



Funding Guidance for FY 2023 Section 128(a) State and Tribal Response Program with funding provided by Annual Appropriations and the Infrastructure Investment and Jobs Act

Introduction

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended,¹ authorizes the United States Environmental Protection Agency’s (“EPA’s”) Office of Brownfields and Land Revitalization (“Brownfields Program” or “OBLR”) to manage a noncompetitive grant program to establish or enhance state² and Tribal³ environmental response programs. These CERCLA Section 128(a) response program grants (hereinafter referred to as “Section 128(a)”) are funded with categorical State and Tribal Assistance Grant (“STAG”) appropriations and awarded in the form of a cooperative agreement, which is a type of assistance agreement that is used when there is substantial federal involvement with the recipient during the performance of an activity or project. Section 128(a) cooperative agreements are awarded and administered by EPA regional offices.

The Infrastructure Investment and Jobs Act (“IIJA” or “Infrastructure Law”),⁴ signed into law in November 2021, invests \$300 million over five federal fiscal years (FY22-FY26), “to carry out section 128 of [CERCLA].” This amounts to approximately \$60 Million per year in cooperative agreements for states and Tribes to build response program capacity, oversee brownfields cleanups, and conduct site assessment and cleanup activities. The Infrastructure Law did not alter the underlying statutory authority for the CERCLA Section 128(a) Program, but simply provided crucial additional funds to support it. One of EPA’s top priorities is uplifting underserved communities, Tribal Nations, and communities across the country that have endured deeply-rooted public health and environmental challenges.

In addition, pursuant to Section 128(a)(1)(B)(ii)(III), the Brownfields program has authority to allocate up to \$1.5 M of CERCLA 104(k) funding for technical assistance grants (“Section 128(a) TAG”) to assist small communities, Indian Tribes, rural areas, or disadvantaged areas, in carrying out activities described in Section 9604(k)(7)(A), such as 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. By law, the maximum amount per Section 128(a) TAG is \$20,000. In FY23, EPA will allow eligible states and Tribes to request up to three Section 128(a) TAG to benefit eligible communities. They will be funded with annual appropriated funds, not IIJA funds. See Appendix A of this Funding Guidance for additional information regarding requesting Section 128(a) TAG, and review the [Section 128\(a\) TAG Fact Sheet](#) for general information.

The Brownfields Program issues this FY 2023 Section 128(a) Funding Guidance, for funding that is provided by EPA’s FY23 Annual Appropriation Act and the FY23 Section 128(a) IIJA funds.⁵

The Catalogue of Federal Domestic Assistance (<https://www.cfda.gov/>) listing for Section 128(a) cooperative agreements is **66.817**.

For additional information about the Section 128(a) Program, please see the [Section 128\(a\) Fact Sheet](#) and the [Section 128\(a\) State and Tribal Response Program](#) page on the [EPA Brownfields website](#).

¹ 42 USC 9628(a).

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

³ The 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 <https://www.whitehouse.gov/bipartisan-infrastructure-law/>

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

FY23 Highlights

- Requests for funding will be accepted from **October 7, 2022 until December 16, 2022**, and should be **sent to the EPA Regional Office contact listed at the end of this Funding Guidance**. *Requests that EPA receives after December 16, 2022, will not be considered for FY 2023 Section 128(a) funding.*
- EPA will accept **one request** from each eligible state or Tribe.
- Requests for funding must include the information listed in **Sections VII and VIII** of this guidance. States or Tribes that do not submit the request in the appropriate manner may not be eligible to receive funds.
- EPA will consider funding requests **up to a maximum of \$1.8 Million total for FY23 Section 128(a) funding per CAR**. *This maximum amount includes Annual Appropriation + IJA funds.*
- *Please note that demand for this program is high and not all requests will be fully awarded.*
- 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.
- For planning purposes, EPA anticipates that the FY23 funds allocated pursuant to this Funding Guidance will be awarded in the third or fourth quarter of the federal fiscal year 2023 (April-September 2023). Section 128(a) cooperative agreements are awarded and administered by EPA regional offices; please contact your regional EPA Project Officer for more specific timing on cooperative agreement awards.
- Section 128(a) Infrastructure Law funds **may not be** comingled with other sources of funding, and EPA will award the funds **separately** from other grant awards.
- **Section 128(a) Infrastructure Law funds are not eligible to be included in State and Tribal Performance Partnership Grants (“PPGs”)** under 40 CFR Part 35 Subparts A and B. This restriction is intended to ensure that Section 128 recipients will be able to effectively track, account for, and report on the use of Infrastructure Law funding. However, **Section 128(a) funding from EPA’s FY23 annual appropriation may be included in a PPG** with the exception of funding to 1) capitalize a revolving loan fund for brownfields remediation under section 104(k)(3), 2) 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 3) to provide CERCLA 128(a) TAG assistance under section 128(a)(I)(B)(ii)(III).
- In FY23, EPA will allow eligible states and Tribes to request **up to three** Technical Assistance Grants (“TAG”) at up to \$20,000 per grant. Section 128(a) TAG will be funded with annual appropriated funds, not IJA funds. See Appendix A of this Funding Guidance for additional information regarding requesting Section 128(a) TAG.
- EPA expects that funding awarded to cooperative agreement recipients will **advance the Administration’s Justice40 priorities**. EPA will award this funding in accordance with the Biden Administration’s [Justice40 Initiative](#), which promises to deliver at least 40 percent of the overall benefits from key federal investments to disadvantaged communities.
- 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.
- Starting April 4, 2022, the new Unique Entity ID from SAM.gov will be the official, government-wide identifier used for federal awards. States and Tribes requesting funds are required to provide a free SAM.gov-issued Unique Entity Identifier (UEI), not their DUNS number. Please see the [RAIN-2021-G01](#) for information about EPA's implementation of the Government-wide transition from DUNS to UEI.

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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.

The passage of the Bipartisan Infrastructure Investment and Jobs Act (“IIJA” or “Infrastructure Law”)⁷ in November 2021, did not alter the underlying statutory authority for the CERCLA Section 128(a) Program, but simply provided additional funds to support it.

Section 128(a) 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 funded with appropriations made available to EPA under the Infrastructure Law.

II. ELIGIBILITY FOR FUNDING

To be eligible for Section 128(a) funding, a State or Indian Tribe (as defined by CERCLA Section 101(27) and 101(36), respectively) must:

1. demonstrate that it has a response program that includes, or is taking reasonable steps to include, the four elements of a response program enumerated in CERCLA Section 128(a)(2) and 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 cost shares (“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 expended 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 CERCLA Section 128(a)(2) and described below. **Achievement and continuing enhancement of the four elements should be viewed as a priority.** CERCLA Section 128(a) 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 enumerated in CERCLA Section 128(a)(2) are described below:

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

⁷ <https://www.whitehouse.gov/bipartisan-infrastructure-law/>

1. **Timely survey and inventory of brownfield sites in state or Tribal land.** The goal for this element is 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 must 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 may 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 CERCLA Section 104(k)(2) 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 action 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.**⁸ 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; 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 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 participation⁹ (refer to Section IV.3 above). Specifically, per CERCLA Section 128(b)(1)(C), states and Tribes must:

⁸States 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>.

⁹ CERCLA §128(b)(1)(C).

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 of CERCLA Section 128(a)(2)(C) differs from the “timely survey and inventory” element in CERCLA Section 128(a)(2)(A) described in the “Four Elements” Section IV.1. 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.¹⁰ *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 they are 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.¹¹

VI. USE OF FUNDING

A. Overview and Prioritization of Funds

CERCLA Section 128(a)(1)(B) provides 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

¹⁰ 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.

¹¹ States 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>.

response programs that include the four elements outlined in Section 128(a)(2), which are summarized in this Funding Guidance in Section IV above.

There is very high demand for Section 128(a) funds, and not all requests can be fully awarded. As expressly stated in the Assistance Listing for 66.817, funding will be prioritized as follows:

- (1) Funding for program development activities to establish or enhance the four elements of a state or Tribal response program (see Sections VI.B. and VI.C. below) and to enable states and Tribes to comply with the public record requirement in Section 128(b)(1)(C), including activities related to institutional controls;
- (2) Funding for program development activities to enhance the response program or the cleanup capacity of a state or Tribal response program;
- (3) Funding for site-specific activities at eligible Brownfields sites, as defined in CERCLA Section 101(39)¹² (see Section VI.D. below);
- (4) Funding for environmental insurance mechanisms;
- (5) Funding to capitalize brownfields cleanup RLFs.¹³

One of EPA's top priorities is uplifting underserved communities, Tribal Nations, and communities across the country that have endured deeply-rooted public health and environmental challenges. EPA expects that Section 128(a) funding awarded to cooperative agreement recipients will advance the Administration's Justice40 priorities. EPA will award this funding in accordance with the Biden Administration's [Justice40 Initiative](#), which promises to deliver at least 40 percent of the overall benefits from key federal investments to disadvantaged communities.

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), "enhance" 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

¹² 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.

¹³ 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), with one exception: although non-competitive supplemental funding for RLFs established under CERCLA 128(a) is authorized, the source of the funding would be the CERCLA 128(a) appropriation rather than the CERCLA 104(k) appropriation. Requirements include a 20 percent cost share (in the form of money, labor, material, or services from a non-federal source in compliance with 2 CFR 200.306) on the amount of Section 128(a) funds used for the RLF, the 5% limitation on eligible administrative costs, 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.

developing better *coordination and understanding* of other state or Tribal environmental programs.

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 ¹⁴ (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 Job Training recipients on the assessment and cleanup of brownfield sites.¹⁵ Other enhancement uses may be allowable as well.

D. Uses related to site-specific activities

1. Eligible uses of funds for site-specific activities

Site-specific assessment and cleanup activities must establish 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.¹⁶
- b. As provided in the Terms and Conditions of CERCLA 128(a) cooperative agreements, absent EPA Project Officer approval, **no more than \$250,000 per site assessment** can be funded with Section 128(a) funds, and **no more than \$250,000 per site cleanup** can be funded with Section 128(a) funds.

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.

- c. States and Tribes that perform site-specific activities should plan to directly engage with and involve affected communities. For example, a Community Involvement Plan (“CIP”) could be developed to provide reasonable notice about a planned cleanup, as well as opportunities for the public to comment on the cleanup.
- d. CARs should describe in their requests whether, and if so, how, site-specific work will address environmental justice (“EJ”) concerns in underserved communities and/or climate change

¹⁴ 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/brownfields-technical-assistance-training-and-research>.

¹⁵ For more information about EPA’s Brownfields Job Training Program, please visit: <https://www.epa.gov/brownfields/brownfields-job-training-jt-grants>.

¹⁶ 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 <https://www.epa.gov/environmentaljustice>.

impacts.¹⁷ While CARS are not required to utilize it, EPA’s [EJSCREEN](#) is a helpful environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic indicators.¹⁸ CARs may also consider using the beta version of the White House Council on Environmental Quality’s [Climate and Economic Justice Screening Tool](#) (CEJST) as an optional and complementary tool to help identify potential pollution-overburdened and underserved communities. Data from other EJ-focused geospatial mapping tools or other sources (e.g. studies, census, etc.) could also be included to provide information on impacted communities and populations.

- e. As provided in the Terms and Conditions of CERCLA 128(a) cooperative agreements, absent EPA Project Officer 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 (in the case of Tribes) held in trust by the United States Government for the recipient.
- f. Assessments and cleanups cannot be conducted at sites where the state is a potentially responsible party (“PRP”) pursuant to CERCLA Section 107, except when the state acquired the property before January 11, 2002, and has not caused or contributed to a release or threatened release of a hazardous substance at the property.
- g. **Subawards** are defined at 2 CFR 200.1 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 for the purposes of EPA’s “Establishing and Managing Subawards” General Term and Condition and EPA’s [Subaward Policy](#). As the pass-through entity, the recipient must report on its subaward monitoring activities under 2 CFR 200.332(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 PRPs (pursuant to CERCLA Section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except when the subrecipient acquired the property before January 11, 2002, and has not caused or contributed to a release or threatened release of a hazardous substance at the property.

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

- a. **States and Tribes may use Section 128(a) funding for site-specific activities that improve state or Tribal capacity. However, the terms and conditions of the CERCLA 128(a) cooperative agreement will provide that the amount recipients may utilize for site-specific assessments and cleanups may not exceed 75% of the total amount of FY23 Section 128(a) funding,¹⁹ absent an approved waiver request. This 75% cap includes FY23 Annual Appropriation + IJA funds.**
- b. In order to exceed the 75% site-specific funding limit, a state or Tribe must submit a written waiver request to the EPA Project Officer; waiver requests 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;

¹⁷ Goal 1 of EPA’s [FY 2022-2026 Strategic Plan](#) is “Tackle the Climate Crisis.” Climate change exacerbates existing pollution problems and environmental stressors impacting the nation’s land, air, and water and the people who depend on them. Overburdened and underserved communities and individuals are particularly vulnerable to these impacts, including low-income communities and communities of color, children, the elderly, Tribes, and indigenous peoples.

¹⁸ Visit <https://www.epa.gov/ejscreen> to access EPA’s EJSCREEN Tool and for additional information on EJSCREEN, general guidance on how to use the tool, understanding results, technical information, and more resources. CARs can also contact their EPA [Technical Assistance to Brownfields Communities \(TAB\) Provider](#) for guidance on using EJSCREEN.

¹⁹ Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 75% limit. The 75% cap also does not include personnel or supplies/equipment purchased in support of site-specific work.

- site-specific activities that will be covered by this funding, and how these activities establish or enhance the response program and are tied to the four elements;
- how the affected community will be (or has been) involved in prioritization and planning of site work, especially those sites where there is a potential or known significant environmental impact to the community;
- whether (and if so, how) such work will benefit a community with environmental justice concerns; and
- an explanation of how this shift in funding will not negatively impact the state or Tribe's 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. CARs 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 75% limit on using 128(a) funds for site-specific activities.

c. The EPA Project Officer will review the waiver request and make a recommendation to EPA's Office of Brownfields and Land Revitalization ("OBLR"). OBLR will review waiver requests based on the information in the written justification, the EPA PO recommendation, and other information available to the Agency. Waivers will be approved on a very limited basis. The EPA Project Officer will inform the CAR 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.²⁰

States and Tribes are encouraged to reach out to their EPA regional brownfields contacts with questions on petroleum brownfield site eligibility and where to get additional information. Also check out resources on EPA's Brownfields website, such as [Community Visions for Abandoned Gas Stations](#) and [EPA's Petroleum Contact List for Tribes](#). Additional information about petroleum brownfields can be found on EPA's Office of Underground Storage Tank's ("OUST's") [Petroleum Brownfields webpage](#).

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 CERCLA 104(k) 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 Project Officer 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, however, ***direct assessment and cleanup activities may only be conducted on eligible brownfield sites, as defined in CERCLA Section 101(39).***

²⁰ 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), subject to the Brownfields RLF requirements described above.

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

Funding authorized under Section 128(a) is awarded through a cooperative agreement²¹ between EPA and a state or a Tribe (the Cooperative Agreement Recipient (“CAR”). The Brownfields 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 at 2 CFR Part 1500, as well as applicable provisions of 40 CFR Part 35 Subparts A and B. Under these regulations, the CAR 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 CAR 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.

A. One application per State or Tribe

EPA will accept one funding request from each eligible state or Tribe.²²

B. Maximum funding request

EPA will consider funding requests **up to a maximum of \$1.8 Million for FY23 Section 128(a) funding per CAR. This maximum amount includes Annual Appropriation + IIJA funds. Please note that demand for this program is high and not all requests will be fully awarded.**

C. Define the State or Tribal response program

CARs must define in their funding request 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, CARs 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 final work plan.

D. Separate cooperative agreements for Infrastructure Funds

Due to the budget accounting, tracking, and reporting requirements for the Infrastructure Law, Section 128(a) cooperative agreements funded with Infrastructure Law money must be awarded separately from Section 128(a) cooperative agreements funded with Annual Appropriated funds.

If a CAR’s FY23 allocation includes both funding sources, and therefore two awards are necessary, each award’s final workplans must clearly delineate what activities will be funded by Annual Appropriation funds versus Infrastructure Law funds. Please work closely with your EPA Project Officer to ensure that there is no overlap or duplication of work funded by the two sources of funding.

E. Infrastructure funds may not be used for Section 128(a) Technical Assistance Grants (“TAG”)

In FY23, EPA will allow eligible states and Tribes to request up to three Section 128(a) Technical Assistance Grants (“TAG”) at up to \$20,000 per grant. Section 128(a) TAG will be funded with annual appropriated funds, not IIJA funds. Review the [Section 128\(a\) TAG Fact Sheet](#) for general information, and see Appendix A of this Funding Guidance for information regarding requesting FY23 Section 128(a) TAG.

²¹ 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.

²² [Entities eligible to receive State and Tribal Response Grants](#) include: State, as defined in CERCLA § 101(27), Indian tribe, as defined in CERCLA § 101(36), and Intertribal consortia, as defined in the Federal Register Notice at 67 FR 67181, Nov. 4, 2002.

F. Section 128(a) cooperative agreements funded with Infrastructure Law money may not be part of a Performance Partnership Grant (“PPG”)

Section 128(a) Infrastructure Law funds are not eligible to be included in State and Tribal Performance Partnership Grants (“PPGs”) under 40 CFR Part 35 Subparts A and B. This restriction is intended to ensure that Section 128 recipients will be able to effectively track, account for, and report on the use of Infrastructure Law funding.

However, **Section 128(a) funding from EPA’s FY23 annual appropriation may be included in a PPG**, with the exception of funding to 1) capitalize a revolving loan fund for brownfields remediation under section 104(k)(3), 2) 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 3) to provide CERCLA 128(a) TAG assistance under section 128(a)(I)(B)(ii)(III).

G. Project period

EPA regional offices will determine the project period for each cooperative agreement. Depending on the EPA regional office’s cooperative agreement policies, cooperative agreements may be for multiple years. CARs are encouraged to discuss this potential option with their regional EPA Project Officer.

Notwithstanding this potential overall structure, each cooperative agreement must still have an annual budget period tied to an annual work plan, because CARs must still submit annual funding requests to receive additional funds added to the agreement. 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 final work plan negotiation process, CARs that do not have VRP MOAs will need to demonstrate that their response program includes, or is taking reasonable steps to include, the four elements described in Section IV. EPA will not fund a CAR’s work plan 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 CAR provides to support its initial funding request, on previous year’s progress reports, or on EPA’s review of the CAR’s response program.

I. Establishing and maintaining the public record

Prior to funding a CAR’s final 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.²³ Specifically, for:

- CARs that received initial funding prior to FY22: Requests for FY23 funds will not be accepted from states or Tribes that fail to demonstrate, by the December 16, 2022, request deadline, that they established and are maintaining a public record. (*Note*, this would potentially impact any CAR that had a term and condition placed on their FY22 cooperative agreement that prohibited drawdown of FY22 funds prior to meeting the public record requirement). CARs in this situation will not be prevented from drawing down their prior year funds once the public record requirement is met; and
- CARs that received initial funding in FY22: By the time of the actual FY23 award, the CAR 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 FY23 cooperative agreement that prohibits the drawdown of FY23 funds until the public record requirement is met).

J. Demonstration of significant utilization of prior years’ funding

CARs 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 FY22* will be considered in the allocation process.

²³ This public record requirement applies to the CAR’s response program(s) that utilized the Section 128(a) funding.

K. Allocation system and process for distribution of funds

EPA regional offices will work with interested CARs to develop their FY23 funding requests. After the December 16, 2022, request deadline, EPA’s regional offices will submit summaries of CAR requests and the region’s allocation recommendations to OBLR.

Regional offices may take multiple factors into account when determining recommended allocation amounts, including, but not limited to the depth and breadth of the CAR’s program, and the 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.).

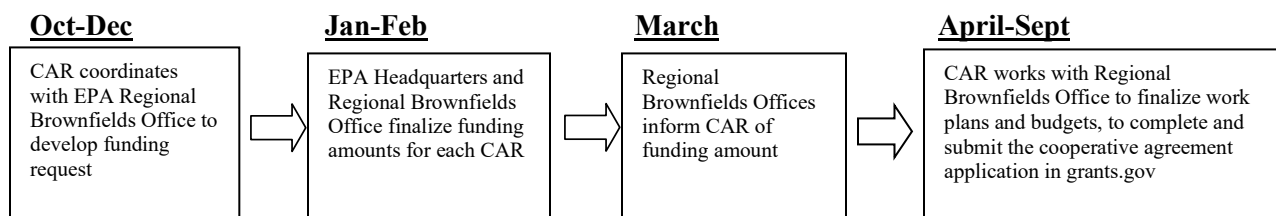
EPA expects that funding awarded to CARs will advance the Administration’s Justice40 priorities, and EPA will award this funding in accordance with the Justice40 Initiative,²⁴ which promises to deliver at least 40 percent of the overall benefits from key federal investments to historically overburdened and underserved communities.

After receipt of the regional recommendations, OBLR will consolidate requests and make final decisions on the FY23 funding allocation.

EPA anticipates that the FY23 allocation decisions will be finalized, and regional offices will communicate those final allocation decisions to CARs, in March 2023. CARs will then work with the appropriate EPA regional office to negotiate final cooperative agreement work plans and budgets. Generally, EPA anticipates that those final, negotiated cooperative agreements will be awarded in the third or fourth quarter of the federal fiscal year 2023 (April-September 2023). Because Section 128(a) cooperative agreements are awarded and administered by EPA regional offices, CARs should contact their regional EPA Project Officer for more specific timing on cooperative agreement awards.

Unless approved with the award of this cooperative agreement, the CAR must receive written approval by EPA’s Award Official or Grants Management Officer of a final workplan within 60 calendar days following the date of the award. The CAR must receive documentation of written EPA approval of the final workplan by EPA’s Project Officer or program manager prior to expenditure of federal funds under this cooperative agreement. Unless the EPA Award Official, or Grants Management Officer grants a waiver, no funds may be drawn down without an EPA approved final workplan. If the recipient fails to obtain EPA approval of the final workplan within 60 days of award, EPA may terminate this agreement under 2 CFR § 200.340.

The **general schedule and process** is illustrated below (*dates are estimates and subject to change*):



L. Separate cooperative agreements for the capitalization of RLFs using Section 128(a) funds and authority to manage a RLF program

If a portion of the Section 128(a) grant funds requested will be used to capitalize a RLF for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded (i.e., one for the RLF and one for

²⁴ Justice40 Initiative information can be found at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>. For more information on Environmental Justice, see <https://www.epa.gov/environmentaljustice>.

non-RLF uses). CARs 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”).

If a CAR chooses to use its Section 128(a) funds to capitalize a RLF program, the CAR 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.

VIII. INFORMATION TO BE SUBMITTED WITH THE FUNDING REQUEST

[NEW FOR FY23 - PLEASE READ CAREFULLY]

A. All CARs requesting FY23 Section 128(a) funds must submit a funding request to the appropriate EPA regional brownfields contact listed on the last page of this Funding Guidance by December 16, 2022

1. **New in FY23:** CARs are **not** required to provide full draft workplans and budgets. Instead, information can be provided in a format similar to the sample request form in Appendix B of this Funding Guidance and described in Section VIII.B. below. Note that this is a sample form being provided for convenience, and CARs who do not use this form will not be penalized for providing the information in a different format.

- a. EPA may request additional information, if it is deemed appropriate to fully understand a CAR’s funding request. EPA Regions and CARs should work together to be sure CARs are providing sufficient information for their funding request and may alter the sample form to memorialize those communications.
- b. While CARs do not need to provide a full draft workplan, *there must be enough detail to inform EPA how the CAR proposes to spend the Section 128(a) funds. Requests that lack sufficient detail may not be funded.*
- c. CARs should work, as early as possible, with their EPA regional brownfields contact to ensure that the funding amount requested can be reasonably spent in one year and the funding request provides sufficient detail of the planned activities that correspond to the requested funding.
- d. **Demand for this program is high, and not all requests will be fully awarded. Refer to Section VI.A. of this Funding Guidance to see how EPA will prioritize the allocation of FY23 Section 128(a) funding.**

2. Annual Appropriation and IJA Funds

- a. CARs should work, as early as possible, with their EPA regional brownfields contact to ensure that the CAR is providing the information that the region needs to make informed allocation recommendations with respect to annual appropriation and IJA funds.
 - i. A CAR’s request *may* include a total amount of funding for their Section 128(a) activities for the year, which does not specify the funding source (annual appropriation vs. IJA).
 1. **Exception:** Section 128(a) IJA funds **are not eligible** to be included in state and Tribal Performance Partnership Grants (“PPGs”) under 40 CFR Part 35 Subparts A and B. This restriction is intended to ensure that CARs are able to effectively track,

account for, and report on the use of Infrastructure Law funding.

2. Therefore, if a CAR has a PPG, it must be made clear in the request what funds are for the PPG, and whether the CAR is also requesting IJJA funding to be awarded separately (for example, a CAR may have annual appropriation funds for capacity-building in their PPG and site-specific work or a specific program-enhancing project in an IJJA award).
 - ii. Alternatively, a CAR *may* expressly state in their request the amount of funding that they are requesting from annual appropriation vs. IJJA funds (for example, if a CAR already has two Cooperative Agreements, because they previously received both annual appropriation and IJJA funds in FY22, and the CAR wants to continue to specify certain funding sources for particular activities).
- b. Once EPA makes final determinations with respect to funding requests and allocation of funds, and those determinations are communicated to each CAR (anticipated in March 2023), the CAR will work with their EPA regional brownfields contact to negotiate a cooperative agreement, which includes a final work plan and budget.
- c. If Section 128(a) IJJA funds are allocated to a CAR, they may not be comingled with other sources of funding, and EPA will award the IJJA funds separately from other grant awards. If a CAR is allocated both annual appropriation funds and IJJA funds in FY23, the CAR should work closely with the EPA Project Officer to ensure that the CAR's two FY23 Cooperative Agreement final workplans clearly delineate what activities will be funded by annual appropriation funds versus IJJA funds to avoid any overlap or duplication.

3. Programmatic Capability – [Only Include if Specifically Requested by Region]

- a. EPA Regions may request demonstration of Programmatic Capability for any new Section 128(a) funding requesters, or if a returning CAR has experienced key staff turnover or has open programmatic review findings.
- b. The CAR's corresponding EPA Region will notify returning recipients if the information below is required; if so, it must be included with your funding request.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.

4. **How will the requested funding address environmental justice (“EJ”)²⁵ concerns in underserved communities and/or climate change impacts²⁶?**

- a. A top priority for EPA is uplifting underserved communities and Tribal Nations across the country that have endured deeply rooted public health and environmental challenges.
- b. EPA expects that funding awarded to CARs will advance the Administration’s Justice40 priorities. EPA will award this funding in accordance with the Biden Administration’s [Justice40 Initiative](#), which promises to deliver at least 40 percent of the overall benefits from key federal investments to disadvantaged communities.
- c. If appropriate, provide names and locations of sites, information about the communities, etc., to support your request.

5. **Demonstration of significant utilization of prior years' funding**

- a. CARs that received Section 128(a) funds *prior to FY22* must provide an explanation and justification of funds (from FY21 or older) that remain in EPA’s Financial Data Warehouse as unspent balances, as of the date of their FY23 funding request.
- b. EPA will take into account these funds in the allocation process when determining the recipient’s programmatic needs under 40 CFR 35.420 and 40 CFR 35.737.

B. Sample Section 128(a) Request Form In APPENDIX B

The sample FY23 Section 128(a) request form in APPENDIX B of this Funding Guidance is provided for convenience, and CARs who do not use this form will not be penalized for providing the information in a different format.

EPA Regions and CARs should work together to be sure CARs are providing sufficient information for their funding request and may alter the sample form to memorialize those communications. EPA may request additional information, if it is deemed appropriate to fully understand a CAR’s funding request.

IX. TERMS AND REPORTING

Once EPA makes final determinations with respect to funding requests and allocations of funds, the CAR will work with the appropriate EPA regional office to negotiate a cooperative agreement, which includes a final work plan and budget. A cooperative agreement is an assistance agreement that is used when there is *substantial federal involvement* with the recipient during the performance of an activity or project. EPA awards cooperative agreements for those projects in which it expects to have *substantial interaction* with the CAR throughout the CAR’s performance of the project.

Cooperative agreements between EPA and CARs will include programmatic and administrative terms and conditions

²⁵ The EPA describes environmental justice (“EJ”) 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. Fair treatment means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. For purposes of this funding guidance, the term “underserved community” refers to a community with environmental justice concerns and/or vulnerable populations, including low-income citizens, communities of color, and tribal and Indigenous peoples.

²⁶ Goal 1 of EPA’s [FY 2022-2026 Strategic Plan](#) is “Tackle the Climate Crisis.” Climate change exacerbates existing pollution problems and environmental stressors impacting the nation’s land, air, and water and the people who depend on them. Overburdened and underserved communities and individuals are particularly vulnerable to these impacts, including low-income communities and communities of color, children, the elderly, Tribes, and indigenous peoples.

and will outline EPA's substantial involvement with the CAR during the period of performance, including technical assistance and collaboration on program development and prior approvals for 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.

Due to the additional budget accounting, tracking, and reporting associated with Infrastructure Law funds, CARs should anticipate additional reporting requirements associated with cooperative agreements funded with Infrastructure Law funds. EPA encourages CARs to work with their regional EPA Project Officer to stay informed on the latest information and potential additional terms and conditions for their cooperative agreements.

A. Progress reports

In accordance with 2 CFR 200.329 and related EPA-specific regulations, CARs must provide progress reports meeting the terms and conditions of their negotiated cooperative agreement. CAR costs for complying with reporting requirements are an eligible expense under the Section 128(a) cooperative agreement. At a minimum, progress reports must include both a narrative discussion and performance data relating to the CAR's accomplishments and environmental outputs associated with the approved budget and work plan.

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

Depending upon the activities included in the CAR's work plan, the CAR 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 6: Safeguard and Revitalize Communities; Strategic Plan 6.1: Clean Up and Restore Land for Productive Uses and Healthy Communities; and Work Plan Commitments and Timeframes. EPA's strategic plan can be found on the internet at <https://www.epa.gov/planandbudget/strategicplan>.
2. *Reporting for Non-MOA states and Tribes.* All CARs without a VRP MOA must report activities related to establishing or enhancing the four elements of its response program. For each element CARs 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 CAR 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.*

CARs 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 compliance with the Programmatic Terms and Conditions of their CERCLA Section 128(a) cooperative agreements.

In addition, per CERCLA Section 128(a)(2)(C)(ii), CARs must report how they will provide the affected community with prior notice and opportunity for meaningful participation on proposed cleanup plans and site activities. For example, EPA expects that CARs will 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.*

CARs 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.* CARs 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.* CARs 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 CARs 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 outputs and outcomes of Section 128(a) funding to states and Tribes.

B. Reporting Program Activity Levels ("PALs")

All CARs must report a summary of the *previous federal fiscal year's* work (October 1 through September 30), known as Program Activity Levels ("PALs"). CARs must report PALs **once** annually when the Section 128(a) funding request is due to the appropriate EPA Regional Office in mid-December.

CARs who receive Section 128(a) Annual Appropriated funds and Section 128(a) Infrastructure funds **are not** required to provide two separate PALs reports; their **one** PALs report should reflect all activities for the period covering the last federal fiscal year (October 1 – September 30), regardless of whether the activity was funded by Annual Appropriated funds or Infrastructure funds.

For FY22 PALs reporting (due on December 16, 2022), CARs must report PALs information either directly in EPA’s [Assessment, Cleanup and Redevelopment Exchange System \(“ACRES”\)](https://www.epa.gov/brownfields/program-activity-levels-pals-reporting-form) database OR by filling out the form found at <https://www.epa.gov/brownfields/program-activity-levels-pals-reporting-form> and providing it to the appropriate EPA Regional Office along with the CAR’s FY23 funding request.

Beginning with FY23 PALs reporting (which will be due with the FY24 requests in December 2023), CARs will only be able to provide PALs information directly into ACRES.

For detailed instructions on how to report PALs in ACRES, please see the quick reference guide at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange>.

C. Reporting of public record

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

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. Updating the State Brownfields and Voluntary Response Programs Report in ACRES

State CARs must update their [State Brownfields and Voluntary Response Programs](#) information in [ACRES](#) at least once a year (and may update more frequently if changes in their response program warrant an additional update), so that EPA has accurate, up-to-date information to share with the public in the form of an online [State Brownfields and Voluntary Response Program Search](#). EPA expects that this annual update will occur when states are already in the [ACRES database](#) performing other required ACRES reporting, thereby reducing the administrative burden.

For detailed instructions on how to update your state brownfields information in ACRES, please see the quick reference guide at: <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange>.

E. Cooperative Agreement 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 Unique Entity Identifier (“UEI”) Requirements

All EPA funding opportunities (competitive and non-competitive) will begin using UEI-compatible grant application packages. As explained in the U.S. General Services Administration’s (“GSA”) [Unique Entity Identifier Update](#), beginning April 2022 [DUNS numbers](#) will no longer be used as a UEI and only the SAM.gov-created UEI will be accepted.

3. Please see the [RAIN-2021-G01](#) for information about EPA's implementation of the upcoming Government-wide transition from DUNS to UEI. To learn more about SAM, go to [SAM.gov](#) or <https://www.sam.gov/portal/public/SAM/>.

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

4. Submitting an application via Grants.gov

a. The request information due on December 16, 2022, should not be submitted via Grants.gov. The request information should be emailed to the regional contact listed at the end of this guidance.

b. Recipients should submit their final work plan via Grants.gov only after the allocation process is complete and the EPA Regional Project Officer has informed the CAR that it is time to do so.

c. If Section 128(a) funding is allocated to a CAR, 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>.

d. When the EPA Project Officer informs you 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](#).

5. Use of funds

A CAR that receives an award under this Funding Guidance 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 cooperative 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 mckeown.amyjean@epa.gov	AmyJean McKeown 5 Post Office Square, Suite 100 (OSRR07-2) Boston, MA 02109-3912 Phone (617) 918-1248 Fax (617) 918-1294 mckeown.amyjean@epa.gov
2 NJ, NY, PR, VI	Terry Wesley 290 Broadway, 25th Floor New York, NY 10007-1866 Phone (212) 637-5027 wesley.terry@epa.gov	Terry Wesley 290 Broadway, 25th Floor New York, NY 10007-1866 Phone (212) 637-5027 wesley.terry@epa.gov
3 DE, DC, MD, PA, VA, WV	Mike Taurino 1650 Arch Street (3HS51) Philadelphia, PA 19103 Phone (215) 814-3371 Fax (215) 814-3274 taurino.michael@epa.gov	Mike Taurino 1650 Arch Street (3HS51) Philadelphia, PA 19103 Phone (215) 814-3371 Fax (215) 814-3274 taurino.michael@epa.gov
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 nolan.cindyj@epa.gov	Cindy Nolan 61 Forsyth Street, S.W, 10TH FL (9T25) Atlanta, GA 30303-8909 Phone (404) 562-8425 Fax (404) 562-8788 nolan.cindyj@epa.gov
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 cragan.keary@epa.gov	Rosita Clarke 77 West Jackson Boulevard (SB-5J) Chicago, IL 60604-3507 Phone (312) 886-7251 Fax (312) 697-2075 clarke.rosita@epa.gov
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 esquivel.ana@epa.gov	Elizabeth Reyes 1201 Elm Street, Suite 500 Dallas, Texas 75270-2102 Phone (214) 665-2194 Fax (214) 665-6660 reyes.elizabeth@epa.gov
7 IA, KS, MO, NE	Susan Klein 11201 Renner Boulevard (LCRD/BSPR) Lenexa KS 66219 Phone (913) 551-7786 klein.susan@epa.gov	Jennifer Morris 11201 Renner Boulevard ((LCRD/BSPR) Lenexa KS 66219 Phone (913) 551-7341 morris.jennifer@epa.gov
8 CO, MT, ND, SD, UT, WY	Melisa Devincenzi 1595 Wynkoop Street (LCRD-BR) Denver, CO 80202-1129 Phone (303) 312-6377 devincenzi.melisa@epa.gov	Ted Lanzano 1595 Wynkoop Street (LCRD-BR) Denver, CO 80202-1129 Phone (303) 312-6596 lanzano.ted@epa.gov
9 AZ, CA, HI, NV, AS, GU, MP	Noemi Emeric-Ford 600 Wilshire Blvd, Suite 940 Los Angeles, CA 90017 Phone (213) 244-1821 meric-ford.noemi@epa.gov	Michelle Baker 75 Hawthorne Street San Francisco, CA 94105 Phone (415) 972-3206 baker.michelle@epa.gov
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 sanders-curry.madison@epa.gov	Madison Sanders-Curry 1200 Sixth Ave, Suite 155 (mail code 15-H04) Seattle, WA 98101 Phone (206) 553-1889 Fax (206) 553-8581 sanders-curry.madison@epa.gov

APPENDIX A: FUNDING GUIDANCE FOR CERCLA SECTION 128(a) TECHNICAL ASSISTANCE GRANTS (“TAGs”)

Section 128(a)(1)(B)(ii)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, authorizes a noncompetitive \$1.5 million²⁷ technical assistance grant (“Section 128(a) TAG”) program to assist small communities,²⁸ Indian tribes,²⁹ rural areas, or disadvantaged areas³⁰ to carry out activities outlined in CERCLA Section 104(k)(7) (e.g. providing training, research, and technical assistance to individuals and organizations to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation).

Per the statute, the **maximum amount of funding allowed per grant is \$20,000**.³¹ 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”). Section 128(a) TAG are funded by annual appropriations, not IIJA funds.

Cooperative agreement recipients (“CARs”) with active CERCLA Section 128(a) grants who are requesting funds in FY23 are eligible to submit requests for up to three TAGs of \$20,000 each to assist a small community, Indian tribe, rural area, or disadvantaged area.

Multiple eligible communities may be assisted by one Section 128(a) TAG. EPA’s goal is that these TAGs benefit as many underserved communities as possible, therefore, if a CAR requests more than one Section 128(a) TAG, each \$20,000 grant should be to assist a different eligible beneficiary or different project. CARs should work with their EPA regional contact to discuss eligible beneficiaries and activities for these TAGs.

Once approved, the Section 128(a) TAGs may be awarded in the same Cooperative Agreement as the CAR’s 128(a) annual appropriation allocation, as authorized by CERCLA Section 128(a)(1)(B)(iii)(III), with appropriate controls in place to ensure the accurate drawdown of funds for the purposes of each grant.

For additional information on Section 128(a) TAG, including examples of uses for the funds, see the [Section 128\(a\) TAG fact sheet](#) on the [Brownfields website](#), and the [ASTSWMO Section 128\(a\) TAG StoryMap](#).

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 Section 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.

Each request should be no more than 2-3 pages and should include the following:

1. the amount of funding requested,
2. a description of the target community and how it meets the definition of a small community, Indian tribe, rural area, or disadvantaged area,

²⁷ 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 the appropriation cap is reached.

²⁸ 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.

²⁹ CERCLA Section 101(36) defines Indian Tribe.

³⁰ 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

³¹ CERCLA Section 128(a)(1)(B)(iii)(II).

3. a description of the proposed project, including an explanation of key activities and how the proposed project will further brownfields reuse,
4. the expected outcomes and timeline to complete the project,
5. how/who will be conducting the activities (e.g., state, tribe, contractor)³²
6. if additional resources are necessary to complete the project, please explain how you will secure them,
7. an explanation of why existing state or tribal funding is inadequate to complete the proposed project,
8. a demonstration that the community supports the state or tribe receiving the grant; this may be a separate letter attached to the submission, and
9. if the CAR has previously received Section 128(a) TAG, include a brief update on the previous project's status or successful completion.

³² If a CAR plans to use a contractor or provide a subaward, the CAR will have to follow EPA's general procurement terms and conditions, as well as any relevant state or tribal requirements.

APPENDIX B: SAMPLE SECTION 128(a) FUNDING REQUEST FORM

The sample form below for requesting FY23 Section 128(a) funding is provided for convenience, and CARs who do not use this form will not be penalized for providing the information in a different format.

EPA Regions and CARs should work together to be sure CARs are providing sufficient information for their funding request and may alter this sample form to memorialize those communications. EPA may request additional information, if it is deemed appropriate to fully understand a CAR's funding request.

**FUNDING REQUEST
CERCLA Section 128(a) State and Tribal Response Program
CFDA: 66.817**

**Federal Fiscal Year (FY) 2023
Period of Performance: _____**

Total Amount Requested: _____

Performance Partnership Grant? Yes No If yes, provide amount of annual appropriation funding for PPG and amount for IJA funding award: _____

Point of Contact: _____

State or Tribal Response Program to which the funds will be applied: _____

Overall basis for request: _____

[CARs who do not have a MOA with EPA: Include an explanation of how your program includes, or is taking reasonable steps to include, the four elements described in Section V. As noted in Section VII.H. above, this demonstration of the four elements will be part of the final work plan negotiation process.]

How will the requested funding address EJ concerns in underserved communities and/or climate change impacts. If appropriate, provide names and locations of sites, information about the communities, etc., to support your request.

Demonstration of significant utilization of prior years' funding (FY21 or older):

[CARs that received Section 128(a) funds prior to FY22 must provide an explanation and justification of funds (from FY21 or older) that remain in EPA's Financial Data Warehouse as unspent balances, as of the date of their FY23 funding request.]

Programmatic Capability – [Only Include if Specifically Requested by Region]:

FUNDING USE	FY23 REQUEST	DETAILED SUMMARY OF INTENDED USE	EXAMPLE ACTIVITIES FOR REFERENCE. THESE LISTS ARE NOT EXHAUSTIVE AND MAY APPLY TO MORE THAN ONE CATEGORY
<p>Establish or enhance the four elements:</p> <p>1. Timely survey and inventory of brownfields sites;</p> <p>2. Oversight and enforcement authorities or other mechanisms;</p> <p>3. Mechanisms and resources to provide meaningful opportunities for public participation;</p> <p>4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete.</p>	<p>\$XX,XXX</p> <p>\$XX,XXX</p> <p>\$XX,XXX</p> <p>\$XX,XXX</p>		<p>1. Examples:</p> <ul style="list-style-type: none"> • inventory and prioritize brownfields sites • develop or improve Institutional Controls/Engineering Controls tracking and SOPs <p>2. Examples:</p> <ul style="list-style-type: none"> • develop/enhance ordinances, regulations, and procedures for response programs <p>3. Examples:</p> <ul style="list-style-type: none"> • develop a community involvement process • build up community outreach and participation • issue public notices of site activities • develop a process to seek public input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies to prioritize sites to be addressed • digitize response program records for easier public access <p>4. Examples:</p> <ul style="list-style-type: none"> • develop/update cleanup standards • review cleanup plans and verify completed actions • build the capacity and process to verify that an assessment or cleanup was done properly and include documentation in the public record
<p>Establish and maintain the public record</p>	<p>\$XX,XXX</p>		<p>Examples:</p> <ul style="list-style-type: none"> • maintain public record • create web site for public record

			<ul style="list-style-type: none"> disseminate public information on how to access the public record
<p>Enhance the response program</p>	<p>\$XX,XXX</p>		<p>Examples:</p> <ul style="list-style-type: none"> provide oversight of site assessments and cleanups attend training and conferences on brownfields cleanup technologies & other brownfields topics update and enhance program management activities negotiate/oversee contracts for response programs enhance program management & tracking systems Brownfields mentoring and training / succession-planning develop or improve electronic document management system <p><i>[Even if a response program has an MOA with EPA, examples provided above in the four elements section may also be helpful or relevant if those aspects of the program need enhancing.]</i></p>
<p>Site-specific activities</p> <p><i>[CAR may conduct assessments or cleanups at sites that meet the definition of a Brownfield site at CERCLA Section 101(39)].</i></p> <p><i>[CARs should describe whether, and if so, how, site-specific work will address EJ concerns in underserved communities and/or climate change impacts.]</i></p>	<p>\$XX,XXX</p> <p><i>[Amount requested for site-specific assessments and cleanups may not exceed 75% of the total amount of Section 128(a) funding awarded to the CAR during FY 2023.</i></p> <p><i>Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 75% limit. The 75% cap also</i></p>		<p>Examples:</p> <ul style="list-style-type: none"> perform site assessments and cleanups at Brownfield sites develop QAPPs establish eligibility of target sites prepare Property Profile Forms/input data into ACRES database for these sites

	<i>does not include personnel or supplies/equipment purchased in support of site-specific work.]</i>		
Total funding	\$XXX,XXX		