

## **Fund Transfers to Tribes Through 23 U.S.C. 202(a)(9)**

**PURPOSE:** To Identify the procedures to transfer funds from States to Tribes pursuant to 23 U.S.C. 104(f)(3) for tribal transportation projects in furtherance of implementation of 23 U.S.C. 202(a)(9)(B).

**BACKGROUND:** Section 202(a)(9) of title 23, United States Code encourages cooperation between States and Tribes by allowing any funds received from a State, county, or local government to be credited to appropriations available for the Tribal Transportation Program (TTP). One potential source of such funding are funds apportioned or allocated to a State under title 23. Section 104(f)(3) allows the Secretary of Transportation to, at the request of a State, transfer among States, or to the Department's Federal Highway Administration (FHWA), funds that have been so apportioned or allocated. This provision, used in conjunction with the authority under 23 U.S.C. 209(a)(9), allows State funds to be transferred to FHWA, which in turn would provide the funds to the specified Tribe.

A Tribe would receive the transferred funds in the same manner that it receives its TTP funds. Some Tribes carry out their TTP projects and activities through Agreements developed with the FHWA Office of Federal Lands Highway (HFL) under 23 U.S.C. 202(b)(7). Other Tribes carry out their TTP projects and activities through Agreements with the Department of the Interior's Bureau of Indian Affairs (BIA) under 23 U.S.C. 202(b)(6). Tribes that have an Agreement with FHWA would receive the transferred funds from FHWA. The FHWA would transfer the funds to BIA for Tribes that have an Agreement with BIA. In either case, the credit to TTP appropriations under 23 U.S.C. 202(a)(9) applies to all funding received and credited to the TTP pursuant to this authority.

### **General requirements**

If, under 23 U.S.C. 202(a)(9), a State elects to transfer to a Tribe funds apportioned or allocated under title 23, the Tribe then administers the project or activity in accordance with TTP provisions. Upon transfer, the funds are credited to the TTP and the project is carried out in accordance with 23 U.S.C. 202(a)(9). Additionally, the State is relieved of oversight for the transferred funds and FHWA or BIA (as applicable) assumes oversight.

In accordance with 23 U.S.C. 104(f)(3)(A), funds that are transferred to the TTP must be for a specific project and that project must be eligible under the initial source of funding. Consistent with 31 U.S.C. 1532, the funds retain their matching requirements from the initial funding source and must be used for the purpose agreed to between the State and the Tribe. A master tri-party Agreement (template) should be used for the transfer of this funding, signed by the Tribe, State, and either FHWA or BIA. The agreement should also contain an addendum that identifies the project, funding, expectations, roles and responsibilities, etc. The BIA or HFL, as applicable, should track the Funds received separately from the Tribe's TTP funds, to ensure that obligation deadlines are met. When the project is complete, any remaining balance must be returned to the State that originated the transfer, unless further agreements are reached for eligible projects.

### **Obligation of funding**

Any funding (and associated obligation limitation) transferred through this process is obligated through the same process as the TTP funding. Formula obligation limitation is available for a single fiscal year. Therefore, if the transfer is of apportioned funds and formula obligation limitation, the funds and formula obligation limitation must be obligated within the fiscal year of transfer. If allocated funding is transferred, any associated allocated obligation limitation that FHWA or BIA does not obligate by the end of the fiscal year is subject to August redistribution and, in the following fiscal year, FHWA will make available obligation limitation equal to any amount so redistributed for the project. However, to avoid having the transferred funds be subject to August redistribution, the Tribe needs to commit in July to obligate the funding prior to the end of the Fiscal Year of the transfer.

### **Transfer process**

To carry out transfers of apportioned funds, a State DOT should work directly with its respective Division Office by submitting the transfer form (FHWA-1576) to transfer the funds to Federal Lands Highway Headquarters (HFL HQ). The transfer form should:

- clearly define the type of funds being transferred;
- specify that the funds are transferred to HFL HQ for the TTP in accordance with 23 U.S.C. 202(a)(9);
- identify the purpose for which the funds are being transferred, and the name of the receiving Tribe; and
- include supporting Agreements with the Tribe, or other related documentation.

The FHWA will transfer the funding to BIA for those Tribes that do not operate their TTP with FHWA following the standard transfer process that is used for TTP funding.

To carry out transfers of allocated funds, the FHWA Division Office will need to coordinate with the appropriate HQ Program Office to administer the transfer.