

fiscal years 2001 and 2002. Negotiated rulemaking under Title 5, U.S.C., allowed for the public and tribes to participate in the development of recommendation of a new formula for the IRR Program and recommendations for interim funding distribution. The Secretary publishes on an annual basis a breakdown of formula percentages as computed by the relative need formula. This breakdown includes the specific amounts of funds available to the BIA regions by tribe and the statutory take-downs for the IRR program.

Comment: Eleven commenters support including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds and do not support BIA's proposal to distribute the remaining 25 percent of fiscal year 2003 IRR Program funds. The commenters state that the **Federal Register** notice states that BIA will distribute fiscal year 2003 IRR Program funds in the same manner as in fiscal year 2000, but that BIA is not proposing including up to \$50,000 per tribe for special planning funds as it did in fiscal year 2000. The commenters also disagree with the **Federal Register** notice statement that BIA conducted consultation and coordination with tribal governments for distribution of fiscal year 2003 IRR Program funds because negotiated rulemaking is not consultation. In addition, one commentator also noted that the funding formula is deficient and does not allow for different modes of transportation which decreases the available funding.

Response: The fiscal year 2003 distribution, as well as the distribution for fiscal years 2001 and 2002, is consistent with the method of distribution of IRR Program funds in the **Federal Register** on February 15, 2000. In fiscal year 2000, the Secretary distributed IRR Program funds under the relative need formula identified in 23 U.S.C. 204 (65 FR 7431, Feb. 15, 2000) and special funds provided as part of a request for projects and distributed to tribal governments and BIA regional offices for transportation planning and bridge designs (65 FR 12026, March 7, 2000). Funding for the \$18.3 million fiscal year 2000 IRR funds was a separate **Federal Register** publication and not part of the regular IRR Program funds distribution. Negotiated rulemaking under Title 5, U.S.C., provides consultation allowed for the public and tribes to participate in the development of recommendation of a new formula for the IRR Program and recommendations for interim funding distribution. However, for fiscal year 2003, the tribal caucus of the negotiated rulemaking committee was

unable to make a consensus recommendation to the full Committee for distributing fiscal year 2003 IRR Program funds. However, the tribal caucus recommended that the Secretary identify fiscal year sources other than IRR Program funds to include ACB funds in the distribution for fiscal year 2003. Without a tribal caucus consensus on how to distribute fiscal year 2003 IRR Program funds, the Committee, under its protocols, could not make a recommendation to the Secretary as to how to distribute fiscal year 2003 IRR Program funds. Without a recommendation from the Committee, the Secretary must determine how to distribute fiscal year 2003 IRR Program funds. The Secretary could not identify another funding source for ACB.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds. The commentator also stated that the relative need formula the 1993 version is no longer valid because BIA's distribution of IRR program funds in fiscal years 2000, 2001, 2002, superceded any previous formula. The commentator also disagreed that BIA is using the same distribution method in fiscal year 2003 as it used in fiscal year 2000, 2001 and 2002, since BIA is not including ACB in the fiscal year 2003 distribution of IRR Program funds.

Response: The relative need formula as used in fiscal years 2000, 2001, and 2002 distribution of IRR Program funds could only be used by rule because of statutory provisions in Title 23, U.S.C. Therefore in each of these years the Secretary published a temporary rule applicable only to the current year. The inclusion of ACB in fiscal years 2001 and 2002 is a direct result of the recommendation of the TEA-21 Negotiated Rulemaking Committee.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because ACB is an essential source of funding. The commentator also requested the continuation of \$35,000 per year per tribe for ACB, or a minimum allocation of \$48,000 per year per tribe to maintain a transportation department compliant with current BIA requirements.

Response: The tribal caucus could not agree on the ACB and could not make a recommendation to the full committee, and could not agree on the ACB and therefore it was not included in the fiscal year 2003 distribution of IRR Program funds.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds. In addition, the

commentor requests that BIA identify other sources of funds for ACB.

Response: BIA could not identify any new sources of funds to support the continued implementation of ACB.

Comment: Four commenters supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because under the new distribution formula, that will be effective in fiscal year 2004, inventory updates are necessary and ACB will be required for the updates. In addition, the commenters state that BIA cannot distribute fiscal year 2003 funds without ACB and without further action of the TEA-21 Negotiated Rulemaking Committee. The commenters also state that under TEA-21, after 1999, BIA's authority to distribute IRR Program funds ended. The commenters further indicate that BIA should identify alternate sources of funding for ACB.

Response: The interim formula for the current fiscal year will provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs, and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2004. The Committee could not make a recommendation to the Secretary because no consensus was reached regarding the use of ACB. There are no additional sources of funding available to the Secretary for ACB. In addition, the proposed and final rule the TEA-21 Negotiated Rulemaking Committee developed has no provision for ACB.

Comment: One commentator supported including ACB funds in the remaining distribution of fiscal year 2003 IRR Program funds because BIA is not authorized to distribute the remaining 25 percent without including ACB funds without a recommendation from the Committee. In addition, the commentator asserts that BIA should have included reference to the special funds for planning and bridge design distributed in fiscal year 2000. The commentator also disagrees with the **Federal Register** notice statement that BIA conducted consultation and coordination with tribal governments for distribution of fiscal year 2003 IRR Program funds. The commentator asserts that because only the tribal caucus of the Negotiated Rulemaking Committee discussed the fiscal year 2003 distribution of IRR Program funds and the tribal co-chairs were not authorized to separately agree to any distribution method in fiscal year 2003, the Secretary did not consult with tribal governments. The commentator also noted that if ACB funds are included in