



Funding Guidance for State and Tribal Response Programs Fiscal Year 2021

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended,¹ authorizes a noncompetitive \$50 million grant program to establish or enhance state² and tribal³ response programs. These CERCLA Section 128(a) response program grants (hereinafter referred to as “Section 128(a)”) are funded with categorical⁴ State and Tribal Assistance Grant (STAG) appropriations. Section 128(a) cooperative agreements are awarded and administered by the U.S. Environmental Protection Agency (EPA) regional offices.

In addition, CERCLA Section 128(a)(1)(B)(ii)(III) authorizes a noncompetitive \$1.5 million grant program to assist small communities, Indian tribes, rural areas, or disadvantaged areas in carrying out activities described in CERCLA Section 104(k)(7) (by providing training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation).

The Catalogue of Federal Domestic Assistance (<https://www.cfda.gov/>) entry for Section 128(a) cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants (PPGs) under 40 CFR Part 35 Subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfields remediation under section 104(k)(3), or to purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program, or to receive funds under section 128(a)(1)(B)(ii)(III).

This document provides guidance to states and tribes requesting Fiscal FY21 Section 128(a) Funds.⁵ The guidance regarding CERCLA 128(a)(1)(B)(ii)(III) Small Technical Assistance Grants is located in Appendix A. For additional information, see <https://www.epa.gov/brownfields/types-brownfields-grant-funding>.

Requests for Funding Highlights

- Requests for funding will be accepted from **October 2, 2020 – December 11, 2020** and should be **sent to the EPA Regional Office contact listed at the end of this guidance.**
- *Requests that EPA receives after December 11, 2020 will not be considered for FY2021 funding.*
- EPA will accept only one application from each eligible state or tribe.
- Requests for funding must include the information listed in **Section VIII** of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds.
- First time requestors are strongly encouraged to contact their Regional EPA Brownfields contact listed on the last page of this guidance, prior to submitting their funding request.
- EPA will consider funding requests up to a maximum of \$1.0 million per state or tribe for FY2021.

¹ 42 USC 9628(a).

²The term "state" is defined in this document as defined in CERCLA §101(27).

³The term "Indian tribe" is defined in this document as it is defined in CERCLA §101(36). Intertribal consortia, as defined in the Federal Register Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA §128(a).

⁴ Categorical grants are issued by the U.S. Congress to fund state and local governments for narrowly defined purposes.

⁵ The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

- EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior Section 128(a) funding in making allocation decisions. Unexpended balances are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance.
- Once EPA makes final determinations with respect to funding requests and allocations of funds, the state or tribe will work with the appropriate EPA regional office to negotiate a cooperative agreement, which includes a final work plan and budget.
- States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. See Section IX.D.2. of this Guidance. For more information, please visit www.grants.gov and <https://fedgov.dnb.com/webform/>.

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I. BACKGROUND

State and tribal response programs oversee assessment and cleanup activities at brownfield sites across the country. The depth and breadth of these programs vary. Some focus on CERCLA-related activities, while others are multi-faceted, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many states also offer accompanying financial incentive programs to spur cleanup and redevelopment of contaminated properties. In enacting CERCLA Section 128(a),⁶ Congress recognized the value of state and tribal response programs in cleaning up and reusing brownfield sites. Section 128(a) strengthens EPA's partnerships with states and tribes and recognizes their response programs' critical role in overseeing cleanups.

This funding is intended for states and tribes that have the required management and administrative capacity within their government to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the program establishes and maintains a public record of sites addressed.

Subject to the availability of funds, EPA regional personnel will provide technical assistance to states and tribes as they apply for and carry out Section 128(a) cooperative agreements.

II. ELIGIBILITY FOR FUNDING

To be eligible for Section 128(a) funding, a state or tribe must:

1. demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program described in Section IV of this guidance; **or** be a party to a voluntary response program Memorandum of Agreement (VRP MOA) with EPA;

AND

2. maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year (see CERCLA section 128(b)(1)(C)).

III. MATCHING FUNDS/COST-SHARE

States and tribes are not required to provide matching funds for Section 128(a) cooperative agreements, with the exception of Section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund (RLF), for which there is a 20% cost share requirement. Section 128(a) funds used to capitalize a RLF must be operated in accordance with CERCLA section 104(k)(3).

IV. THE FOUR ELEMENTS - SECTION 128(a)(2)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements enumerated in Section 128(a)(2) of the statute and described below. Achievement of the four elements should be viewed as a priority. Section 128(a) of CERCLA authorizes funding for activities necessary to establish or enhance the four elements and to establish and maintain the public record requirement.

The four elements of a response program are described below:

1. Timely survey and inventory of brownfield sites in state or tribal land. The goal for this element is

⁶Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfield sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a “list” of brownfield sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfield sites within their state or tribal lands. Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment. Inventories should be developed in direct coordination with communities, and particular attention should focus on communities with limited capacity to compete for and manage a competitive brownfield assessment, revolving loan, or cleanup cooperative agreement.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. Oversight and enforcement authorities or other mechanisms and resources. The goal for this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms and resources to ensure that:
 - a. a response action will protect human health and the environment and be conducted in accordance with applicable laws; and
 - b. the state or tribe will complete the necessary response activities if the person conducting the response fails to complete them (this includes operation and maintenance and/or long-term monitoring activities).
3. Mechanisms and resources to provide meaningful opportunities for public participation.⁷ The goal for this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, at a minimum:
 - a. public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing to make cleanup decisions or conduct site activities;
 - b. prior notice and opportunity for meaningful public comment on cleanup plans and site activities, including input into the prioritization of sites; and
 - c. a mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site — located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.
4. Mechanisms for approval of cleanup plans and verification and certification that cleanup is complete. The goal for this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including

⁷States and tribes establishing this element may find useful information on public participation on the EPA's community involvement web site at <https://www.epa.gov/superfund/superfund-community-involvement>.

a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

V. PUBLIC RECORD REQUIREMENT

In order to be eligible for Section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, as described below, to enable meaningful public participation⁸ (refer to Section IV.3 above). Specifically, under Section 128(b)(1)(C), states and tribes must:

1. maintain and update, at least annually, or more often as appropriate, a public record that includes the name and location of sites at which response actions have been completed during the previous year;
2. maintain and update, at least annually, or more often as appropriate, a public record that includes the name and location of sites at which response actions are planned in the next year; and
3. identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls; and how the responsible entity is implementing those activities (see Section V.C).

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the “survey and inventory” element from the “public record”

It is important to note that the public record requirement differs from the “timely survey and inventory” element described in the “Four Elements” section above. The public record addresses sites at which response actions have been completed in the previous year or are planned in the upcoming year. In contrast, the “timely survey and inventory” element, described above, refers to identifying brownfield sites regardless of planned or completed actions.

B. Making the public record easily accessible

EPA’s goal is to enable states and tribes to make the public record and other information, such as information from the “survey and inventory” element, easily accessible. For this reason, EPA will allow states and tribes to use Section 128(a) funding to make such information available to the public via the internet or other avenues. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.⁹ *States and tribes should ensure that all affected communities have appropriate access to the public record by making it available on-line, in-print at libraries, or at other community gathering places.*

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet, if

⁸ CERCLA §128(b)(1)(C).

⁹ For further information on data quality requirements for latitude and longitude information, please see the EPA’s data standards web site available at https://www.epa.gov/sites/production/files/2015-06/documents/latlongstandard-v2a_10022014.pdf.

it is able to do so. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-term maintenance of the public record

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long-term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long-term maintenance of the public record, including information on institutional controls (such as ensuring the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls is implementing those activities) in their work plans.¹⁰

VI. USE OF FUNDING

A. Overview

CERCLA Section 128(a)(1)(B) says that states and tribes may use Section 128(a) funding to establish or enhance its response program. Specifically, a state or tribe may use cooperative agreement funds to build response programs that include the four elements outlined in Section 128(a)(2). Eligible activities include, but are not limited to, the following:

- developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of a response program;
- establishing and maintaining the required public record described in Section V of this guidance;
- operation, maintenance and long-term monitoring of institutional controls and engineering controls;
- conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement under Section 128(a)(2)(C)(ii) to provide for public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed—especially from local communities with health risks related to exposure to hazardous waste or other public health concerns, those in economically disadvantaged or remote areas, and those with limited experience working with government agencies. EPA will not provide Section 128(a) funds solely for assessment or cleanup of specific brownfield sites; site-specific activities must be part of an overall Section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
- capitalizing a revolving loan fund (RLF) for brownfields cleanup as authorized under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under CERCLA section 104(k)(3). Requirements include a 20 percent match (in the form of money, labor, material, or services from a non-federal source) on the amount of Section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs

¹⁰States and tribes may find useful information on institutional controls on the EPA's institutional controls web site at <https://www.epa.gov/superfund/superfund-institutional-controls-guidance-and-policy>.

relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions relevant to CERCLA section 104(k)(4) also apply; and

- purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

B. Uses related to establishing a state or tribal response program

Under Section 128(a), “establish” includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use Section 128(a) funds to develop regulations, ordinances, procedures, guidance, and a public record.

C. Uses related to enhancing a state or tribal response program

Under Section 128(a), “enhancing” a state or tribal response program includes related activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under such programs.

The exact enhancement activities that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that Section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program and improving the skills of program staff (training examples include ASTM standards for conducting Limited Transaction Screens, Environmental Phase I and Phase IIs). It may also include developing better coordination and understanding of other state or tribal programs, (e.g., programs that address RCRA or underground storage tanks (USTs)). As another example, states and tribal response program enhancement activities can also include outreach to local communities to increase awareness about brownfields, building a sustainable brownfields program, federal brownfields technical assistance opportunities¹¹ (e.g., holding workshops to assist communities in applying for federal Brownfields grant funding, attending health fairs and cleanup days to inform individuals how to identify hazards in their own living areas, abandoned buildings and among dumping areas), and knowledge regarding the importance of monitoring engineering and institutional controls. Additionally, enhancement activities can include facilitating the participation of the state and local agencies (e.g., transportation, water, other infrastructure) in implementation of brownfields projects. States and tribes can also help local communities collaborate with local workforce development entities or Brownfields Environmental Workforce Development and Job Training recipients on the assessment and cleanup of brownfield sites.¹² Other enhancement uses may be allowable as well.

¹¹ EPA expects states and tribes will familiarize themselves with EPA’s brownfields technical assistance opportunities for brownfields communities. For more information on technical assistance opportunities, please visit: <https://www.epa.gov/brownfields>.

¹² For more information about EPA’s Brownfields Environmental Workforce Development and Job Training Program, please visit: <https://www.epa.gov/brownfields/types-brownfields-grant-funding>

D. Uses related to site-specific activities

1. Eligible uses of funds for site-specific activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups can be both eligible and allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe, but activities must comply with all applicable laws and are subject to the following restrictions:

- a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39). EPA encourages states and tribes to use site-specific funding to perform assessment (e.g. phase I, phase II, supplemental assessments and cleanup planning) and cleanup activities that will expedite the reuse and redevelopment of sites, and prioritize sites based on need.¹³ Furthermore, states and tribes that perform site-specific activities should plan to directly engage with and involve affected communities. For example, a Community Relations Plan (CRP) could be developed to provide reasonable notice about a planned cleanup, as well as opportunities for the public to comment on the cleanup. States and tribes should work towards securing additional funding for site-specific activities by leveraging resources from other sources such as businesses, non-profit organizations, education and training providers, and/or federal, state, tribal, and local governments;
- b. absent EPA approval, no more than \$200,000 per site assessment can be funded with Section 128(a) funds, and no more than \$200,000 per site cleanup can be funded with Section 128(a) funds;
- c. absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and/or cleanup sites owned or operated by the recipient or held in trust by the United States Government for the recipient; and
- d. assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party (PRP) pursuant to CERCLA section 107, except:
 - at brownfield sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
 - when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser, or would satisfy all elements of section 101(40), except where the date of acquisition of the property was on or before January 11, 2002.

Subawards are defined at 2 CFR 200.92 and may not be awarded to for-profit organizations. If the recipient plans on making any subawards under the cooperative agreement, then it becomes a pass-through entity. As the pass-through entity, the recipient must report on its

¹³ An example of prioritizing sites based on need can be focusing on environmental justice. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across the nation. Environmental justice will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. For more information, please visit www.epa.gov/environmentaljustice.

subaward monitoring activities under 2 CFR 200.331(d). Additional reporting requirements for these activities will be included in the cooperative agreement. In addition, subawards cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

- at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
- when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser or would satisfy all elements of CERCLA section 101(40)(D) except where the date of acquisition of the property was on or before January 11, 2002.

2. Limitations on the amount of funds used for site-specific activities and waiver process

- a. States and tribes may use Section 128(a) funds for site-specific activities that improve state or tribal capacity. However, the amount recipients may request for site-specific assessments and cleanups may not exceed 50% of the total amount of funding.¹⁴ In order to exceed the 50% site-specific funding limit, a state or tribe must submit a waiver request. The request must include a brief justification describing the reason(s) for spending more than 50% of an annual allocation on site-specific activities.
- b. When requesting a waiver, an applicant must include the following information in the written justification:
 - total amount requested for site-specific activities;
 - percentage of the site-specific activities (assuming waiver is approved) in the total budget;
 - site-specific activities that will be covered by this funding. If known, provide site-specific information and describe how work on each site contributes to the development or enhancement of your state/tribal response program. Explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;
 - an explanation of how this shift in funding will not negatively impact the core programmatic capacity (i.e., the ability to establish/enhance the four required elements of a response program) and how the core program activities will be maintained in spite of an increase in site-specific work. Recipients must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 50% limit on using 128(a) funds for site-specific activities; and
 - an explanation as to whether the sites to be addressed are those for which the affected community(ies) has requested work be conducted (refer to Section VI.A Overview of Funding for more information).

¹⁴ Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 50% limit.

EPA Headquarters will review waiver requests based on the information in the justification and other information available to the Agency. EPA will inform recipients whether the waiver is approved.

3. Uses related to site-specific activities at petroleum brownfield sites

States and tribes may use Section 128(a) funds for activities that establish or enhance response programs addressing petroleum brownfield sites. Subject to the restrictions listed above (see Section VI.D.1) for all site-specific activities, the costs of site-specific assessment and cleanup activities at petroleum brownfield sites, as defined in CERCLA section 101(39)(D)(ii)(II), are both eligible and allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfield sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

4. Additional Examples of Eligible Site-Specific Activities

Other eligible uses of funds for site-specific related work include, but are not limited to, the following activities:

- technical assistance to federal brownfields cooperative agreement recipients;
- development and/or review of quality assurance project plans (QAPPs); and
- entering data into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database.

E. Uses related to activities at “non-brownfield” sites

Other uses not specifically referenced in this guidance may also be eligible and allowable. Recipients should consult with their EPA regional state or tribal contact for additional guidance. Costs incurred for activities at non-brownfield sites may be eligible and allowable if such activities are included in the state’s or tribe’s work plan. *Direct assessment and cleanup activities may only be conducted on eligible brownfield sites, as defined in CERCLA section 101(39).*

VII. GENERAL PROGRAMMATIC GUIDELINES FOR SECTION 128(a) GRANT FUNDING REQUESTS

Funding authorized under Section 128(a) is awarded through a cooperative agreement¹⁵ between EPA and a state or a tribe. The program administers cooperative agreements under the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* regulations for all entity types including states, tribes, and local governments found in the Code of Federal Regulations (CFR) at 2 CFR Part 200 and any applicable EPA regulations in Title 2 CFR Subtitle B—Federal Agency Regulations for Grants and Agreements Chapter 15, as well as applicable provisions of 40 CFR Part 35 Subparts A and B. Under these regulations, the cooperative agreement recipient for a Section 128(a) grant is the government to which a cooperative agreement is awarded and which is accountable for use of the funds provided. The cooperative agreement recipient is the legal entity even if only a particular component of the entity is designated in the cooperative agreement award document. Further, unexpended balances of cooperative agreement funds are subject to restrictions under 40 CFR 35.118 and 40 CFR 35.518. EPA allocates funds to state and tribal response programs consistent with 40 CFR 35.420 and 40 CFR 35.737.

¹⁵ A cooperative agreement is an agreement with a state/tribe that includes substantial involvement by the EPA on activities described in the work plan, which may include technical assistance, collaboration on program priorities, etc.

A. One application per state or tribe

Subject to the availability of funds, EPA regional offices will negotiate and enter into Section 128(a) cooperative agreements with eligible and interested states or tribes. EPA will accept only one application from each eligible state or tribe.

B. Maximum funding request

For Fiscal Year 2021, EPA will consider funding requests up to a maximum of \$1.0 million per state or tribe. Please note that demand for this program continues to increase. Due to the increasing number of entities requesting funding, it is likely that state and tribal individual funding amounts in FY21 will be less than FY20 individual funding amounts.

C. Define the state or tribal response program

States and tribes must define in their work plan the Section 128(a) response program(s) to which the funds will be applied and may designate a component of the state or tribe that will be EPA's primary point of contact. When EPA funds the Section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the Section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

D. Separate cooperative agreements for the capitalization of RLFs using Section 128(a) funds

If a portion of the Section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded (i.e., one for the RLF and one for non-RLF uses). States and tribes must, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

E. Authority to manage a revolving loan fund program

If a state or tribe chooses to use its Section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the lead authority to manage the program (e.g., hold funds, make loans, enter into loan agreements, collect repayment, access and secure the site in event of an emergency or loan default). If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another agency within that state or tribe has the authority to manage the RLF and is willing to do so.

F. Section 128(a) cooperative agreements can be part of a Performance Partnership Grant (PPG)

States and tribes may include Section 128(a) cooperative agreements in their PPG as described in 69 Fed. Reg. 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase environmental insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

G. Project period

EPA regional offices will determine the project period for each cooperative agreement. These

may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan. While not prohibited, pre-award costs are subject to 40 CFR 35.113 and 40 CFR 35.513.

H. Demonstrating the four elements

As part of the annual work plan negotiation process, states or tribes that do not have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section IV. EPA will not fund state or tribal response program annual work plans if EPA determines that these elements are not met, or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, on progress reports, or on EPA's review of the state or tribal response program.

I. Establishing and maintaining the public record

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section V and below, exists and is being maintained.¹⁶ Specifically, for:

- states or tribes that received initial funding prior to FY20: Requests for FY21 funds will not be accepted from states or tribes that fail to demonstrate, by the December 11, 2020 request deadline, that they established and are maintaining a public record. (*Note*, this would potentially impact any state or tribe that had a term and condition placed on their FY20 cooperative agreement that prohibited drawdown of FY20 funds prior to meeting the public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds once the public record requirement is met; and
- states or tribes that received initial funding in FY20: By the time of the actual FY21 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY21 cooperative agreement that prohibits the drawdown of FY21 funds until the public record requirement is met).

J. Demonstration of significant utilization of prior years' funding

States and tribes should be aware that EPA and its Congressional appropriations committees place significant emphasis on the utilization of prior years' funding. Unused funds awarded prior to FY20 will be considered in the allocation process. Existing balances of cooperative agreement funds, as reflected in EPA's Financial Data Warehouse as of January 1, 2021, may result in a decreased allocation amount or, if appropriate, the deobligation and reallocation of prior funding by EPA Regions, as provided for in 40 CFR 35.118 and 40 CFR 35.518.

If a state or tribe places their Section 128(a) funds into a PPG, they must be able to demonstrate their progress on the four statutory elements and the maintenance of the public record as an equivalent of demonstrating how they utilized prior year's funding.

K. Allocation system and process for distribution of funds

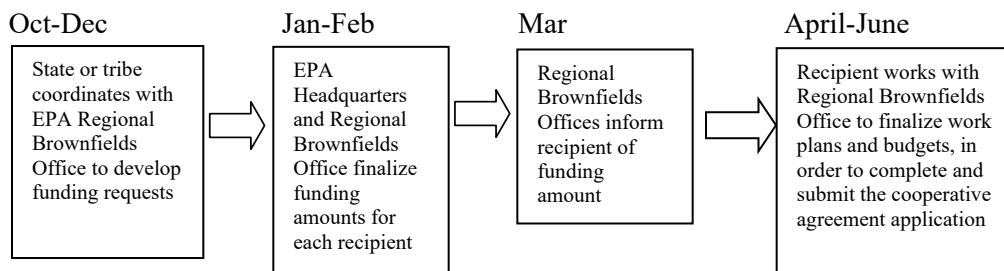
After the December 11, 2020 request deadline, EPA's regional offices will submit summaries of state and tribal requests to EPA Headquarters. Before doing so, regional offices may take into

¹⁶ For purposes of 128(a) funding, the state or tribe's public record applies to that state or tribe's response program(s) that utilized the section 128(a) funding.

account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program, and scope of the perceived need for funding (e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of current year funding, funds remaining from prior years, etc.).

After receipt of the regional recommendations, EPA Headquarters will consolidate requests and make decisions on the final funding allocations.

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below (*dates are estimates and subject to change*):



VIII. INFORMATION TO BE SUBMITTED WITH THE FUNDING REQUEST

A. Funding Requests for entities that received Section 128(a) funding in previous years

All states and tribes requesting FY21 funds must submit a summary of the planned use of Section 128(a) funds to their regional brownfields contact listed on the last page of this guidance.

1. Each funding request should include the following:

- a. Prepare a draft work plan and budget for your FY21 funding request. The funding requested should be reasonably spent in one year. The requestor should work, as early as possible, with their EPA regional program contact to ensure that the funding amount requested, and related activities, are reasonable. Please also contact your regional brownfields contact for a sample draft work plan. If your funds are in a PPG, your regional brownfields contact may allow for the funding request to be submitted in an alternative format. Please contact your regional brownfields contact for more information.
- b. In your funding request, note any un-spent funding amounts from prior years' awards. This includes any funds that you, the requestor, have not received or drawn down in payments (i.e., funds EPA has obligated for grants that remain in EPA's Financial Data Warehouse). EPA will consider these funds in the allocation process when determining the requestor's programmatic needs. The requestor should include a detailed explanation

and justification of prior year funds that remain in EPA's Financial Data Warehouse. The requestor should consult with the region regarding the amount of unspent funds which require explanation to ensure they have addressed the full amount of any remaining balance.

- c. If you do not have a MOA with EPA, demonstrate how your program includes, or is taking reasonable steps to include, the four elements described in Section VI.
2. Programmatic Capability – [Only Include if Specifically Requested by Region]
 - a. EPA Regions may request demonstration of Programmatic Capability if the returning grantee has experienced key staff turnover or if the grantee has open programmatic review findings. An entity's corresponding EPA Region will notify returning recipients if the information below is required, and it must be included with your funding request. Describe the organizational structure you will utilize to ensure sound program management to guarantee or confirm timely and successful expenditure of funds, and completion of all technical, administrative, and financial requirements of the program and cooperative agreement.
 - b. Include a brief description of the key qualifications of staff to manage the response program and/or the process you will follow to hire staff to manage the response program. If key staff is already in place, include their roles, expertise, qualifications, and experience.
 - c. Discuss how this response program fits into your current environmental program(s). If you do not have an environmental program, describe your process to develop, or interest to start one.
 - d. Describe if you have had adverse audit findings. If you had problems with the administration of any grants or cooperative agreements, describe how you have corrected, or are correcting, the problems.

B. Funding Requests for Entities that have never received CERCLA 128(a) funding

All first-time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed on the last page of this guidance, prior to submitting their funding request.

1. Each funding request should include the following:
 - a. Describe your plan to establish a response program, why it is a priority for your tribe, and why CERCLA 128(a) funding will be beneficial to your program. If your tribe is already supported by a tribal consortium receiving CERCLA 128(a) funding, explain why additional resources are necessary.
 - b. Prepare a draft work plan and budget for your first funding year. The funding requested should be reasonably spent in one year. The requestor should work, as early as possible, with their EPA regional program contact to ensure that the funding amount requested, and related activities, are reasonable.
 - c. For budget planning purposes, it is recommended that you assume funding sufficient to support 0.5 staff to establish a response program and travel to attend regional and national trainings or events.

- d. Please contact your regional brownfields contact or visit <https://www.epa.gov/brownfields/state-and-tribal-response-program-grant-funding-guidance-resources> for sample draft work plans.
2. Programmatic Capability.
 - a. Describe the organizational structure you will utilize to ensure sound program management to guarantee or confirm timely and successful expenditure of funds, and completion of all technical, administrative and financial requirements of the program and cooperative agreement.
 - b. Include a brief description of the key qualifications of staff to manage the response program and/or the process you will follow to hire staff to manage the response program. If key staff is already in place, include their roles, expertise, qualifications, and experience.
 - c. Discuss how this response program fits into your current environmental program(s). If you do not have an environmental program, describe your process to develop, or interest to start one.
 - d. Describe if you have had adverse audit findings. If you had problems with the administration of any grants or cooperative agreements, describe how you have corrected, or are correcting, the problems.

IX. TERMS AND REPORTING

Once EPA makes final determinations with respect to funding requests and allocations of funds, the state or tribe will work with the appropriate EPA regional office to negotiate a cooperative agreement, which includes a final work plan and budget. Cooperative agreements between EPA and Section 128(a) recipients will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement, including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions and related reporting that will be incorporated into your cooperative agreement.

A. Progress reports

In accordance with 2 CFR 200.328 and related EPA-specific regulations, states and tribes must provide progress reports meeting the terms and conditions of their negotiated cooperative agreement. State and tribal costs for complying with reporting requirements are an eligible expense under the Section 128(a) cooperative agreement. At a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state or tribe's accomplishments and environmental outputs associated with the approved budget and work plan.

Reports must also provide an accounting of Section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four statutory elements of the state or tribe's response program. All recipients must provide information related to establishing or, if already established, maintaining the public record.

Depending upon the activities included in the state or tribe's work plan, the recipient will also need to report on the following:

1. *Interim and final progress reports.* Reports must prominently display the following

information, as reflected in the current EPA strategic plan: Strategic Plan Goal 1: Core Mission: Deliver real results to provide Americans with clean air, land, and water, and ensure chemical safety; Strategic Plan Objective 1.3: Revitalize Land and Prevent Contamination; and Work Plan Commitments and Timeframes. EPA's strategic plan can be found on the internet at <http://www.epa.gov/planandbudget/strategicplan.html>.

2. *Reporting for Non-MOA states and tribes.* All recipients without a VRP MOA must report activities related to establishing or enhancing the four elements of the state or tribe's response program. For each element states/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include a:
 - narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
 - legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements); and
 - policies and procedures to implement legal authorities; and other mechanisms;
 - description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;
 - narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
 - a response action will protect human health and the environment; and be conducted in accordance with applicable federal and state laws; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities will be completed; and
 - narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfield site.
3. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfield site assessment or cleanup* must input information required by the OMB-approved Property Profile Form into the ACRES database for each site assessment and/or and cleanup. In addition, recipients must report how they will provide the affected community with prior notice and opportunity for meaningful participation, per CERCLA section 128(a)(2)(C)(ii), on proposed cleanup plans and site activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and to solicit input from local communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote communities, and communities with limited experience working with government agencies.
4. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example, the:
 - number and frequency of oversight audits of licensed site professional certified cleanups;

- number and frequency of state/tribal oversight audits conducted;
 - number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities; and
 - number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.
5. *Reporting required when using funding for an RLF.* Recipients with work plans that include funding for a revolving loan fund must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.
6. *Reporting environmental insurance.* Recipients with work plans that include funding for environmental insurance must report the:
- number and description of insurance policies purchased (e.g., name of insurer, type of coverage provided, dollar limits of coverage, any buffers or deductibles, category and identity of insured persons, premium, first dollar or umbrella, whether site specific or blanket, occurrence or claims made, etc.);
 - number of sites covered by the insurance;
 - amount of funds spent on environmental insurance (e.g., amount dedicated to insurance program, or to insurance premiums); and
 - amount of claims paid by insurers to policy holders.

7. *EPA Regional Office discretion to request additional information*

EPA's regional offices may also request that additional information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan. EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of Section 128(a) funding to states and tribes.

B. Reporting of program activity levels

By December 11, 2020, states and tribes must report a summary of the *previous federal fiscal year's* work (October 1, 2019 through September 30, 2020) by completing the Program Activity Levels (PALs) form, found at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange-system>, or reporting this information directly in EPA's ACRES database.

C. Reporting of public record

All recipients must report, as specified in the terms and conditions of their cooperative agreement and in Section VII.I of this guidance, information related to establishing, or if already established, maintaining the public record. States and tribes can refer to an existing public record (e.g., website or other public database to meet the public record requirement). To meet the reporting requirement, recipients' reporting only needs to demonstrate that the public record: a) exists and is up-to-date; and b) is adequate.

A public record must, as appropriate, include the following information:

1. A list of sites at which response actions have been completed in the past year, including:
 - date the response action was completed;
 - site name;
 - name of owner at time of cleanup, if known;
 - location of the site (street address, and latitude and longitude);
 - whether an institutional control is in place;
 - type of institutional control(s) in place (e.g., deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
 - nature of the contamination at the site (e.g., hazardous substances, contaminants or pollutants, petroleum contamination, etc.); and
 - size of the site in acres.
2. A list of sites planned to be addressed by the state or tribal response program in the coming year, including:
 - site name and the name of owner at time of cleanup, if known;
 - location of the site (street address, and latitude and longitude);
 - to the extent known, whether an institutional control is in place;
 - type of the institutional control(s) in place (e.g., deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
 - to the extent known, the nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.); and
 - size of the site in acres.

D. Award administration information

1. Subaward and executive compensation reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR Part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at 2 CFR Part 25 (e.g., individuals), applicants must:

- a. Be registered in SAM prior to submitting an application or proposal under this announcement. SAM information can be found at <https://www.sam.gov/portal/public/SAM/>;
- b. Maintain an active SAM registration with current information at all times during which

they have an active federal award or an application or proposal under consideration by an agency; and

c. Provide their DUNS number in each application or proposal submitted to the agency. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711, or visiting the D&B website at: <http://www.dnb.com>

If an applicant fails to comply with these requirements, it will affect their ability to receive the award.

Please note that the Central Contractor Registration (CCR) system has been replaced by the System for Award Management (SAM). To learn more about SAM, go to SAM.gov or <https://www.sam.gov/portal/public/SAM/>.

3. Submitting an application via Grants.gov

a. If Section 128(a) funding is allocated to a requestor, it will be provided through a cooperative agreement award. All cooperative agreement applications for non-competitive assistance agreement awards must be submitted using Grants.gov. Below is the information that the applicant will use to submit their State and Tribal Response Program Grant applications via grants.gov:

CDFA number: 66.817

Funding Opportunity Number (FON): EPA-CEP-02

To learn more about the Grants.gov submission requirements, go to <https://www.epa.gov/grants/how-apply-grants>.

b. Recipients should only submit their final work plan via Grants.gov. The draft work plan due on December 11, 2020 should not be submitted via Grants.gov. The draft work plan should be emailed to the regional contact listed at the end of this guidance.

c. When the EPA project officer informs you when to submit your final work plan in Grants.gov, it must be submitted using the “Workspace” feature. Information on the Workspace feature can be found at Grants.gov Workspace Overview Page.

4. Use of funds

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively and make sufficient progress towards completing the project activities described in the work plan in a timely manner. The assistance agreement will include terms and conditions related to this requirement.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

REGION	STATE	TRIBAL
1 CT, ME, MA, NH, RI, VT	AmyJean McKeown 5 Post Office Square, Suite 100 (OSRR07-2) Boston, MA 02109-3912 Phone (617) 918-1248 Fax (617) 918-1294	AmyJean McKeown 5 Post Office Square, Suite 100 (OSRR07-2) Boston, MA 02109-3912 Phone (617) 918-1248 Fax (617) 918-1294
2 NJ, NY, PR, VI	John Struble 290 Broadway, 25th Floor New York, NY 10007-1866 Phone (212) 637-4291 Fax (212) 637-3083	John Struble 290 Broadway, 25th Floor New York, NY 10007-1866 Phone (212) 637-4291 Fax (212) 637-3083
3 DE, DC, MD, PA, VA, WV	Mike Taurino 1650 Arch Street (3HS51) Philadelphia, PA 19103 Phone (215) 814-3371 Fax (215) 814-3274	Mike Taurino 1650 Arch Street (3HS51) Philadelphia, PA 19103 Phone (215) 814-3371 Fax (215) 814-3274
4 AL, FL, GA, KY, MS, NC, SC, TN	Cindy Nolan 61 Forsyth Street, S.W, 10TH FL (9T25) Atlanta, GA 30303-8960 Phone (404) 562-8425 Fax (404) 562-8788	Cindy Nolan 61 Forsyth Street, S.W, 10TH FL (9T25) Atlanta, GA 30303-8909 Phone (404) 562-8425 Fax (404) 562-8788
5 IL, IN, MI, MN, OH, WI	Keary Cragan 77 West Jackson Boulevard (SB-5J) Chicago, IL 60604-3507 Phone (312) 353-5669 Fax (312) 692-2161	Rosita Clarke 77 West Jackson Boulevard (SB-5J) Chicago, IL 60604-3507 Phone (312) 886-7251 Fax (312) 697-2075
6 AR, LA, NM, OK, TX	Ana Esquivel 1201 Elm Street, Suite 500 Dallas, Texas 75270-2102 Phone (214) 665-3163 Fax (214) 665-6660	Elizabeth Reyes 1201 Elm Street, Suite 500 Dallas, Texas 75270-2102 Phone (214) 665-2194 Fax (214) 665-6660
7 IA, KS, MO, NE	Susan Klein 11201 Renner Boulevard (LCRD/BSPR) Lenexa KS 66219 Phone (913) 551-7786	Jennifer Morris 11201 Renner Boulevard ((LCRD/BSPR) Lenexa KS 66219 Phone (913) 551-7341
8 CO, MT, ND, SD, UT, WY	Christina Wilson 1595 Wynkoop Street (8LCR-BR) Denver, CO 80202-1129 Phone (303) 312-6706 Fax (303) 312-6065	Melisa Devincenzi 1595 Wynkoop Street (8LCR-BR) Denver, CO 80202-1129 Phone (303) 312-6377 Fax (303) 312-6962
9 AZ, CA, HI, NV, AS, GU, MP	Jose Garcia, Jr. 600 Wilshire Blvd, Suite 1460 Los Angeles, CA 90017 Phone (213) 244-1811 Fax (213) 244-1850	Jose Garcia, Jr. 600 Wilshire Blvd, Suite 1460 Los Angeles, CA 90017 Phone (213) 244-1811 Fax (213) 244-1850
10 AK, ID, OR, WA	Madison Sanders-Curry 1200 Sixth Ave, Suite 155 (mail code 15-H04) Seattle, WA 98101 Phone (206) 553-1889 Fax 206 553-8581	Madison Sanders-Curry 1200 Sixth Ave, Suite 155 (mail code 15-H04) Seattle, WA 98101 Phone (206) 553-1889 Fax (206) 553-8581

APPENDIX A: FUNDING GUIDANCE FOR CERCLA 128(a) SMALL TECHNICAL ASSISTANCE GRANTS

Section 128(a)(1)(B)(ii)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive \$1.5 million¹⁷ grant program to assist small communities,¹⁸ Indian tribes,¹⁹ rural areas, or disadvantaged areas²⁰ to carry out activities outlined in CERCLA Section 104(k)(7) (e.g. providing training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation). These funds may not be used to augment an existing CERCLA 128(a) State and Tribal Program and may not be placed in Performance Partnership Grants (PPGs).

State and tribes with active CERCLA 128(a) grants and are requesting funds in fiscal year (FY) 2021 are eligible to submit one request on behalf of a small community, Indian tribe, rural area, or disadvantaged area. The maximum amount of funding allowed is \$20,000. The funding will be awarded as part of the FY21 CERCLA 128(a) funding grant. Requests will be considered based on the following:

- readiness of the recipient and community to complete the project within a year of award,
- the recipient is in good standing with their current CERCLA 128(a) grant,
- the recipient has documented support from the community benefiting from this grant, and
- the recipient adequately responds to the criteria listed below.

Requests should be no more than 2 pages. Information to include in the request:

- the amount of funding requested,
- a description of the target community and how it meets the definition of a small community, Indian tribe, rural area, or disadvantaged area,
- a description of the proposed project, including a description of key activities and how it will further brownfields reuse,
- the expected outcomes and timeline to complete the project,
- how/who will be conducting the activities (e.g., state, tribe, contractor)²¹
- if additional resources are necessary to complete the project, please explain how you will secure them,
- an explanation of why existing state or tribal funding is inadequate to complete the proposed project, and
- a demonstration that the community supports the state or tribe receiving the grant.

¹⁷ If EPA receives over \$1.5 million in requests, it will evaluate projects based on criteria listed in Appendix A. EPA will prioritize fully funding high quality projects until appropriation cap is reached.

¹⁸ CERCLA Section 128(a)(1)(B)(iv)(II) defines Small Community as a community with a population of not more than 15,000 individuals, as determined by the President based on the latest available decennial census.

¹⁹ CERCLA Section 101(36) defines Indian Tribe.

²⁰ CERCLA Section 128(a)(1)(B)(iv)(I) defines Disadvantaged Area as a community with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the President based on the latest available decennial census

²¹ If a state or tribe plans to use a contractor or provide a subaward, states and tribes will have to follow EPA's general procurement terms and conditions, as well as any relevant state or tribal requirements.