



## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket FTA–2023-0015]

### Public Transportation on Indian Reservations Program; Tribal Transit Program

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice of public meeting and request for comment.

**SUMMARY:** This notice seeks comments on how the Federal Transit Administration (FTA) Tribal Transit competitive program and technical assistance to Tribes is administered. This notice also introduces FTA’s consultation process and schedule for implementation.

**DATES:** The official comment period for this consultation will close by **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

However, FTA’s partnership with Tribal leadership will remain ongoing. Late-filed comments will be considered to the extent practicable. Comments must be submitted in writing directly to the official docket per the instructions found in the **ADDRESSES** section of this notice. In-person consultation will be held in conjunction with the National Transportation in Indian Country Conference (NTICC) in Anchorage, Alaska, on Monday, September 25, 2023, from 1:30-3:00 PM Alaska Daylight Time (ADT). Additionally, a virtual consultation will be held on November 2, 2023.

**ADDRESSES:** Comments should be submitted by the following method, identifying your submission by docket number FTA–2023-0015: *Federal eRulemaking Portal*: Go to <https://www.regulations.gov> and follow the online instructions for submitting comments. The in-person consultation will be held at the Dena’ina Civic and Convention Center, 600 West 7th Avenue Anchorage, AK 99501. The virtual consultation can be accessed here: <https://www.transit.dot.gov/tribal-transit>.

**FOR FURTHER INFORMATION CONTACT:** Elan Flippin-Jones, Office of Program Management, (202) 366-3800 or email [TribalTransit@dot.gov](mailto:TribalTransit@dot.gov). A TDD is available at 1-800-877-8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

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**A. Program Overview**

Federal public transportation law (49 U.S.C. 5338(a)(2)(F)) and 49 U.S.C. 5311(j)), as amended by the Infrastructure Investment and Jobs Act (Pub. L. 117-58, the “Bipartisan Infrastructure Law” or “BIL”), authorizes the Public Transportation on Indian Reservations Program (Tribal Transit Program) for Fiscal Years (FY) 2022-2026. The Tribal Transit Program (TTP) is funded as a takedown from the FTA’s Formula Grants for Rural Areas Program, 49 U.S.C. 5311. Eligible direct recipients are federally recognized American Indian Tribes and Alaskan Native Villages, groups and, communities providing public transportation in rural areas, as identified by the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA) at this link: <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>. The TTP funds are allocated for grants to eligible recipients for any purpose eligible under Section 5311, which includes capital, operating, and planning projects. BIL authorizes a total of \$229 million over five years, of which \$183.2 million is for the TTP formula program, and \$45.8 million is for the TTP competitive grant program.

FTA is committed to ensuring that programs, policies, and procedures are responsive

to the needs and concerns of Indian Tribes. FTA's last official consultation with the Tribes was conducted in November 2012. FTA's previous consultation efforts can be found here: 2012 Request for Comments (77 FR 67439) and 2013 Response to Comments (78 FR 27284). USDOT Order 5301.1 (<https://www.transportation.gov/individuals/foia/dot-order-53011-american-indiansalaska-nativestribes>) explains that FTA will engage in formal Government-to-Government consultation with federally recognized Tribes before taking any action that may significantly or uniquely affect them. Potential policy changes under the Tribal Transit competitive program that FTA is considering may significantly affect Tribes. This FTA action also supports E.O. 13175: Executive Order on Consultation and Coordination with Indian Tribal Governments (<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>). The Federal Government's commitment to implement E.O. 13175 is reaffirmed in the Biden Administration's January 26, 2021 Presidential Memo on Tribal Consultation and Strengthening Nation-to-Nation Relationships (<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>) and the November 30, 2022 Presidential Memo on Uniform Standards for Tribal Consultation (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/>).

Since the program has now been administered under the requirements of the previous consultation for approximately a decade, funding levels have increased, as well as the number of Tribes participating in the program. Additionally, certain operational considerations may have changed, particularly in response to the COVID-19 pandemic, supply chain disruptions, and increases in the cost of goods and services. Therefore, FTA is consulting with Tribal recipients to ensure the program still is being administered in a beneficial way. Specifically, with the authorization of BIL, the amount made available

under Tribal Transit competitive program increased by 83 percent over previously authorized levels of the Fixing America's Surface Transportation (FAST) Act. Furthermore, in Fiscal Year (FY) 2013, approximately 110 Tribes received funding under the TTP formula program. That number has grown to 136 Tribes receiving funding under the formula program in FY 2023.

Through this notice, FTA seeks comments on the administration of the Tribal Transit competitive program, as well as comments about the technical assistance that FTA provides to recipients of FTA Tribal Transit funding. Comments related to other aspects of the TTP, including the administration of the TTP formula program, will also be considered. Comments from eligible recipients of the Tribal Transit competitive program are highly encouraged.

## **B. Outreach and Consultation Schedule**

### ***1. Outreach and Meetings***

In-person consultation will be held in conjunction with the National Transportation in Indian Country Conference (NTICC) in Anchorage, Alaska on Monday, September 25, 2023, from 1:30-3 p.m. ADT.

Additionally, a virtual consultation will be held on November 2, 2023.

Tribes that are eligible recipients of FTA's TTP are encouraged to attend one or both of these meetings. Comments made at these meetings will inform FTA's decision-making. However, to be considered as part of the official consultation, comments must be made in writing to the docket.

### ***2. Consultation Schedule***

- Inform Tribes of consultation efforts in Notice of Funding Opportunity (NOFO) for FY 2023 Tribal Transit Competitive Program: Published March 26, 2023 (88 FR 18364).
- In-Person listening session at Department of Transportation Tribal Transit Symposium held in Oklahoma City: May 24-25, 2023.

- In-Person consultation meeting at NTICC: September 25, 2023.
- Virtual outreach meeting: November 2, 2023.
- Publication of Federal Register Notice with responses and program changes to the TTP competitive program: 2024.

**C. Questions on Proposed Changes to the Tribal Transit Competitive Program**

A total of \$45,812,610 is authorized for FY 2022-2026 for the Tribal Transit competitive grant program. Funds may be awarded to federally-recognized Indian Tribes for any purpose under the Section 5311 program. The outcome of this consultation may impact the administration of competitive funding awarded for FY 2024-2026. For FY 2024-2026, a total of \$28,123,961 is made available under the Tribal Transit competitive program.

| <b>Funding Program</b>             | <b>FY 2024</b> | <b>FY 2025</b> | <b>FY 2026</b> |
|------------------------------------|----------------|----------------|----------------|
| Tribal Transit Competitive Program | \$9,169,076    | \$9,358,487    | \$9,596,398    |

Program requirements for the Tribal Transit Program can be found in the Section 5311 Circular (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/formula-grants-rural-areas-program-guidance-and-application>).

FTA seeks comments for the Tribal Transit competitive program on the following questions:

1. Should TTP competitive program funds continue to support capital, operating and planning projects? These types of projects are currently eligible under the program. Limitations on certain activities will leave more funding available for the other types of activities. For example, limiting or removing operating projects as an eligible project type will leave more funding available for capital and planning projects.
2. Should operating assistance under the competitive program be limited based on the amount of TTP formula allocation received? In the past, FTA has limited operating

assistance to applicants who receive less than \$20,000 under the TTP formula program. This threshold preserves TTP competitive funds for larger capital projects. Increasing or removing this threshold would potentially reduce the amount of funding available for capital projects.

3. Should TTP competitive program funds continue to support start-up, expansion, and replacement capital projects? These projects are currently eligible under the program. Should FTA prioritize start-up projects in order to advance Tribal transit providers into the formula program? Once a Tribal transit provider begins operating service and providing service data to the National Transit Database, the provider will begin to receive Tribal Transit formula funds.
4. Should FTA establish a minimum and/or maximum grant amount under the TTP competitive program? Currently, there is no minimum or maximum set for allocations under this program. However, planning grants are capped at \$25,000. Establishing a maximum grant amount would preserve funds for additional projects but may prevent larger projects from being funded at the full request.
5. Should FTA continue to cap planning grants at \$25,000 under the competitive program? Should FTA retain the cap for planning grants but set it at a different amount? This cap preserves TTP competitive funds for larger capital projects.
6. Should FTA require a local match of 10 percent of total project costs for both capital and operating assistance projects under the TTP competitive program? If so, should FTA continue to include an option for Tribes to submit a local match waiver request? Currently, there is no match required for both the competitive and formula programs. However, in the past, a match of 10 percent was required on competitive program projects, unless the Tribe applied for a hardship waiver. Requiring a local match would allow for more projects to be funded, but may discourage some Tribes from applying for funding.

7. Should FTA retain the condition that indirect costs not exceed 10 percent of each Tribal Transit competitive grant allocation? Providing a cap on the percentage of a grant that can be applied to indirect costs reserves more funding for capital projects, but may underestimate the true amount of indirect costs attributable to a project.
8. Should FTA continue to provide Tribes 90 days to submit applications under the TTP competitive program Notice of Funding Opportunity? In the past, FTA has had either a 60-day or a 90-day deadline for application submission under the TTP competitive program.
9. Should FTA examine or alter any other aspect of the Tribal Transit competitive program?

#### **D. Tribal Transit Technical Assistance Improvements**

Through the Tribal Transit Technical Assistance Assessments Initiative, FTA Collaborates with Tribal Transit recipients to review processes and identify areas in need of improvement and then assists by offering solutions to address these needs – all in a supportive and mutually beneficial manner that results in technical assistance. These Assessments include discussions of compliance areas pursuant to FTA’s Master Agreement (<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>), site visits, promising practices reviews, and technical assistance from FTA and its contractors. These Assessments also provide FTA with invaluable opportunities to learn more about a Tribe’s perspectives and how to better honor the sovereignty of each Tribal Nation. To date, FTA has conducted 62 Assessments and will conduct 36 Assessments in FY 2023-2024.

In addition, FTA also offers technical assistance to Tribes through its National Rural Transit Assistance Program (<https://www.nationalrtap.org/>) and FTA Regional Offices (<https://www.transit.dot.gov/about/regional-offices/regional-offices>) provide direct Technical Assistance to Tribal recipients in their region.

FTA seeks comments on its technical assistance efforts through the following question:

1. How can FTA improve its technical assistance efforts for Tribal recipients?

**E. Tribal Transit Formula Program**

For FY 2024-2026, the TTP formula program has been authorized at \$112.5 million.

| <b>Funding Program</b>            | <b>FY 2024</b> | <b>FY 2025</b> | <b>FY 2026</b> |
|-----------------------------------|----------------|----------------|----------------|
| Tribal Transit<br>Formula Program | \$36,676,304   | \$37,433,948   | \$38,385,592   |

Although no specific questions are posed, FTA also encourages comments and suggestions on ways to improve the TTP formula program.

**Nuria I. Fernandez,**

*Administrator.*

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