

National Allocation of GAP Funds Tribal Comment Summary

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Introduction:

Under the Indian Environmental General Assistance Program (GAP) Act of 1992, the U.S. Environmental Protection Agency (EPA) provides GAP financial assistance to tribal governments and intertribal consortia to a) assist tribes in planning, developing, and establishing the capacity to implement federal environmental programs administered by the EPA, b) assist in implementation of tribal solid and hazardous waste programs in accordance with applicable provisions of law, and c) provide for service delivery activities, such as the collection, transportation, storage, backhaul and disposal of solid waste and/or recovered resources. As the National Program Manager of GAP, the American Indian Environmental Office (AIEO) in the Office of International and Tribal Affairs (OITA) is considering changes to the national GAP allocation to provide greater flexibility, access, and transparency in the process.

Since 1998 the national allocation formula has remained largely unchanged. In summary, AIEO allocates \$110,000 per federally recognized Tribe and distributes this amount to each of EPA's ten regions who in turn make awards to the Tribes and intertribal consortia that apply for a GAP grant. 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."¹

In July 2021 EPA initiated a 120-day consultation and coordination process to receive input from Tribes on how to improve the GAP allocation methodology to better address diverse and unique tribal environmental capacity needs and support environmental protection in Indian Country. EPA participated in a number of engagements with Tribes to exchange ideas and receive suggestions on how to improve the GAP allocation. Engagements included written input, government-to-government consultations, national consultation teleconference calls, and informational calls with EPA's national and regional tribal operations committees. The Agency asked specific questions for Tribes to consider and welcomed comments on any aspect of the national allocation of GAP.

This document, the *National Allocation of GAP Funds Tribal Comment Summary*, is a comprehensive summary of the written and oral comments AIEO received from Tribes. The American Indian Environmental Office has consolidated and organized the comments into themes based on the six questions posed to Tribes. In preparing the summary, AIEO made every effort to maintain the specificity and authenticity of the original comments, while grouping similar comments together for readability. The American Indian Environmental Office will respond individually to each tribe that provided written comments.

¹ <https://www.epa.gov/office-inspector-general/report-framework-developing-tribal-capacity-needed-indian-general>

Summary of Tribal Comments

Question 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?

Theme: Importance of Baseline Funding

- Base funding needs to remain in place to support tribal capacity across the regions. Any new allocation formula should be fair and reasonable across the board and must do no harm by decreasing funding to tribal environmental programs (26 Tribes, 3 intertribal consortia, 1 Regional Tribal Operations Committee (RTOC))

Theme: Allocation Based on Tribes that Apply

- EPA's revised allocation should only be based on the number of Tribes that actually apply for funding, not potential grant recipients. That way the remaining allotted funding can be split across all Tribes nation-wide, not just within a region that has fewer Tribes applying than the total in that specific region." (14 Tribes, 1 RTOC)

Theme: Regional Allocation

- Allocate funding to the regions to distribute according to the criteria that the region determines. The regions and the tribes themselves are in the best positions to determine what is needed for protection of their environment. (1 Tribe)

Theme: Sequence of Funding

- We urge EPA to explicitly reject the "sequence of funding" approach and fund Alaska Tribes on the same basis as the lower 48 Tribes. (1 Tribe, 1 intertribal consortium)

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

Theme: Do Not Consider Allocation Factors

- Using allocation criteria such as land base, population and program goals creates an atmosphere of competition and pits Tribe against Tribe over a small amount of funds. (13 Tribes, 1 intertribal consortium, 3 RTOCs)

Theme: Consider Geographic Size as Allocation Factor:

- Large land-based Tribes struggle to continue to do the same amount of work with the same amount of money. (2 Tribes)

Question 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?

Theme: Consider Environmental Need Factors

- Tribes are sovereign nations and the national GAP allocation should continue to defer to Tribes' self-identified environmental capacity needs (16 Tribes, 1 intertribal consortium, 1 RTOC)

Question 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?

Theme: No Set Aside for Service Delivery

- EPA should not establish a set aside for tribal service delivery activities or take funds off the top of GAP to award to solid waste services. (7 Tribes, 1 RTOC)

Theme: Set Aside for Service Delivery

- A set aside should be considered and discussed between tribes and EPA. Criteria should be established by each region because the barriers for waste service delivery would vary. (4 Tribes)

Theme: Fund Special Projects

- Allocation for special projects would be beneficial to Tribes. (1 Tribe)

Question 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?

Theme: Do Not Allocate to Intertribal Consortia

- Intertribal consortia chartered by a group of individual Tribes should not be counted in a GAP funding formula; member Tribes of each consortium should fund the consortium out of their individual GAP grants or other funding sources if they so choose. (7 Tribes, 1 RTOC)

Theme: Allocate to Intertribal Consortia

- Intertribal consortia should be considered in the national allocation. (3 Tribes, 2 intertribal consortia)

Theme: Consortia Membership Requirements

- The only criteria EPA should consider is whether an intertribal consortium has been duly authorized by a Tribe to apply for and receive GAP funding, and whether the intertribal consortium has complied with federal audit standards and 2 C.F.R. Pt. 200. (6 Tribes, 1 intertribal consortium)

Question 6: Are there other examples of allocation criteria from other federal agencies that EPA should consider?

Theme: Funding Disbursement

- We recommend that the EPA integrate funding disbursement through self-governance similar to the Bureau of Indian Affairs Office of Self-Governance. Federally Recognized Tribes would still apply for the funding through the EPA's process; however, awards would be distributed through a Self-Governance compact. (3 Tribes)

Theme: Other Federal Allocation Ideas

- EPA should meet with their federal partners to discuss how other funding sources similar the GAP and its eligible activities are allocated. (1 Tribe)

Other Comments:

Theme: No Change to GAP Allocation

- The existing method is equitable, and the Tribe suggests it is best to keep it that way. We are concerned that if a change is made to the current GAP allocation it could pit one Tribe against another considering the individuals need or capacity, land base or population size... the current method distributes the GAP dollars amongst tribes fairly. (13 Tribes, 2 intertribal consortia)

Theme: Tribal Consultation Process

- The process for consultation, adoption, and implementation has been too rushed, especially during COVID. The timeline should be pushed back accordingly at least 12 months to allow for robust and meaningful consultation. Tribal consultation should occur before any decisions by the Agency are acted upon or made final. (5 Tribes, 3 intertribal consortia, 3 RTOCs)

Theme: EPA Should Provide Analysis

- We ask that EPA must provide, at a minimum, an analysis of impacts to Tribes, including economic, environmental, and personnel impacts. (3 Tribes, 3 RTOCs)

Theme: Increased GAP Flexibility

- Increase flexibility to the use of GAP funding. Changes to the GAP allocation must not decrease existing levels of flexibility in the use of GAP funding. (4 Tribes)

Theme: Create a Report to Congress

- We ask that a positive report is made to Congress soon to highlight the good work and challenges that the tribes face. (1 Tribe)