



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

Office of
International and
Tribal Affairs

July 20, 2021

Re: Notification of Consultation and Coordination on the National Allocation of Indian Environmental General Assistance Program Funding

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized tribes to receive input on how to improve the national allocation of Indian Environmental General Assistance Program (GAP) funds to tribal and intertribal consortia recipients. The current funding allocation formula, attached, is informed by the GAP Act of 1992¹. The Act requires that each grant awarded for a fiscal year shall be no less than \$75,000. In the current national allocation methodology, EPA targets \$110,000 per federally recognized tribe.

In February 2008, EPA's Office of Inspector General (OIG) issued a report with recommendations on how to improve the effectiveness of the GAP program². In summary, the report recommended that the EPA American Indian Environmental Office (AIEO): (1) develop a framework for tribal capacity building; (2) require tribal environmental plans; and (3) revise how GAP funding is distributed to tribes to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals. Since receiving these recommendations, AIEO has implemented EPA-Tribal Environmental Plans (ETEPs) and is working to improve the 2013 GAP Guidance to be responsive to both the OIG report and tribal environmental capacity building needs. Addressing the third recommendation, the national allocation, is timely to coincide with revisions to the GAP Guidance, including new service delivery authorities, and most importantly, to ensure that EPA is addressing tribal environmental capacity building needs and helping tribes achieve their environmental goals.

EPA is now initiating a tribal consultation process that seeks input on how to allocate GAP funds to address diverse and unique tribal environmental capacity needs and support environmental protection in Indian country. Once input from tribal representatives is gathered

¹ 42 U.S.C. § 4368b(d)(2).

² <https://www.epa.gov/sites/production/files/2015-11/documents/20080219-08-p-0083.pdf>



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and fully considered through this tribal consultation and coordination process, EPA may propose to revise its GAP national allocation policy.

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>). EPA invites you and your designated consultation representative(s) to participate in this process. EPA's anticipated timeline for the consultation and coordination period is expected to extend from **Tuesday, July 20 – Wednesday, November 17**.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process 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>.*

The official EPA contact person for this consultation and coordination process is Lisa Berrios, Senior Advisor in the American Indian Environmental Office. Please do not hesitate to contact Ms. Berrios at berrios.lisa@epa.gov or at (202) 564-1739 should you have any questions.

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

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Chase".

JoAnn Chase
Director, American Indian Environmental Office;
Office of International and Tribal Affairs

Attachments

cc: Jane Nishida, Assistant Administrator, Office of International and Tribal Affairs
Office of Regional Administrator Deputy Directors
Regional Indian Program Coordinators
Lisa Berrios, Senior Advisor, American Indian Environmental Office



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Attachment 1: Consultation Plan for EPA's National GAP Allocation Formula

INTRODUCTION

Historically, AIEO's primary national allocation goal has been to provide each region sufficient resources to award a base level of funding to all federally recognized tribes. The goal was to provide all tribes with "access to an environmental presence" which was defined as enough funding to cover the cost of one full-time position as well as office costs, training, travel, equipment, and indirect costs. In addition to supporting a minimum environmental presence, the allocation formula also attempted to equitably fund all tribes. Since 1998 the allocation formula has been the total number of tribes per region multiplied by \$110,000. The total was then distributed to each region to award to the tribes.

Since the establishment of the allocation formula there have been two significant events. In 2008, EPA's Office of Inspector General recommended that AIEO revise the distribution of GAP funds to tribes "in order to place more emphasis on tribes' prior progress, environmental capacity needs, and long-term goals." In addition, the 2018 Appropriations Act expanded the scope of GAP eligible activities to include solid waste and recovered materials collection, transportation, backhaul, and disposal services without a corresponding increase in the Congressional authorization for GAP.

The purpose of this consultation is to receive input from tribal governments on how to improve the GAP allocation methodology to address diverse and unique tribal environmental capacity needs and support environmental protection in Indian Country.

QUESTIONS TO CONSIDER

Tribes are welcome to comment on any aspect of EPA's national GAP allocation. Specific aspects of the allocation that the Agency would appreciate input on include the following:

1. Should EPA's revised allocation continue to be based primarily on the number of federally recognized tribes in a region regardless of whether the tribe applies for funding?
2. How might EPA's revised allocation consider the environmental capacity needs of individual tribes? Other examples of EPA State and Tribal Assistance Grant (STAG) allocation formulas consider numerous factors, such as geographic size, demographics, and the



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presence of pollution sources. What factors should be considered when quantifying tribal environmental capacity needs in a revised GAP allocation?

3. Many tribes have different environmental capacity goals (e.g., environmental presence, Treatment in a manner similar to a State (TAS), meaningful participation and/or solid waste implementation) included in EPA/Tribal Environmental Plans (ETEPs). Should EPA consider different funding amounts for tribes that have different environmental capacity goals?
4. Should EPA establish a set aside for tribal service delivery activities (transportation, collection, disposal and backhaul) and if so, what criteria should EPA use to determine this set aside?
5. Intertribal consortia are eligible to receive GAP funding. However, the current GAP Guidance does not require that they develop ETEPs. Instead, intertribal consortia GAP work plans are required to respond to member tribes' program development needs. What criteria should EPA consider when including consortia in the allocation given their unique role?
6. Are there other examples of allocation criteria from other federal agencies that EPA should consider?

CONSULTATION TIMELINE AND OUTREACH ACTIVITIES

Tribal governments may submit written comments on the Guidance through November 16, 2021. AIEO requests that tribes consider the consultation questions in their responses, in addition to any other feedback. Tribes may submit written comments via email to Lisa Berrios at berrios.lisa@epa.gov.

Tribal governments may request one-on-one consultation meetings with EPA. EPA will work to accommodate these requests to the greatest extent possible. All consultation meetings will be virtual. If you are interested in requesting consultation with the Agency, please contact Lisa (contact information above) to make arrangements prior to the close of consultation.

OITA has also scheduled several opportunities for tribes to provide verbal comments during this consultation and coordination process. The table below outlines opportunities for tribes to receive information, ask questions and provide comments on this action. All consultation information is also available on EPA's tribal portal website: <https://tcots.epa.gov>.



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| Consultation & Coordination Activity | Date |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| CONSULTATION & COORDINATION PROCESS BEGINS - Consultation notification letter mailed & email announcements sent | Monday, July 19, 2021 |
| National Notification Call to Tribal Leaders on the scope of the consultation - Provides tribes with an overview of the GAP guidance evaluation consultation scope, process, & timeline Conference call line: 202-991-0477 Conference call code: 168 706 335# Webinar access via computer on mobile app: Click here to join the meeting | Tuesday, August 3, 2021 3:00 PM – 4:30 PM EDT |
| Regional Consultation and Coordination Webinar with tribes in Regions 1-5 - Provides tribes with an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 972 686 061# Webinar access via computer on mobile app: Click here to join the meeting | Tuesday, August 10, 2021 10:30 AM – 12:00 PM EDT |
| Regional Consultation and Coordination Webinar with tribes and Alaska Native Villages in Alaska - Provides tribes and Alaska Native Villages with an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 438 134 910# Webinar access via computer on mobile app: Click here to join the meeting | Tuesday, August 17, 2021 3:00 PM – 4:30 PM EDT |
| Regional Consultation and Coordination Webinar with tribes in Regions 6-8 - Provides tribes with an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 533 060 607# Webinar access via computer on mobile app: Click here to join the meeting | Thursday, August 19, 2021 11:00 AM – 12:30 PM EDT |
| Regional Consultation and Coordination Webinar with tribes in Region 9 - Provides tribes and Alaska Native Villages with an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 131 810 436# Webinar access via computer on mobile app: Click here to join the meeting | Thursday, August 26, 2021 3:00 PM – 4:30 PM EDT |
| Regional Consultation and Coordination Webinar with tribes in Region 10 (lower 48) | Tuesday, August 31, 2021 3:00 PM – 4:30 PM EDT |



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| <p>- Provides tribes with an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 295 265 557# Webinar access via computer on mobile app: Click here to join the meeting</p> | |
| <p>Coordination and Informational Webinar for intertribal consortia - Provides intertribal consortia an opportunity to ask questions and provide comments Conference call line: 202-991-0477 Conference call code: 926 899 251# Webinar access via computer on mobile app: Click here to join the meeting</p> | <p>Thursday, September 2, 2021 3:30 PM – 5:00 PM EDT</p> |
| <p>Consultation Process Ends. Tribal Comments Due</p> | <p>Wednesday, November 17, 2021</p> |
| <p>Official Agency Point-of-Contact:</p> <p>Lisa Berrios, Senior Advisor Phone: 202-564-1739 Email: berrios.lisa@epa.gov</p> | |



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Attachment 2: Current GAP Allocation Methodology

EPA uses a three-step process for allocating appropriated GAP dollars to regional offices. The process has remained largely unchanged since it was established in 1996, with two notable exceptions: (1) in 1998 the per tribe average environmental grant level was changed from \$75,000 to \$110,000; and (2) in 2012 the number of recipients became a factor as described below.

Note: The methodology described below does not dictate how regional offices award funds to GAP grantees (e.g., a region can make an award that is greater or less than \$110,000 to a particular tribe).

Prior to making regional allocations, headquarters/AIEO reserves a lump sum from the congressionally appropriated funds as a “set-aside” for special projects of regional/national significance that are proposed by the regions or HQ. These funds are distributed to regions in Step 3 (described below).

Step 1: From the remaining funds after the set-aside, regional allocations are determined by first multiplying \$110,000 by the number of federally recognized tribes in each Region. In FY 2020, \$250,000 was subtracted from the \$66,250,000 appropriation giving \$66,000,000 from which \$64,130,000 (583 tribes * \$110,000) was subtracted to leave a balance of \$1,870,000.

Note: In 1996, at the direction of EPA’s Deputy Administrator, EPA established a sequence-of-funding approach to account for the large number of tribes in Alaska with limited jurisdiction to regulate pollution sources. This approach was to allocate GAP funds for tribes in the lower 48 first, followed by tribes in Alaska, as appropriated funds allowed. As national GAP funding levels increased from \$42.6M in 2000 to \$62.1M in 2004, the Region 10 allocation increased more quickly than all other regions, such that by FY 2004 the Region 10 allocation reached the level needed to provide \$110,000 for all tribes in Alaska.

Step 2: Since 2012, any unallocated balance after Step 1 is then divided equally by the number of active GAP recipients from the previous year (includes intertribal consortia recipients and PPGs containing GAP funds) and added to the regional allocation accordingly. In FY 2021, the total unallocated balance was \$1,870,000 (\$3,645.22 for each of the 513 recipients). Steps 1 and 2 are combined to make-up each region’s base allocation.

Step 3: Finally, regions might receive additional funds from the set-aside to fund HQ approved projects. For example, in FY2021, there were no regional projects identified so nothing was



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added to the regions in this step. Instead, HQ is currently providing \$250,000 to the Indian Health Service, through an Interagency Agreement, to help increase the capacity of tribal solid waste programs.