

# Implementation Guidance for the Tribal Transportation Program

This cancels guidance previously issued under MAP-21.

**Date: March 9, 2017**

## Purpose

The purpose of this document is to provide general guidance for implementing and administering the Tribal Transportation Program (TTP) under 23 U.S.C. 202, established under section 1119 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) and continued under the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94).

## Framework

The goal of the TTP is to provide funding to Tribes to address their transportation needs and provide access to basic community services to enhance the quality of life in Indian country. The TTP replaced the former Indian Reservation Roads (IRR) program.

**Statutory citations:** FAST Act §§ 1117, 1118, & 1121; 23 U.S.C. 201, & 202

## Funding features

The TTP is funded by contract authority from the Highway Account of the Highway Trust Fund. Funds are subject to the overall Federal-aid obligation limitation.

## Formula

Tribal shares are calculated using two components as follows [23 U.S.C. 202(b)(3)]:

- 20 percent of the funds made available are distributed based on the tribal shares percentages of the IRR Program as calculated in FY 2011.
- The remainder of the funds are distributed using the following factors—
  - 27 percent are based on eligible road miles, which is defined as the following mileage included in the National Tribal Transportation Facility Inventory (NTTFI):
    - The mileage of roads identified as being owned by the Bureau of Indian Affairs (BIA) or an Indian Tribal Government for Fiscal year (FY) 2012; and
    - The mileage of roads included in the BIA system inventory prior to October 1, 2004.
  - 39 percent are based on tribal population using the most recent population data on American Indian/Alaska Native Reservation or Statistical Area pursuant to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, 25 U.S.C. 4101 et seq.).

- The remaining 34 percent are divided equally among the 12 BIA regions and then distributed among Tribes in each region based on the proportion of each Tribe's average FY 2005-FY 2011 formula distribution compared to that region's total FY 2005-FY 2011 distribution.

### Set-asides

Prior to distribution of TTP funds to Tribes each year, amounts may be deducted for the following purposes—

- *Program administration.*—Up to 5 percent may be set aside for program administration, including funding for Tribal Technical Assistance Centers (TTAPs). The Secretary of Transportation or the Secretary of the Interior may use these funds for program management and oversight and project-related administrative expenses. [FAST Act § 1118; 23 U.S.C. 202(a)(6)]
- *Transportation planning.*—Up to 2 percent may be set aside for transportation planning, to be allocated among Indian tribal governments that apply for transportation planning. [23 U.S.C. 202(c)]
- *Tribal bridges.*—Up to 3 percent may be set aside for a nationwide priority program for improving eligible deficient bridges. [23 U.S.C. 202(d)]
- *Tribal safety projects.*—Up to 2 percent may be set aside for safety projects, to be allocated as determined by the Secretary of Transportation, to applicant tribal governments for eligible projects as described in 23 U.S.C. 148(a)(4). [23 U.S.C. 202(e)]
- *Tribal supplemental funding.*—The set aside amount is determined as follows [23 U.S.C. 202(b)(3)(C)(i)]:
  - If the TTP funding level is less than \$275 million, 30 percent of such funds must be set aside for a tribal supplemental program.
  - If the TTP funding level exceeds \$275 million, \$82.5 million plus 12.5 percent of the amount made available in excess over \$275 million must be set aside.

Tribal supplemental funding is initially distributed by BIA region based on that region's proportion of tribal share funding under 23 U.S.C. 202(b)(3)(B) to the total tribal share funding made available to all regions. The funds are then further distributed to Tribes within the region. [23 U.S.C. 202(b)(3)(C)(ii)]

Tribal High Priority Projects -- The Tribal High Priority Projects Program, as originally established in section 1123 of MAP-21, was not reauthorized by the FAST Act.

### Non-Federal share

The TTP funds may be used to pay the non-Federal share for any project funded under 23 U.S.C. or chapter 53 of 49 U.S.C. that provides access to or within Federal or tribal land. [23 U.S.C. 120(k)]

**Federal share:** The TPP federal share is 100 percent. [23 U.S.C. 201(b)(7)]

## **Eligible activities**

The Secretary of Transportation and the Secretary of the Interior may use TTP funds to pay the costs of the following activities [23 U.S.C. 202(a)(1)]:

- Transportation planning, research, maintenance (subject to the limitation described below), engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities;
- Adjacent vehicular parking areas;
- Interpretive signage;
- Acquisition of necessary scenic easements and scenic or historic sites;
- Provisions for pedestrians and bicycles;
- Environmental mitigation in or adjacent to tribal land to—
  - Improve public safety and reduce vehicle caused wildlife mortality while maintaining habitat connectivity; and
  - Mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;
- Construction and reconstruction of roadside rest areas, including sanitary and water facilities;
- Other appropriate public road facilities as determined by the Secretary of Transportation;
- Operation and maintenance of transit programs and facilities that are (1) located on, or provide access to, tribal land, or are (2) administered by a tribal government; and
- Any transportation project eligible for assistance under 23 U.S.C. that is (1) located within, or that provides access to, tribal land, or is (2) associated with a tribal government.

Limitation on maintenance -- A Tribe can use up to 25 percent of its TTP allocation or \$500,000, whichever is greater, for maintenance of tribal transportation facilities. This limitation does not apply to road sealing. The Secretary of the Interior must verify that this maintenance funding does not supplant maintenance funding provided by the BIA for road maintenance programs on Indian reservations. [23 U.S.C. 202(a)(8)]

## **Program features**

### Definition

*Tribal transportation facility* -- A public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in 23 U.S.C. 202(b)(1). [23 U.S.C. 101(a)(31)]

### Tribal transportation facility inventory

The Secretary of the Interior, in cooperation with the U.S. Department of Transportation, must maintain an inventory of tribal transportation facilities eligible for the TTP. [23 U.S.C. 202(b)(1)] The inventory is used to identify the tribal transportation system and determine the

relative transportation needs among Indian Tribes. The inventory includes, at a minimum, transportation facilities that are eligible for assistance under the TTP that a Tribe has requested, including facilities that—

- were included in the BIA system inventory prior to October 1, 2004;
- are owned by an Indian tribal government;
- are owned by the BIA;
- were constructed or reconstructed with funds from the Highway Trust Fund under the IRR program since 1983;
- are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives;
- are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or
- are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

[23 U.S.C. 202(b)(1)(B)]

### Planning

Indian Tribal governments, in cooperation with the Secretary of the Interior, must carry out transportation planning procedures consistent with existing State and metropolitan planning processes, in accordance with 23 U.S.C. 201(c). Regionally significant TTP projects must be included in Tribal transportation improvement plans, State and metropolitan plans, and transportation improvement programs. [23 U.S.C. 202(c)]

### Tribal transportation facility bridges

The Secretary of Transportation must maintain a nationwide priority program for improving deficient bridges eligible for the TTP. Eligible activities include:

- carrying out planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, or paint bridges;
- applying calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or
- implementing any countermeasures for deficient bridges (including multiple-pipe culverts).

To be eligible for funding under the set-aside, a bridge must (1) have an opening of at least 20 feet, (2) be classified as a tribal transportation facility, and (3) be structurally deficient or functionally obsolete.

[23 U.S.C. 202(d)]

### Safety projects

The Secretary of Transportation must allocate funds based on an identification and analysis of highway safety issues and opportunities on tribal lands that are included in applications received from Indian tribal governments. [23 U.S.C. 202(e)]

### Federal-aid eligible projects

The TTP funds may be obligated for projects on a tribal transportation facility eligible for Federal-aid funds apportioned to States under 23 U.S.C. 104. However, before any TTP funds may be obligated on such a project, the Secretary of Transportation must determine that the TTP funds are supplemental to, and not in lieu of, the obligation of a fair and equitable share of the State's section 104 funds. [23 U.S.C. 202(f)]

### **Program administration**

- *Tribal Authorities.*—Tribes may approve Plans, Specifications, & Estimates (PS&E) packages, award construction contracts, and administer construction projects in accordance with the ISDEEA. [23 U.S.C. 202(b)(5)] The specific requirements for meeting these authorities can be found in 25 CFR 170.460-461.
- *Direct funding agreements.*—Subject to the approval of the Secretary of Transportation, Indian Tribes that are financially stable and have adequate financial management capability may opt to enter into TTP Funding Agreements directly with FHWA for all funds a Tribe receives under chapter 2 of title 23, U.S.C. [23 U.S.C. 202(b)(7)]
- *Asset management.*—The Secretary of Transportation and the Secretary of the Interior will, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems to support effective asset management. [23 U.S.C. 201(c)(5)]
- *Data collection.*—The Secretary of Transportation and the Secretary of the Interior must collect and report data necessary to the implementation of the TTP in accordance with the Indian Self-Determination and Education Assistance Act, including inventory and condition information on tribal transportation facilities, and bridge inspection and inventory information on federally- and tribally-owned bridges open to the public. [23 U.S.C. 201(c)(6) and 144(b)].
- *Tribal Data Collection.*—Section 1117 of the FAST Act adds a new Tribal Data Collection requirement. Any entity carrying out a project under the TTP must report the following data within 90 days of the end of a fiscal year, based on obligations and expenditures for that year [23 U.S.C. 201(c)(6)(C)]—
  - The names of projects and activities carried out by the entity under the TTP;
  - A description of those projects and activities;
  - The current status of the projects and activities; and

- An estimate of the number of jobs created and the number of jobs retained by the projects and activities.
- *Reimbursable agreements.*—State, local, and/or Tribal governments may use reimbursable agreements, in addition to agreements between Federal agencies. [23 U.S.C. 201(d)]