



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 15 2019

OFFICE OF WATER

Re: Notification of Consultation and Coordination on the Proposed Implementation of the Tribal Set-Aside of the Water Infrastructure Improvements for the Nation (WIIN) Act Section 2107 Drinking Water Grant Program

Dear Honorable Leader,

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian Tribes to obtain input on the establishment of a new tribal drinking water grant program, as authorized by the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act. The WIIN Act addresses, supports, and improves America's drinking water infrastructure, which promotes public health and the protection of the environment. Included in the WIIN Act is a new drinking water grant program, which will include a tribal allotment to support access to safe drinking water in tribal schools and child care centers.

This new grant, established in section 2107, is the Lead Testing in School and Child Care Program Drinking Water grant. The EPA is seeking your input on the questions enclosed related to the section 2107 Lead Testing in School and Child Care Program Drinking Water grant to help guide the implementation of the grant program. The Agency previously sought tribal consultation and comment on the establishment of this grant program in the fall of 2018.

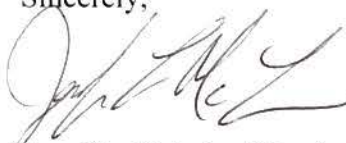
This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>). The EPA invites you and your designated consultation representative(s) to participate in this process. The Agency's anticipated timeline for the consultation and coordination period is expected to occur from November 25 to December 30, 2019.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period, and information on how you can provide input on this action. *This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.*

Please do not hesitate to contact Leslie Temple, the official EPA contact person for this consultation and coordination process, by email at temple.leslie@epa.gov or by phone at (202) 564-4734 should you have any questions related to this action.

I look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer McLain". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer McLain, Director
Office of Ground Water and Drinking Water

Enclosures

Tribal Consultation and Coordination Plan: Proposed Implementation of the Tribal Set-Aside of the Water Infrastructure Improvements for the Nation (WIIN) Act Section 2107 Drinking Water Grant Program

Background:

The Water Infrastructure Improvements for the Nation Act (WIIN Act) of 2016 addresses, supports and improves America's water resources infrastructure, critical to providing safe drinking water, economic competitiveness and domestic security. The WIIN Act authorized three new grant programs in sections 2104, 2105 and 2107, appropriated in fiscal years 2018 and 2019. At this time, the EPA is seeking tribal consultation and comment on the proposed implementation of the section 2107 Lead Testing in School and Child Care Program Drinking Water grant program.

Section 2107 Lead Testing in School and Child Care Program Drinking Water:

Section 2107 of the WIIN Act amends the Safe Drinking Water Act (SDWA) to direct the EPA to establish a voluntary school and child care program lead testing grant "to assist local educational agencies in voluntary testing for lead contamination in drinking water at schools and child care programs under the jurisdiction of the local educational agencies."

Under the act, local tribal education agencies are eligible to receive grants to fund eligible schools and child care programs to test for lead contamination in drinking water. The program will:

- Assess lead levels in tribal schools and child care facilities and establish best practices for a lead in drinking water prevention program,
- Improve protection of tribal children's health by reducing lead exposure, and
- Enhance community, parent, and teacher trust.

Participation in this lead testing program is voluntary and at the discretion of tribal leadership and facility owners. This program makes assistance available to schools and child care programs that opt in to the program. This grant program does not guarantee funding for testing at all schools and/or child care facilities throughout areas governed by Indian tribes.

The America's Water Infrastructure Act (AWIA) of 2018 further amended the SDWA to direct the EPA to provide technical assistance to schools and child care facilities in carrying out this grant program. This technical assistance may include identifying sources of lead contamination in drinking water, assistance in identifying or applying for funding that may assist in eliminating sources of lead contamination, or assistance in identifying organizations that may be able to assist with the elimination of sources of lead contamination.

Tribal Allotment

The EPA will award approximately \$2.6 million for combined fiscal years 2018 and 2019 to help tribal schools and child care programs assess lead levels in drinking water. The proposed tribal allotment from the \$43.7 million available funds is based upon the tribal set-aside of the Public Water System Supervision (PWSS) Program allocation.

Eligibility Under the WIIN Act

The WIIN Act identifies tribal education agencies as eligible recipients of grants under the lead testing program and it defines “tribal education agency” as “a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native Village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs.” See WIIN Act Section 2107(1)(B)(ii).

Schools administered by the Bureau of Indian Affairs (BIA) are ineligible to receive funding under this grant program. School officials interested in implementing a lead testing program in a facility that is ineligible to participate in this grant program should contact their Regional EPA office to identify available options.

Proposed Eligible Recipients

During the tribal consultation and comment period in the fall of 2018 related to the establishment of this grant program, the EPA received comments that due to the relatively high burden on tribes of managing federal funds relative to the small grant amounts to be awarded to carry out the lead testing in individual schools or child care facilities that in many cases it would be inefficient to award direct grants to the many different eligible tribal education agencies. For this reason, it was recommended that the EPA allow funding to be awarded to an entity that can provide national or regional implementation of the grant program on behalf of tribes, tribal schools, and tribal child care facilities, in addition to providing direct grants to interested tribal education agencies. Specifically, it was determined that organizations that provide technical assistance to tribes should be allowed to receive grants to implement the program on behalf of participating eligible recipients.

To implement this recommendation and to meet the requirements under the AWIA, the EPA is proposing to utilize the Associated Program Support Costs (APSC) authority. The APSC authority allows the EPA to use a portion of the funds available for states and tribes to fund activities that benefit all or a portion of the state and tribal grant recipients at the request of the eligible recipients. See Public Law 105-276. This consultation with tribes, the eligible recipients of this grant and the government entities overseeing tribal schools, seeks the comment of tribes on the proposed use of the APSC authority. Thus, the EPA may use the APSC authority to award the grant funds to an organization that provides technical assistance to tribes and can provide broad implementation to eligible tribal schools and child care facilities. Awarded organization(s) will then provide lead testing services and technical assistance to a group of tribal education agencies according to the terms of the grant. Under this proposed approach, tribal education agencies, tribal governments, and tribal consortia will be eligible to apply for funding, and applicants must describe in their applications if and how they will provide assistance to tribal schools and child care facilities on a national or regional level.

Potential Impacts to Tribes

The EPA will award a total of \$43.7 million dollars nationwide to support lead testing in school and child care facility drinking water and protect public health. A total of \$2.6 million will be awarded through a tribal allotment to support activities to assess lead in drinking water in schools and child care facilities serving tribal populations.

Opportunities for Tribes to Participate

Through this consultation and coordination process, the EPA seeks to better understand tribal priorities with respect to the implementation of the WIIN Act Lead Testing in School and Child Care Program Drinking Water tribal allotment grant program. Specifically, the EPA seeks to understand tribal priorities in the following areas:

1. What criteria should the EPA consider when assessing proposed projects to promote broad access to assistance for tribal schools and child care facilities?
2. As discussed above, the EPA is considering using the APSC authority to address the comments received during tribal consultation regarding the burden of managing federal funds. Are there other options the Agency should consider?

The tribal consultation and coordination process table below lays out the process and timeline for government-to-government consultation and coordination. The combined goal for these efforts is to ensure there is sufficient information for tribal officials to make informed decisions about consultation and to understand how to provide informed input.

The tribal consultation letter, consultation and coordination plan, and related consultation information and materials are available online via the EPA’s *Tribal Consultation Opportunities Tracking System (TCOTS)*, located at: <https://tcots.epa.gov>.

At any point in the tribal consultation process, tribes may submit written comments to:

1. Email: Temple.Leslie@epa.gov
2. Mail: U.S. Environmental Protection Agency, Office of Water, Office of Ground Water and Drinking Water, Mail Code: 4606M, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Attention: EPA WIIN Act Grant Program Tribal Consultation.

To assist in providing feedback, tribes may also use the feedback collection template (enclosed and also available via the TCOTS website located at: <https://tcots.epa.gov>), to collect information on the WIIN grant tribal allotment program for the Lead Testing in School and Child Care Program Drinking Water grant.

As noted below, the EPA intends to hold two informational webinars for tribal governments on December 5, 2019, and December 18, 2019, from 1:00 PM to 2:00 PM Eastern Time. The webinars will provide an overview of the WIIN Act grants and answer any questions. To access the webinar, please visit <https://epawebconferencing.acms.com/wiingranttribalconsultation/>.

Tribal Consultation and Coordination Process and Timeline

Date	Event	Contact Information
November 25, 2019	Tribal Consultation period begins	EPA Contact: Leslie Temple
December 5, 2019	Informational Webinar for Tribes	1:00 – 2:00 PM Eastern Time Join the webinar via: https://meet.lync.com/usepa/temple.leslie/V6YVJVMT

		For audio, please call: 202-991-0477; conference ID: 67975799
December 18, 2019	Informational Webinar for Tribes	1:00 – 2:00 PM Eastern Time Join the webinar via: https://meet.lync.com/usepa/temple.leslie/94GRBL80 For audio, please call: 202-991-0477; conference ID: 67975799
December 30, 2019	Tribal Consultation period ends	EPA Contact: Leslie Temple