

GUIDANCE ON THE BIPARTISAN INFRASTRUCTURE LAW
ABANDONED MINE LAND GRANT IMPLEMENTATION

I. OVERVIEW

The Bipartisan Infrastructure Law (BIL) (Pub. L. No. 117-58), also known as the Infrastructure Investment and Jobs Act, was enacted on November 15, 2021. The BIL authorized and appropriated \$11.293 billion for deposit into the Abandoned Mine Reclamation Fund administered by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Of the \$11.293 billion appropriated OSMRE will distribute approximately \$10.873 billion¹ in BIL Abandoned Mine Land (AML) grants to eligible States and Tribes on an equal annual basis—approximately \$725 million a year—over a 15-year period.² In accordance with Executive Order 14008, States and Tribes are encouraged to prioritize projects that equitably provide funding under the Justice40 Initiative towards meeting the goal that 40 percent of the overall benefits flow to disadvantaged communities.³ BIL funds will expand the AML Reclamation Program to meet the priorities described in the BIL and the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended. States and Tribes may use BIL AML grants to address coal AML problems, including:

- Hazards resulting from legacy coal mining that pose a threat to public health, safety, and the environment within their jurisdictions (including, but not limited to, dangerous highwalls, waste piles, subsidence, open portals, features that may be routes for the release of harmful gases, acid mine drainage, etc.);
- Water supply restoration (infrastructure); and
- Coal AML emergencies.

The purpose of this guidance document is to provide State/Tribal AML Programs with overarching information concerning the interpretation, project eligibility, and priorities for the use of BIL AML

¹ Section 40701 of the BIL authorizes \$11.293 billion for deposit into the AML Fund, and Division J, Title VI appropriates and apportions the funds in the following ways: up to 3% for OSMRE Operations, 0.5% for Office of Inspector General (OIG) Operations, and \$25 Million for OSMRE to provide States and Tribes financial and technical assistance in making amendments to the inventory system for documenting eligible lands and waters. The remaining funds, approximately \$10.873 billion, will be distributed to eligible States and Tribes as BIL AML grants.

² Section 40701(c) of the BIL limits the use of BIL AML grants to the activities described in subsections (a) and (b) of section 403 and 410 of SMCRA. OSMRE will ensure that the annual grants provided to a State or Tribe do not exceed its estimated cost to reclaim its remaining coal AML problems and water supply restoration, as documented in the Abandoned Mine Land Inventory System (e-AMLIS).

³ “Disadvantaged Community” – a community may be considered disadvantaged based on a combination of: low income, high and/or persistent poverty; high unemployment and underemployment; racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities; linguistic isolation; high housing cost burden and substandard housing; distressed neighborhoods; high transportation cost burden and/or low transportation access; disproportionate environmental stressor burden and high cumulative impacts; limited water and sanitation access and affordability; disproportionate impacts from climate change; high energy cost burden and low energy access; jobs lost through the energy transition; access to healthcare; and geographic areas within Tribal jurisdictions; or based on the community’s inclusion in the Climate and Economic Justice Screening Tool. Definition adapted from OMB and CEQ Interim Implementation Guidance for the Justice40 Initiative (M-21-28) dated July 20, 2021. See Climate and Economic Justice Screening Tool at: [Explore the tool - Climate & Economic Justice Screening Tool \(geoplatform.gov\)](https://www.eplanning.gov/data-tools/justice40).

grant funds.⁴ It also clarifies how BIL AML grant funding differs from the traditional fee-based AML grant distributions authorized by SMCRA. OSMRE will consider initiating rulemaking to establish requirements and obligations related to application procedures, allowable uses of funds, and reporting program activities and outcomes.

II. ELIGIBLE STATES AND TRIBES

Pursuant to section 40701(b)(2) of the BIL, eligible grant recipients include both certified and uncertified States and Tribes carrying out approved AML Programs. A certified State or Tribe is a State or Tribe that has certified that all coal reclamation projects that are considered a priority under section 403(a) of SMCRA have been completed. An uncertified State or Tribe is a State or Tribe that has not yet made the certification that reclamation of all priority coal reclamation projects in the State or on applicable Indian lands have been completed.

III. ELIGIBLE PROJECTS & PRIORITIZATION

BIL AML funding may only be spent on eligible abandoned coal mine reclamation projects.⁵ According to section 40701(c) of the BIL, BIL AML grants may only be used on one or more of the following:

- Priority 1 Projects – These projects protect public health and safety from extreme effects of coal mining practices, including the restoration of adjacent land and water resources and the environment (Section 403(a)(1) of SMCRA).
- Priority 2 Projects – These projects protect public health and safety from adverse effects of coal mining practices, including the restoration of adjacent land and water resources and the environment (Section 403(a)(2) of SMCRA).
- Priority 3 Projects – These projects restore land and water resources and the environment previously degraded by adverse effects of coal mining practices (Section 403(a)(3) of SMCRA). These projects may include the design, construction, operation, maintenance, and rehabilitation of acid mine drainage (AMD) treatment facilities regardless of whether they are part of a qualified hydrologic unit.
- Water Supply Restoration Projects - protection, repair, replacement, construction, or enhancement of facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices (Section 403(b) of SMCRA).

⁴ As this is a guidance document, it does not create legally binding requirements and should not be construed to create any rights or benefits, either substantive or procedural, that are enforceable by law. To the extent there is any inconsistency between a provision of this guidance document and any applicable law or regulation, the law or regulation will control.

⁵ In general, section 404 of SMCRA describes “[l]ands and waters eligible for reclamation or drainage abatement expenditures” under SMCRA as those lands and waters “which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes . . . and abandoned or left in an inadequate reclamation status prior to” August 3, 1977.

- AML Emergency Projects - Emergency projects that restore, reclaim, abate, control, or prevent adverse effects of coal mining practices, on eligible lands when an emergency exists constituting a danger to the public health, safety, or general welfare and no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent adverse effects of coal mining practices (Section 410 of SMCRA).

Use of BIL funding differs from the traditional fee-based AML funding in a few important ways:

- Stand-alone projects classified as Priority 3 under SMCRA Title IV are eligible for BIL funding, whether or not the project is in conjunction with other projects classified as Priority 1 and Priority 2 projects under SMCRA Title IV;
- AMD treatment projects that are not part of a qualified hydrologic unit are eligible for BIL funding;
- Eligible states and tribes are not authorized under the BIL to place BIL AML grant funds into AMD set-aside accounts.⁶

Under section 405(e) of SMCRA, State and Tribal AML Reclamation Plans must identify the specific criteria for ranking and identifying projects to be funded. The *overall* State or Tribal AML Program must reflect the priorities listed in section 403(a), and, accordingly, the BIL does not require strict adherence to those priorities when grantees and OSMRE work to evaluate, apply for, and approve particular projects.

OSMRE will consult with each State and Tribe receiving funds under the BIL to identify which updates to the grantee's Reclamation Plan, if any, are necessary to ensure that the Plan's complies with the BIL.

In spending BIL AML funds, as authorized by section 40701(f) of the BIL, States and Tribes should, consistent with State or Tribal applicable law, prioritize providing employment opportunities to current and former employees of the coal industry, when such employees are available to work on projects within the region, State, or local area. OSMRE will work with States and Tribes to incorporate such prioritization into their reclamation plans. Measures to implement these priorities may include: (1) requiring contractors to affirm that they will give preference to current and former employees of the coal industry in any hiring for BIL-funded AML projects; (2) requiring contractors to report on the extent to which current and former employees of the coal industry have been employed in any AML work the contractors perform; (3) requiring contractors to retain data that can substantiate the reported information; and (4) providing to OSMRE the information reported by the contractors as part of the State or Tribe's regular AML reporting processes. To further implement the section 40701(f) prioritization, States and Tribes should engage with other Federal, State, Tribal, and local government agencies, and labor or worker organizations that represent coal industry workers to identify current or former employees of the coal industry who are candidates to be employed by AML reclamation contractors and provide OSMRE with certifications of this engagement.

⁶ Section 402(g)(6) of SMCRA authorized the creation and use of AMD set aside accounts, which allow uncertified States to apply for up to 30% of certain fee-based funds received as part of their traditional annual AML grant to be transferred to an interest-bearing account established by the State/Tribe to be used for the abatement of the causes and the treatment of the effects of AMD in a comprehensive manner within qualified hydrologic units affected by coal mining practices.

The Department will commence notice and comment rulemaking, as necessary, to further implement section 40701(f) and to provide additional guidance as to its scope. Such a proposed rule would, if finalized, based on section 40701(f), require that States and Tribes provide employment opportunities to current and former employees of the coal industry, prioritize projects that provide such employment opportunities, and prioritize use of BIL AML funding on AML projects that promote the revitalization of coal communities.

States and Tribes should also prioritize projects that deliver benefits to disadvantaged communities including the reduction of environmental burdens on such communities in alignment with the overall objectives of the Justice40 Initiative.

States with unreclaimed mines on the list of EPA's Methane Coal Mine Opportunities Database (<https://www.epa.gov/cmop/coal-mine-methane-abandoned-underground-mines>) are encouraged to prioritize the reclamation of such sites where eligible for BIL AML funding in a manner that eliminates methane emissions to the greatest extent possible.

IV. AML PROGRAM MANAGEMENT

In carrying out their programs with BIL AML funding, OSMRE encourages States and Tribes, consistent with State or Tribal applicable law, to:

- Use procurement processes that incentivize AML contractors to hire current and former employees of the coal industry when bidding on BIL-funded AML projects and require the collection of information from AML contractors about the number of current and former coal industry employees they employ;
- Aggregate projects into larger statewide or regional contracts as part of their procurement processes, in order to improve efficiencies in their BIL AML grant funding;⁷
- Prioritize aggregated or larger projects in selecting projects to be funded;
- Support pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment by collaborating with other Federal, State, Tribal, and local government agencies and non-governmental organizations that have the relevant expertise in these areas, including the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization. While BIL AML grants may not be used to directly fund pre-apprenticeships, apprenticeships and training programs, States and Tribes are encouraged to strengthen existing partnerships with governmental agencies and non-governmental entities that provide these types of services and to strategize on ways to promote these types of opportunities for BIL AML projects, including by identifying workforce needs for AML projects.

⁷ Section 40701(b)(3) of the BIL allows states to aggregate bids in this manner.

- Require contractors to support safe, equitable, and fair labor practices by adopting collective bargaining agreements, local hiring provisions (as applicable), project labor agreements, and community benefits agreements.
- When applicable, select project designs that reduce methane emissions from abandoned coal mine sites.
- Incorporate input from disadvantaged communities, communities of color, low-income communities, and Tribal and Indigenous communities⁸ into prioritization criteria and the method for selecting projects to be funded. For more information, see the “Public Engagement” section.

If any of the aforementioned activities cannot be reasonably accomplished in carrying out the BIL AML program, States and Tribes should include in their grant application a detailed rationale for why the specified activity(ies) could not be implemented.

OSMRE and the Department of the Interior (DOI) will engage with the Department of Labor (DOL) to determine what information and tools DOL can provide to States and Tribes to support the above efforts.

BIL AML funds may not be used, directly or indirectly, to support or oppose union organizing.

Further, States and Tribes must implement measures to ensure that a bidder for a BIL AML contract cannot be awarded a contract or subcontract or perform any work funded by the BIL AML, if their company, their owners and controllers, their corporate officers and their shareholders own or control mine operations that have any outstanding uncorrected or unabated violations. Consistent with 30 C.F.R. § 874.16 and § 875.20, every successful bidder for an AML contract must be eligible under 30 C.F.R. §§ 773.12, 773.13, and 773.14 at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations. At a minimum, States and Tribes must review the Applicant Violator System, and the System for Award Management and any other available information to verify the eligibility of each bidder before a contract or subcontract is awarded for any work performed and funded under the BIL AML.

V. BIL AML GRANTS

⁸ “Low-income communities” are those communities that in the last 12 months had a median household income less than twice the poverty level. This definition is similar to USEPA’s EJSCREEN definition at <https://www.epa.gov/ejscreen/ejscreen-map-descriptions#category-demographics>

“Communities of color” are those communities with a higher than national average percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word "alone" in this case indicates that the person is of a single race, not multiracial. A block group is an area defined by the Census Bureau that usually has in the range of 600-3,000 people living in it. This definition is adopted from USEPA’s EJSCREEN definitions at: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen#demoindex>

“Tribal and Indigenous communities” are communities whose members make up a Federally recognized Indian Tribe, a State-recognized Indian Tribe, an Alaska Native community or organization, a Native Hawaiian organization, or any other community of indigenous people located in a State, including indigenous persons residing in urban communities.

On February 7, 2022, DOI announced the BIL AML grant distribution amounts that each eligible State and Tribe will receive in fiscal year (FY) 2022. The Notice of Funding Opportunity for the BIL AML grants will be available before the end of the 4th quarter of FY 2022.

Annual BIL AML grant amounts are calculated using a congressionally mandated formula based on the number of tons of coal historically produced in the States or from applicable Indian lands before August 3, 1977. Adjustments will be made to ensure the total amount of the distributions to any individual State or Tribe is not less than \$20 million over the life of the program to the extent that amount is needed for eligible projects described above and to reconcile the amount of the BIL AML funding with the total unfunded cost of coal problems at the end of the preceding fiscal year, as reflected in the enhanced Abandoned Mine Land Inventory System (e-AMLIS).

BIL AML grants will be awarded to eligible State and Tribal AML Programs on an annual basis and adjustments will be made to these distributions as required and needed to achieve the objectives of the program. For example, adjustments will be made as changes to the number of eligible States and Tribes increase or decrease. The period of performance for BIL grants will be five-years, with an option for a one-time no-cost extension of up to one year, subject to OSMRE's review and approval. BIL AML grants will be disbursed and tracked under the Assistance Listing Numbers (ALN) No. 15.252.⁹ In order to receive BIL AML funding in FY22, each eligible State and Tribe will need to submit a separate grant application for BIL AML grants from the traditional AML fee-based grants through [GrantSolutions](#). For FY23 and beyond, due to the differing requirements and timeframes of BIL and fee-based grants, OSMRE expects to require separate grant applications for the two programs, but the agency will continue working with the States and Tribes in order to develop procedures that minimize burdens on applicants. States and Tribes are required to ensure that expenditures for the two programs are tracked separately.

BIL AML grant recipients will be required to comply with all applicable Federal grant award requirements, including but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([2 C.F.R. part 200](#)). OSMRE anticipates that State and Tribal AML Programs will incur higher staffing and operational costs as they stand up programs to effectively implement their BIL AML programs. In addition, the administrative costs for annual BIL AML grant awards will be available for the entire grant performance period (i.e., five years, with the possibility of a one-year extension).

The BIL AML funded projects are subject to the Build America Buy America (BABA) Act that was enacted as part of the BIL in 2021. As required by Section 70914 of the BIL and consistent with the Office of Management and Budget's (OMB) Made in America's April 18, 2022 guidance for implementing the BABA Act, none of the funds under a federal award that are part of Federal financial assistance for infrastructure may be obligated on or after May 14, 2022, for a project unless all of the iron, steel, manufactured products, and construction materials (excluding concrete and aggregates) used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products.

⁹ The ALN number is a five-digit number assigned in an awarding document for any financial assistance (e.g., grants) funded by the Federal government. Although both the BIL AML Funds and the traditional AML fee-based grants will be disbursed under the same ~~CFDA~~ ALN No. 15.252, separate grant applications via GrantSolutions will be necessary in FY22.

Appendix I, which is entitled, “Subaccounts for BIL AML Financial Assistance,” provides guidance on the available subaccount categories that State/Tribal AML Programs can use in the development of their BIL AML grant application. Outlined below are the main subaccounts:

- BIL – Non-Emergency Administrative Costs
- BIL – Non-Water Supply (Coal Project) Costs
- BIL – Water Supply Project Costs
- BIL – Coal Projects Engineering & Design Costs
- BIL – AMD Operational and Maintenance Costs
- BIL – Emergency Project Costs

For FY22, States and Tribes are encouraged, but will not be required, to provide a list of projects expected to be funded in the upcoming year in their application (see Appendix II). Beginning with FY23 grant applications, States and Tribes will be required to include lists of projects to be funded over a one-year timeframe; additional details on this requirement will be provided in future guidance.

When applying for BIL AML grants, State and Tribal AML Programs should include:

- Starting in FY 2023, a description of each proposed projects to be funded during the grant period of performance (see Appendix II).
- A description of the State and Tribe’s prioritization process or ranking system for the selection of proposed projects;
- A description of the process the State or Tribe will use to obtain public input to develop the list of projects to be funded;
- A statement of the estimated benefits that will result from proposed projects;
- A statement of how the State or Tribe will prioritize projects employing current or former employees of the coal industry, consistent with State or Tribal applicable law;
- Plans for engaging with other Federal, State, Tribal, or local governmental agencies and non-governmental entities on workforce training and development issues, including how activities encouraged under Section III will be implemented, if applicable, along with the names of potential partners to support recruiting and training efforts, including community colleges, workforce partners, community-based groups, and unions;
- Any known linkages to economic redevelopment opportunities created by carrying out proposed projects;
- A description of how the grantee will address environmental justice issues within coalfield communities;
- Details of how the grantee will engage with relevant State, Tribal, or local governmental agencies or non-governmental organizations to identify and address any disproportionate burden of adverse human health or environmental effects of coal AML problems on disadvantaged communities, communities of color, low-income communities, and Tribal and Indigenous communities;
- A description of whether and to what extent proposed projects may reduce greenhouse gas emissions, particularly methane emissions;
- Estimated costs for each project to be completed using the BIL AML grant funding. If BIL AML funds will be leveraged with other funding sources, such as AML-fee based grants, include this information; and,

- Proposed performance measurement (See Section XI).

OSMRE understands that it will be difficult for States and Tribes to determine or estimate much of this information for projects to be funded with the first year of BIL AML grant funding, but is listing them here to allow States and Tribes to prepare for future application requirements. In FY22, States and Tribes should spell out how their project selection practices will achieve reclamation, remediation, and socio-economic benefits.

When possible, a project's scope or outcome may be expanded or enhanced. States and Tribes are encouraged to identify and leverage additional funding sources (e.g., Clean Energy Demonstration Program under Title III, Section 40341 of the BIL; DOI's Ecosystem Restoration Program under Title VIII, Section 40804 of the BIL; and EPA Brownfield Job Training Grants) and in-kind contributions to be used in conjunction with BIL AML monies.

VI. DAVIS-BACON ACT

The BIL requires that all laborers and mechanics employed by the applicant, recipient, subrecipient, contractors, or subcontractors in the performance of construction, alteration, or repair work on a project that will be assisted in whole or in part by funding made available under the BIL must be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148). The Davis-Bacon labor standards are applicable to the reclamation projects completed using BIL AML funding and Davis-Bacon clauses must be included in BIL AML work contracts. The Department of Labor [Fact Sheet #66A: Bipartisan Infrastructure Law](#) provides additional information on the responsibilities of BIL funding recipients (see Appendix IV).

Technical assistance to States and Tribes to meet the requirements of the Davis Bacon Act is also available through the Department of Labor. Currently, the Department of Labor offers free Prevailing Wage Seminars several times a year that focus on compliance with the Davis Bacon Act, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>. For additional resources on how to comply with DBA provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

VII. PUBLIC ENGAGEMENT

When selecting and developing eligible projects for the BIL AML Program, State and Tribal AML Programs should ensure public engagement at the local level through engagement with affected communities. The term, "public" includes all stakeholders (e.g., citizens at large, industry, other Federal, State, Tribal, or local agencies, Tribal Nations, unions and worker organizations, non-governmental organizations, community colleges, workforce boards, community-based groups, and environmental groups). Engaging with the public to identify potential projects before the projects are selected will ensure that the projects completed through this program best address the needs of the relevant communities.

States and Tribes are encouraged to use existing best practices for public engagement or develop a process for public outreach and communication with local citizens, agencies, and organizations that best

fits their unique circumstances. For example, States and Tribes could notify local citizens of the intent/purpose of a project via meetings, print media, websites, and social media and/or partner with organizations that facilitate public outreach and communication. OSMRE recommends that public engagement occur as early as possible for each grant cycle, with the public provided at least 60 days to review and provide input on the projects that will be proposed for funding in the State or Tribe's grant application.

VIII. ENHANCED ABANDONED MINE LAND INVENTORY SYSTEM (e-AMLIS)

Pursuant to section 403(c) of SMCRA, OSMRE maintains e-AMLIS, the central electronic database for housing the national inventory of unreclaimed AML problems affecting public health, safety, and the environment and reclaimed sites, along with their associated reclamation costs. Data maintained in e-AMLIS are provided by States and Tribes using standardized procedures approved by OSMRE.

States and Tribes are required to enter all coal AML projects into e-AMLIS and identify them as BIL AML projects when funds are expended. To ensure that States and Tribes are able to update their respective AML inventories in e-AMLIS, the BIL makes \$25 million available to the Secretary of the Interior to provide financial and technical assistance to States and Tribes to amend e-AMLIS. OSMRE will provide further guidance on its implementation of this specific requirement of the BIL at a later date.

IX. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

OSMRE has determined that all BIL AML funded reclamation projects are major Federal actions¹⁰ subject to review under the NEPA because, in accordance with NEPA regulations,¹¹ BIL AML projects are federally assisted activities performed using Federal funds.

OSMRE REG-1, Handbook on Procedures for Implementing the National Environmental Policy Act ([NEPA Handbook](#)) (Revised 2019), provides additional information on NEPA compliance.

Depending on the significance of the actual and potential impacts of the proposed action, there are three potential analytical approaches under NEPA, including a:

- 1) Categorical Exclusion (CE);
- 2) Environmental Assessment (EA), which may result in a Finding of No Significant Impact (FONSI) or a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS); or
- 3) Environmental Impact Statement (EIS) and Record of Decision (ROD).

The Department's NEPA regulations make clear that in the absence of an applicable CE, an EA, and, in some cases, an EIS, must be prepared for the proposed Federal action. 43 C.F.R. § 46.205(a) states:

¹⁰ According to 40 C.F.R. § 1508.1, major Federal actions may include, among other things, new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies.

¹¹ NEPA regulations issued by the White House Council on Environmental Quality (CEQ) are found at Title 40, Parts 1500-1508 of the Code of Federal Regulations (40 C.F.R. § 1500-1508, 42 U.S.C. §§ 4371 *et seq.*).

If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

In accordance with section 8.5.2.1 of OSMRE's NEPA Handbook, State and Tribal AML programs must ensure that all connected actions, regardless of the funding source or who proposes them, are analyzed in a single NEPA document. Additionally, the impacts of a project that includes multiple phases must be reviewed in a single or programmatic NEPA document. Multi-phase projects may require subsequent additional NEPA. State and Tribal AML Programs are strongly encouraged to look closely at the NEPA analyses outlined above and refer to OSMRE's [NEPA Handbook](#) to better understand the NEPA process early and align their proposed projects accordingly.

The three potential analytical approaches under NEPA are defined below.

Categorical Exclusion

A CE is a class of actions that a Federal agency has determined, after review by CEQ, does not individually or cumulatively have a significant effect on the human environment; therefore, neither an EA nor an EIS is normally required unless an extraordinary circumstance is identified.¹² A CE is the threshold NEPA analysis for a proposed Federal action. OSMRE has created and received approval from CEQ for a CE. This CE is contained in the DOI Departmental Manual (DM), Chapter 13 [516 DM 13.5(33)].

Environmental Assessment

If a determination is made that the proposed Federal action cannot be categorically excluded from further NEPA analysis, then an EA is prepared. The EA determines whether a Federal action has the potential to cause significant environmental effects. If no significant environmental effects are found, the decision document will result in a FONSI, and the project may continue without further NEPA analysis. However, if it is determined that an action will have significant effects, then the project must go through the EIS process.

Environmental Impact Statement

For actions with significant impacts, NEPA requires Federal agencies to prepare an EIS that must assess, among other things, the potential environmental impacts of the proposal and alternatives to the proposed action. *See* 42 U.S.C. § 4332; 40 C.F.R. part 1502. Once an agency reaches a final decision on the action it wishes to take (i.e., the proposed action or an alternative), it creates a ROD, which is the conclusion of the EIS process. 40 C.F.R. § 1505.2.

X. PROJECT AUTHORIZATION

OSMRE's regulations require that, before the start of construction on any non-emergency reclamation project, States and Tribes must submit to OSMRE a request for an Authorization to Proceed (ATP) once the NEPA analysis has been completed. 30 C.F.R. §§ 885.15, 886.16. An ATP request for a reclamation project must include: confirmation that the problem area to be reclaimed has been entered into e-

¹² Extraordinary circumstances are described in the Departmental NEPA regulations at 43 C.F.R. § 46.215.

AMLIS; all completed environmental documents, including NEPA documents and other documents demonstrating compliance with relevant environmental laws, such as the Endangered Species Act; an AML eligibility statement; and any additional documentation requested by OSMRE for that particular project.

As discussed above, State and Tribal AML programs should, in compliance with State or Tribal law, engage with other Federal, State, Tribal agencies, and local government agencies and labor and worker organizations that represent coal industry workers to identify current or former employees of the coal industry who are candidates to be employed by AML reclamation contractors consistent with the section 40701(f) prioritization and provide OSMRE with certifications of this engagement. States and Tribes should maintain sufficient records to substantiate this engagement upon request.

OSMRE will provide an ATP letter once the agency has determined that the request satisfies the guidelines for ATP issuance. The ATP letter from OSMRE provides the required approval to use BIL AML grant funding to reclaim the specific project being addressed and allows project construction to begin. Although NEPA documentation is part of the criteria required for an ATP request, the NEPA process and ATP process are two separate processes. An ATP request cannot be completed until OSMRE has completed the NEPA review process and issued a ROD, FONSI, or CE in compliance with the NEPA requirements.

XI. EMERGENCY AUTHORIZATION

According to chapter 4-120 of the Federal Assistance Manual (FAM), States and Tribes are required to submit a request for emergency declaration to OSMRE for emergency reclamation projects. The FAM requirements track the “emergency” definition at 30 C.F.R. § 700.5, identifying the proper amount of emergency reclamation as the amount necessary to stabilize the emergency aspects of the problem—eliminating the immediate danger to public health, safety, and general welfare. Any remaining reclamation should then be accomplished as part of a regular, non-emergency AML project, as necessary.

Upon receipt of a request for emergency declaration, OSMRE will review the information and ensure that the project meets all requirements of the AML emergency program. If all information contained within the request for emergency declaration is complete, OSMRE will declare an emergency by signing a Finding of Fact/ATP. The Finding of Fact certifies that the problem meets the emergency criteria and serves as the point of Federal action, authorizing the State/Tribe to proceed with reclamation work on the site. After the emergency is abated, the States and Tribes are required to comply with all applicable Federal laws and regulations, including NEPA.

XII. BIL AML PERFORMANCE MEASURES & REPORTING

OSMRE is required to submit a report to Congress within six years of the first BIL AML grant allocation to State and Tribal AML Programs. This report will detail the progress made under the BIL AML provisions in addressing outstanding reclamation needs under subsections (a) and (b) of section 403 and section 410 of SMCRA. In preparing this report, OSMRE will solicit input from State and Tribal AML Programs on the progress made in addressing outstanding coal AML problems and use the

information provided in the annual evaluation reports each State and Tribe submits pursuant to section 405(j) of SMCRA.¹³ OSMRE intends to provide future guidance on how to prepare the information required in the report to Congress.

OSMRE is evaluating and developing the performance measures and reporting elements to be tracked to ensure accomplishments made by State and Tribal AML Programs under the BIL are captured in these annual reports. Given that AML projects are located in coalfield communities that may also be defined as disadvantaged communities, communities of color, low-income communities, or Tribal or Indigenous communities, State and Tribal AML Programs are encouraged to track and report on the types of benefits and the percentage of benefits that accrue to these communities. State and Tribal AML Programs are also encouraged to engage with stakeholders to help identify metrics that accurately reflect the benefits of BIL AML projects in their reclamation programs. In order to enable complete reporting, States and Tribes are expected to track the following types of benefits that can be measured and reported:

AML Reclamation Environmental Benefits

- Number of acres reforested
- Number of trees planted on AML sites
- Number of bat gates installed
- Number of acres of endangered species habitat re-established
- Number of tons of rare earth elements, metals, or sediment recovered for reuse
- Amount of methane emissions reduced

AMD Remediation Project Benefits

- Quantity of iron, aluminum, manganese, sulfate, etc. removed and/or recovered on annual basis by AMD water reclamation projects
- Quantity of Rare Earth Elements (REE) recovered by AMD water reclamation projects
- Number of AMD passive treatment systems built
- Number of AMD passive treatment systems operated and maintained
- Number of AMD active treatment systems built
- Number of AMD discharges abated
- Miles of waterways improved
- Estimated volume of water treated
- Number of outflows remediated

Socio-economic Benefits of BIL AML Projects

- Percent of overall benefits and types of benefits that accrue to disadvantaged communities, communities of color, low-income communities, or Tribal or Indigenous communities;
- Number of former/current employees of the coal industry employed in AML reclamation;
- Demographics/number of workers from under-represented groups, as defined by Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”;
- Percentage of workers employed at AML sites that reside in the county in which the AML

¹³ Pursuant to section 405(j) of SMCRA, State and Tribal AML programs will be required to submit annual reports to track their progress and accomplishments in addressing outstanding reclamation needs using BIL AML grant funds.

- project is located, or in adjacent counties;
- If there is a community benefit agreement as part of the project;
 - Number of project partners involved in AML reclamation projects;
 - Number of contract(s) awarded that aggregated projects exceeding a value of \$1 million at the time of award;
 - Number of businesses constructed on reclaimed AML sites, and number of people employed at those sites;
 - Number of job hours involved in BIL AML remediation;
 - Number of people receiving potable water after completion of water supply restoration projects;
 - Number of residents positively impacted by the restoration of previously polluted waterways; and,
 - Number of residents within one mile of a BIL-funded project.

Further, for projects or aggregated projects in excess of \$1 million, States or Tribes should require that contractors, consistent with State or Tribal applicable law, provide:

- 1) a certification that the project uses a unionized project workforce;
- 2) a certification that the project includes a project labor agreement; or
- 3) a project workforce continuity plan, detailing:
 - How the contractor ensured the project had ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training, registered apprenticeships or labor-management partnership training programs, and partnerships like unions, community colleges, or community-based groups;
 - How the contractor minimized risks of labor disputes and disruptions that would have jeopardized the timeliness and cost-effectiveness of the project;
 - How the contractor provided a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
 - Whether workers on the project received wages and benefits that secured an appropriately skilled workforce in the context of the local or regional labor market;
 - Whether the project had a Community Benefit Agreement, with a description of any such agreement; and
 - Whether the project prioritized local hires.

As noted in Section IV, BIL AML funds may not be used to support or oppose union organizing.

* * *

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

Appendix I: Subaccounts for BIL AML Financial Assistance

Appendix II: Table for BIL AML Eligible Projects

Appendix III: BIL AML Project Flowchart

Appendix IV: Department of Labor Fact Sheet

** - Appendices to be developed as needed.

Appendix I: Subaccounts for BIL AML Financial Assistance

I. Authorities

- The Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. No. 95-87, as amended
- Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, also known as the Bipartisan Infrastructure Law (BIL)
- Office of Surface Mining Reclamation and Enforcement (OSMRE) Directive GMT-10, The Federal Assistance Manual (FAM)
- The Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224
- Title 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

II. Purpose

The purpose of this document is to provide guidance and to clarify the available subaccounts (i.e. cost categories) for allocating monies when submitting a BIL AML grant application and expending monies when invoices are submitted for processing through DOI's/OSMRE's financial system. This guidance document outlines the available subaccounts for BIL funds that were created in 2022. The Federal Assistance Manual (FAM) will be updated to reflect these changes.

III. Additional Information

This section contains the following information:

- BIL Subaccounts Table. (Table 1) This table provides a listing of all available subaccounts under the BIL AML Program, which is funded by moneys sourced from the U.S. Treasury.
- Fund Type Descriptions. This section describes the different types of funds listed in Table 1, which are used in the BIL AML Program.

BIL AML Grant Subaccount Table

The table below contains a listing of standard subaccounts currently available for BIL AML Grants:

Table 1: BIL Fund Subaccounts

Subaccount	Bipartisan Infrastructure Law
01	IL
03	IL
04	IL
19	IL
21	IL
23	IL

Listed below is the fund type description.

IL Funds authorized by section 40701 of the BIL that are available to eligible States and Tribes.

Source: U.S. Treasury Funds

Listed below are the subaccount number definitions:

01. Non-Emergency Administrative

These are costs that cannot be tracked to individual reclamation projects and include items, such as travel, rental of vehicles, and any other administrative expenses. Project Design and Engineering costs should not be incorporated into subaccount 01.

03. Coal Project Costs (Non-Water Supply)

These are costs for actual construction, realty work, construction contracting, construction inspection, and other items allocable to a specific project in accordance with the BIL. Please note that project design and engineering coal-related costs and operation and maintenance costs related to AMD projects should not be included under subaccount 03. An engineering and design subaccount 19, as described below, has been created to track these coal-related costs. An operational and maintenance subaccount 21, as described below, has been created to track these AMD related costs.

04. Water Supply Project Costs

These costs are authorized by the BIL, and eligible States and Tribes may expend funds to protect, repair, replace, construct, or enhance facilities related to water supplies adversely affected by coal mining practices. Please note that project design and engineering coal-related costs should no longer be included under subaccount 04. A new engineering and design subaccount 19, as described below, has been created to track these coal-related costs

19. Coal Projects Engineering & Design Costs

These are coal-related engineering and design costs associated with site investigation, public engagement, including identification and mapping of hazards; environmental sample collection and data validation; costs associated with surveying design and engineering of reclamation activities, including development of construction bid packages; costs associated with owner operator searches, eligibility determination, historic and archeological surveys, threatened and endangered species reports and consultation, document preparation related to NEPA, public meetings, and landowner agreements; and any other costs associated with project preparation before the award or initiation of a construction project.

Pursuant to section 403(c) of SMCRA, OSMRE maintains e-AMLIS, the central electronic database for housing the national inventory of unreclaimed AML problems affecting public health, safety, and the environment, and reclaimed sites, along with their associated reclamation costs. BIL funding may be used by State or Tribal AML Programs to amend their inventory of coal problems. Costs associated with the activities necessary to update a State or Tribe's inventory in e-AMLIS should be included under this subaccount.

Please note that this definition does not include construction oversight or long-term monitoring or maintenance. Any cost related to construction oversight or long-term monitoring or maintenance should be included under direct project subaccounts such as 03 and 04. Any BIL costs related to long term AMD operational and maintenance costs should be included under subaccount 21.

21. Acid Mine Drainage (AMD) Operational and Maintenance Costs

These are costs associated with the long-term operation and maintenance of AMD treatment facilities. This category was created as a result of the determination that States and Tribes receiving BIL AML funding may use the grant funds to operate and maintain AMD treatment facilities. Costs related to the construction of AMD treatment facilities should be included under direct project subaccounts such as 03 and 04. Costs related to the design of AMD treatment facilities should be included under subaccount 19.

23. BIL Emergency Projects Costs

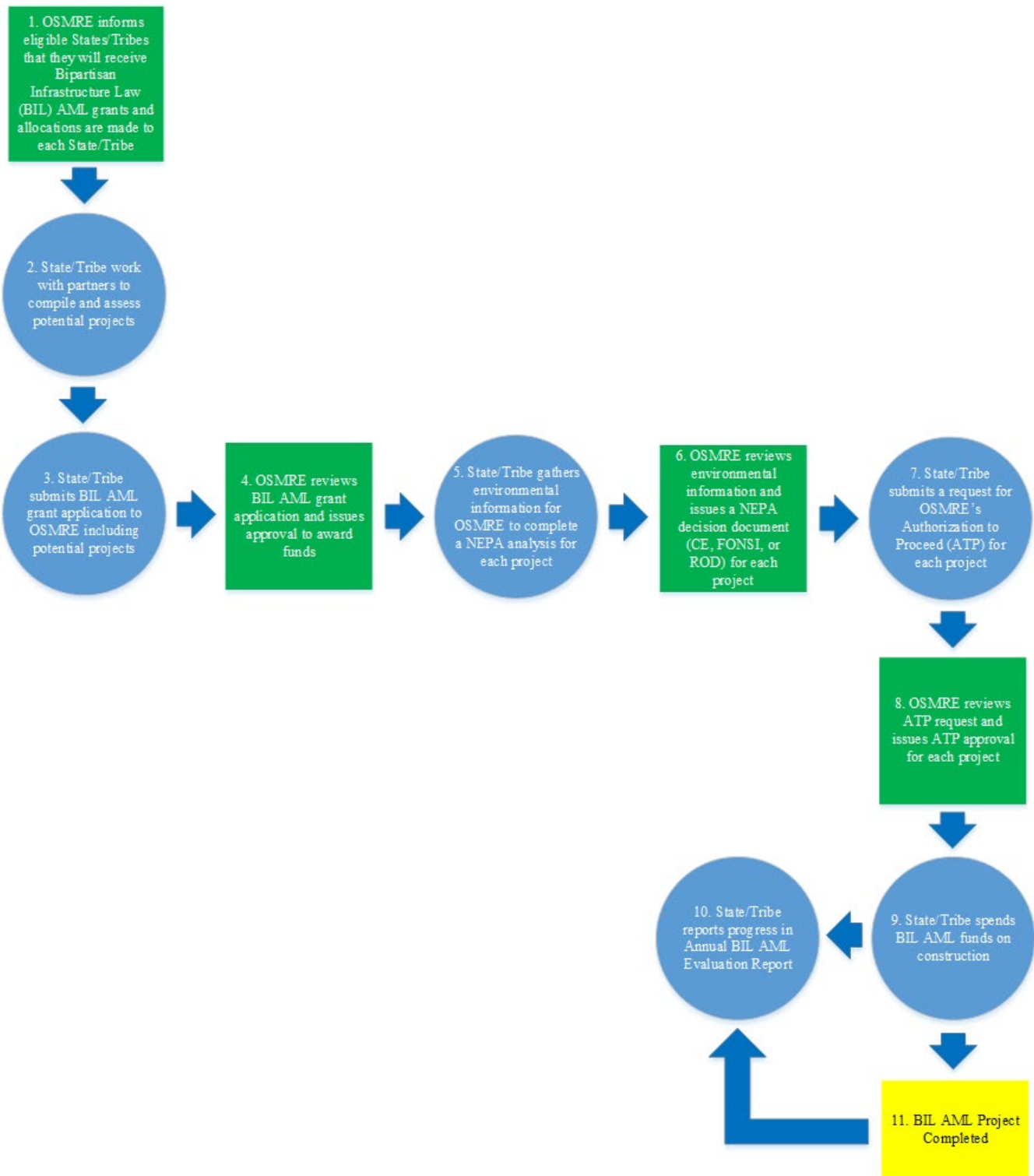
These costs are authorized by the BIL. As defined at 30 C.F.R. § 700.5, an emergency is a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures. Emergency project costs cover the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible lands. Emergency projects must be pre-authorized by OSMRE, directly related to emergency hazard abatement, and are subject to availability of funds

Appendix II: Table for BIL AML Eligible Projects

The following table is an optional template for States and Tribes that choose to submit project lists with their FY22 BIL AML application.

Project or Activity	Type of Hazard	Estimated FY 20XX BIL AML Funding for Project	Schedule	Proposed Project Accomplishments
<i>Project 1 – Name of Project</i>	<i>E.g., Dangerous Highwall, Clogged Stream Lands, etc.</i>	<i>\$XXXX</i>	<i>Anticipated Start Date – Anticipated End Date</i>	<i>E.g., dangerous highwall reclaimed</i>

Appendix III: BIL AML Project Flowchart



Appendix IV: DOL Fact Sheet #66A: Bipartisan Infrastructure Law

This fact sheet provides general information relating to Davis-Bacon requirements for construction projects funded by the Bipartisan Infrastructure Law (BIL), provided by the Department of Labor's Wage and Hour Division (WHD). The WHD administers and enforces Davis-Bacon labor standards on Federally funded and assisted construction projects, and, as such, is responsible for determining locally prevailing wage rates and ensuring those prevailing wages are paid to construction workers on covered projects.

Davis-Bacon Related Act Coverage of Bipartisan Infrastructure Law Construction Projects

The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics employed on federal construction contracts no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. Many federal laws that authorize federal assistance for construction projects, such as through grants, loans, loan guarantees, or other similar funding mechanisms, require funding recipients to comply with the prevailing wage and labor standards requirements of the Davis-Bacon Act. Such laws are generally known as Davis-Bacon "Related Acts," or Davis-Bacon Related Acts.

The BIL, which President Biden signed on November 15, 2021, focuses on rebuilding and improving our nation's aging infrastructure through a historic investment of federal funds in state and local infrastructure construction. A vast majority of the federal funding authorized by the BIL requires the payment of Davis-Bacon prevailing wages on covered construction projects. The BIL applies Davis-Bacon labor standards to federally-funded or assisted construction projects in three different ways by:

1. adding funding to programs previously authorized by an existing Davis-Bacon Related Act (such as the Infrastructure for Rebuilding America program and the Drinking Water/Clean Water state revolving loan funds);
2. adding new programs under the umbrella of an existing Davis-Bacon Related Act (such as the new Bridge Investment program and the new Airport Terminal Improvement program); or
3. including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through the BIL. For example, construction projects assisted by funding made available under Division D or an amendment made by Division D of the BIL (Energy) are subject to Davis-Bacon requirements

Finally, while the broadband assistance programs under Division F of the BIL do not generally require the payment of Davis-Bacon prevailing wages, the agencies administering those programs may consider the payment of prevailing wages as a positive factor when allocating funding. WHD will be available to provide guidance to funding applicants and funding agencies who are considering the payment of Davis-Bacon prevailing wages as a factor in connection with funding awards under the BIL's broadband assistance programs.

Basic Provisions/Requirements of Davis-Bacon Related Acts

Funding for construction projects authorized by the BIL requires certain actions on the part of federal funding agencies, funding recipients (such as state or local agencies), and construction contractors in order to ensure compliance with Davis-Bacon Related Acts.

Federal Funding Agencies

Among other requirements, the federal funding agency must:

- notify potential funding recipients that the Davis-Bacon labor standards are applicable to any construction projects that receive the relevant BIL funding;
- ensure that the funding recipients require the Davis-Bacon contract clauses, as set forth at 29 C.F.R. § 5.5, and applicable wage determinations be inserted into all contracts for construction projects receiving the federal funding (a wage determination is a schedule of prevailing wage rates determined by the Secretary of Labor that applies to construction subject to Davis-Bacon requirements in a particular geographic area);
- provide guidance to funding recipients as to which construction projects are covered by Davis-Bacon requirements and which wage determinations apply to those projects; and
- take steps to ensure that the Davis-Bacon requirements are met on their funded projects, including receiving and reviewing certified payrolls submitted by contractors (except to the extent that the federal agency has delegated the receipt and review of certified payrolls to the funding recipient).

Funding Recipients

Among other requirements, the funding recipients must:

- ensure that the Davis-Bacon contract clauses and applicable wage determinations are inserted into any construction contracts entered into by themselves or their sub-recipients for projects receiving any federal funding subject to Davis-Bacon labor standards (the required contract clauses are set forth at 29 C.F.R. § 5.5, and general wage determinations and guidance on their application can be found at alpha.sam.gov);
- provide guidance to sub-recipients and contractors as to Related Act coverage, wage determination applicability, and the classifications of work performed on the contract;
- conduct sufficient monitoring of sub-recipients and contractors to ensure that laborers and mechanics are being paid the applicable prevailing wages and fringe benefits;
- receive and review certified payrolls, and, where applicable, forward certified payrolls to the federal funding agency; and
- upon the written request of the Department of Labor, or on their own initiative, both the federal funding agencies and the funding recipients must withhold payments to the prime contractors in an amount sufficient to cover any unpaid prevailing wages owed to workers or suspend any further payments until violations of the Davis-Bacon labor standards have ceased.

Failure to take these actions may result in the loss of the federal funding, in accordance with 29 C.F.R. § 5.6.

Contractors and Subcontractors

Among other requirements, contractors and subcontractors must:

- pay at least the Davis-Bacon prevailing wages listed in the applicable wage determinations included in the contract to laborers and mechanics who work on the site of work—
 - the Davis-Bacon prevailing wage is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination;
 - contractors can meet this obligation by paying each laborer and mechanic the applicable prevailing wage for the classification of work they perform entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits;
 - contractors must pay laborers and mechanics the applicable prevailing wages for all hours worked on the site of the work on a weekly basis (except for contributions to bona fide fringe benefit plans, which must be made at least quarterly);
- maintain an accurate record of hours worked and wages paid, including fringe benefit contributions;
- submit certified payrolls to the contracting agency/funding recipient each week, within seven days of the payroll date for that workweek; and
- ensure that the required contract clauses and applicable wage determinations are incorporated into any lower-tier subcontracts.

Where to Obtain Additional Information

For additional information, visit the Wage and Hour Division website: www.dol.gov/agencies/whd or call our toll-free information and helpline, 1-866-4-USWAGE (1-866-487-9243), available 8 a.m. to 5 p.m. in your time zone. This appendix is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this appendix do not have the force and effect of law and are not meant to bind the public in any way. This appendix is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.