

§ 170.110

§ 170.110 How can State and local governments prevent discrimination or adverse impacts?

(a) Under 23 U.S.C. 134 and 135, and 23 CFR part 450, State and local government officials should consult and work with tribes early in the development of programs to:

(1) Identify potential discrimination; and
(2) Recommend corrective actions to avoid disproportionately high and adverse effects on tribes and Native American populations.

(b) Examples of adverse effects include, but are not limited to:

- (1) Impeding access to tribal communities or activities;
- (2) Creating excessive access to culturally or religiously sensitive areas;
- (3) Negatively affecting natural resources, trust resources, tribal businesses, religious, and cultural sites;
- (4) Harming indigenous plants and animals; and
- (5) Impairing the ability of tribal members to engage in commercial, cultural, and religious activities.

§ 170.111 What can a tribe do if discrimination or adverse impacts occur?

If discrimination or adverse impacts occur, a tribe should take the following steps in the order listed:

- (a) Take reasonable steps to resolve the problem directly with the State or local government involved;
- (b) Contact BIA, FHWA, or the Federal Transit Authority (FTA), as appropriate, to report the problem and seek assistance in resolving the problem.

ELIGIBLE USES IF IRR PROGRAM FUNDS

§ 170.115 What activities may be funded with IRR Program funds?

- (a) IRR Program funds may be used:
- (1) For all of the items listed in appendix A to this subpart;
 - (2) For other purposes identified in this part; or
 - (3) For other purposes recommended by the IRR Program Coordinating Committee under the procedures in Appendix A to Subpart B (35) and § 170.156 and approved by FHWA or BIA pursuant to § 170.117.

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(b) Each of the items listed in Appendix A must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.

§ 170.116 What activities are not eligible for IRR Program funding?

IRR Program funds cannot be used for any of the following:

(a) Routine maintenance work such as: grading shoulders and ditches; cleaning culverts; snow removal, roadside mowing, normal sign repair and replacement, painting roadway structures, and the maintaining, cleaning, or repair of bridge appurtenances;

(b) Structures and erosion protection unrelated to transportation and roadways;

(c) General reservation planning not involving transportation;

(d) Landscaping and irrigation systems not involving transportation programs and projects;

(e) Work performed on projects that are not included on an FHWA-approved IRR Transportation Improvement Program (TIP), unless otherwise authorized by the Secretary of the Interior and the Secretary of Transportation;

(f) Purchase of equipment unless authorized by Federal law or in this part; or

(g) Condemnation of land for recreational trails.

§ 170.117 How can a tribe determine whether a new use of funds is allowable?

(a) A tribe that proposes new uses of IRR Program funds must ask BIA in writing whether the proposed use is eligible under Federal law. The tribe must also provide a copy of its inquiry to FHWA.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of IRR Program funds is allowable and provide a written response to the requesting tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2. The address is: Department of the Interior, BIA, Division of Transportation, 1849 C Street, NW., MS 4058-MIB, Washington, DC 20240.