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Highways and Highway Safety on Indian Lands

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Summary

Cars and trucks are the primary means of transportation on Indian lands, mostly rural areas that cover about 56 million acres. There are about 145,000 miles of roads, owned variously by tribal, federal, state, and local governments, which provide access to and within these areas. Although comprehensive data are not available, roads on Indian lands are typically rudimentary and in poor condition.

A large share of federal funding for highways on Indian lands is provided through the Tribal Transportation Program (TTP), which is jointly administered by the Federal Highway Administration (FHWA) in the Department of Transportation (DOT) and the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI). The TTP was authorized at an average of $465 million per year from FY2016 through FY2020 as part of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94).

Other programs that provide funding for highways and highway safety on Indian reservations include BIA's Road Maintenance Program and the National Highway Traffic Safety Administration's (NHTSA's) State Highway Safety Program (§402 safety grants). Indian tribes may also receive federal aid for projects from funding apportioned to a state department of transportation. Moreover, tribes have had some success competing for discretionary funding. For example, Indian tribes have received discretionary Transportation Investment Generating Economic Recovery (TIGER) grants from DOT.

Tribal advocates, citing the poor and unsafe condition of tribal roads, argue for a much larger tribal transportation program and more funds for highway safety programs. The FAST Act provided modest increases in funding in nominal dollars. The FAST Act also requires two safety-related reports, one on the quality of transportation safety data collected on tribal lands and the other to provide options for improving highway safety on Indian reservations.

DOT and BIA have different requirements for projects that involve similar right-of-way circumstances, and a tribe needs to have approval from BIA on BIA-owned or trust land even if the tribe has an agreement with FHWA. In certain situations, BIA will require a more resource-intensive environmental assessment when DOT will process the request as a less resource-intensive categorical exclusion. A legislative option would be to require BIA to apply DOT regulations when implementing the National Environmental Policy Act (NEPA). Others have suggested improving the documentation of rights-of-way on Indian reservations.

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Introduction

The federal government holds about 56 million acres of land in trust for Indian tribes and individuals, an area approximately the size of Utah.[1] Cars and trucks are the primary means of transportation on these lands, although airplanes, public transportation vans and buses, snowmobiles, all-terrain vehicles, boats, and other conveyances are important in some areas.[2] The federal government supports highway transportation on Indian lands predominantly with grants and technical assistance. Most of this support is provided through the Tribal Transportation Program (TTP) that is jointly administered by the Federal Highway Administration (FHWA) in the Department of Transportation (DOT) and the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI).

This report discusses the TTP and other highway programs relevant to the tribes, such as the National Highway Traffic Safety Administration's (NHTSA's) State Highway Safety Program. The report also looks at the role of BIA's Road Maintenance Program. The Fixing America's Surface Transportation (FAST) Act (P.L. 114-94), enacted in 2015, reauthorized the TTP and NHTSA's safety programs from FY2016 through FY2020. These programs are discussed in the context of the special relationship between the federal government and Indian tribes, and the existing physical condition and safety performance of highways on Indian lands. This report discusses several policy issues that are likely to be of ongoing concern, including the federal funding of highways on Indian lands, particularly for highway safety, and environmental review and rights-of-way.

Terminology

In this report the term "Indian" is meant to include American Indians and Alaska Natives. The terms "Indian tribe" and "tribe" are intended to include American Indian tribes and Alaska native tribes and villages that are recognized by the federal government. The terms "tribal lands," "Indian lands," and "Indian reservation" are intended to mean the land that is under the jurisdiction of a federally recognized tribe, including areas known as reservations, pueblos, rancherias, missions, villages, and communities.

Background

There are currently 566 federally recognized Indian tribes and 326 land areas administered by the federal government as Indian reservations. These reservations range in size from the 16 million acres of the Navajo Nation Reservation located in Arizona, New Mexico, and Utah to the Pit River Tribe's one-acre cemetery in California.[3] There are also other types of Indian lands, including state-authorized Indian reservations. Indian reservations are typically rural, sparsely populated, and remote from services, such as medical centers, schools and colleges, and large retail stores.[4] According to the 2010 Census, about 4.8 million people live in American Indian

[1] Department of the Interior, Bureau of Indian Affairs, "Frequently Asked Questions," http://www.bia.gov/FAQs/index.htm.

[2] Joseph Myers, "Indian Country 101: History, Geography, Politics and Initiatives Affecting Tribal Transportation Infrastructure," *TR News,* 294, September-October 2014, pp. 5-11.

[3] Department of the Interior, Bureau of Indian Affairs, "Frequently Asked Questions," http://www.bia.gov/FAQs/index.htm.

[4] Jon Mielke, "5311(c) Tribal Transit Funding: Assessing Impacts and Determining Future Program Needs," White Paper, Small Urban & Rural Transit Center, Upper Great Plains Transportation Institute, North Dakota State University, October 2011, http://www.ugpti.org/pubs/pdf/DP243.pdf.

areas and Alaska Native villages. Of these people, 1.1 million identify as American Indian or Alaska Native.[5]

Federally recognized Indian tribes are sovereign nations, but "subject to the overriding authority of the United States." This means "Indian tribes enjoy all the rights of sovereignty that have not been divested by Congress or that are not inconsistent with the tribes' dependent status."[6] Federally recognized tribes are eligible for federal services and benefits. Since the 1970s, federal policy toward Indian tribes has favored self-determination and, more recently, self-governance. The Indian Self-Determination and Educational Assistance Act of 1975 (ISDEAA; P.L. 93-638) gave tribes the power to contract with the federal government to directly administer federal funds in some policy areas including health and education. Amendments to ISDEAA authorized self-governance in which tribes receive federal funds as a block grant through a compact with the federal government.[7] These compacts allow tribes to establish their own funding priorities.[8]

Tribal self-determination and self-governance in transportation have been slow to develop relative to other policy and program areas.[9] Because of its historical role in managing Indian lands, BIA administered the Tribal Transportation Program (formerly known as the Indian Reservation Roads Program) from its beginning in 1928, and funding for the program was provided through the DOI appropriations bill from the general fund of the U.S. Treasury. In 1979, BIA and FHWA signed an interdepartmental agreement for stewardship of tribal roads. With enactment of the Surface Transportation Assistance Act of 1982 (P.L. 97-424), funding for the TTP was switched from the general fund to the Highway Trust Fund.

Tribal priorities for road and bridge funding were given more weight in the Intermodal Surface Transportation Act of 1991 (ISTEA; P.L. 102-240). But a turning point in tribal self-governance came in the Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178), enacted in 1998, which authorized Indian tribes to administer federal road funding under contracts or compacts with BIA as permitted by ISDEAA (23 U.S.C. 202(b)(7)).

Another major change in the administration of the TTP came about as a result of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA; P.L. 109-59), enacted in 2005. SAFETEA gave tribes the power to enter into contracts with either BIA or FHWA to provide oversight.[10] In 2013, at least 110 tribes had agreements with FHWA.[11] The FAST Act, enacted in 2015, provides authority for tribes to enter into compacts with FHWA. In conjunction with either BIA or FHWA, many Indian tribes administer federal funds for road maintenance, road construction, and road safety through their own tribal departments of transportation.

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[5] Bureau of the Census, "The American Indian and Alaska Native Population: 2010," 2010 Census Briefs, January 2012, table 5, http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf.

[6] CRS Legal Sidebar WSLG621, *What Does It Mean that Indian Tribes are Sovereign Nations?*, by (name redacted)

[7] These amendments include Indian Self-Determination and Education Assistance Act Amendments of 1988 (P.L. 100-472); Indian Health Amendments of 1992 (P.L. 102-573); and Tribal Self-Governance Amendments of 2000 (P.L. 106-260).

[8] CRS Legal Sidebar WSLG253, *The United States Relationship with Indian Tribes and Federal Indian Policy*, by (name redacted).

[9] James Glaze and Nathaniel Amdur-Clark, "The Transformation to Tribal Self-Governance in the Transportation Arena: A Progress Through Legislative Milestones," *TR News*, No. 294, September-October 2014, pp. 19-25.

[10] See Chapter III, Federal Highway Administration, *Tribal Transportation Program Delivery Guide-2013*, http://flh.fhwa.dot.gov/programs/ttp/guide/documents/full-guide.pdf.

[11] Glaze and Amdur-Clark, p. 22.

Characteristics of Highways on Indian Lands

Responsibility for public road infrastructure on and to Indian reservations lies with governmental entities at all levels, tribal, federal, state, and local. This is reflected in the National Tribal Transportation Facility Inventory (NTTFI), a database of existing and proposed roads that provide access to and within Indian lands. The NTTFI is maintained by law by BIA in cooperation with FHWA (23 U.S.C. §202(b)(1)(A)). Of the 157,000 miles of road listed in the NTTFI, 31,400 miles are BIA-system roads, 26,000 miles are tribal-system roads, and 100,000 miles are state and local government roads. About 145,500 miles of roads in the NTTFI currently exist and 11,500 miles are planned or proposed.[12]

Comprehensive information on the characteristics and condition of roads on and providing access to Indian lands is unavailable, but data on BIA-system roads suggest that most are rudimentary and in poor condition. Although it is not unusual for rural roads to be unpaved, about 70% of BIA-system road mileage is unpaved.[13] By comparison, about 53% of rural roads in Arizona are unpaved and 82% of rural roads in North Dakota are unpaved.[14] BIA reports that in 2014, 17% of BIA-system road miles and 68% of bridges on this system were in "acceptable" condition.[15] Unpaved roads are considered unacceptable by definition.[16]

FHWA's National Bridge Inventory indicates that at the end of 2014 about 14% of BIA-owned bridges were classified as structurally deficient and 6% were classified as functionally obsolete (see **Table A-1** for the breakout by state). Nationally, about 10% of bridges were classified as structurally deficient and 14% were functionally obsolete at the end of 2014.[17]

A bridge is considered to be structurally deficient "if significant load-carrying elements are found to be in poor or worse condition due to deterioration and/or damage, or if the adequacy of the waterway opening provided by the bridge is determined to be extremely insufficient to the point of causing intolerable traffic interruptions."[18] Functional obsolescence arises if a bridge does not meet current design standards or traffic demands. Reasons for functional obsolescence include a bridge handles more traffic than it was built to carry; its lanes or shoulders are narrower than those that would be built today; the overhead clearance is inadequate; and the roadway curve in the approach to the bridge is too extreme.

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[12] Testimony of Michael Black, Director, Bureau of Indian Affairs, U.S. Congress, Senate Committee on Indian Affairs, *Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country*, 113th Cong., 2nd sess., March 13, 2014, http://www.indian.senate.gov/hearing/oversight-hearing-receive-testimony-tribal-transportation-pathways-infrastructure-and.

[13] Testimony of Michael Black, Director, Bureau of Indian Affairs, U.S. Congress, Senate Committee on Indian Affairs, *Tribal Transportation: Pathways to Safer Roads in Indian Country*, 114th Cong., 1st sess., April 22, 2015, http://www.indian.senate.gov/hearing/tribal-transportation-pathways-safer-roads-indian-country.

[14] Federal Highway Administration, *Highway Statistics, 2012*, table HM-51.

[15] Department of the Interior, *Budget Justifications and Performance Information, FY2016: Indian Affairs*, p. IA-TG-8, http://www.bia.gov/cs/groups/xocfo/documents/text/idc1-029426.pdf.

[16] BIA classifies its roads and bridges from 1 to 5 according to a Service Level Index: Level 1 (excellent), Level 2 (good), Level 3 (fair), Level 4 (poor) and Level 5 (failing). Acceptable condition is defined as roads in fair condition or better as measured by the Service Level Index. Testimony of Michael Black, April 22, 2015.

[17] CRS Insight IN10241, *Deficient Bridge Count Drops Again*, by (name redacted) . The data cover bridges located on public roads that are 20 feet (6.1 meters) in length or longer.

[18] Federal Highway Administration, *2013 Conditions and Performance Report*, p. 3-11, http://www.fhwa.dot.gov/policy/2013cpr/pdfs/chap3.pdf.

The different deficiency rates of BIA-owned bridges and of highway bridges nationally are likely explained by these definitions. Bridges on lightly traveled routes, a category that probably includes most roads on tribal lands, tend generally to be in poorer structural condition than bridges on heavily traveled routes and are therefore more likely to be structurally deficient. Functional obsolescence is usually related to growing traffic demands, which may be more likely among bridges in urban areas than among those rural tribal lands.

Highway Safety on Indian Lands

It is widely believed that motor vehicle crashes on Indian lands are substantially underreported in the NHTSA Fatal Accident Reporting System (FARS) database because tribes' reporting is voluntary, officials may not be trained in crash reporting, tribal record keeping may be inadequate, and computer systems may not be compatible with state systems. For this reason, and other reasons, such as the lack of vehicle miles traveled data, it is difficult to know how safe highways on Indian lands are.[19] In a study of crashes on tribal lands in South Dakota in 2005, researchers documented 737 crashes from tribal and BIA law enforcement agencies, but only 53 of these were reported in enough detail to be included in the South Dakota Accident Reporting System (SDARS), which is the source of South Dakota data for NHTSA's FARS database. The study in South Dakota found that less serious crashes were the most underreported. Fatalities, while not reflective of all motor vehicle crashes, are more likely to be reported in crash databases.

According to NHTSA, 316 motor vehicle crash fatalities on reservations were reported in 2013, the most recent year for which data are available. A little more than half of the victims (180) were Native Americans.[20]

The only national study of fatalities in motor vehicle crashes on Indian lands, conducted by the National Highway Traffic Safety Administration in 2004, found that the number of fatalities on Indian reservations increased by 47%, from 222 in 1975 to 327 in 2002, while fatalities in the nation as a whole declined by 3%.[21] More recent data show that although fatalities on reservations have declined since 2006, they still remain higher than in the mid-1970s.[22] By comparison, rural motor vehicle fatalities, only available from 1977, declined by 38% between 1977 and 2013 (**Figure 1**).

Studies have identified a host of personal, vehicle, and environmental factors that may contribute to the safety trends on Indian lands highways compared with those on highways nationally and in rural areas. BIA's Indian Highway Safety Program (IHSP) states that "while nationwide data continues to be an issue, it is evident from the self-reported data from the Tribes, that alcohol impaired driving, speed and non-use of seat belts play a significant role in fatal and injury crashes on the reservations."[23] Other factors that have been identified include road characteristics, accident response times by emergency services, low rates of child-seat use, and pedestrian safety.

[19] Linda Bailey and Dave Huft, "Improving Crash Reporting: Study of Crash Reporting Practice on Nine Indian Reservations," *Transportation Research Record*, No. 2078, 2008, pp. 72-79.

[20] National Highway Traffic Safety Administration, "Native American Traffic Safety Facts, FARS 2009-2013," http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/NA_Report.htm.

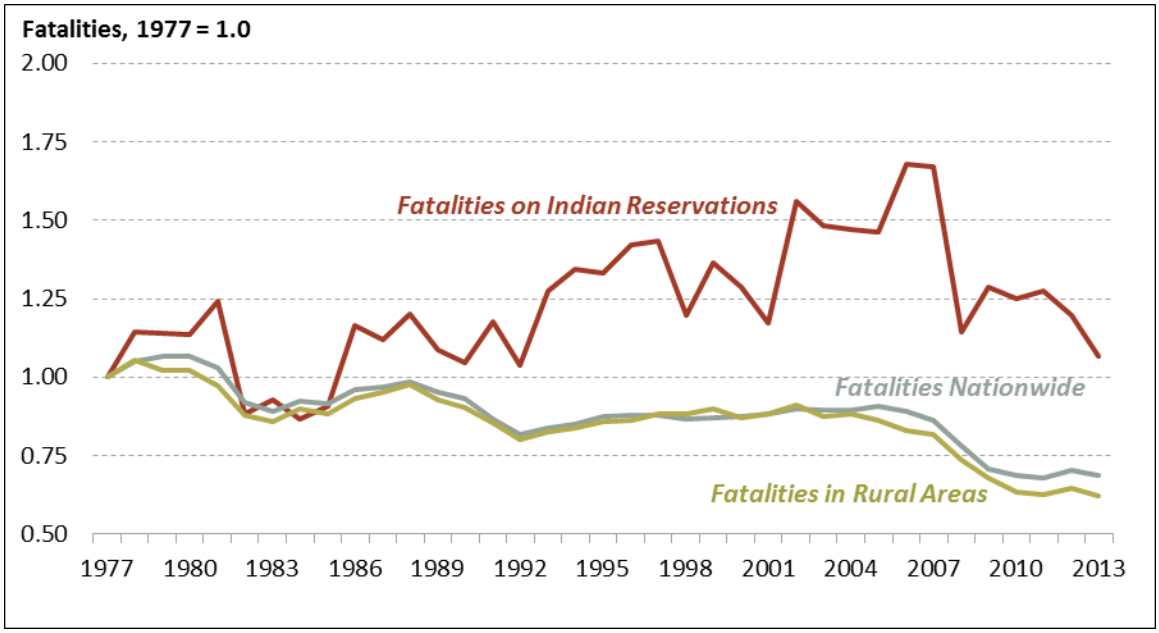
[21] National Highway Traffic Safety Administration, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975-2002*, April 2004, DOT HS 809 727, http://www-nrd.nhtsa.dot.gov/Pubs/809727.pdf.

[22] "Fatalities in Motor Vehicle Crashes by Year and Special Jurisdiction," data provided to CRS by National Highway Traffic Safety Administration, January 20, 2016.

[23] Bureau of Indian Affairs, Indian Highway Safety Program, *FY2015 Highway Safety Plan*, p. 13, http://www.nhtsa.gov/links/StateDocs/pages/SafetyPlans.htm.

A study of pedestrian safety on Indian lands by FHWA, for example, found problems due to alcohol use by drivers and pedestrians, and lack of pedestrian facilities, such as traffic control devices and other treatments.[24]

Figure 1. Highway Fatalities on Indian Reservations, 1977-2013



Sources: "Fatalities in Motor Vehicle Crashes by Year and Special Jurisdiction," data provided to CRS by NHTSA, January 20, 2016; Insurance Institute for Highway Safety, "Fatality Facts: Urban/Rural Comparison," http://www.iihs.org/iihs/topics/t/roadway-and-environment/fatalityfacts/roadway-and-environment/2013.

Note: Data for fatalities on Indian Reservations are those reported by local authorities. These data tend to undercount Indian Reservation highway fatalities when compared with data geolocated by NHTSA. NHTSA's geolocated fatalities data series are only available from 2001.

A survey of seat belt use funded by IHSP in 2013 found that seat belt use on reservations averaged about 70%, although rates differed across reservations from 36% to 91%.[25] The national average of seat belt use in 2013 was 87%.[26] An earlier study of seat belt use on reservations in 2004 and 2005 found overall seat belt use was 55%, ranging from 9% to 85%. This suggests that while seat belt use has increased on Indian reservations it remains lower than in the United States generally. According to NHTSA, one of the main factors that explains the wide variation in seat belt use is seat belt law on reservations.[27] Seat belt use is highest on reservations with primary seat belt laws, lower where secondary laws exist, and lowest where there are no seat belt laws. Primary seat belt laws allow a law enforcement officer to stop a vehicle and issue a citation to a driver or passenger for not wearing a belt without any other violation of the law. Secondary laws allow a citation for not wearing a seat belt only when another traffic offense has been committed.

[24] Federal Highway Administration, *Pedestrian Safety in Native America*, September 2004, FHWA-SA-04-007, http://www.pedbikeinfo.org/cms/downloads/Ped_Safety_in_Native_America.pdf.

[25] BIA, *FY2015 Highway Safety Plan*, p. 5.

[26] National Highway Traffic Safety Administration, *Seat Belt Use in 2013—Overall Results*, DOT HS 811 875, January 2014, http://www-nrd.nhtsa.dot.gov/Pubs/811875.pdf.

[27] National Highway Traffic Safety Administration, *Safety Belt Use Estimate for Native American Tribal Reservations* DOT HS 809 921, October 2005.

Highway safety on Indian reservations is complicated by the interjurisdictional nature of law enforcement. Traffic laws on reservation roads are the decision of tribal government, and may vary from those that apply on surrounding nonreservation roads. Enforcement of traffic laws on reservations can involve tribal police, BIA police, state highway patrol, and sheriff's deputies. The authority each has to stop, detain, and cite motorists for traffic violations can depend on the tribal status of the driver, the seriousness of the violation, and agreements between the tribe and nontribal law enforcement agencies.[28] For example, on some reservations a speeding nontribal motorist can be stopped and detained by a tribal police officer but that officer may not be able to issue a citation without the help of a state or local police officer. Similarly, on some reservations nontribal police officers can stop and detain tribal members for violating traffic laws but cannot issue citations unless authorized to do so by the tribe.[29]

Federal Highway Programs

Tribal Transportation Program

By far the largest federal program supporting highways on Indian lands is the Tribal Transportation Program, formerly the Indian Reservation Roads Program (**Table 1**). Funding for the TTP in the FAST Act is authorized at $465 million in FY2016, an amount that increases to $505 million in FY2020. Funding for the program comes from the highway account of the Highway Trust Fund. These funds are primarily for the construction or reconstruction of roads on the NTTFI, although some can be used for maintenance. Currently, the maximum that may be used for maintenance is 25% or $500,000 of a tribe's allocation, whichever is greater (23 U.S.C. §202(a)(8)). In addition to construction and maintenance, TTP funding can be used for planning and research.

TTP funding is distributed according to a statutory formula based on a tribe's FY2011 funding share, tribal population, road mileage, and average funding for FY2005 through FY2012. Prior to this calculation an amount of supplemental funding is set aside and distributed to tribes within each region that receive less than the amount they received in FY2011. Funds are distributed directly to the tribes and do not pass through a state department of transportation. To receive funds, each tribe must establish a funding agreement with either BIA or FHWA.[30]

The TTP funds are subject to several other set-asides. Some of these funds are used for administration by DOT and DOI. Other funds are distributed by FHWA on a discretionary basis for specific purposes. These specific purpose funds do not preclude tribes from spending formula funds on such projects. The set-asides are the following:

- Up to 5% is reserved for administration of the program, including funding for Tribal Technical Assistance Program (TTAP) centers. TTAP centers are operated in cooperation with state departments of transportation and universities.

[28] According to one report, the Montana Highway Patrol has an agreement with three of Montana's seven Indian reservations, the Blackfeet, Fort Peck, and Flathead reservations, to allow state troopers to issue citations to tribal members on the reservations. David Murray, "Traffic Laws May Be Different on Indian Reservations," *Great Falls Tribune*, June 25, 2015, http://www.greatfallstribune.com/story/news/local/2015/06/25/traffic-laws-may-different-indian-reservations/29304969/.

[29] Melissa Savage, *Traffic Safety on Tribal Lands*, National Conference of State Legislatures, October 2004, http://www.ttap.colostate.edu/downloads/safety/Traffic%20Safety%20on%20Tribal%20Lands.pdf.

[30] FHWA, *Tribal Transportation Program Delivery Guide-2013*, Chapters IV and V.

- Up to 2% is reserved for transportation planning. These funds are allocated to tribes that apply for transportation planning assistance.
- Up to 3% is reserved for a nationwide priority program for improving deficient bridges.
- Up to 2% is reserved for safety projects. These funds are distributed on a competitive basis by FHWA based on an identification and analysis of highway safety issues and opportunities on tribal lands.

Table 1. Authorizations for Highways on Indian Lands

FY2015-FY2020 (Millions of Dollars)

	MAP-21	FAST Act				
	FY2015	**FY2016**	**FY2017**	**FY2018**	**FY2019**	**FY2020**
Federal Highway Administration						
Tribal Transportation Program (TTP)	$450	$465	$475	$485	$495	$505
Tribal High Priority Projects Program	$30 (GF)	Not reauthorized				
Nat. Sig. Federal Lands and Tribal Projects Program	Not applicable	$100 (GF)	$100 (GF)	$100 (GF)	$100 (GF)	$100 (GF)
National Highway Traffic Safety Administration						
Section 402 Safety Grants	$5.0	Not available				
Bureau of Indian Affairs[a]						
Road Maintenance Program	$26 (GF)	$27 (GF)[b]	Not available			

Sources: MAP-21; FAST Act; U.S. Department of the Interior, *Budget Justifications and Performance Information, FY2016: Bureau of Indian Affairs*, http://www.indianaffairs.gov/cs/groups/xocfo/documents/text/idc1-029426.pdf; National Highway Traffic Safety Administration, "Highway Safety Grant Programs," http://www.nhtsa.gov/About+NHTSA/Highway+Safety+Grant+Programs.

Notes: Funding authorized from the Highway Trust Fund unless otherwise noted. GF = General Fund.

a. BIA Road Maintenance Program funds are enacted or requested Department of the Interior appropriations and are not authorized in MAP-21 or the FAST Act.

b. Requested.

Other Highway Programs

The FAST Act authorized a new Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP) at $100 million per year, with funds coming from the general fund of the U.S. Treasury. In addition to projects on tribal lands, eligible projects include those on land managed by federal land management agencies, such as the National Park Service, the Forest Service, and the Bureau of Land Management. This program is for projects that are estimated to cost more than $25 million.

Funding for the Tribal High Priority Projects Program (THPP) was authorized in MAP-21 at $30 million per year in general funds, although no funding was appropriated.[31] The FAST Act did not authorize funding for the THPP.

[31] The intent of the THPP, formerly known as the Indian Reservation Roads High Priority Projects Program, is twofold. First, it is intended to provide extra funds to tribes for their highest priority project for which their regular allocation is too small. Second, the program provides funds to tribes in the case of an emergency or disaster. The costs of an (continued...)

Tribal roads are eligible for emergency funding as part of the Emergency Relief (ER) Program (23 U.S.C. 125) that provides funding for the repair or reconstruction of roads that have suffered damage as a result of a natural disaster or a catastrophic failure from an external cause.

Federal Highway Safety Programs

Funds set aside for safety from the TTP go to the Tribal Transportation Program Safety Funds (TTPSF). Grants are made by FHWA to tribes through a competitive, discretionary process. Projects are funded in four categories that are weighted by funding goals: safety planning (40%), engineering improvements (30%), enforcement and emergency services (20%), and education (10%). In FY2014, after administrative costs, $8.5 million was distributed to 94 projects. These projects were from a total of 126 applications requesting a total of $27.1 million in assistance. FHWA provides a number of examples of projects receiving grants in FY2014:[32]

> The La Jolla Band of Luiseño Indians in California will receive $479,224 to better equip the tribe's emergency responders with supplies they need when responding to crashes or accidents on the winding mountainous roads in the area.
>
> The Fort Peck Assiniboine Sioux Tribes of Montana will receive $180,000 to pave Poplar Airport Access Road, which is expected to improve response times of law enforcement and other first responders during emergencies.
>
> The Kialegee Tribe of Oklahoma will receive $78,000 for the installation of a traffic signal in Wetumka at the intersection of US 75 and SH 9 to improve driver and pedestrian safety.
>
> The Nome Eskimo Community in Alaska will receive $60,868 to improve warning lights near the Nome Elementary School, which will make it safer for pedestrians and drivers alike in the extended darkness of Alaska's long winter months.

Many tribes have used TTP safety funds to develop a tribal transportation safety plan. These plans are part of a larger effort at the regional and national level to improve transportation safety planning (23 U.S.C. §201(c)(5); 23 C.F.R. §973).[33] To implement the strategic plan, BIA and FHWA established a Safety Management System Steering Committee consisting of five tribal transportation planning representatives, 11 federal agency delegates, and one FHWA tribal technical assistance contractor. Among other activities, since 2008 FHWA has sponsored tribal safety summits at the national and regional level.[34]

Indian tribes also receive funding from NHTSA's State Highway Safety Program, commonly referred to as Section 402 safety grants. These funds are distributed by formula to states and territories, but with not less than 2% distributed to the Secretary of the Interior for use on Indian lands. In FY2015, $5.0 million was available for Section 402 safety grants on Indian lands. At the state level, these funds are administered by state highway safety offices. The Indian Highway Safety Program (IHSP) within BIA serves as the state highway safety office for Indian lands.

(...continued)

emergency or disaster must be at least 10% of the tribe's TTP funding.

[32] Federal Highway Administration, "U.S. Transportation Secretary Foxx Announces $8.5 Million for Tribal Transportation Safety Improvements," Press Release, FHWA 15-15, March 9, 2015, http://www.fhwa.dot.gov/pressroom/fhwa1515.cfm.

[33] Federal Highway Administration, "Strategic Highway Safety Plan for Indian Lands," http://flh.fhwa.dot.gov/programs/ttp/safety/documents/strategic-hsp.pdf; Federal Highway Administration, "Tribal Safety Management System Implementation Plan," http://flh.fhwa.dot.gov/programs/ttp/safety/documents/sms-implementation.pdf.

[34] Federal Highway Administration, "Safety Summit Reports," http://flh.fhwa.dot.gov/programs/ttp/safety/plans.htm.

To receive Section 402 safety grants, recipient entities, predominantly states must develop and implement a highway safety plan. BIA's IHSP, the federal agency responsible for traffic safety on Indian lands, develops and implements a safety plan in coordination with the tribes. There were five categories of grants in FY2016: full-time law enforcement; overtime law enforcement; traffic records; child passenger safety seats; and impaired driving adjudication court.[35]

BIA's Road Maintenance Program

The BIA's Road Maintenance Program received about $26 million in FY2015 in Tribal Priority Allocation from the Department of the Interior's appropriation.[36] These funds go mainly for maintaining roads and bridges on the BIA system, although under current regulations these funds can also be used on non-BIA-system roads at the election of the tribe (25 C.F.R. §170.183). Acceptable road and bridge maintenance includes road surface patching, crack sealing, and striping; grading or smoothing of gravel or dirt roads; shoulder repair; vegetation control; culvert cleaning; snow and ice removal; and emergency repair work. Annual funding for the program over the past 10 years has ranged between $24 million and $28 million in nominal terms, except that an extra $150 million was made available in FY2009 as part of the American Recovery and Reinvestment Act of 2009.[37]

Other Formula and Discretionary Programs

In addition to funds that are directly allocated to BIA and tribes, other federal highway funds may be available for tribal transportation. In most cases, these funds are apportioned to the states, and tribes must work with the state department of transportation to obtain them. For example, funds for the Highway Safety Improvement Program, administered by FHWA, are apportioned to the states, but public roads maintained by Indian tribes are eligible for funding.

FHWA and the Department of Transportation also administer some discretionary funding programs for which tribes are eligible. For example, in FY2014 the Department of Transportation awarded a $1 million grant under the Transportation Investment Generating Economic Recovery (TIGER) competitive grant program to the Mandan, Hidatsa, and Arikara Nation to study and update plans because of the rapid development of oil and gas exploration and extraction on the Fort Berthold Reservation in North Dakota.[38] An FY2013 $8.8 million TIGER grant was awarded to the Oglala Sioux Tribe to pave an 18-mile stretch of BIA 2, a gravel road in the Pine Ridge Indian Reservation in South Dakota.[39]

[35] Bureau of Indian Affairs, "2016 ISHP Grant Documents," http://indianaffairs.gov/WhoWeAre/BIA/OJS/who/fieldops/ojs-dhs/2016IHSPGrant/index.htm.

[36] Department of the Interior, *Indian Affairs, Budget Justifications FY2016*, p. IA-ST-1, http://www.bia.gov/cs/groups/xocfo/documents/text/idc1-029426.pdf.

[37] Department of the Interior, *Indian Affairs, Budget Justifications*, various years, http://bia.gov/WhoWeAre/AS-IA/OCFO/TBAC/BDDoc/Greenbook/index.htm.

[38] Department of Transportation, "TIGER 2014 Awards," http://www.transportation.gov/sites/dot.gov/files/docs/TIGER14_Project_FactSheets.pdf.

[39] Department of Transportation, "TIGER 2013 Awards," http://www.transportation.gov/sites/dot.gov/files/docs/TIGER_2013_FactSheets.pdf.

Policy Issues

Funding

Because of the generally poor condition of highways on Indian lands and the problem with highway safety, there have been proposals for large increases in funding for programs that directly fund the construction and maintenance of highways on Indian lands. Because of the modest nominal increases in funding for the TTP in the FAST Act, funding is likely to remain an issue of concern.

During the debate over reauthorizing MAP-21, for example, a coalition of tribal groups proposed increasing funding for TTP and associated programs from the FY2015 level of $450 million to $960 million in the first year of a multi-year authorization.[40] This would have included $800 million for the TTP, $75 million for the bridge program, $30 million for the Tribal High Priority Projects Program, and $50 million for a new National Tribal Asset Management program, mirroring a program for states. The coalition proposal also called for a portion of TIGER grant funds be set aside for tribes and that the law allow creation of a Tribal Infrastructure Bank. [41] To gain more funding certainty, the proposal sought to authorize all program funding from the Highway Trust Fund. Most of these recommendations were not incorporated into the legislation.

Highway Safety

Funding for safety program is also likely to remain an issue for Indian tribes. The tribal coalition proposal argued for increased funding by directing funds from highway safety programs to tribes, such as a 2% set-aside from FHWA's Highway Safety Improvement Program (HSIP). It also proposed raising the set-aside of Section 402 grant funding from 2% to 3.5%. Neither proposal was included in the FAST Act. If these set-asides had been applied to the FY2015 authorization, tribes would have received approximately $8 million extra in direct funding for safety-related projects.

The FAST Act requires two studies by the Secretary of Transportation pertaining to highway safety on tribal lands: one on the quality of transportation safety data collected on tribal lands and the other on identifying and evaluating "options for improving safety on public roads on Indian reservations" (§1117 (c)(1)).

Environmental Review and Rights-of-Way

Although tribes have the option of entering into agreements with either FHWA or BIA to oversee transportation projects, BIA retains responsibility for BIA-owned lands or lands held in trust. This has become an issue in the environmental review of projects pursuant to the National Environmental Policy Act (NEPA). FHWA and BIA have different requirements for projects that involve similar right-of-way circumstances, and a tribe needs approval from BIA on BIA-owned or trust land even if the tribe has an agreement with FHWA. In certain situations, BIA will require

[40] Tribal Transportation Unity Caucus, National Congress of American Indians, and Intertribal Transportation Association, "Tribal Transportation Provisions Proposed for Inclusion in the Highway Reauthorization Legislation," April 25, 2014, http://www.attwg.org/yahoo_site_admin/assets/docs/TTUA_Legislative_language_4-25-2014_edition.12673815.pdf.

[41] Testimony of J. Michael Chavarria, Governor, Pueblo of Santa Clara, U.S. Congress, Senate Committee on Indian Affairs, *Tribal Transportation: Pathways to Safer Roads in Indian Country*, 114th Cong., 1st sess., April 22, 2015.

a more resource-intensive environmental assessment when FHWA will process the request as a less resource-intensive categorical exclusion. As the Department of Transportation Inspector General notes the following:[42]

> BIA requires environmental assessments for existing roads if the tribe needs to establish or amend a right-of-way, whereas FLH [Federal Lands Highway] grants categorical exclusion in these cases. Consequently, BIA determinations on the required level of environmental review could reverse FLH's decisions regarding NEPA requirements. According to FLH and tribal officials, BIA's requirements for environmental assessments—in cases where FLH does not require them—results in unnecessary effort, time, and cost for the tribes.

A legislative option would be to require BIA to apply DOT regulations when implementing NEPA. Relatedly, there have been proposals to allow tribes the option of assuming NEPA responsibilities like the states currently have. It is believed that this might speed the approval of transportation projects. However, a tribe making this election would have to waive sovereign immunity to allow itself to be sued in federal court to carry out the responsibilities of a federal official.

Part of the problem with rights-of-way in Indian Country is the complexity of land ownership and rights.[43] Additionally, documentation of existing rights-of-way is often poor. To aid transportation projects, there have been proposals for the clarification of BIA's authority to provide documentation on existing rights-of-way and to provide BIA and the tribes the authority to acquire rights-of-way when necessary. There have also been calls for the authorization of $10 million per year from the Highway Trust Fund for BIA to develop a comprehensive computerized national database of rights-of-way.[44]

[42] Department of Transportation, Office of Inspector General, *Opportunities Exist to Strengthen FHWA's Coordination, Guidance, and Oversight of the Tribal Transportation Program*, MH-2014-003, October 30, 2013, p. 5, http://flh.fhwa.dot.gov/programs/ttp/documents/oig-audit-report.pdf.

[43] Raquelle Myers and Ron Hall, "Right-of-Way Through Indian Country: The Complexities of a Commonplace Arrangement," *TR News* 294, September-October 2014, pp. 32-36.

[44] Tribal Transportation Unity Caucus, National Congress of American Indians, and Intertribal Transportation Association, "Tribal Transportation Provisions Proposed for Inclusion in the Highway Reauthorization Legislation," April 25, 2014.

Appendix. Deficient Bridges

Table A-1. Deficient Bridges Owned by Bureau of Indian Affairs by State

December 31, 2014

State	BIA Bridges	Structurally Deficient		Functionally Obsolete	
		Number	%	Number	%
Alabama	2	0	0%	0	0%
Alaska	7	0	0%	1	14%
Arizona	301	50	17%	25	8%
Arkansas	0	0	0%	0	0%
California	17	2	12%	3	18%
Colorado	10	0	0%	0	0%
Connecticut	0	0	0%	0	0%
Delaware	0	0	0%	0	0%
Dist. of Columbia	0	0	0%	0	0%
Florida	6	1	17%	0	0%
Georgia	0	0	0%	0	0%
Hawaii	0	0	0%	0	0%
Idaho	22	5	23%	3	14%
Illinois	0	0	0%	0	0%
Indiana	0	0	0%	0	0%
Iowa	3	0	0%	0	0%
Kansas	43	1	2%	0	0%
Kentucky	0	0	0%	0	0%
Louisiana	1	0	0%	0	0%
Maine	1	0	0%	1	1%
Maryland	0	0	0%	0	0%
Massachusetts	0	0	0%	0	0%
Michigan	8	0	0%	0	0%
Minnesota	11	0	0%	0	0%
Mississippi	20	0	0%	0	0%
Missouri	0	0	0%	0	0%
Montana	84	12	14%	3	4%
Nebraska	14	2	14%	0	0%
Nevada	8	1	13%	0	0%
New Hampshire	0	0	0%	0	0%
New Jersey	0	0	0%	0	0%

State	BIA Bridges	Structurally Deficient		Functionally Obsolete	
New Mexico	125	22	18%	11	9%
North Carolina	35	4	11%	1	3%
North Dakota	9	0	0%	0	0%
Ohio	0	0	0%	0	0%
Oklahoma	0	0	0%	0	0%
Oregon	25	3	12%	4	16%
Pennsylvania	0	0	0%	0	0%
Rhode Island	0	0	0%	0	0%
South Carolina	2	0	0%	0	0%
South Dakota	65	12	18%	4	6%
Tennessee	0	0	0%	0	0%
Texas	0	0	0%	0	0%
Utah	9	3	33%	1	11%
Vermont	0	0	0%	0	0%
Virginia	0	0	0%	0	0%
Washington	40	3	8%	2	5%
West Virginia	0	0	0%	0	0%
Wisconsin	30	4	13%	0	0%
Wyoming	21	3	14%	0	0%
Puerto Rico	0	0	0%	0	0%
U.S. Total	**919**	**128**	**14%**	**59**	**6%**

Source: Federal Highway Administration, National Bridge Inventory.

Note: The National Bridge Inventory includes only bridges on public roads that are 20 feet (6.1 meters) in length or longer.

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