

# FHWA TERO Updates

2023 Pacific Northwest TERO Spring Conference

Pendleton, Oregon

April 20, 2023



U.S. Department of Transportation

**Federal Highway Administration**



# Disclaimer

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Except for any statutes or regulations cited, the contents of this presentation do not have the force and effect of law and are not meant to bind the public in any way. This presentation is intended only to provide information regarding existing requirements under the law or agency policies.



# Roadmap

Introduction

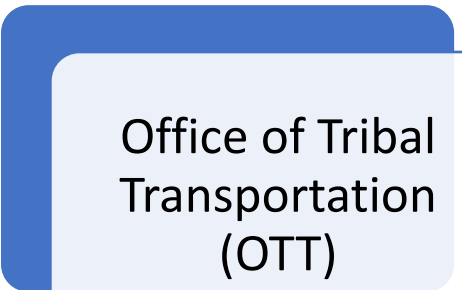
Tribal Transportation Program (TTP)

FHWA/TERO history (Federal-aid)

Federal Lands



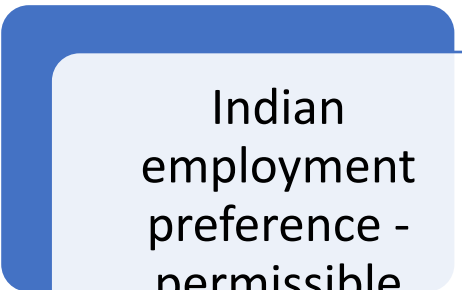
# Tribal Transportation Program



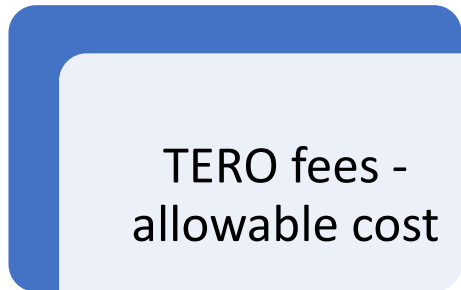
Office of Tribal  
Transportation  
(OTT)



Jointly  
administered



Indian  
employment  
preference -  
permissible



TERO fees -  
allowable cost

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# FHWA and TERO (Fed-Aid)

- 23 USC 140(d)
  - **"(d) INDIAN EMPLOYMENT.**—Consistent with section 703(i) of the [Civil Rights Act of 1964 \(42 U.S.C. 2000e-2\(i\)\)](#), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on [projects](#) and contracts on Indian reservation roads. [States](#) may implement a preference for employment of Indians on [projects](#) carried out under this title near Indian reservations. The [Secretary](#) shall cooperate with Indian tribal governments and the [States](#) to implement this subsection."
- FHWA's implementing regulations - 23 CFR 635.117 - Labor and employment
- FHWA Notice 4720.7
- No extra project funds - included in total project cost.

FHWA Notice  
4720.7  
March 15,  
1993

- Still in effect/guidance on TERO and Indian employment preference
- Consolidated prior guidance regarding the allowance for Indian preference in employment
  - For projects on and near Indian reservations
- Guidance issued regarding applicability, eligible employees, Indian preference goal, and TERO tax



# 23 CFR § 635.117- Labor and Employment

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(d) Pursuant to [23 U.S.C. 140\(d\)](#), it is permissible for State DOT's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in [paragraph \(e\)](#) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

# Local Hiring Preference for Construction Jobs

Bipartisan  
Infrastructure Law -  
Section 25019(a)

Does not affect TERO

Allowance for  
geographic or  
economic hiring  
preferences



# Federal Lands

Mandatory, not  
permissive

Federal Acquisition  
Regulations (FAR)  
apply

SCR Section 107A -  
Indian Preference

# Section 107A. - Indian Preference

**107A.01 Definitions.** As used in this clause, the following definitions apply:

- **Core Workforce** – Contractor’s workforce composed of full-time employed individuals necessary to satisfy the contractor’s reasonable needs for supervisory or especially experienced personnel to assure an efficient execution of the contract work. Includes any Indian already employed by the contractor.
- **Indian** - A person who is an enrolled member of a federally recognized American Indian Tribe or Alaska Native.

**107A.02 Employment Opportunities.** To the extent feasible and consistent with the efficient performance of this contract, give preference in employment under this contract to Indians who are qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. Maintain statistical records as are necessary to indicate compliance with this paragraph.

**107A.03 Application.** This Section does not apply to the contractor’s core workforce.

Except for the core workforce, follow the process set forth in this Section for the hiring of all construction workers who will be employed on this project.

# References

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- 23 USC 140 (Nondiscrimination)
- 23 USC 201 (Federal Lands and Tribal Transportation Programs)
- 23 USC 202 (Tribal Transportation Program)
- 25 USC 5307 (Wage and Labor Standards)
- 23 CFR 635.117 (Labor and employment)
- 25 CFR 170.619 (TTP)
- 49 CFR 29.516 (USDOT Self-Governance Program)
- 49 CFR 29.526 (Tribal Preference)
- FAR 22.807(b)(4) (Exemptions)
- FHWA Notice 4720.7 ("Indian Preference in Employment on Federal-Aid Highway Projects on or near Indian Reservations," March 15, 1993)

# Questions

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