

Tribal Transportation Program – Tribal High Priority Projects Program

Questions and Answers

These Questions and Answers (Q&As) provide guidance on the administration, project selection, and funding for the Tribal High Priority Projects Program that has been funded using a set-aside from the Tribal Transportation Program. *See* section 11128 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58) (November 15, 2021), also known as the “Bipartisan Infrastructure Law” or “BIL.”

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

ACRONYMS

AASHTO – American Association of State Highway and Transportation Officials
ADA – Americans with Disabilities Act
BIA – Bureau of Indian Affairs
BIA POC – Bureau of Indian Affairs Point of Contact
BIL – Bipartisan Infrastructure Law
CFR – Code of Federal Regulations
DOI – Department of the Interior
ERFO – Emergency Relief for Federally Owned Roads Program
FHWA – Federal Highway Administration
FHWA TC – Federal Highway Administration Tribal Coordinator
FPL – Funding Priority List
FY – Fiscal Year
IIJA – Infrastructure Investment and Jobs Act (Pub. L. 117-58)
IRR – Indian Reservation Roads Program (former name of the Tribal Transportation Program)
IRRBP – Indian Reservation Roads Bridge Program (now known as the Tribal Transportation Facility Bridges)
MAP-21 – Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141)
NTTFI – National Tribal Transportation Facility Inventory
OTT – Office of Tribal Transportation
Pub. L. – Public Law
Tribal HPP Program – Tribal High Priority Projects Program
TIP or TTIP – Tribal Transportation Improvement Program
TTP – Tribal Transportation Program
USDOT – United States Department of Transportation
U.S.C. – United States Code

TRIBAL HPP PROGRAM OVERVIEW

1. What is the Tribal HPP Program?

The Tribal HPP Program is authorized at section 1123 of the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141 (MAP-21) (23 U.S.C. 202 note,) as amended, as part of the Tribal Transportation Program (TTP) authorized at 23 U.S.C. 201-202. All Tribal HPP Program activities are governed by the TTP regulations at 25 CFR part 170 (TTP regulations), and funding for selected projects is awarded in accordance with the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, or the Department of Transportation's Tribal Self-Governance authorization under 23 U.S.C. 207. The "Tribal HPP Program Eligibility" section has additional information below.

The Tribal HPP Program provides funds to eligible applicants:

- Whose annual allocation of funding under the TTP is insufficient to complete the highest priority project of the Indian Tribe;¹ or
- Has an emergency or disaster with respect to a transportation facility included on the National Tribal Transportation Facility Inventory (NTTFI) that renders the facility impassible or unusable.

See MAP-21, § 1123(b)(2).

2. What is the intent of Tribal HPP Program emergency or disaster funding?

The intent of the Tribal HPP Program emergency or disaster funding is to provide assistance for emergency relief projects for tribal transportation facilities that, due to a natural disaster or catastrophic failure, are rendered impassable or unusable, under the following condition:

The emergency or disaster event consists of eligible work that normally qualify for FHWA–Emergency Relief for Federally Owned Roads Program (ERFO) program funding but does not meet the disaster dollar threshold for ERFO (currently \$700,000).²

Additional information on emergency or disaster funding can be found below in Question #11.

3. Where can I find additional information about the Tribal HPP Program?

Additional information can be found on the Tribal HPP Program website:

<https://highways.dot.gov/federal-lands/programs-tribal/high-priority-projects>

¹ "Priority projects" are those submitted in applications that will be scored and ranked in accordance with the Project Scoring Matrix explained further below in Question #19.

² As background, Tribes are eligible to receive emergency or disaster relief funds through the FHWA–ERFO program if there is a declared emergency event and certain disaster dollar thresholds are met. See 23 U.S.C. 125(e). If an emergency or disaster meets the ERFO program eligibility, including the funding threshold, applicants are encouraged to work through their BIA Regional Office to determine if the disaster would be approved for funding by FHWA's ERFO program.

4. How does this Program support the Administration's priorities?

BIL represents a once-in-a-generation investment in our nation's infrastructure, competitiveness, and communities. This includes historic and critical investments in Tribal transportation through the TTP, including the re-establishment of funding towards the Tribal HPP Program.

The Tribal HPP Program supports the Administration's priorities by investing in historically underserved communities that don't receive enough TTP funds to fund their highest priority project. The Tribal HPP Program funds can be expended for a wide variety of eligible projects that include key priority areas such as safety, Complete Streets, ADA, climate change, and sustainability.

TRIBAL HPP PROGRAM FUNDING

5. What are the dedicated funding sources for the Tribal HPP Program?

Funding for the Tribal HPP Program for each fiscal year 2022 through 2026 includes:

- A \$9,000,000 set-aside out of the TTP, and
- Authorized amount of \$30,000,000 out of the General Fund, subject to appropriation, to carry out the Tribal HPP Program for each fiscal year 2022 through 2026.³

See MAP-21, § 1123(h), as amended by BIL, § 11128.

6. What is the Federal share of the cost of a project?

The Federal share of the cost of a project shall be 100 percent.⁴ *See* MAP-21, § 1123(h)(3), as amended by BIL, § 11128.

TRIBAL HPP PROGRAM ELIGIBILITY

7. Who are eligible applicants for the Tribal HPP Program?

Eligible applicants for the Tribal HPP Program are:

- An Indian Tribe⁵ whose annual allocation of funding under the TTP, is insufficient to complete the highest priority project of the Indian Tribe;

³ Although Tribal HPP Program funds are authorized to be appropriated, Congress must pass an appropriations bill that includes these additional funds each year for funds to be available for the Tribal HPP Program.

⁴ Projects with a greater percentage of other sources of matching funds, that are not provided under the TTP, will receive a higher score in accordance with the Project Scoring Matrix. The Project Scoring Matrix is explained further below in Question #19.

⁵ "Indian Tribe" or "Tribe" means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community recognized by the Secretary of the Interior and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as an Indian Tribe.

- A governmental subdivision of an Indian Tribe that is authorized to administer the funding of the Indian Tribe under the TTP and for which the annual allocation under the TTP is insufficient to complete the highest priority project of the Indian tribe; or
- Any Indian Tribe that has an emergency or disaster with respect to a transportation facility included on the NTTFI.

See MAP-21, § 1123(b)(2).

8. How does a Tribe determine whether its annual allocation of funding “is insufficient to complete the highest priority project”?

“Insufficient to complete the highest priority project” means that only Tribes receiving less than \$1,000,000 in annual allocation of statutory formula Tribal shares through the TTP may apply for a priority project.

However, the statutory limitation that the annual allocation of funding be insufficient to complete the highest priority project does not apply to emergency or disaster projects. Therefore, any Tribe may apply for Tribal HPP Program funding for an emergency or disaster project regardless of its amount of annual allocation of statutory formula Tribal shares through the TTP.

See Indian Reservation Roads Coordinating Committee Motion, June 23, 2010

9. What are the eligible activities for Tribal HPP Program funds?

Tribal HPP Program funds may be used to carry out activities defined by Federal law and the TTP regulations as “construction,” including preliminary engineering and construction engineering. Exceptions are noted below and discussed further in Question #10.

Tribal HPP Program funds shall not be used for:

- (1) Transportation planning
- (2) Research
- (3) Routine maintenance activities;
- (4) Structures and erosion protection unrelated to transportation and roadways;
- (5) General or Tribal reservation planning not involving transportation;
- (6) Landscaping and irrigation systems not involving transportation programs and projects;
- (7) Work performed on projects that are not included on a TIP approved by the FHWA, unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;
- (8) The purchase of equipment unless otherwise authorized by Federal law⁶; or
- (9) The condemnation of land for recreational trails.

MAP-21, § 1123(e).

10. May a Tribe use Tribal HPP Program funds to purchase equipment?

⁶ Unless the requirements in Question #10 are met.

Tribal HPP Program funds can be used to purchase construction equipment associated with a Tribal HPP Program application that requests construction funding. The applicant must obtain and attach FHWA or BIA's written approval with the application submittal. The applicant must obtain approval by following the requirements found in 25 CFR part 170, appendix A to subpart B (Allowable Uses of TTP funds), section (b)(49).

An application cannot request Tribal HPP Program funds for maintenance equipment because routine maintenance activities are not eligible for Tribal HPP Program funds. *See* MAP-21, § 1123(e)(3).

11. Is there a limitation on the amount of funds that a Tribe may request for a project?

Yes. Project funding shall be limited to:

1. Priority projects: A maximum of \$1,000,000 per application; and
2. For emergency or disaster projects submitted for funding:
 - a. Funding requests must be at least 10 percent of the total amount of the annual allocation of statutory formula Tribal shares under 23 U.S.C. 202(b); and
 - b. Will be limited to the estimated cost of repairing damage to the Tribal transportation facility.

See MAP-21, §§ 1123(d)(4), 1123(f).

12. What is the definition of “emergency or disaster” for purposes of the Tribal HPP Program?

The term “emergency or disaster” or “emergency/disaster” means damage to a Tribal transportation facility that:

1. Renders the facility impassable or unusable; and
2. Is caused by either a natural disaster over a widespread area or catastrophic failure from an external cause; and
3. Would be eligible to receive funding under the ERFO Program (23 U.S.C. 125(e)) but does not meet the funding threshold of a total of \$700,000 per event across all affected public authorities, including Indian Tribes, as provided in USDOT's ERFO Disaster Assistance Manual.

See MAP-21, § 1123(a)(1).

Some examples of natural disasters include, but are not limited to, floods, droughts, earthquakes, tornadoes, landslides, avalanches, and severe storms.

An example of a catastrophic failure is the collapse of a highway bridge after being struck by a barge, truck, or landslide.

13. Is there a limitation on the number of applications that can be submitted?

An applicant for funds under the Tribal HPP Program may only have one application for assistance pending at any one time. This includes both categories: priority projects and emergency/disaster applications.

See MAP-21, § 1123(c)(2).

HOW TO APPLY FOR TRIBAL HPP PROGRAM FUNDING

14. What resources are available to assist with applying for Tribal HPP Program funds?

The following resources are available on the Tribal HPP Program website (<https://highways.dot.gov/federal-lands/programs-tribal/high-priority-projects>):

- Eligibility and application checklist
- Application form
- Application form instructions
- Recorded webinars
- Tribal HPP Program Manager contact information

The BIA Region or FHWA TC is also available to provide technical assistance to interested Tribes who are preparing an application package. Technical assistance includes explaining project eligibility, clarifying the scoring criteria, and reviewing the application for completeness.

15. When can I submit a Tribal HPP Program application?

A Tribe may prepare and submit an application package to request Tribal HPP Program funding at any time during the year.

16. How do I submit my Tribal HPP Program application?

For Tribes with FHWA Program Agreements⁷ or USDOT Self-Governance Tribes, the Tribe will email their application to their FHWA TC. The FHWA TC will submit the completed Tribal HPP Program application package directly to the OTT Tribal HPP Program Manager for review of the application and further processing.

For Tribes working with the BIA (Program Agreement, 93-638 Self-Determination Contract, or Direct Service) or under a DOI Self-Governance Compact, the Tribe will email their application to their BIA Region. The BIA Region will submit the completed Tribal HPP Program application package directly to the OTT Tribal HPP Program Manager for review of the

⁷ Section 202(b)(7) of title 23, U.S.C., authorizes Indian Tribal governments to enter into a Tribal Transportation Program Agreement (TTPA) with the Secretary of Transportation to carry out their transportation program and projects. This gives the Tribes the option of working directly with FHWA in the administration of their Tribal Transportation Program rather than having to go through the BIA. The TTPA allows Tribes to assume all the functions and duties that the BIA would have performed with respect to a program or project under chapter 2 of title 23, U.S.C., except those inherently Federal functions.

application and further processing.

17. What does a complete application package include?

The application must include:

- (a) Project scope of work, including deliverables, project cost estimate, and project timeline;
- (b) The amount of funds requested;
- (c) Project information addressing –
 - a. For priority projects, the ranking criteria identified in the Project Scoring Matrix and discussed further below in Questions 19 and 20, or
 - b. For emergency or disaster projects, the nature of the emergency or disaster;
- (d) Documentation that the project meets the definition of a Tribal transportation facility, as defined in 23 U.S.C. 101(a)(33), and is included in the NTTFI;
- (e) Documentation of official Tribal action requesting the project; and
- (f) Documentation from the Indian Tribe providing authority for the Secretary of the Interior to place the project on a TIP if the project is selected and approved.

See MAP-21, § 1123(c)(1).

18. Must the cost estimate in the application be certified?

Yes. *See* MAP-21, § 1123(g). In addition, a Tribe may assume the TTP functions and activities of certifying and approving the cost estimate by providing a breakdown of project costs in accordance with 25 CFR 170.460 and 170.461.

HOW WILL PRIORITY PROJECT APPLICATIONS BE SCORED AND RANKED?

19. How will Tribal HPP Program applications be scored?

The Tribal HPP Program authorization at section 1123(c)(4) of MAP-21 mandates that all applications be scored by FHWA and BIA using the Project Scoring Matrix⁸ set forth below:

⁸ Published in 2004 as appendix A 25 CFR part 170, subpart C (69 FR 43090 (July 19, 2004)).

Score	10	5	3	1	0
Accident ⁹ ¹⁰ and fatality rate for candidate route.	Severe.....	X.....	Moderate.....	Minimal.....	No accidents
Years since last IRR construction project completed	Never.....	Last project more than 10 years ago	Last project 5-9 years ago	Last project within last 1 to 4 years	Currently has project.
Readiness to Proceed to Construction or IRRBP Design Need	PS&E Complete and approved	Bridge Replacement PS&E development Project	Bridge Rehabilitation PS&E development Project	Non-bridge PS&E development project	X.....
Percentage of Project matched by other funds	X.....	80 percent or more by other funds.	20-79 percent by other funds.	1-19 percent.....	No other funds
Amount of funds requested ¹ .	X.....	\$250,000 or less	\$250,001-\$500,000	\$500,001-\$750,000	Over \$750,000
Geographic isolation	No external access to community	Substandard Primary access to community	Substandard Secondary access to community	Substandard access to Tribal facility	X.....
All weather access for:..... - Employment - Commerce - Health - Safety - Educational Resources - Housing	Addresses all 6 elements	Addresses 4 or 5 elements	Addresses 3 elements	Addresses 2 elements	Addresses 1 element
¹ Total funds requested, including preliminary engineering, construction, and construction engineering.					

⁹ Because few collisions are accidental, the word “crash” is the current transportation safety industry standard terminology. For the purposes of the Tribal HPP Program, the word “accident” means “crash” as defined by the AASHTO’s Highway Safety Manual.

¹⁰ Ideally, police crash reports would describe the incident history in terms of type, severity, and quantity that a safety project would address. When such data is not available, news articles, written testimonies, a letter from local law enforcement describing safety performance, health data on injuries, and other documentation of incident history can be accepted. A project that implements an effective safety countermeasure (Proven Safety Countermeasure, Crash Modification Factors Clearinghouse, or other research reports) or addresses a need identified in a current (5 years or newer) Tribal Transportation Safety Plan, Road Safety Audit, State Highway Safety Plan, or a Systemic Safety study are examples of alternative safety data sources that could be used to supplement incident history and demonstrate the safety benefit of a project.

20. After scoring, how will Tribal HPP Program applications be ranked?

Approved emergency or disaster applications will be given the highest priority as explained below in Questions 25-27. *See* MAP-21, § 1123(d)(2).

After scoring, the Tribal HPP Program authorization mandates that FHWA and BIA shall apply project ranking criteria for priority project applications to include:

1. Existence of safety hazards with documented fatality and injury accidents;
2. Number of years since the Indian Tribe last completed a construction project funded by the TTP;
3. Readiness of the Indian Tribe to proceed to construction or bridge design need;
4. Percentage of project cost matched by non-TTP funds¹¹;
5. Amount of funds requested;
6. Challenges caused by geographic isolation; and
7. All weather access for: employment, commerce, health, safety, educational resources, or housing.

See MAP-21, § 1123(c)(3).

HOW WILL APPLICATIONS BE AWARDED?

21. What is the Tribal HPP Program Funding Priority List (FPL)?

The FPL is a list of applications scored according to the “Project Scoring Matrix” identified in section 1123(c)(4) of MAP-21, ranked, and approved for Tribal HPP Program funding. The number of projects on the FPL is limited by the amount of Tribal HPP Program funds available.

Questions 25-27 explain how approved emergency or disaster project applications are funded.

22. Will I be notified of my application status?

Yes. FHWA and BIA will jointly notify all applicants in writing of their application status. FHWA and BIA will make notifications for applications that:

- have been accepted for evaluation and ranking.
- have not been accepted for evaluation and ranking along with an explanation of deficiencies.
- have been evaluated and ranked but not funded.

See MAP-21, § 1123(c)(6).

23. Do applicants approved for Tribal HPP Program funds have to update their Tribal TIP before expending the funds?

¹¹ Project funding may include funds received through the TTP and non-TTP funds, but only the non-TTP funds will be counted toward the percentage of project cost matched by non-TTP funds.

Yes. The FHWA and BIA will work with the Tribe to update a Tribe’s individual TTIP with the awarded project. *See 25 CFR 170.421.*

TIMELINE FOR THE TRIBAL HPP PROGRAM

24. What is the timeline for major Tribal HPP Program milestones?

At any time during the year, a Tribe may prepare and submit to the BIA Region or FHWA TC an application package to request Tribal HPP Program funding.

By...	FHWA and BIA will...
January 31	Accept Tribal HPP Program applications until January 31 for the current fiscal year funding.
February 15	Notify all applicants and Regions in writing of acceptance of applications and return unaccepted applications to the applicant with an explanation of deficiencies.
March 31	Complete evaluation and ranking
April 15*	Final FPL developed. FHWA and BIA will (1) notify applicants that are on the FPL and (2) notify applicants that did not score high enough to make the FPL.
May 15*	Distribute funds to successful applicants.

**These dates may be affected if FHWA doesn’t receive full appropriation of funding and is operating under a continuing resolution (CR).*

25. When can an emergency or disaster project application be submitted?

Eligible applicants are encouraged to submit an emergency or disaster project application at any time for consideration. These applications will be considered for immediate funding because the Tribal HPP Program authorization mandates that approved emergency or disaster applications receive funding before funding is dispersed for other approved projects on the FPL. Prior to the issuance of the FPL, FHWA will provide funding to eligible emergency or disaster projects before providing funding for other approved priority projects on the FPL.

26. What happens if an emergency or disaster project application is submitted after projects have been awarded and funds have been distributed?

If the emergency or disaster project is eligible for the Tribal HPP Program, funding will be provided as soon as additional funds become available. However, additional Tribal HPP Program funds may not become available until the following fiscal year.

27. What if my project was on the FPL and did not receive Tribal HPP Program funding because funds were redesignated for an emergency or disaster project?

If FHWA uses funding previously designated for a project on the FPL to fund an emergency or disaster project, the project that lost its funding will move to the top of the FPL for the following year. *See* MAP-21, § 1123(d)(3)(C).