| **COLUMN 1** | **COLUMN 2** | **COLUMN 3** |
| --- | --- | --- |
| **Sec. 1121. Tribal Transportation**  **Self-Governance Program**  **FAST ACT, Pub. L. 114-94**  **(23 U.S.C. §207)** | **PROPOSED REGULATION** | **COMMENTS** |
| **207(d) Annual Funding Agreements**.—  (1) FUNDING AGREEMENT REQUIRED.—After entering into a compact with an Indian tribe under subsection (c), the Secretary shall negotiate and enter into a written annual funding agreement with the Indian tribe.  (2) CONTENTS.—  (A) IN GENERAL.—   1. FORMULA FUNDING AND DISCRETIONARY GRANTS.—A funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.   (ii) TRANSFERS OF STATE FUNDS.—   * 1. INCLUSION OF TRANSFERRED FUNDS IN FUNDING AGREEMENT.—A funding agreement entered into with an Indian tribe shall include Federal-aid funds apportioned to a State under chapter 1 if the State elects to provide a portion of such funds to the Indian tribe for a project eligible under section 202(a). The provisions of this section shall be in addition to the methods for making funding contributions described in section 202(a)(9). Nothing in this section shall diminish the authority of the Secretary to provide funds to an Indian tribe under section 202(a)(9).   **(II) METHOD FOR TRANSFERS.—If a State elects to provide funds described in subclause (I) to an Indian tribe**—  (aa) the transfer may occur in accordance with section 202(a)(9); or  (bb) the State shall transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section.  (III) RESPONSIBILITY FOR TRANSFERRED FUNDS.—Notwithstanding any other provision of law, if a State provides funds described in sub- clause (I) to an Indian tribe—  (aa) the State shall not be responsible for constructing or maintaining a project carried out using the funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project; and  (bb) the Indian tribe shall be responsible for constructing and maintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the applicable statute of limitations period related to the construction of the project.  (B) ADMINISTRATION OF TRIBAL SHARES.—The tribal shares referred to in subparagraph (A) shall be provided without regard to the agency or office of the Department within which the program, service, function, or activity (or portion thereof) is performed.  (C) FLEXIBLE AND INNOVATIVE FINANCING.—  (i) IN GENERAL.—A funding agreement entered into with an Indian tribe under paragraph (1) shall include provisions pertaining to flexible and innovative financing if agreed upon by the parties.  (ii) TERMS AND CONDITIONS.—  (I) AUTHORITY TO ISSUE REGULATIONS.—The Secretary may issue regulations to establish the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i).  (II) TERMS AND CONDITIONS IN ABSENCE OF REGULATIONS.—If the Secretary does not issue regulations under subclause (I), the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i) shall be consistent with—  (aa) agreements entered into by the Department under—  (AA) section 202(b)(7); and (BB) section 202(d)(5), as in effect before the date of enactment of MAP–21 (Public Law 112–141); or  (bb) regulations of the Department of the Interior relating to flexible financing contained in part 170 of title 25, Code of Federal Regulations, as in effect on the date of enactment of the FAST Act.  (3) TERMS.—A funding agreement shall set forth—  (A) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered by the Indian tribe; and  (B) for items identified in subparagraph (A)—  (i) the general budget category assigned;  (ii) the funds to be provided, including those funds to be provided on a recurring basis;  (iii) the time and method of transfer of the funds;  (iv) the responsibilities of the Secretary and the Indian tribe; and  (v) any other provision agreed to by the Indian tribe and the Secretary.  (4) SUBSEQUENT FUNDING AGREEMENTS.—  (A)APPLICABILITY OF EXISTING AGREEMENT.—Absent notification from an Indian tribe that the Indian tribe is withdrawing from or retroceding the operation of 1 or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.  (B) EFFECTIVE DATE OF SUBSEQUENT AGREEMENT.— The terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.  (5) CONSENT OF INDIAN TRIBE REQUIRED.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law.  **207(h) TRANSFER of FUNDS**  TRANSFER OF FUNDS.—The Secretary shall provide funds to an Indian tribe under a funding agreement in an amount equal to—  (1) the sum of the funding that the Indian tribe would otherwise receive for the program, function, service, or activity in accordance with a funding formula or other allocation method established under this title or chapter 53 of title 49; and  (2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.  **207(l) APPLICABILITY of ISDEAA**  (l) APPLICABILITY OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Except to the extent in conflict with this section (as determined by the Secretary), the following provisions of the Indian Self-Determination and Education Assistance Act shall apply to compact and funding agreements (except that any reference to the Secretary of the Interior or the Secretary of Health and Human Services in such provisions shall be treated as a reference to the Secretary of Transportation):  . . .  **207(l)(3)**  Subsections (a), (b), (d), (e), (g), (h), (i), and (k) of section 508 of such Act (25 U.S.C. 458aaa–7), relating to transfer of funds.  **207(l)(8) Application of other Sections**  Subsections (a) and (b) of section 516 of such Act (25 U.S.C. 458aaa–15), relating to application of title I provisions | **SUBPART \_\_** — **FUNDING AGREEMENTS**  **§ ###.01 What is a funding agreement?**   1. A funding agreement is a legally binding and mutually enforceable written agreement [between the Secretary and an Indian tribe entered into under 23 U.S.C. § 207(d)] that identifies the funds being transferred, the programs, services, functions and activities (PSFAs) or projects that the Tribe will carry out under the Compact with such funds, any other funds, and such other terms as are required or may be agreed upon by the Secretary and the Tribe pursuant to 23 U.S.C. § 207. 2. ~~The funds identified in a funding agreement shall include funds made available to Tribes through:~~   ~~(1) the Tribal Transportation Program identified in 23 USC 202;~~  ~~(2) the Tribal Transit Program identified in 49 USC 5311;~~  ~~(3) the award of any entitlement, discretionary and competitive grant at USDOT for which Tribes are an eligible direct recipient; and~~  ~~(4) Federal-aid funds apportioned to a State and any other funds if the Indian tribe negotiates an agreement authorized under 23 USC § 202(a)(9) or § 207 (d)(2)(A)(ii)(II)(bb) for a project eligible under 23 USC § 202(a).~~   1. ~~The Secretary shall provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations and authorization extensions, to the extent permitted by such resolutions.~~ 2. ~~A funding agreement shall authorize the Tribe, as it determines, to plan, conduct, and administer the funds identified in (b) above.~~ 3. ~~The funds is this provision may be consolidated but only to the extent allowed by and in accordance with the statutes and regulations of those programs.~~ 4. ~~The terms of the Funding Agreement must be in accordance with 23 USC 207(d)(3).~~   **§ ###.02 What PSFAs must be included in a funding agreement?**  In accordance with 23 U.S.C. § 207(d)(2)(A)(i), the PSFAs which must be included in a funding agreement, at the option of the Indian Tribe, are PSFAs relating to:  (1) the Tribal Transportation Program identified in 23 USC 202;  (2) the Tribal Transit Program identified in 49 USC 5311;  (3) any entitlement, discretionary and competitive Department grant for which Tribes are an eligible recipient;  (4) other grants administered by the Department that are otherwise available to Indian Tribes; and  (4) a project or projects funded through the execution of an agreement under 23 U.S.C. § 202(a)(9) which the Tribe elects to include in a funding agreement.    ~~In accordance with 23 U.S.C. § 207(d)(2)(A)(i), a funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the tribe, to plan, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all PSFAs (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and PSFAs (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.~~    **§###.03 Which entity is responsible for the transferred funds?**  The Tribe shall be responsible for constructing ~~and maintaining~~ a project carried out using the funds received under a [funding agreement] ~~Self-Governance Agreement~~ and for administering and supervising the project and funds in accordance with this section ~~during the applicable statute of limitations period related to the construction of the project.~~ In addition, the Indian Tribe must carry out the project or PSFAs in accordance with the funding agreement, the statutes, and the regulations in this part. ~~regulations of those program from which the funds were provided.~~  **§ ###.04 May a funding agreement include provisions for the Secretary to perform certain activities associated with the PSFAs performed by the Tribe?**  Yes. In accordance with 23 U.S.C. § 207(d)(3)(B)(iv) and (v), a funding agreement must set forth the responsibilities of the Secretary and the Indian tribe and may include any other provision agreed to by the parties. If the Tribe elects,, the funding agreement may include provisions for the Secretary to perform certain activities associated with the PFSAs included in the funding agreement. The Tribe may use eligible funds to pay for such activities. ~~to be performed by the Secretary.~~  TERMS AND CONDITIONS IN A FUNDING AGREEMENT  **§ ###.05 What terms and conditions must be included in a funding agreement?**    In accordance with 23 USC 207(d)(3), a funding agreement shall set forth terms that generally identify the PSFAs (or portions thereof) to be performed or administered by the Indian tribe; and for those PSFAs identified:   1. the general budget category assigned; 2. the funds to be provided, including those funds to be provided on a recurring basis; 3. the time and method of transfer of the funds; 4. the responsibilities of the Secretary and the Indian tribe; and 5. any other provision agreed to by the Indian tribe and the Secretary.   In addition, a provision authorizing the Secretary to terminate the compact or funding agreement (or a portion thereof) and reassume the remaining funding associated with the reassumed PFSAs as provided in 23 U.S.C. 207(f)(2)(A) will also be included unless such provision is included in the compact required under this part.  **§ ###.06 May additional terms and conditions be included in a funding agreement?**  Yes, in accordance with 23 U.S.C. 207(d)(3)(B), any other provision agreed to by the Tribe and the Secretary may be included in the funding agreement.  **§ ###.07 What provisions of Title I and Title V of Pub. L. 93-638 apply to compacts and funding agreements negotiated under section 207 of title 23?**   1. The provisions identified in 23 U.S.C. 207(l) apply to compacts and funding agreements and shall have the same force and effect as if they were set out in full in 23 U.S.C. 207.   **§ ###.09 What if a Tribe requests incorporation of a provision of Title I or Title V of Pub. L. 93-638 at the negotiation stage of a compact or funding agreement?**  In the event that a Tribe request such incorporation at the negotiation stage of a compact or funding agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting compact and funding agreement.  TERM OF A FUNDING AGREEMENT  **§ ###.10 What is the term of a funding agreement?**  A funding agreement shall have the term mutually agreed to by the parties. As provided in 23 U.S.C. § 207(d)(4)(A), absent notification from a Tribe that it is withdrawing or retroceding the operation of one or more PSFAs (or portions thereof) identified in the funding agreement, termination of the funding agreement by the Secretary under 23 U.S.C. § 207(f)(2), or unless agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.  **§ ###.11 Does a funding a**g**reement remain in effect after the end of its term?**  Yes, the provisions of a funding agreement, including all recurring increases received for Tribal shares and continuing eligibility for other increases, remain in full force and effect until a subsequent funding agreement is executed unless the funding agreement is terminated by the Secretary as provided in 23 U.S.C. § 207(f)(2). As provided in 23 U.S.C. § 207(d)(4)(B), upon execution of a subsequent funding agreement by the Secretary and a tribe, the provisions of such a funding agreement are retroactive to the end of the term of the preceding funding agreement.  **§ ###.12 How is a funding agreement amended?**  A funding agreement may be amended by the parties as provided for in the funding agreement, or as identified in 23 U.S.C. § 207(d)(5).  **SUBPART \_\_-DISCRETIONARY AND COMPETITIVE GRANTS OR FUNDS RECEIVED THROUGH AN AGREEMENT DEVELOPED UNDER 23 U.S.C. 202(a)(9)**  **§ ###.13 May the award of a discretionary and competitive grant from the Department be added to a funding agreement?**  Yes, in accordance with section 207(d)(2)(A)(i) of title 23, a discretionary or competitive grant may be added to the funding agreement after award. .  **§ ###.13A May funds made available to a tribe through the execution of an agreement developed under 23 U.S.C. 202(a)(9) be added to a funding agreement?**  Yes, in accordance with 23 U.S.C. § 207(d)(2)(A)(ii), funds made available to a tribe through the execution of an agreement developed under 23 U.S.C. § 202(a)(9), may be added to a funding agreement at the request of the tribe.  **§###.13B Which entity is responsible for the transfer of funds received by a Tribe through an agreement developed under 23 U.S.C. 202(a)(9) and included in a funding agreement under this Part?**  In accordance with 23 U.S.C. § 207(d)(2)(A)(III), if a State provides funds to a Tribe through an Agreement developed under 23 U.S.C. 202(a)(9) and included in a Funding Agreement under this Part, the Tribe shall be responsible for constructing and maintaining the project carried out using such funds and for administering and supervising the project and funds in accordance with section 207(d)(A)(ii) during the applicable statute of limitations period related to the construction of the project. The State shall not be responsible for constructing or maintaining the project carried out by the Tribe using such funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project.  **§###.13C May any funds received from a State, county, or local subdivision be credited to appropriations for the tribal transportation program and made available to a Tribe under a funding agreement in this part?**  Yes, in accordance with section 202(a)(9) of title 23, any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program transferred to a Tribe under a funding agreement under this part.  **§###.13D May a Tribe continue to receive funds from a State received through an Agreement developed under 23 U.S.C. 202(a)(9)?**  Yes. The transfer of funds to a Tribe may also occur in accordance with section 202(a)(9) of title 23 United States Code. Nothing in these regulations shall diminish the authority of the Secretary to provide funds to a Tribe under section 202(a)(9) of title 23.  **§ ###.14 May a Tribe receive discretionary and competitive grant funds in an annual lump sum advance payment?**  Yes, discretionary and competitive grant program funds may be added to the funding agreement as an annual lump sum advance payment after award unless specifically prohibited by the statute that covers those programs. Funds made available through the execution of an agreement under 23 U.S.C. 202(a)(9) shall be made available in accordance with the terms of the 23 U.S.C. 202(a)(9) agreement.  **§ ###.15 May a Tribe keep interest earned on funding identified in a Funding Agreement?**  Yes, a Tribe may keep interest earned on funding identified in a Funding Agreement.  **§ ###.16 How may a Tribe use interest earned onfunding identified in a Funding Agreement?**  Interest earned on such funds may be used by the Tribe at its discretion.  **§ ###.17 May the funds from a discretionary or competitive grant, or funds made available to a Tribe under an agreement under 23 U.S.C. 202(a)(9), and included in a Funding Agreement under this subpart be reallocated, redesigned or consolidated?**  No, unless it is permitted under the statute authorizing the grant or under the terms and conditions of the grant award, as provided in 23 U.S.C. 207(e)(1)(B), these funds may not be reallocated, redesigned or consolidated [and must be used for the purposes for which the funds were originally authorized].  **§ ###.XX What happens to excess funding that remains after completion and final acceptance of a project funded through a discretionary or competitive grant or funding made available to the Tribe through a 23 U.S.C. 202(a)(9) agreement [that is included in a Funding Agreement under this Part]?**  After completion and final acceptance of a project or PSFA ~~funded~~ [financed] through the funds made available to the Tribe through a discretionary or competitive grant or funding made available through a 23 U.S.C. 202(a)(9) agreement, and added to a Funding Agreement under this Part, any excess funds that may remain shall be returned to the Secretary [by the Tribe] ~~as defined in the agreement~~ [in accordance with the requirements of the Funding Agreement].  **§ ###.19 Are the reporting requirements different for a discretionary or competitive grant program or funding made available through a 23 U.S.C. 202(a)(9) agreement [which are]added [by a Tribe] to a funding agreement?**  ~~Yes, the requirements for a discretionary and competitive grant program added to a funding agreement are subject to the terms and conditions of the grant award.~~ Except as provided otherwise under this Part, the reporting requirements for these funds are subject to the [statutory] reporting requirements ~~and terms and conditions of~~  [associated with] the award.  **§ ###.20 May the Secretary and the Tribe develop separate programmatic reporting requirements for the funding made available in a discretionary or competitive grant or funding made available through a 23 U.S.C. 202(a)(9) agreement?**  Yes, the Secretary and the Tribe may develop separate programmatic reporting requirements for discretionary and competitive grants and funds made available to the Tribe through a 23 U.S.C. 202(a)(9) agreement, however, the Tribe must submit the data/reports [that are statutorily] required by the respective program ~~statutes and regulations~~ for the funding made available through the Funding Agreement.  **§###.XX May the Secretary require [additional] reporting ~~in addition to what is statutorily required for a discretionary grant or award~~ [beyond the requirements set out in this Part]?**  No, [unless mandated by statute or a directive from Congress included in a report accompanying an act of Congress,] the Secretary may not require a Tribe to provide additional reports beyond those mandated by a statute, included in the Compact or Funding Agreement, or as specified in this Part.]  [Proposed definition of “**discretionary or competitive grant**” = means a grant specifically designated in a statute for a defined purpose administered by the Department for all programs, services, functions and activities (or portions thereof) that are made available to a public authority, including an Indian tribe, to carry out transportation or other programs, and programs, services, functions and activities (or portions thereof) administered by the Secretary that are otherwise available to an Indian tribe.”]  **§ ###.21 Are Tribes and their employees carrying out a project or PFSA funded through a Funding Agreement covered by the Federal Tort Claims Act (FTCA)?**  Yes, Tribes and their employees carrying out ~~these~~ projects or PSFAs are covered by the FTCA in accordance with section 314 of Public Law 101-512 [25 U.S.C. 5321 note] and section 102(d) of the Act [25 U.S.C. 5321(d)]. Regulations governing coverage under the FTCA are published at 25 CFR Part 900, Subpart M [and §\_\_\_\_\_\_\_\_\_herein].  **FEDERAL NOTE:** Are additional regulatory provisions required to identify other PSFAs (or portions thereof) administered by the Secretary of Transportation that are “otherwise available to Indian tribes” to include in a funding agreement under the Tribal Transportation Self-Governance Program as authorized in 23 U.S.C. §207(d)(2)(A)(i)?  **TRIBAL ADMIN WORKGROUP RESPONSE**: Yes, or the Admin. Workgroup could modify existing regulatory provisions relating to discretionary and competitive grants above to capture “PSFAs (or portions thereof) administered by the Secretary that are *otherwise* available to Indian tribes” as authorized under 207(d) of the TTSGP legislation.  **SUBPART ## - FUNDING**  GENERAL  **§ ###.22 What funds must the Secretary transfer to a Tribe in a funding agreement?**   1. Subject to the terms of any compact or funding agreement, the Secretary must transfer to a Tribe all funds provided for in the funding agreement, pursuant to sections 207(d)(2) of title 23 and other funds agreed upon by the Secretary and the Tribe to be included in the funding agreement. 2. A funding agreement shall authorize the Tribe to receive funds made available to Tribes through: 3. the Tribal Transportation Program identified in 23 U.S.C. § 202; 4. the Tribal Transit Program identified in 49 U.S.C. § 5311, 5. the award of any entitlement, discretionary and competitive grants administered by the Department for all PSFAs (or portions thereof) that are made available to Tribes to carry out tribal transportation programs, and 6. other PSFAs (or portions thereof) and funding administered by the Secretary that are otherwise available to Indian tribes. 7. As prescribed in 23 U.S.C. § 207(d)(2)(B), with respect to tribal shares included in a funding agreement, such funds shall be provided without regard to the agency or office of the Department within which the PSFA (or portion thereof) is performed. 8. The Secretary shall provide funding [to Tribes] for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.   e) Pursuant to section 207(h) of title 23, the Secretary must include funds in a funding agreement in an amount equal to:   1. the sum of the funding that the Tribe would otherwise receive for the PSFA in accordance with a funding formula or other allocation method established under title 23 or chapter 53 of title 49; and 2. such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project. 3. any other funds required by section 516(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5396), as made applicable to the Program by 23 U.S.C. § 207(l)(8).   ~~(1)~~  **§ ###.24 When must the Secretary transfer to a tribe the funds identified in a funding agreement?**  When a funding agreement requires an annual transfer of funding to be made [by the Secretary] at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made [to the Tribe], the first such transfer shall be made [by the Secretary] not later than 30 days after the apportionment of such funds by the Office of Management and Budget (OMB) to the Department, unless the funding agreement provides otherwise.  **§ ###.25 When must the Secretary transfer funds that were not paid as part of the initial lump sum payment (or initial periodic payment)?**  The Secretary must transfer any funds that were not paid in the initial lump sum payment (or initial periodic payment) within 30 days after distribution methodologies and other decisions regarding payment of those funds have been made by the Department.  **§ ###.26 May a Tribe negotiate a funding agreement for a term longer or shorter than one year?**  Yes, upon the Tribe’s request, the Secretary must negotiate a funding agreement for a term longer or shorter than a year. All references in these regulations to funding agreements shall also include funding agreements for a term longer or shorter than one year.  TRANSFERS OF STATE FUNDS    **]**  **§###.30 May any funds received from a State, county, or local subdivision be credited to appropriations for the tribal transportation program and made available to a Tribe under a funding agreement in this part?**  Yes, in accordance with section 202(a)(9) of title 23, any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program transferred to a Tribe under a funding agreement under this part.  FLEXIBLE FINANCING  **§###.31 May a funding agreement include provisions pertaining to flexible or innovative financing?**   1. In accordance with 23 U.S.C. 207(d)(2)(C), if agreed upon by both parties, a funding agreement shall include provisions pertaining to flexible financing and innovative financing. The Secretary [shall] ~~may issue regulations to~~ establish the terms and conditions relating to the flexible and innovative financing provisions~~. If the Secretary does not issue such regulations, the terms and conditions relating to the flexible and innovative financing provisions referred to above~~ [which] shall be consistent with: 2. agreements entered into by the Department under 23 U.S.C. 202(b)(7) and 23 U.S.C. 202(d)(5), as in effect before the date of enactment of MAP-21 (Public Law 112-141); or 3. regulations of the Department of the Interior relating to flexible financing contained in 25 CFR [Part] 170.   **§###.32 Can an Indian tribe use funds made available under a [Compact and Funding] ~~Self-Governance~~ Agreement to leverage other funds or to pay back loans?**  Yes. An Indian tribe can use funds made available under a ~~self-governance agreement~~ [Compact and Funding Agreement] to leverage other funds or to pay back transportation related loans [except if the use of such funds for such purposes is prohibited in the legislation creating the Department program, grant or award.] ~~but only to the extent allowed by and in accordance with the statutes and regulations of those funds being used~~.  **§###.33 Can an Indian tribe apply for loans or credit from a State infrastructure bank?**  Yes. A tribe can apply for loans or credit from a State infrastructure bank. Upon the request of a Tribe, the Department will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a Tribal Transportation Program or other eligible project.  PROHIBITIONS  **§ ###.36 Is the Secretary prohibited from failing or refusing to transfer funds that are due to a Tribe under the funding agreement to carry out the PSFAs to be ?**  Yes, section 508(d)(1)(A) and (B) of the Act [25 U.S.C. 5388(d)(1)(A) and (B)] as made applicable to the [Tribal Transportation Self-Governance] Program by 23 U.S.C. 207(l)(3), expressly prohibit the Secretary from:   1. Failing or refusing to transfer to a Tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under the Tribal Transportation Self-Governance Program, except as required by Federal law, and 2. From withholding portions of such funds for transfer over a period of years.   **§ ###.37 May the Secretary reduce the amount of funds made available to a tribe in a funding agreement ~~under 137.40(b)~~ to make funding available for monitoring or administration by the Department?**  No. The Secretary is prohibited from reducing the amount of funds to make funding available for self-governance monitoring or administration.  **§ ###.38 May the Secretary reduce the amount of formula funds due under the Tribal Transportation Self-Governance Program in subsequent years?**  No, in accordance with section 508(d)(1)(C)(ii) of the Act [25 U.S.C. 5388(d)(1)(C)(ii)], as made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3) ~~of title 23~~, the Secretary is prohibited from reducing the amount of funds required under the Program, except pursuant to:   1. a reduction in appropriations or change in the funding formula from the previous fiscal year for the PSFAs or award included in a compact or funding agreement; 2. a congressional directive in legislation or accompanying report; 3. a tribal authorization; 4. a change in the amount of pass-through funds subject to the terms of the funding agreement; or 5. completion of a project, activity, or program for which such funds were provided.   **§ ###.39 May the Secretary reduce the amount of funds identified in a funding agreement to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Act?**  In accordance with 25 U.S.C. § 5388(d)(1)(c)(iii), [made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3)]the Secretary may not reduce the amount of funds identified in a Funding Agreement to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Tribal Transportation Self-Governance Program.  **§ ###.40 May the Secretary reduce the amount of funds required under 23 U.S.C. § 207 to pay for costs of Federal personnel displaced by self-governance compacts and funding agreements under the Tribal Transportation Self-Governance Program?**  In accordance with 25 U.S.C. 5388(d)(1)(C)(iv), the Secretary may not reduce the amount of funds required under the Tribal Transportation Self-Governance Program to pay for costs of Federal personnel displaced by [Self-Governance] compacts and funding agreements.    **§ ###.41 May the Secretary increase the funds required under the funding agreement?**  Yes, [in accordance with 25 U.S.C. § 5388(d)(2), made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3),] the Secretary may increase the funds provided in the funding agreement. However, the Tribe and the Secretary must agree to any transfer of funds to the Tribe unless otherwise provided for in the funding agreement.  ACQUISITION OF GOODS AND SERVICES  **§ ###.42 Must the Secretary acquire and transfer to a Tribe federal supplies and resources to carry out a compact and funding agreement?**  [In accordance with 25 U.S.C. §§ 5388(e) and 5324(k), made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. §§ 207(l)(3) and (8),] if statutorily available, and upon the Tribe’s request, the Secretary shall acquire personnel, supplies (including those from federal warehouses and supply sources such as lodging, airlines and other transportation), and federal resources available to the Secretary, and transfer the same to the Tribe in order to carry out a compact or funding agreement.  PROMPT PAYMENT ACT  **§ ###.42 Does the Prompt Payment Act apply to funds transferred to a Tribe in a compact or funding agreement?**  Yes, [in accordance with 25 U.S.C. § 5388(g), made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3),]the Prompt Payment Act, 39 U.S.C. section 3901 *et seq.,* applies to the transfer of all funds due under a compact or funding agreement authorized pursuant to the Self-Governance Program.  INTEREST OR OTHER INCOME ON TRANSFERS  **§ ###.43 May a Tribe retain and spend interest earned on any funds paid under a compact or funding agreement?**  Yes, pursuant to section 25 U.S.C. § 5388(h), [made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3),] a Tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or transportation purposes and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year. Funds transferred under this part shall be managed using the prudent investment standard. ~~A Tribe may retain and spend interest earned on any funds paid under a compact or funding agreement~~  **§ ###.44 May a Tribe carryover from one year to the next any funds that remain at the end of the funding agreement?**  Yes, pursuant to section 25 U.S.C. 5388(i), [made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3),] all funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from one year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.  **§ ###.45 Is a Tribe obligated to continue performance under a compact or funding agreement if the Secretary does not transfer sufficient funds?**  In accordance with 25 U.S.C. 5388(k), [made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l)(3),] an Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.  **§ ###.46 Will the Compacts and Funding Agreements be affected by subsequent transportation authorization Acts?**  Unless Congress explicitly revokes the Secretary’s authority to carry out compacts and funding agreements under 23 U.S.C. § 207, ~~this section~~, or a program is no longer authorized, existing compacts and funding agreements will be unaffected by subsequent transportation authorization Acts. Compacts and funding agreements will continue in force according to 23 U.S.C. § 207(d)(4) and will not end due to operation of law or any other default mechanisms. | 23 USC 207(m)(1)(D) and 207(d)(2)(A)(i).  See Fed. Markup Edition (“Working Comments of RWS and VP on Working Draft”) @ 137.40 (p. 10)  Remaining paragraphs in Q&A #1 addressed in Q&A #22 herein.  23 U.S.C. 207(d)(2)(A)(i).  Q&A #3 deleted (see Q&A #2 above re: tribal shares)    Federal officials modified State-transferred 202(a)(9) Federal-Aid Highway funds answer to apply to all Department funds transferred to a tribe under a compact and funding agreement. Tribal Admin. Workgroup disagrees that DOT regulations follow funds awarded a tribe under a compact and funding agreement.  Proposed solution to parking lot item on “buybacks.”  23 U.S.C. 207(d)(3)(B)(iv).  23 U.S.C. 207(d)(3)(A) and (B); 23 U.S.C. 207(f)(2).  23 U.S.C. 207(d)(3)(B)(v)  23 U.S.C. 207(l)    This was deleted by Matt before.  Undeleted this; didn’t see the duplicate included later.  23 U.S.C. 207(d)(4)(A) and 207(f)  Rejecting this deletion in the highlight, believe this is still a parking lot item.  23 U.S.C. 207(f)(2) and 207(d)(4)(B)  23 U.S.C. 207(d)(5)  23 U.S.C. 207(d)(2)(A)(i)  New Q&A  23 U.S.C. 202(a)(9) and 207(d)(2)(A)(ii)  New Q&A  New Q&A    New Q&A  I would prefer to word this as reallocation, etc. would be allowed unless prohibited, but I think this is the language we’ve used throughout  23 U.S.C. 207(e)(1)(B).    Tribal Caucus recommends that the Admin Workgroup develop appropriate reporting requirements in the proposed rule.  Tribal Caucus observation:  Annual appropriations are often based on need supported by verifiable data. Tribes may want to consider including a q&a similar to the draft provision in col. 2 to capture future data/reporting that Congress may include in a statute or as part of a Senate or House report that may accompany an annual appropriations measure.  Placeholder definition for “discretionary or competitive grant”  23 U.S.C. 207(d)(2)    Q&A #22 & #23 are combined.  23 U.S.C. 207(d)(2)(A)(i)  23 U.S.C. 207(d)(2)(B)  23 U.S.C. 207(h)  Q&A #23 combined in Q&A #22 as paragraph (e) (col 2)    Duplicate Q. See Q&A #13A above  Duplicate Q. See Q&A #13D above  Duplicate Q. See Q&A #13E  23 U.S.C. 202(a)(9)(A) and (B)  23 USC 207(d)(2)(C)  Not sure we need regulations here, may be OK to allow practices to be consistent with b7, 202 d5, and 170. No strong feelings here.  Federal position is that the Q&A is already included in the Part 170 regulations for the Tribal Transportation Program is can be deleted.  Federal position is that Q&A is specific to the TTP and can be included in the Tribe’s AFA, not TTSGP regulations.  Duplicate Q&A (#32 above)    Reworded to “no” at request of federal members.  23 U.S.C. § 207(l)(3)  23 U.S.C. § 207(l)(3)  23 U.S.C. § 207(l)(3)  23 U.S.C. §§ 207(l)(3) and (8)  Refer Q&A to Operations Workgroup to ensure no duplication.  23 U.S.C. § 207(l)(3)  23 U.S.C. § 207(l)(3)  Edits reflect Title V statutory text.  23 U.S.C. § 207(l)(3). Edits reflect Title V statutory text.  23 U.S.C. § 207(l)(3). Edits reflect Title V statutory text |