

## Attachment A: General Program Overview

The Tribal Transportation Program (TTP), established in Fiscal Year (FY) 2013 under the Moving Ahead for Progress in the 21st Century Act (MAP-21), provides funding for addressing the transportation needs of the 574 federally-recognized Indian Tribes and Alaska Native Villages (Tribes). The Tribes can use these funds for eligible transportation activities such as planning, design, construction, and road and bridge maintenance. The program is jointly administered by the Federal Highway Administration's (FHWA) Office of Federal Lands Highway and the Bureau of Indian Affairs (BIA) in accordance with a memorandum of understanding. Prior to MAP-21, TTP was known as the Indian Reservation Roads (IRR) Program, established by the Surface Transportation Assistance Act of 1982.

Under an extension of the Fixing America's Surface Transportation (FAST) Act, TTP was authorized at a funded level of \$505 million in FY 2021. Except for a 5-percent set-aside for BIA and FHWA to carry out program management and oversight, Tribes receive all other available TTP funding. Funding is provided to Tribes either as Tribal shares or as special set-aside funding to address transportation planning or safety and bridge projects and activities. A statutory funding formula that can be found at Title 23, United States Code (U.S.C.), Section 202(b) determines the Tribal shares. The TTP is an important resource of a Tribe's overall infrastructure investment strategy. Title 25, Code of Federal Regulations (CFR), Part 170 contains the regulations for carrying out the TTP.

The National Tribal Transportation Facility Inventory (NTTFI) includes facilities that provide access to or are located within Tribal lands. These roads, trails, bridges, and other facilities provide safe and adequate transportation for public access to, within, and through Indian reservations and native communities for Native Americans, visitors, recreational users, resource users, and others, while contributing to the health and safety and economic development of Native American communities. The NTTFI currently lists more than 164,000 miles of roads. Approximately 31,400 miles are identified as BIA routes and another 28,000 miles as Tribal routes. States, counties, townships, boroughs, or other Federal Agencies own the remaining mileage.

The TTP funds can only be expended for projects and activities identified in an FHWA approved Transportation Improvement Program per 23 U.S.C. 202(b)(4)(B). If Tribes expend the funds on a facility, that facility must be included in the NTTFI. Eligible TTP activities are listed in Appendix A to Subpart B of 25 CFR Part 170.

### TTP Funding Formula

The FAST Act carried over the existing funding formula established in MAP-21. Found at 23 U.S.C. 202(b), the statute states that, after incorporating the set asides authorized under other subsections and subparagraphs (identified below), the Secretary shall distribute the remaining TTP funding among Indian Tribes as follows:

1. Twenty percent of the remaining funding using the FY 2011 total relative need distribution factor (RNDF) and population adjustment factor (PAF) percentages (of the funding formula that was in place at that time); and
2. The "balance" using the MAP-21 TTP funding formula.

The MAP-21 TTP funding formula contains three factors:

1. Eligible Road Mileage (27 percent of the “balance” identified above)

For the purposes of this calculation, and per 23 U.S.C. 202(b)(3)(B), the eligible road mileage is computed as the sum of the BIA or Tribally owned roads included in the FY 2012 NTTFI as well as any other road that was included in the BIA system inventory prior to October 1, 2004. A total of 60,446 miles was used for this factor. Each Tribe’s ratio of total eligible road mileage as compared to the total eligible road mileage of all Tribes is used in this Tribal share calculation. The FHWA TTP Website has a Tribe-by-Tribe breakdown of eligible mileage included in the table of Tribal shares for FY 2021 at <https://highways.dot.gov/federal-lands/programs-tribal/finance> under the heading of Tribal Shares and Planning Funds under the FAST Act.

2. Tribal Population (39 percent of the “balance” identified above)

This calculation utilizes the most recent data on American Indian and Alaska Native population within each Indian Tribe’s American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.). For FY 2021, this totaled 1,527,934. Each Tribe’s ratio of their total population as compared to the total population of all American Indians and Alaskan Natives is used in this Tribal share calculation.

3. Historic Tribal Shares (34 percent of the “balance” identified above)

The Tribal share distribution for this factor is initially divided equally among each of the 12 BIA Regions. Then within each region, each Tribe’s share is determined by calculating the ratio that the average total RNDF and PAF from FY 2005 through FY 2011 calculated for that Tribe bears to the average total of RNDF and PAF for FY 2005 through FY 2011 calculated for all the Tribes within that region.

In FY 2021, \$333,150,000 was authorized for the TTP funding formula codified in 23 U.S.C. 202(b)(3)(B). Of this amount, \$69,339,516 (20 percent) was distributed using the FY 2011 RNDF and PAF percentages described above, while \$263,810,484 was distributed using the MAP-21 TTP funding formula.

The set asides that are incorporated into the TTP funding formula include:

*Tribal supplemental funding* – Under the statutory TTP funding formula, the dollar amount for this set aside is equal to \$82,500,000 plus 12.5 percent of the amount made available for TTP in excess of \$275,000,000. For FY 2021, this totaled \$111,250,000 in authority. The intent of this set aside is to offset any negative impacts to each Tribe’s funding levels (from the MAP-21 formula versus the previously used IRR funding formula) by providing extra funding to assure that, if possible, each federally-recognized Tribe receives at least the same level of funding that it did in FY 2011. The total funding for this set aside is initially designated at the BIA regional level based on a ratio of their regional Tribes’ total of Tribal shares as compared to the total nationwide Tribal shares for that year. The funds are then made available to the Tribes within each region that were negatively impacted by the new formula so that their Tribal share total is at least the same as they received in FY 2011. Any remaining funds are then made available to all the Tribes within that region based on the size of their Tribal shares. If the supplemental funding

made available to a region is not adequate to achieve this, then those Tribes that were negatively impacted each receive an amount that equals the same percentage of their FY 2011 amount.

*Planning* – Two percent of the funds made available under the FY 2021 TTP were set aside for Tribes to carry out transportation planning activities, such as the development of a Long-Range Transportation Plan (LRTP) or to carry out other planning activities such as inventory updates or project specific planning. These funds were made available to each Tribe by adding 2 percent to their calculated Tribal share. In FY 2021, this set aside totaled \$10,100,000 in authority (which was reduced to \$8,978,900 after the imposition of the obligation limitation reduction).

*Tribal Transportation Facility Bridges* - Three percent of the funds made available under the FY 2021 TTP were set aside for the purposes of carrying out this program. Tribes applied for these funds in accordance with 23 CFR part 661 to carry out any planning, design, engineering, preconstruction, construction, and inspection of any bridge project located on a route included in the NTTFI. In FY 2021, this set aside totaled \$15,150,000 in authority (which was reduced to \$13,468,350 after the imposition of the obligation limitation reduction).

*Safety* – Two percent of the funds made available under the FY 2021 TTP were set aside for the purposes of carrying out this program. Eligible projects and activities were in accordance with 23 U.S.C. 148(a)(4). Tribes applied for these funds based on a notice of funding opportunity published by FHWA, and awards were approved by the Secretary of Transportation. In FY 2021, this set aside totaled \$10,100,000 in authority (which was reduced to \$8,978,900 after the imposition of the obligation limitation reduction).

*Administrative Expenses* – In accordance with 23 U.S.C. 202(a)(6), 5 percent of the funds made available under the FY 2021 TTP were set aside for use by the Secretary of Transportation and the Secretary of the Interior for program management and oversight and project-related administrative expenses. This is often referred to as Program Management and Oversight funds. In FY 2021, this set aside totaled \$25,250,000 in authority (which was reduced to \$22,447,250 after the imposition of the obligation limitation reduction).

### FY 2021 TTP Fund Distribution

Because of the language of the statute, the TTP funding formula must initially be run and the Tribal shares determined based on the authorized levels. The Tribal shares are then adjusted to meet the funds made available. The FHWA TTP Website has the FY 2021 calculated Tribal shares as well as the breakdown of the 2-percent Planning funds for each of the 574 federally-recognized Tribes at <https://highways.dot.gov/federal-lands/programs-tribal/finance> under the heading of Tribal Shares and Planning Funds under the FAST Act.

### Contracting Mechanisms

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109-59 (2005), for the first time allowed eligible Tribes the option of working directly with FHWA in the administration of their IRR Program. This option has continued through subsequent FHWA authorizations. In FY 2021, 134 Tribes operated their TTP through Program Agreements directly with FHWA. Under these FHWA Program Agreements, the Tribes receive their funding in advance directly from FHWA and are responsible for managing

their TTP. The FHWA is responsible for the stewardship and oversight of the provided funds and ensures that the program is carried out in accordance with statutory and regulatory requirements.

Four additional options are available for Tribes which opt to work directly with BIA. For these options, the TTP funds are initially transferred from FHWA to BIA for further distribution to the Tribes. The options include:

**Direct Service Agreements** – Under these agreements the BIA carries out TTP on behalf of and in consultation with a Tribe. Therefore, BIA is responsible for all aspects of TTP, including delivery, stewardship, and oversight. In FY 2021, 22 Tribes had Direct Service Agreements with BIA for their TTP;

**Self-Determination Contracts** – These contracts are developed between BIA and a Tribe in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638. Generally, each contract is for a specific project or activity, so several contracts could be developed over a 1-year period to account for the amount of TTP funding made available to the Tribe. The Tribe is provided TTP funding on a contract-by-contract basis from BIA and is responsible for carrying out the work identified. The BIA is responsible for the stewardship and oversight of the provided funds and ensures that the program is carried out in accordance with the contract and statutory and regulatory requirements. In FY 2021, 174 Tribes carried out their TTP under Self-Determination Contracts;

**Self-Governance Compacts** – Compacts are developed between the Tribe and the Department of the Interior's (DOI) Office of Self-Governance. Under a self-governance compact, the Tribe receives its funding in advance from DOI and manages its TTP in a way that is similar to FHWA Program Agreements. However, these compacts include certain protections and other options afforded them in accordance with the ISDEAA. The DOI is responsible for the stewardship and oversight of the provided funds and ensures that the program is carried out in accordance with the compact and statutory and regulatory requirements. In FY 2021, 38 Tribes carried out their TTP under Self-Governance Compacts; and

**BIA Government to Government (G2G) Agreements** – These Agreements are “sister” agreements of FHWA Program Agreements, first established in July 2011. A Tribe operating under these Agreements receives its funding in advance from BIA and is responsible for managing its TTP. The BIA is responsible for the stewardship and oversight of the provided funds and ensures that the program is carried out in accordance with statutory and regulatory requirements. In FY 2021, 214 Tribes carried out their TTP under G2G Agreements.