

Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Program Information

SUMMARY

The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water (OGWDW) has made available to tribes the Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Program ("Grant Program"). The EPA has allocated funding to Regional offices based on the Drinking Water Infrastructure Grants – Tribal Set-Aside (DWIG–TSA) formula. The EPA will waive cost share requirements for the tribal grant program.

Eligible projects for assistance include investments necessary for a public water system to comply with the Safe Drinking Water Act; efforts that benefit a disadvantaged community on a per household basis; programs to provide household water quality testing, including testing for unregulated contaminants; and activities necessary and appropriate for a primacy agency to respond to a contaminant. Projects and activities must serve a small or disadvantaged community to qualify for grant assistance.

EPA Regions must give priority for the use of program funds to projects and activities benefiting underserved communities. As specified in the statute authorizing the Grant Program, an underserved community is a political subdivision that has been determined to have an inadequate system for obtaining drinking water, including a community that does not have household drinking water or wastewater services or that is served by a public water system that violates or exceeds a requirement of a national primary drinking water regulation.

The activities under this program will support the following goals for the tribal drinking water program.

1. Increase the number of American Indian and Alaska Native homes with access to safe drinking water in coordination with other federal agencies.
2. Reduce the number of community water systems with health-based violations of national primary drinking water regulations.

This document contains information on the Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Program for both internal and external stakeholders. Nothing in this document is meant to conflict with or supersede the Office of Management and Budget [Uniform Grant Guidance](#), or any grant terms and conditions. All public materials for the grant program are available at www.epa.gov/safewater/grants.



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I. OVERVIEW

The Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Implementation Document describes how the U.S. Environmental Protection Agency (EPA) will provide assistance to small and disadvantaged communities in areas governed by Indian tribes to meet the requirements of the Safe Drinking Water Act (SDWA). The purpose of this document is to present EPA Regions with information to implement the program. Projects and activities funded under the Assistance for Small and Disadvantaged Communities Tribal Drinking Water Grant Program (the Grant Program) must meet all eligibility and funding requirements as explained in this document.

Statutory provisions described in this document are legally binding requirements. However, this document does not substitute for those provisions or any OMB Uniform Grant Guidance regulations, nor is it a regulation itself. Any decisions regarding a distinct situation will be made based on the statutes, regulations, and regional policies. This Grant Program allows flexibility in its implementation. This document explains the manner in which the goals, objectives, and legal requirements of section 1459A of the SDWA may be successfully met.

II. STATUTORY AUTHORITY

Section 1459A of the SDWA, as amended by the 2016 Water Infrastructure Improvements for the Nation Act and the 2018 America's Water Infrastructure Act, authorizes the EPA to assist eligible small and disadvantaged tribal communities to finance projects needed to comply with the SDWA. This assistance may be provided through funding assistance or in-kind services for the benefit of the tribal community.

SDWA section 1459A states:

“(b) ESTABLISHMENT. –

(1) IN GENERAL. – The Administrator shall establish a program under which grants are provided to eligible entities for use in carrying out projects and activities the primary purposes of which are to assist public water systems in meeting the requirements of this title.”

As required in SDWA section 1459A(d), ¹ funding priority will be given to projects and activities that benefit underserved communities, which are defined in SDWA section 1459A(b): ²

“(2) INCLUSIONS.—The term ‘underserved community’ includes a political subdivision of a [tribe] that either, as determined by the Administrator—

¹ SDWA §1459A(d) (42 U.S.C. 300j-19a).

² SDWA § 1459A(b)(2) (42 U.S.C. 300j-19a).

- (A) does not have household drinking water or wastewater services; or
- (B) is served by a public water system that violates, or exceeds, as applicable, a requirement of a national primary drinking water regulation issued under section 1412, including—
 - (i) a maximum contaminant level;
 - (ii) a treatment technique; and
 - (iii) an action level.”

The term ‘small and disadvantaged’ as it relates to tribal communities receiving assistance under the Grant Program is specified in the statute as a community:

“(c)(2)(B) with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance a project or activity under subsection (b).”³

Tribes and their respective communities that are determined to have a population less than 10,000 and lack the capacity to incur sufficient debt may qualify for assistance under this Grant Program. Assistance through the Grant Program is subject to the availability of appropriated funds.

III. ELIGIBLE BENEFICIARIES

EPA Regions will be allocated funds to be given as assistance to tribes based on the DWIG-TSA allocation formula. Only federally-recognized tribes that otherwise meet the statutory requirements and are not suspended or debarred are eligible to receive assistance under the Tribal Grant Program. EPA Regions will develop procedures to identify eligible projects according to the requirements of the authorizing statute.

As specified in section 1459A(c) of the SDWA, eligible grant recipients include:

“(c) ELIGIBLE ENTITIES. — An eligible entity under this section—

(1) is—

- (A) a public water system;
- (B) a water system that is located in an area governed by an Indian Tribe; or
- (C) a State [or Indian Tribe], on behalf of an underserved community;”

And

“(2) serves a community—

- (A) that, under affordability criteria established by the State under section 1452(d)(3), is determined by the State—
 - (i) to be a disadvantaged community; or

³ SDWA §1459A(c)(2) (42 U.S.C. 300j-19a).

(ii) to be a community that may become a disadvantaged community as a result of carrying out a project or activity under subsection (b); or
(B) with a population of less than 10,000 individuals that the Administrator determines does not have the capacity to incur debt sufficient to finance a project or activity under subsection (b).”⁴

Section (2)(A) applies only to tribal communities that may receive assistance from a state Assistance for Small and Disadvantaged Communities Drinking Water Grant Program; thus, tribal communities under this program must meet eligibility criteria outlined in section (2)(B).

Assistance may be provided to the following types of public water systems.⁵

- Tribally Owned Water Systems: All existing community water systems and all non-profit, non-community water systems owned by a tribal government are considered to serve an Indian tribe and are eligible to have projects funded with Grant Program funds.
- Non-Tribally Owned Water Systems: The tribal population served by the water system must be governed by a federally recognized tribal entity.
- The project or activity must be exclusively or primarily for the benefit of a tribal population, even in the event that the system’s tribal population may be a small percentage of the total service population served.
 - If the project is exclusively, or primarily, for the benefit of a tribal population, then the Region may conclude that the Grant Program should fund the entire cost of the project.
 - If the tribal population benefitting from the project is a relatively small percentage of the total population benefitting from the project, then the Region must conclude that it is not appropriate for the Grant Program to fund the entire cost of the project.

Under section 1459A(c)(1)(C), assistance can also be provided to tribal underserved communities that do not have public water systems. Projects and activities must serve a small or disadvantaged community as specified under section 1459A(c)(2)(B) of the SDWA. The EPA may utilize third parties, including technical assistance providers, federal agencies, etc., to provide in-kind services to implement a project or activity exclusively for the benefit of eligible tribal communities.

The following types of water systems are ineligible to receive funding from the Grant Program.

- Federally-owned public water systems.
- For-profit non-community water systems.

⁴ SDWA §1459A(c)(2) (42 U.S.C. 300j-19a).

⁵ Drinking Water Infrastructure Grants – Tribal Set-Aside Guidance, 2013.

- Systems that have enforcement priority with any national primary drinking water regulation or variance, unless:
 - The purpose of the assistance is to address the cause of significant non-compliance and the assistance will ensure that the system returns to compliance
 - The purpose of the assistance is unrelated to the cause of the significant non-compliance and the system is on an enforcement schedule (for maximum contaminant level and treatment technique violations) to return to compliance.

As described in Section VIII, EPA Regions will develop objective criteria by which communities will be assessed to determine capacity to incur debt to finance a project or activity. Priority shall be given to projects or activities that benefit underserved communities.

IV. ELIGIBLE ACTIVITIES

EPA Regions will ensure that allocated funding is distributed to eligible projects and activities that serve a small or disadvantaged community. For the purposes of determining eligible and ineligible projects, the Grant Program follows the [Drinking Water Infrastructure Grants – Tribal Set-Asides Guidance](#). For additional clarification on eligible projects, please refer to the [Drinking Water State Revolving Fund Eligibilities Handbook](#).

The grant funds allocated to the region shall be expended in accordance with statutory language of section 1459A(b)(2) of the SDWA. Eligible uses of funds include the following.

- Investments necessary for a public water system to comply with the SDWA.
- Efforts that benefit a small or disadvantaged community on a per household basis.
- Programs to provide household water quality testing, including testing for unregulated contaminants.
- Activities necessary and appropriate to respond to a contaminant.

Specific projects and activities that are consistent with the statutory language may include, but are not limited to the following:

- Assistance to increase technical, managerial, and financial capacity;
- Treatment;
- Transmission and distribution;
- Storage;
- Consolidation; and
- Household water quality testing, including for unregulated contaminants.

Assistance provided through the Grant Program may be used to increase the technical, managerial, and financial capacity of a water systems that serves a tribal community if that water system lacks appropriate technical, managerial, or financial capability and is not receiving such assistance under another Federal program. Projects and activities to increase technical, managerial, and financial capacity may include, but are not limited to the following.

- Training for system staff and board members on the importance of TMF capacity and how to achieve compliance.
- On-site visits to systems experiencing compliance challenges.
- Water/energy audits.
- Completion of an engineering feasibility study to highlight operational areas of improvement.
- Operator certification training.
- Completion of environmental reviews.
- Preparation of Consumer Confidence Reports.
- Developing cost estimates for project planning.
- Rate evaluations and project development.
- Drafting of source water protection ordinances.
- Financial assistance for planning and design of infrastructure improvements.

Funding under this program cannot be used for operation and maintenance purposes or for routine compliance monitoring. For the purposes of defining “Operation and maintenance costs” that are ineligible to be funded under the grant, the grant program follows the definition as outlined in the [Drinking Water State Revolving Fund Eligibility Handbook](#). In addition, the following projects are ineligible for assistance.

- Purchase of land (prohibited by statute).
- Operations and maintenance costs (prohibited by statute).
- Partial lead service line replacement (prohibited by statute).
- Replacement of premise plumbing such as faucets (private side lead service line replacement is eligible).
- Construction or rehabilitation of dams.
- Construction or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.
- Projects needed primarily for fire protection.
- Projects needed primarily to serve future population growth (prohibited by statute).
- Projects that have received assistance from the Grant Program state allotment for any other state.

V. FUNDING SCHEDULE AND PROCEDURES

EPA will distribute the national tribal allotment of the Grant Program, subject to Congressional appropriations, as an allocation to regions based upon the DWIG-TSA allocation formula. Regional offices will develop the procedures and schedule for annual selection of projects and activities, obligation of funds, or distribution of grants. EPA Regions will have up to one calendar year from the date that funds are made available to the Regions to obligate funds to awarded projects and activities but are encouraged to award funds as soon as possible. Funds unobligated at the end of the allowed time period may be redistributed to other regions.

ALLOCATION OF FUNDS

Allocation Formula: The national tribal allotment of the grant is calculated according to the 2% tribal set-aside of the Drinking Water State Revolving Fund as authorized in the SDWA and annual Congressional appropriations. The regional tribal allotment is calculated based on the DWIG-TSA allotment formula as outlined in the [DWIG-TSA Program Guidelines](#).

VII. AUTHORITIES AND FUNDING VEHICLES

The available authorities and funding vehicles for using Assistance for Small and Disadvantaged Communities grant funds to assist the EPA in carrying out the responsibilities of the Grant Program are as follow.

- Contract as in-kind services.
- Interagency Agreements (IAs).
- Direct Implementation Tribal Cooperative Agreements (DITCA).
- Direct Grants.
- Cooperative Agreements.

VIII. REGIONAL RESPONSIBILITIES

EPA Regions will administer annual allotments to provide assistance which will facilitate SDWA compliance for public water systems that violate or exceed a requirement of a national primary drinking water regulation and for communities that do not have household drinking water or wastewater services. Any projects funded through this grant must meet the requirements described in section 1459A of the SDWA.

A. Project and Budget Period: EPA Regions will have up to one calendar year to obligate funds to a project or activity. For projects that are anticipated to be longer than one year, the Region must work with the Office of Ground Water and Drinking Water to develop the project and reporting schedule.

B. Project Prioritization: EPA Regions must develop objective criteria by which communities will be assessed to determine capacity to incur debt to finance a project or activity. EPA Regions will determine project prioritization based on the needs of the communities within the Region. Each EPA Region will determine the balance of projects and activities to be funded. Priority shall be given to projects or activities that benefit underserved communities. EPA Regions will ensure that allocated funding is distributed to eligible projects and activities that serve a small or disadvantaged community.

C. Grant Programmatic Priorities: The principal objective of the Grant Program is to facilitate compliance with national primary drinking water regulations or otherwise significantly advance the public health protection objectives of the SDWA in small and disadvantaged communities, including providing access to safe drinking water. EPA Regions are required to give priority for the use of project funds as follows.

- Address the most serious risks to human health.
- Ensure compliance with the requirements of the SDWA.

D. Terms and Conditions: EPA Regions that issue direct grants to tribes will develop terms and conditions in accordance with Regional grant requirements.

E. Reporting Requirements: Within 90 days of obligation or award, Regions will be required to submit a programmatic report to headquarters through TDI Nexus. Reporting in TDI Nexus must include a summary of the following information.

- i. Community name.
- ii. Tribe name.
- iii. Assistance provided.
- iv. Need addressed.
- v. Project or activity costs.
- vi. Technical progress.
- vii. Additional planned activities.
- viii. Summary of expenditures.

Within 90 days of completing the project or activity, EPA Regions will submit to HQ a brief final summary of the project, which will include a project/activity summary, project/activity costs, benefits to the community, outputs and outcomes achieved, and successes and/or lessons learned. For projects that are anticipated to be longer than one year, the Region must work with the Office of Ground Water and Drinking Water to develop the project and reporting schedule.

EPA Regions that issue direct grants to tribes will establish reporting requirements for the grantee in the terms and conditions of the grant.

IX. USE OF FUNDS RESTRICTIONS

Expenses Incurred Prior to the Project Period: Except for eligible pre-award costs as defined in 2 CFR §200.458 and as authorized by 2 CFR §200.309 and 2 CFR §1500.8, no funds awarded under the Grant Program shall be used to cover expenses incurred prior to the project period set forth in any assistance agreement funded under the Grant Program.

X. ADDITIONAL GRANT PROGRAM INFORMATION

A. Performance Partnership Grants: Funds awarded under this program are not eligible for inclusion with the tribe's Performance Partnership Grants.

B. National Environmental Review: The EPA Region will follow existing environmental review policies as established in the Regional DWIG-TSA policies.

XI. CONTACT INFORMATION

If you have any questions concerning the contents of this Guide, you may contact Leslie Temple, Tribal WIIN Program Lead, Protection Branch, Drinking Water Protection Division, at (202) 564-4734, or Cathy Davis, Acting Manager, Protection Branch, Drinking Water Protection Division, at (202) 564-2703. Regional points of contact can be found at: <https://www.epa.gov/tribaldrinkingwater/regional-coordinators-assistance-small-and-disadvantaged-communities-tribal>.

XII. APPENDICES

Appendix A: FUNDING SCHEDULE AND PROCEDURES

- A. **February 2019:** EPA Office of Ground Water and Drinking Water (OGWDW) announced the grant program.
- B. **June 2019:** OGWDW informed EPA Regions of their allocation via email.
- C. **June 2019:** OGWDW released the Grant Program Information Guide and criteria for regional review.
- D. **October 2019:** Funds made available to EPA Regions; Regions identify projects and activities for assistance.
- E. **October 2020:** Deadline for EPA to obligate funding to projects/activities.

Please note: This schedule is subject to change and updated information will be provided directly to states as needed. Regions will have up to one year to obligate their allocated Grant Program funds. EPA encourages the obligation of funds as soon as possible to allow for timely implementation of projects.

Appendix B: Cross-Cutting Federal Authorities for Assistance to the Grant Program

Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Tittles ill, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- National Historic Preservation Act, Pub. L. 89-655, as amended
- Safe Drinking Water Act, Pub L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended

Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended
- Drug-Free Workplace Act, Pub. L. 100-690
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act, Pub. L 88-352

Disadvantaged Business Enterprise Authorities

- Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements