

American Recovery and Reinvestment Act of 2009 Indian Reservation Roads Funding Redistribution Guidance

Purpose: The American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Recovery Act), provides the Federal Highway Administration (FHWA) with \$27.5 billion for highway infrastructure investment. Of that amount, \$310 million was provided to supplement the Indian Reservation Roads (IRR) Program. The purpose of this memorandum is to establish the guidance by which the redistribution of Recovery Act funds made available to the IRR Program will be carried out.

Authority: The authority to carry out the redistribution is contained in the Recovery Act language. Specifically, the language of the Highway Infrastructure Investment appropriation says: “*Provided further*, that of the funds provided under this heading, \$550,000,000 shall be for investments in transportation at Indian reservations and Federal lands: *Provided further*, That of the funds identified in the preceding proviso, \$310,000,000 shall be for the Indian Reservation Roads program, ..., *Provided further*, That for investments at Indian reservations and Federal lands, priority shall be given to capital investments, and to projects and activities that can be completed within 2 years of enactment of this Act: *Provided further*, That 1 year following the enactment of this Act, to ensure the prompt use of the \$550,000,000 provided for investments at Indian reservations and Federal lands, the Secretary shall have the authority to redistribute unobligated funds within the respective program for which the funds were appropriated.”

Definitions:

Obligation: The Federal Government’s commitment to pay the Federal share of a project’s eligible cost. This commitment occurs when the project is approved and the project agreement is executed. It is the point at which the designated funds can begin to be expended.

Recovery Act-IRRTIP: The document that shows the list of projects programmed for a Tribe’s Recovery Act funding. It also provides project activity information in such a manner so as to meet the public information requirements of 23 U.S.C. § 204.

Shovel ready project: A project that is fully designed, has completed all required planning and NEPA and applicable other permit/approval requirements, has obtained ROW and/or easements, and permits, and is ready to proceed to construction or bid.

New Road/Bridge Project: A project on a road or bridge that does not currently exist and is shown in the IRR Inventory as proposed (CN=4).

Existing Road/Bridge Project: A project on an existing road or bridge that is included in the IRR Inventory (CN=1 or 2) and determined eligible for rehabilitation, reconstruction, or replacement.

Guidance:

This guidance contains the procedures that FHWA will follow for the redistribution of Recovery Act-IRR funds. The purpose of this guidance is to assure that all Recovery Act-IRR funds are obligated prior to September 30, 2010, per the Act and to identify the critical dates and criteria that will be utilized in the redistribution process. Two dates are critical in this guidance. On February 17, 2010, Recovery Act-IRR funds not identified on a FHWA approved Recovery Act-IRRTIP will be subject to redistribution. On June 1, 2010, Recovery Act-IRR funds not fully obligated will be subject to redistribution. Additional information is shown below:

1) What are the critical dates associated with redistribution of Recovery Act-IRR funds?

- a) November 16, 2009– On or about this date, the Bureau of Indian Affairs (BIA) and FHWA will notify all Tribes in writing of their “obligation of Recovery Act-IRR funds” status. The letter shall include a notice that in accordance with the Recovery Act, Recovery Act-IRR funds not obligated by February 17, 2010, may be withdrawn and collected by the Secretary of Transportation and made available to other Tribes. To facilitate the withdrawal and redistribution process, the letter will also state that a Tribe must complete and submit an Recovery Act-IRRTIP for their initial tribal Recovery Act-IRR shares to BIA/FHWA by February 1, 2010, in order to guarantee consideration for Federal approval by the February 17, 2010 deadline. In addition, the letter will reference the BIA/FHWA obligation/agreement timeline for initial tribal Recovery Act-IRR shares, including the steps and actions necessary to develop a Recovery Act-IRRTIP, and an offer to provide technical assistance to the Tribe, if requested, on the actions necessary to obligate the funds.
- b) December 15, 2009 – On or about this date, FHWA will issue a “call for projects” to Tribes that will contain the requirements and due date for project applications that a Tribe requests be considered for use of any redistributed Recovery Act-IRR funds.
- c) December 31, 2009 – On or about this date, BIA/FHWA will provide a written notice that indicates the upcoming loss of the Tribe’s initial tribal Recovery Act-IRR shares if a Recovery Act-IRRTIP is not submitted for consideration by February 1, 2010.
- d) February 1, 2010 -- On or about this date, the BIA and FHWA will jointly develop a status of Recovery Act-IRRTIP and fund commitments and determine the amount of Recovery Act-IRR funds projected for withdrawal and redistribution. This list will be updated weekly.
- e) February 17, 2010 – On or about this date, submitted projects will be reviewed and ranked. In addition, Recovery Act-IRR funds not included on a FHWA approved Recovery Act-IRRTIP shall be withdrawn from BIA and collected at FHWA. A letter of notification will be provided to each Tribe whose initial Recovery Act-IRR shares have been withdrawn for redistribution. The funds collected at FHWA will then be redistributed in accordance with the ranking of approved projects as shown on the Recovery Act-IRR Redistribution Project Queue.
- f) April 30, 2010 – On or about this date, BIA/FHWA will provide a written notice that indicates the upcoming loss of the Tribe’s initial tribal Recovery Act-IRR shares if those initial funds are not obligated by June 1, 2010.

- g) June 1, 2010 – On or about this date, FHWA and BIA will review all Recovery Act-IRR documentation and withdraw any Recovery Act-IRR funds previously held for a Tribe that are not obligated. These funds will then be made available for re-distribution to other Tribes in accordance with project rankings on the Recovery Act-IRR Redistribution Project Queue.
- h) September 30, 2010 – The date by which all Recovery Act funds must be fully obligated in the Federal financial systems.

2) What process must the Tribe follow to submit a project for consideration of redistributed funds?

- a) The maximum amount of redistributed Recovery Act-IRR funding made available for a project will be \$2,000,000.
- b) FHWA and BIA will issue a “call for projects” which will identify the documentation required and the due date for Federal receipt of the documentation. Tribal projects must be shovel ready (construction) or a design or transit project and be able to be awarded and begin construction within 60 days of notification of approval. An FHWA approved Recovery Act-IRRTIP identifying the project will be required as part of the documentation. Only one project per Tribe will be reviewed, ranked, and placed on the Recovery Act-IRR Redistribution Project Queue. Tribes may submit a second project for consideration, but that project will only be eligible for funding after every Tribe’s initial submitted project is reviewed, ranked, approved, and funded.
- c) The Tribe must submit all of the required documentation to either BIA-DOT or FHWA by the due date indicated in the call for projects letter. The deadline is expected to be in late December.
- d) A project’s ranking on the Recovery Act Redistribution Project Queue will be based on the total score obtained through the ranking criteria shown below. Projects receiving equal score shall be inserted into the queue by the highest score received for: time to completion; expenditure status; access determination, and amount of funding requested, in that order.
- e) The “redistributed” funds will be made available to those Tribes with the highest scoring projects, regardless of regional location, until all available Recovery Act funds are depleted.

**American Recovery and Reinvestment Act of 2009
IRR Redistribution Guidance
Project Ranking Criteria**

Points Criteria	10	7	4	1
Recovery Act Obligation/ Expenditure Status	- Tribe has obligated 100% of its initial Recovery Act-IRR share on approved projects/activities and expended more than 95% of its initial Recovery Act IRR share on approved projects/activities.	- Tribe has obligated 100% of its initial Recovery Act share on approved projects/activities, but the expenditure of the funds is still ongoing.	- Tribe has obligated less than 100% of its initial Recovery Act share on approved projects/activities.	- Tribe only has approved Recovery Act IRRTIP and no obligations or expenditures have occurred.
Project Type	Construction (Existing Road or Bridge)	Construction (New Road or Bridge)	Construction (Transit or Transportation facilities)	Design (All)
Safety	X ¹	Project addresses documented safety concerns	X	X
Reporting	X	All reports up to date as of Jan. 15	X	X
Amount requested	$\leq \$500k$	$\$501k \leq X \leq \$1000k$	$\$1001k \leq X \leq \$1500k$	$\$1501k \leq X \leq \$2000k$
Leveraging Effect (% participation of non Recovery Act-IRR funds in the overall project)	$>80\%$	$79\% > X > 40\%$	$39\% > X > 10\%$	$9\% > X > 5\%$
Time to completion	X	X	Project completion by Feb 17, 2011	X
Project provides immediate access to a BIA or tribal: 1. School 2. Health facility 3. Housing 4. Business/ Enterprise 5. Cultural sites (per 25 CFR 121)	Addresses all 5 elements	Addresses 3 or 4 elements	Addresses 1 or 2 elements	Does not address any of the elements

¹ An "X" in any ranking criteria indicates that points of that level are not available in the overall scoring of the project.