Cities Coalitions;
- Responsible emergency/disaster preparedness functions in the State;
- Electric vehicle service providers;
- Organizations for persons with disabilities;
- Local housing organizations;
- Local social service providers;
- Community-based organizations
- Environmental justice and environmental protection organizations;
- Minority- and women-based businesses and organizations;
- Taxicab commissions and ridesharing companies;
- Chambers of Commerce and small business associations; and
- Tribal governments.

## **Question: Are specific tools available to help State DOTs conduct meaningful public engagement?**

*Answer:*

Yes. For example, FHWA's guide, [Public Involvement Techniques for Transportation Decisionmaking](#), provides examples of public engagement best practices and illustrates how meaningful public engagement entails more than simply holding public events, but also incorporating public comments and feedback into decisionmaking. Additional suggested resources include:

- Public Involvement Techniques for Transportation Decisionmaking (FHWA) - [Public Involvement Techniques - Publications - Public Involvement - Planning - FHWA \(dot.gov\)](#)
- Virtual Public Involvement (FHWA) - [EDC-6: Virtual Public Involvement | Federal Highway Administration \(dot.gov\)](#)
- How to Engage Low-Literacy and Limited-English-Proficiency Populations in Transportation Decision Making (FHWA) - [Low Limited - Publications - Planning - FHWA \(dot.gov\)](#)
- Every Place Counts Leadership Academy Transportation Toolkit (FHWA) - [Every Place Counts Leadership Academy \(transportation.gov\)](#)

## Equity Considerations

### **Question: What is the Justice40 Initiative?**

#### *Answer:*

On January 27, 2021, President Biden issued [Executive Order \(E.O.\) 14008](#), which created the “Justice40” initiative. This initiative establishes a goal that 40 percent of the overall benefits of certain Federal investments (“covered investments”) flow to disadvantaged communities (DACs).

### **Question: Does the Justice40 Initiative apply to the NEVI Formula Program?**

#### *Answer:*

Yes. The NEVI Formula Program has been identified as a covered investment by the White House Office of Management and Budget (OMB). Thus, 40 percent of the benefits from the NEVI program should flow to DACs.

### **Question: What should State DOTs include in their Plans with regard to Justice40 for the first year of the NEVI program?**

#### *Answer:*

The Plans due on August 1, 2022 should describe how the State DOT intends to measure the accrual of program benefits to demonstrate that 40 percent of benefits are received either directly or indirectly by identified DACs. Successful Plans should also explain a public engagement process that they will utilize to identify those benefits. Existing methodologies or data collection efforts that State DOTs already have in place to measure the benefits of EV infrastructure programs should be included in Plans.

### **Question: Do State DOTs need to address Justice40 in their Plans?**

#### *Answer:*

Yes, State DOTs should address Justice40 in their Plans. Consistent with E.O. 14008 and the Interim Justice40 Guidance<sup>2</sup> issued by the OMB, as well as Section III.C. of the NEVI Formula Program Guidance, Plans should explain how the State DOT will deliver projects under the NEVI Formula Program that target 40 percent of the benefits flowing to DACs.

As explained more below, successful Plans should explain how, over the course of the State DOT’s implementation of the NEVI Formula Program, the State DOT will identify, prioritize, and measure benefits from EV charging infrastructure. Successful Plans should incorporate input from DACs to ensure DACs are receiving 40 percent of benefits under the NEVI Formula Program (as is noted in the NEVI Formula Program Guidance, this does not mean that 40% of all charging infrastructure funded under this program must be located in DACs). Successful Plans should also explain how the State DOT has considered how DACs will benefit from the added job growth resulting from the NEVI Formula Program.

### **Question: How can State DOTs identify Disadvantaged Communities (DACs)?**

#### *Answer:*

State DOTs should use the [Electric Vehicle Charging Justice40 Map tool](#) developed by the Department of Energy (DOE) and DOT to identify DACs that may directly or indirectly benefit from this program.<sup>3</sup> This

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<sup>2</sup> Section 219 of Executive Order (E.O.) 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 <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

<sup>3</sup> In accordance with E.O. 14008, the White House Council on Environmental Quality is in the process of creating a Climate and Economic Justice Screening Tool that will identify DACs and will be used by all Federal agencies. At the time of the issuance of this report, that tool has not yet been finalized. Therefore, for the first year of the NEVI Formula Program, State DOTs should utilize the Electric Vehicle Charging Justice40 Map tool to identify DACs.

tool incorporates publicly available data on vulnerable populations, health, transportation access and burden, energy burden, fossil dependence, resilience, and environmental and climate hazards. The methodology and resulting Census tracts identified as DACs for purposes of Justice40 are identified in this Map tool.

### **Question: How can State DOTs identify Justice40 benefits?**

#### *Answer:*

State DOTs should describe in their Plans which benefits they anticipate measuring and tracking towards the Justice40 goal. Benefits, which are direct or indirect investment and program outcomes that positively impact DACs, should be identified through a public engagement process. Example of potential benefits from EV charging infrastructure include:

- Improving clean transportation access through the location of charging stations;
- Decreasing the transportation energy cost burden by enabling reliable access to affordable charging;
- Reducing environmental exposures to transportation emissions;
- Increasing parity in clean energy technology access and adoption;
- Increasing access to low-cost capital to increase equitable adoption of more costly, clean energy technologies like EV charging;
- Increasing the clean energy job pipeline, job training, and enterprise creation in disadvantaged communities;
- Increasing energy resilience;
- Providing charging infrastructure that can serve transit and shared-ride vehicles;
- Increasing equitable access to the electric grid; and
- Minimizing gentrification-induced displacement result from new EV charging infrastructure.

### **Question: What are examples of public engagement activities that may be effective in ensuring meaningful engagement with rural, underserved, or disadvantaged communities (DACs)?**

#### *Answer:*

The FHWA guide, *Public Involvement Techniques for Transportation Decisionmaking* describes examples of how employing different methods to improve community engagement could enable a more inclusive, accessible, and transparent process to gain input from communities. These activities could include, but are not limited to the following:

- Briefings
- Brainstorming
- Canvassing
- Charettes
- Drop-in centers
- Established website and/or social media
- Focus groups
- Interactive displays and kiosks
- Meetings in comfortable/non-traditional spaces
- Outreach to community groups
- Outreach by phone
- Public workshops or meetings
- Scenario planning
- Surveys
- Transportation fairs
- Video recordings
- Visioning

- Visual preference surveys
- Voting and polling

Additional examples of how States can conduct meaningful public engagement with DACs includes but is not limited to:

- Clearly defining the goals of the public engagement strategy with members of DACs.
- Providing foundational information to DAC members that will equip them to actively provide feedback for NEVI decisions (e.g., outreach and education on EV charging basics, existing and planned public EV charger locations, total cost of ownership, and financial incentives).
- Gathering and publicly summarizing information about the benefits of EV charging infrastructure that DAC members most prioritize, and any concerns they may have about EV charging infrastructure deployment.
- Communicating progress on Plan development and deployment activities, including those informed by public engagement.
- Evaluating how DAC members are receiving benefits as Plans are being deployed.

**Question: Are costs associated with public engagement an eligible expense under the NEVI Formula Program?**

*Answer:*

Yes. NEVI Formula Program funds can be used for public engagement, including with rural, underserved, Tribal, and disadvantaged communities. This includes additional staffing resources to facilitate public engagement by States or other NEVI Formula Program funding recipients.

*Permitting and Environmental Review*

**Question: Are EV charging stations eligible for a “categorical exclusion” (CE) National Environmental Policy Act (NEPA) class of action?**

*Answer:*

In most instances, yes. As stated in the NEVI Formula Program Guidance, State DOTs should consider the appropriate level of review under NEPA. 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. EV charging station installation 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) and (d), depending on the scope of the action and the CE's conditions. Before a CE determination can be applied, 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)).

**Question: Can States take steps to efficiently meet National Historic Preservation Act Section 106 requirements?**

*Answer:*

Yes. Section 106 Programmatic Agreements (PAs) can streamline the review process required under Section 106. Section 106 PAs vary by State and an inventory is available [here](#). By planning to locate EV charging infrastructure in locations with low probability to affect historic properties, States can decrease the likelihood that additional consultation would be required under Section 106.

## **Question: Can States take steps during the planning process to reduce the likelihood of impacts to Threatened and Endangered Species?**

### *Answer:*

Yes. The U.S. Fish and Wildlife Service's (USFWS) [Information for Planning and Consultation](#) (IPaC) is a GIS tool that identifies listed species, critical habitat, migratory bird, and other resources. The location of a potential EV charging projects can be entered into the IPaC tool and a report generated that includes listed species, critical habitat, migratory bird, and other resources that may be found within the project area. Consultation with the USFWS is not required if the project will have "no effect" on a listed species or designated critical habitat.

## **Question: Are there additional requirements if an EV charging station is located in the floodplain?**

### *Answer:*

Yes. Executive Order 11988, "Floodplain Management" requires Federal agencies to consider alternatives for proposed actions in or affecting floodplains. FHWA implements E.O. 11988 through DOT Order 5650.2 (1979); and 23 CFR part 650, subpart A (Location and Hydraulic Design of Encroachments on Flood Plains). The FHWA also issued FHWA Order 5520 in 2014 to address extreme events and climate change. The FHWA's floodplain regulation also generally requires projects to be consistent with the intent of the standards established by the Federal Emergency Management Agency (FEMA), States, and local governmental agencies for the administration of the National Flood Insurance Program (NFIP). 23 CFR 650.103(g) and 650.115(a)(5). The presence of a floodplain will typically not preclude FHWA from funding or approving the placement of a charging station within a proposed or existing transportation facility, provided that the action will not adversely affect the base floodplain or constitute a significant encroachment. See 23 CFR 60.103(d) and 60.105(q). However, floodplains can still pose some flooding risks for EV charging stations and project sponsor should consider the following factors:

- **Safety:** If a project sponsor seeks to place EV charging stations in a base floodplain, they will need to conduct appropriate location hydraulic studies under 23 CFR 650.111. To evaluate safety risk, the project sponsor should confirm with the manufacturer that the charging station can be safely inundated with floodwater within the base floodplain. See CFR 650.111(c) and 650.115(a). If inundation of the charging station presents a risk to safety, the project sponsor may need to elevate the EV charging station or implement appropriate measures to minimize or avoid the risk.
- **Access:** Project sponsors will need to consider access to the EV charging station, including access roads that are located within a base floodplain, that may reduce or prevent access to EV charging station locations during a flooding event.

To determine whether a proposed location for an EV charging station will be within the limits of a base floodplain, States must use NFIP maps or, if NFIP maps are not available, information developed by the State highway agency. 23 CFR 650.111(a). NFIP maps may be found on FEMA's online [Map Service Center](#). The FHWA regulations, policies, and procedures apply to encroachments in all base floodplains, not just the floodplains regulated by FEMA in the NFIP.

## *Technical Assistance*

## **Question: What types of support or technical assistance can State DOTs obtain from the Joint Office?**

### *Answer:*

The Joint Office will provide support to State DOTs as they develop their Plans, and once Plans are approved by FHWA, move toward supporting implementation of those Plans. Specific technical

assistance from the Joint Office includes, but is not limited to, EV technologies, modeling and analysis, sharing relevant data sources, identification of best practices, consultation requirements, and implementation of Justice40. Support can be accessed through the “Contact Us” form at [driveelectric.gov/contact](https://driveelectric.gov/contact). The Joint Office will assist State DOTs directly or connect State DOTs to other available resources. State DOTs are encouraged to work directly with the Joint Office during Plan development before submitting their Plans no later than August 1, 2022.

**Question: Who can answer specific questions related to the NEVI Formula Program?**

*Answer:*

Technical assistance questions regarding Plan development can be directed to the Joint Office at <https://driveelectric.gov/contact> or 833-600-2751.

Program-related questions regarding the implementation of the NEVI Formula Program, such as those regarding financial management, non-Federal share, or other Title 23, U.S.C., requirements, can be directed to the appropriate FHWA Division Office or Gary Jensen at [Gary.Jensen@dot.gov](mailto:Gary.Jensen@dot.gov) or Dawn Horan at [Dawn.M.Horan@dot.gov](mailto:Dawn.M.Horan@dot.gov).