

GUIDANCE FOR PROJECT ELIGIBILITY UNDER THE ABANDONED MINE LAND ECONOMIC REVITALIZATION PROGRAM FOR FISCAL YEAR 2025

I. OVERVIEW

This guidance document applies to projects funded exclusively with FY 2024 and/or FY 2025 AMLER payment moneys. OSMRE is available as a technical resource to assist States and Tribes as needed or requested for any aspect of the AMLER Program.

Pursuant to the Full-Year Continuing Appropriations and Extensions Act, 2025 (Pub. L. No. 119-4), the Department of the Interior's (DOI) Office of Surface Mining Reclamation and Enforcement (OSMRE) has made \$130 million in Fiscal Year (FY) 2025 Abandoned Mine Land Economic Revitalization (AMLER) Program funding available as payments to certain States and federally recognized Indian tribes with approved reclamation plans under section 405 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) for economic and community development in conjunction with the priorities described in section 403(a) of SMCRA. Of the \$130 million available, \$86,000,000 will be divided equally and distributed to the three Appalachian States with the greatest amount of unfunded Priority 1 and Priority 2 AML problems as delineated in OSMRE's AML inventory data as of September 30, 2024, while \$33,000,000 will be divided equally and distributed to the three Appalachian States with the subsequent greatest amount of unfunded Priority 1 and Priority 2 AML problems. Accordingly, \$86,000,000 will be distributed in equal amounts among Kentucky, Pennsylvania, and West Virginia (\$28.667 million each), while \$33,000,000 will be distributed in equal amounts among Alabama, Ohio, and Virginia (\$11 million each). In addition, each of the three Tribes with approved AML reclamation plans, the Hopi Tribe, Crow Tribe, and Navajo Nation, will receive an equal portion of \$11 million (\$3.667 million each).

As State/Tribal AML Programs must spend FY 2025 AMLER funds on economic and community development in conjunction with the priorities described in section 403(a) of SMCRA, the AMLER Program presents an opportunity for local communities and States/Tribes to return coal mining impacted areas to productive reuse and achieve the economic and community development goals identified for the community and/or region.

The purpose of this guidance document is to assist State/Tribal AML Programs in making lawful use of the funds provided. This guidance is intended to ensure that projects meet the economic and community development criteria, as the current AML program does not require such criteria. As such, the AMLER Program offers a non-traditional approach to the reclamation of impacted pre-SMCRA coal-mined lands. A uniform approach is not expected in every State/Tribe; however, this guidance is intended to assist States/Tribes in their selection of projects.

As they deem appropriate, State/Tribal AML Programs should collaborate with their respective State/Tribal and local economic development authorities and local communities to identify potential projects and apply funds from the AMLER Program to projects that will offer the greatest benefits for communities. The AMLER Program offers States, Tribes, and local communities flexibility in deciding which projects offer the greatest opportunities within their communities.

II. ELIGIBLE PROJECTS

Sites eligible under the AMLER Program:

- Unreclaimed Priority 1, Priority 2, or Priority 3 sites (i.e., AML lands and polluted waters) listed in e-AMLIS.

- Previously reclaimed AML lands and polluted waters.
- Land adjacent to unreclaimed or previously reclaimed AML lands and polluted waters as justified by the State, Tribe, and/or the communities impacted by historic coal production.

Please note: Currently permitted Title V mine sites are not eligible to receive AMLER funds. Formerly permitted mine sites reclaimed after August 3, 1977, that are adjacent to, or connected with, an eligible AMLER project may be included in AMLER funding. Consistent with 30 C.F.R. § 874.16, any person or entity that is in violation of SMCRA is not eligible for AMLER funding.

III. ECONOMIC AND COMMUNITY DEVELOPMENT

Economic and community development can either (1) be incorporated as part of the project itself (Category A projects), or (2) primarily involve reclamation activities that create the conditions for future economic and community development that occurs post-reclamation (Category B projects). Project description examples are provided below:

Example of Acceptable Category A Project: The Big Sky Outdoor Recreation Trail project will consist of two sections of trail infrastructure development: 1) reclamation and construction on abandoned mine lands to create 10 miles of trails within the Big Sky Outdoor Recreation Trail Network, using AMLER funding; and 2) construction of trail facilities and five miles of feeder trails on adjacent properties that will connect to the Big Sky Outdoor Recreation Trail Network, leveraging private funding. The project application demonstrates support for the trail system from local residents and community groups. The project is also consistent with a Comprehensive Economic Development Strategy developed by the region and focuses on tourism and recreation as an economic growth opportunity. By investing in the infrastructure for both local and visiting outdoor enthusiasts, the region will attract visitors and develop local businesses around the emerging cluster of outdoor recreation outfitters and manufacturers, restaurants, hospitality businesses, and other related businesses.

Example of Acceptable Category B Project: This project will reclaim 10 acres of abandoned mine land, which will later be used to build a community center with internet access, job placement, and vocational training facilities. The need for the community center was identified in a documented community planning process and approved by local government officials. Support for the community center from local community groups and residents is documented, and potential funding sources for construction of the community center are identified in the application. Appropriate project partners, such as job/career training center partner and an internet company to provide service to the facility have been identified.

Examples of Unacceptable Projects: 1) The project is not located on or adjacent to an unreclaimed or previously reclaimed AML site; and/or 2) there is no current or future economic and community development associated with the project.

IV. USE OF FUNDS AND LEVERAGING OTHER FUNDING SOURCES

FY 2025 AMLER funds are being provided to AMLER States and Tribes as payments. In this context, payments differ from the grants that were issued for the AMLER Program before FY 2024. For FY 2025, eligible States and Tribes will need to comply with some, but not all, of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In particular, eligible States and Tribes will need to comply with 2 C.F.R. §§ 200.0 – 200.1, 200.100 – 200.113, 200.303, 200.331 – 200.333, 200.500 – 200.521.

In addition, any interest earned on FY 2025 AMLER payments must be remitted to OSMRE for inclusion in the Abandoned Mine Reclamation Fund (AML Fund). See U.S. General Accounting Office

(GAO), GAO-06-382SP, *Principles of Federal Appropriations Law* 10-79 (2006) (GAO Red Book); see also 1 Comp. Gen. 652 (1922).

States, Tribes, and local communities have the flexibility to use AMLER funds for both the reclamation of impacted lands and waters and brick and mortar needs related to the end-use development project. The AMLER Program offers maximum flexibility in this regard, letting States, Tribes, and local communities balance the needs of an individual project with the ability to fund other priority AMLER projects.

Where additional resources may help expand a project's scope or outcome, States, Tribes, and local communities should consider whether a model similar to the Appalachian Regional Commission grants process could streamline project selection, and whether an interagency agreement or other contracting mechanisms could streamline program implementation. Matching funds are not required for AMLER projects, but State and Tribal programs can use other public and private resources, including Infrastructure Investment and Jobs Act (IIJA) or AML-fee based funds as appropriate, or to provide in-kind contributions in combination with AMLER funds. States and Tribes are responsible for tracking and monitoring the FY 2025 AMLER payment and any other additional funding source(s) for the project.

V. DEVELOPING AMLER PROJECTS

Each State/Tribal AML Program is responsible for soliciting, selecting, developing, and approving eligible AMLER projects funded exclusively with FY 2025 AMLER payment moneys. Eligible subrecipients are typically limited to State, Tribal, and local governments, economic development organizations, local communities, and non-government organizations. These subrecipients may subcontract project-related activities. As noted in Section II, any person or entity that is in violation of SMCRA at the time of contract award is not eligible for AMLER funding.

State/Tribal AML Programs should work with their local economic development authorities and local communities, as appropriate, on AMLER project proposals. AMLER projects funded exclusively with FY 2025 AMLER payment moneys are not subject to OSMRE preliminary vetting, NEPA review, or Authorization to Proceed (ATP) requirements.

VI. PUBLIC ENGAGEMENT

State/Tribal AML Programs may engage with the public in the solicitation, selection, development, and reporting of AMLER projects.

VII. COMPLIANCE WITH ENVIRONMENTAL STATUTES

Projects funded entirely with FY 2025 AMLER payment moneys, or a combination of FY 2025 AMLER payment moneys and private moneys are not subject to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* Other environmental statutes, such as the Endangered Species Act (ESA), apply whether or not there is a discretionary Federal action; however, as the Federal consultation requirement under section 7 of the ESA no longer applies, the State, Tribe, or project applicant may need to apply for an incidental take permit under section 10 of the ESA. Any take that occurs in the absence of or that exceeds an incidental take permit would be a violation of section 9 of the ESA. Refer to the [USFWS's website on Habitat Conservation Plans](#) for additional information.

However, if a project is funded with FY 2025 AMLER payment moneys and AML fee-based or IIJA AML funds, NEPA, section 7 of the ESA, and section 106 of the National Historic Preservation Act will continue to apply. If a project is funded with FY 2025 AMLER payment moneys and Federal funds

provided by another agency, please coordinate with the other agency to determine how to comply with the applicable environmental statutes.

VIII. BUILD AMERICA, BUY AMERICA ACT

The Build America, Buy America (BABA) Act requires the head of each Federal agency to ensure that "none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Pub. L. No. 117-58, § 70914. The BABA Act allows the head of each Federal agency to waive its requirements under certain circumstances. *Id.* Consequently, BABA Act terms and conditions must now be included in all subawards and all contracts or purchase orders for work or products unless an active BABA waiver applies. For current DOI BABA Act waivers, please refer to the list at: <https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>. Additional general information about complying with the BABA Act is available from the DOI Office of Grants Management at: [doi.gov/grants/buyamerica](https://www.doi.gov/grants/buyamerica).

IX. FISCAL RESPONSIBILITY

Although FY 2025 AMLER funds are being provided to AMLER States and Tribes as payments instead of grants, States and Tribes must still ensure that they have adequate fiscal controls and monitoring in place for these Federal funds. Payments are considered financial assistance under the Federal Grants and Cooperative Agreement Act (FGCAA); therefore, some, but not all, provisions of the Uniform Administrative Guidance will remain in effect for States and Tribes as outlined in 2 CFR Part 200. For example, the following will continue to apply:

- **2 C.F.R. Part 200 Subpart A (§§ 200.0 – 200.1) – Acronyms and Definitions.**
- **2 C.F.R. Part 200 Subpart B (§§ 200.100 – 200.113) - General Provisions:**
Among other things, this subpart details the purpose and applicability of the regulations. It also provides for conflict-of-interest policies and mandatory disclosures.
- **2 C.F.R. Part 200 Subpart D (§ 200.303) - Post Federal Award Requirements - Internal Controls:**
Details the responsibilities of the non-Federal entity to maintain effective internal controls over the Federal award and ensure compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- **2 C.F.R. Part 200 Subpart D (§§ 200.331 – 200.333)- Post Federal Award Requirements - Subrecipient Monitoring and Management:**
 - **§ 200.331 - Subrecipient and Contractor Determination:**
Details some of the characteristics a pass-through entity (i.e., State/Tribe) must look at to decide whether an 'agreement' that allows for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. This is to effectively distinguish the roles inherent to a subaward or a contract.
 - **§ 200.332 - Requirements for Pass-Through Entities:**
Details the responsibility of the pass-through entity (i.e., State/Tribe) to ensure the subrecipient has a complete description of award/subaward information; and to comply

with Federal awarding Agency terms, conditions, and requirements that flow down to subrecipients.

- **§ 200.333 - Fixed Amount Subawards:**
Details that, with prior written approval from the Federal awarding agency, a pass-through entity (i.e., State/Tribe) may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold.

- **2 C.F.R. Part 200 Subpart F (§§ 200.500 – 200.521) - Audit Requirements:**
Provides standards for the audit of non-Federal entities expending Federal awards.

For projects funded exclusively with FY 2025 AMLER payment moneys, State and Tribal AML Programs are responsible for ensuring that the acquisition and improvement of real property and/or movable machinery and equipment is necessary to achieve the goals of the AMLER Program. States and Tribes should ensure that each project proposal clearly demonstrates that the acquisition of the property is necessary to achieve the goals of the AMLER Program. All aspects of the purchase must comply with applicable laws and regulations.

Designation as Recipient/Subrecipient

The State/Tribal AML Program that receives an AMLER payment that funds the purchase of real property will always be designated as the recipient. Any other State/Tribal Agency, local government, institution of higher education, or non-profit organization that holds title to real property purchased using AMLER funds will be designated as a subrecipient. It is incumbent upon the State/Tribal AML Program, as the recipient, to provide the subrecipient with all relevant terms and conditions of the AMLER payment.

X. REPORTING REQUIREMENTS

Only projects funded exclusively by the FY 2024 and/or 2025 AMLER Program will follow the reporting guidance detailed in this section. OSMRE reports to Congress and the public on the use of AMLER funds, as well as the benefits derived from their use. To this end, OSMRE compiles an annual AMLER Program Report that evaluates the economic impact of the Program and the status of AMLER projects within each State and Tribe. State or Tribal AML Programs that would like to assist OSMRE in preparing this report may provide information they wish to highlight. Such information may include:

- A list of AMLER projects funded with FY 2025 AMLER payment moneys
- The current status of each AMLER project
- Project location (county)
- Requested AMLER funding
- Additional funding amount and sources
- AML nexus (based on section II)
- Project Partners
- Description of the project scope
- Economic, community, or other benefits anticipated or accomplished; or
- AML land or waters reclaimed, improved, or revitalized.

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If you have any questions or need additional assistance, please contact your servicing OSMRE Field Office