



CERCLA Section 128(a) State and Tribal Response Program Fiscal Year 2022 Funding Guidance for Bipartisan Infrastructure Law Funds

Frequently Asked Questions

As of March 31, 2022

EPA prepared these Frequently Asked Questions and Answers to assist eligible states and tribes with preparing a request for FY22 Section 128(a) Bipartisan Infrastructure Law funds.

Please carefully review and follow the [FY22 CERCLA Section 128\(a\) Infrastructure Funding Guidance](#) for comprehensive information and instructions to states and tribes requesting FY22 Section 128(a) funding provided by the Infrastructure Law. If information in these FAQs differs from information in the statute, regulation, or the Funding Guidance, then the statute, regulation, or the Funding Guidance will govern.



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Q.1. What is Section 128(a) State and Tribal Response Program funding?

A. Section 128(a)¹ of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) authorizes a noncompetitive grant program to establish or enhance state² and tribal³ response programs. These CERCLA Section 128(a) response program grants (hereinafter referred to as “Section 128(a)”) are funded with 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.

Check out the [Section 128\(a\) Fact Sheet](#) for more information.

Q.2. Is this funding request different from the FY22 Section 128(a) Funding Guidance that was issued in October 2021?

A. Yes. EPA’s Office of Brownfields and Land Revitalization issued the FY22 Section 128(a) Funding Guidance on October 1, 2021, for funding that would be provided by EPA’s Annual Appropriation Act and finalized the allocation of those funds on February 24, 2022. Cooperative Agreement Recipients (“CARs”) were notified of their FY22 Section 128(a) annual appropriation allocation amounts prior to the issuance of this Funding Guidance.

Due to the passage of the Bipartisan Infrastructure Investment and Jobs Act (“Infrastructure Law”)⁴ in November 2021, EPA is now issuing this second FY22 Funding Guidance to provide information and instruction to states and tribes requesting FY22 Section 128(a) funding provided by the Infrastructure Law.

The Infrastructure Law did not alter the underlying statutory authority for the CERCLA Section 128(a) Program, but simply provided additional funds to support it. EPA anticipates that it may allocate approximately \$57.9 million in Section 128(a) Infrastructure Law funds under this FY22 Funding Guidance.

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/>

Q.3. Who is eligible to request Section 128(a) funds?

A. EPA will accept **one request** from each eligible State or Indian Tribe (as defined by CERCLA – see Q.4. and Q.5. below) that:

1. demonstrates 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); **or** is a party to a voluntary response program Memorandum of Agreement (“VRP MOA”) with EPA; **AND**
2. maintains, and makes 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)).

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

Q.4. How is “State” defined in CERCLA?

A. CERCLA Section 101(27) defines “State” to “include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.”

Q.5. How is “Indian Tribe” defined in CERCLA?

A. CERCLA Section 101(36) defines “Indian Tribe” as “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

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).

Q.6. When can eligible entities submit funding requests for FY22 Section 128(a) Infrastructure Law funds?

A. Requests for funding will be accepted from **March 30, 2022, until June 3, 2022**. Requests that EPA receives after June 3, 2022, will not be considered for FY22 Section 128(a) Infrastructure Law funding.

Q.7. Where should funding requests be submitted?

A. Section 128(a) funding requests should be sent to the EPA Regional Office contact listed at the end of the Funding Guidance and this FAQ.

Q.8. How does this funding request relate to the FY22 Annual Appropriation money that I have already requested?

A. The allocation process for FY22 Section 128(a) funding that will be provided by EPA’s Annual Appropriation Act was finalized on February 24, 2022. CARs were notified of their FY22 Section 128(a) Annual Appropriation allocation amounts prior to the issuance of this Funding Guidance.

Due to the passage of the Infrastructure Law, EPA is now issuing this second FY22 Funding

Guidance to provide information and instruction to states and tribes requesting FY22 Section 128(a) funding provided by the Infrastructure Law.

CARs that have a FY22 Section 128(a) Annual Appropriation workplan must not duplicate the specific activities already covered in their initial FY22 award. CARs may reference their existing FY22 workplan to demonstrate satisfaction of Section 128(a) requirements to eliminate overlap or redundancy in their second FY22 workplan, for example: demonstration that its response program includes, or is taking reasonable steps to include, the four elements of a response program enumerated in CERCLA Section 128(a)(2), or satisfaction of the public record requirement in CERCLA Section 128(b)(1)(C).

A CAR's two FY22 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 utilizing the two funding sources.

Q.9. What is the maximum amount of funding EPA will consider for this FY22 request?

A. EPA will consider funding requests up to a maximum of \$2 Million TOTAL for FY22 Section 128(a) funding per CAR. *This maximum amount includes the FY22 funding that a CAR has already been allocated for FY22 Section 128(a) Annual Appropriation funds.* CARs were notified of their FY22 Section 128(a) annual appropriation allocation amounts prior to the issuance of this Funding Guidance.

Please note that demand for this program is high and not all requests will be fully awarded. EPA anticipates that it may allocate approximately \$57.9 Million in Section 128(a) Infrastructure Law funds under this FY22 Funding Guidance.

For planning purposes, EPA anticipates that the Infrastructure Law funds allocated pursuant to this Funding Guidance will be awarded in the first quarter of the federal fiscal year 2023 (around November/December 2022). Section 128(a) cooperative agreements are awarded and administered by EPA regional offices; please contact your regional EPA Project Officer for more specific information on your region's cooperative agreement award timing.

EPA also anticipates issuing the Funding Guidance for FY 2023 Section 128(a) Annual Appropriation and Infrastructure Law funds in late September 2022.

Q.10. What are eligible uses of Section 128(a) funding?

A. 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 response programs that include the four elements outlined in CERCLA Section 128(a)(2). Eligible activities include, but are not limited to, the following:

- developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of a response program;
- establishing and maintaining the required public record;
- operation, maintenance, and long-term monitoring of institutional controls and engineering controls;

- conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements outlined in Section 128(a)(2);
- capitalizing a revolving loan fund (“RLF”) for brownfields cleanup as authorized under CERCLA section 104(k)(3); and
- purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

See Section VI. of the Funding Guidance for more examples of eligible activities. Also, reach out to your regional EPA brownfields contact to discuss your eligibility questions.

Q.11. What are the eligible uses of funds for site-specific activities?

A. 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 CAR, but activities must comply with all applicable laws and are subject to the following restrictions:

- 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).
- 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.
 - *This per-site cap includes the FY22 funding that a CAR has already been allocated from FY22 Section 128(a) Annual Appropriation funds; it does not add an additional \$250,000 on top of the \$200,000 cap from the previous award. If the CAR’s existing FY22 workplan for Annual Appropriated funds addresses a site assessment or cleanup and has reached the previous cap of \$200,000, the CAR may add \$50,000.*
- Absent EPA Project Officer approval, the CAR 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.
- 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.

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.⁵

⁵ 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>.

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.

Q.12. Is there a cap on the amount of FY22 Section 128(a) funds that can be used for site-specific activities?

A. CARs may use FY22 Section 128(a) Infrastructure Law funds for site-specific activities that establish or enhance state or tribal capacity. However, the amount recipients may request for site-specific assessments and cleanups may not exceed 75% of the TOTAL amount of FY22 Section 128(a) funding. *This 75% cap includes the FY22 funding that a CAR has already been allocated from FY22 Section 128(a) Annual Appropriation funds.* CARs were notified of their FY22 Section 128(a) annual appropriation allocation amounts prior to the issuance of this Funding Guidance.

Note: 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.

Q.13. Can the two FY22 Section 128(a) funding awards be combined?

A. No. 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.

Q.14. Can Section 128(a) Infrastructure Law funds be placed in a Performance Partnership Grant (“PPG”)?

A. No. Due to the budget accounting, tracking, and reporting requirements for the Infrastructure Law, Section 128(a) cooperative agreements funded with Infrastructure Law money, are ineligible for inclusion in PPGs.

Q.15. Will EPA prioritize the Administration’s [Justice40 Initiative](#) when allocating Section 128(a) funds?

A. EPA expects that funding awarded to CARs will advance the Agency’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.⁶

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 impacts. 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

⁶ 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>.

for combining environmental and demographic indicators.⁷ 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.

Q.16. Will there be additional tracking and reporting requirements associated with the Infrastructure Law funds?

A. 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. As of the issuance of this Funding Guidance, the Agency is awaiting final guidance from the Office of Management and Budget regarding Infrastructure Law tracking and reporting requirements. 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.

Q.17. What is the Unique Entity Identifier (“UEI”) Requirement?

A. 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 Unique Entity ID (“UEI”) and only the SAM.gov-created UEI will be accepted.

States and tribes requesting funds are required to provide a free SAM.gov-issued UEI, not their DUNS number. Please see the [RAIN-2021-G01](#) for information about EPA's implementation of the upcoming Government-wide transition from DUNS to UEI.

Q.18. What is the Catalogue of Federal Domestic Assistance (<https://www.cfda.gov/>) listing for Section 128(a) cooperative agreements?

A. The CFDA is 66.817.

Q.19. How do I find more information?

A. For additional information, please contact the appropriate EPA regional brownfields office (contact information below).

Or check out:

- [EPA Brownfields Website](#)
- [Section 128\(a\) State and Tribal Response Program Grants](#)
- [Highlights about State and Tribal Brownfields Response Programs](#)
- [CERCLA Section 128\(a\) Fact Sheet](#)
- [EPA Bipartisan Infrastructure Law: A Historic Investment in Brownfields](#)

⁷ 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.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

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