

ABANDONED MINE LAND ECONOMIC REVITALIZATION PROGRAM RECOMMENDATIONS FOR MORE EQUITABLE IMPLEMENTATION

The Abandoned Mine Land Economic Revitalization (AMLER) Grant Program, formerly known as AML Pilot, was first established in 2016 to provide grant funding for coal mine redevelopment projects that spur economic development. Congress appropriated \$90 million in FY 2016, \$105 million in FY 2017, and \$115 million in each subsequent fiscal year to the six Appalachian states with the highest amount of unfunded Priority 1 and Priority 2 Abandoned Mine Land (AML) sites based on Office of Surface Mining Reclamation and Enforcement (OSMRE) AML inventory data and the three tribes with AML programs. This money is distributed to projects through OSMRE and state/tribal AML programs. State/tribal programs are given discretion over funding decisions and local management of the AMLER Program.

The Reclaiming Appalachia Coalition, a multi-state collaborative of nonprofit organizations that advances impactful mine land reuse concepts, has worked with frontline communities and organizations on dozens of AMLER proposals since 2017. Since the AMLER Program's inception, the Coalition has noticed certain discrepancies that can lead to inefficiencies in the way the program is managed by state and tribal AML programs and OSMRE. In late 2021 and early 2022, the Coalition and its partners engaged in conversations with representatives from organizations throughout Appalachia that have experience with the AMLER Program. Utilizing this information and information gathered from the Coalition's own experience, the group is proposing ten recommendations to improve the AMLER Program.

These recommendations are important to consider as the agency begins implementation of the Justice40 initiative and as Congress considers future funding levels for the AMLER Program. Ensuring that federal funding reaches disadvantaged communities is especially difficult for programs that are implemented by state agencies, because the interpretation of program guidance varies across each jurisdiction, and federal oversight is more difficult. Furthermore, given that the specific purpose of the AMLER Program is to support economically and environmentally disadvantaged communities, OSMRE has a responsibility to ensure that the funding is accessible and transformative for the communities most in need, and that includes reconsidering whether or not it is in fact equitable to limit this program solely to Appalachian states and tribes. Each recommendation below is intended to ensure the AMLER Program is transparent and equitable, supporting transformative investments in coal-impacted and energy transition communities.

RECOMMENDATIONS FOR EQUITABLE IMPLEMENTATION OF AMLER PROGRAM

1 Increase public awareness about the Program and create informational materials about the application process. The OSMRE AMLER Program guidance leaves public engagement practices entirely to the discretion of the state and tribal programs. Advertisement of the grant opportunity varies from state to state, with some states and tribes engaging in significant public outreach and others failing to advertise the opportunity at all. As an example, over the last two program years, the Kentucky Energy and Environment Cabinet has hosted public educational workshops and has developed education materials about the program application process and the awarded projects. In 2020, approximately 144 people attended these workshops. Simultaneously, the number of applications for the program have increased each year. Accessible sources of information about the program should be created for other state and tribal programs. Additionally, state and tribal agencies should be encouraged to work together to develop consistent program outreach materials.

¹For information regarding the projects funded through the AMLER Program, including funding levels, projects status, and other details, see: reclaimingappalachia.org/abandoned-mine-land-economic-revitalization/

²For a list of projects the RAC has proposed or facilitated, see: reclaimingappalachia.org/aml-maps/



2 Ensure that state/tribal AML programs have the capacity to assist interested parties with the application process or provide technical assistance grants to third parties. In Ohio, the Division of Natural Resources (DNR) has historically been very hands-on in assisting with applications, often including participating in a site visit to the AML feature, developing a cost estimate, and working with partner organizations to develop economic impact statements. Having the state agency involved in developing a cost estimate and impact study ensures that there is some consistency in evaluations across projects. In addition, DNR has led the process for National Environmental Policy Act and other federal permitting processes and has served as the applicant on every single project to shoulder the administrative burden of these projects and manage all the contracting and bidding. This model is very different from other states and could be a valuable approach to remove barriers for participation in the program. In other places, like Virginia, nonprofit organizations are having to help fill that capacity gap to connect applicants to the program by providing support on AML site identification, grant writing, and administrative capacity for selected projects. Counties are currently viewed as the de facto applicant in Virginia and at this point many of the counties have a long list of priority projects they intend to submit, with little room for new applicants and innovative ideas. Providing additional financial support and technical assistance to non-county entities will help support a diverse pool of proposals and counterbalance the politicization of project selection.

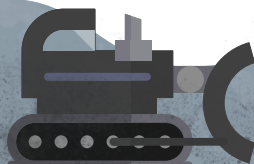
3 Support feasibility and project design studies. Because it is primarily managed by state agencies and tribal governments and because the initial applications for the program are generally not too complex, the AMLER Program may serve as an entry point for organizations and interested individuals that have not previously been involved in economic development programs within their states. However, though first-time applicants may have innovative ideas, many do not have a competitive project proposal or a proposal that meets minimum application standards. In order to support these applicants, agencies should work to establish pathways through which these applicants can continue developing their project ideas. Some program administrators, like Ohio DNR, assist unsuccessful applicants with identifying other relevant programs that could help advance their projects and increase chances of success with the AMLER Program in the future. State and tribal agencies should be able to provide a small portion of AMLER funds for feasibility and project design studies and/or connect interested applicants to other federal funding that can be used for feasibility and project design studies (i.e., programs under the Economic Development Administration and Appalachian Regional Commission).

4 Collaborate with the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization (IWG), the Appalachian Regional Commission, and the Economic Development Administration to provide guidance regarding fund matching across federal grant programs. There is confusion across state agencies, federal program officers, and community groups regarding whether AMLER, AML, ARC, and EDA funds can be used as matching funds on other project applications across these different federal agencies and programs. The IWG recently established a “clearinghouse” for federal programs that offer financial support to coal-impacted communities. This resource could be expanded to provide clarity regarding the matching fund rules for each of these programs, and each agency’s guidelines should also be updated to clarify the rules regarding matching funds across these programs. Lastly, for grant programs that cannot be used as matching funds for other agencies’ programs that support coal-impacted communities, these rules should be changed where allowable under existing federal law.

³Educational resources and workshop information from the Kentucky EEC is available here: eec.ky.gov/Natural-Resources/Mining/Abandoned-Mine-Lands/Pages/AMLER_Program.aspx and a map of funded projects is available here: kygis.maps.arcgis.com/apps/dashboards/1003aa4989274a389c59ee0e4bd66d9a

⁴Though Ohio DNR has played this vital role throughout the program’s history, DNR staff has recently indicated that they plan to no longer provide this support because of increasing staff capacity limitations and the growing AML program. Staff capacity constraints are likely to present problems for most state and tribal programs in the near term. Many of the recommendations in this document can help to improve application quality and streamline the AMLER program and thus reduce pressure on AML program staff.

⁵Virginia Department of Energy AMLER Scoring Matrix. reclaimingappalachia.org/wp-content/uploads/2022/02/VE-AML-Pilot-Project-Scoring-Matrix.pdf



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Create a more transparent project selection process. The OSMRE AMLER Program guidance provides little to no direction for project selection processes and thus these processes vary greatly across state and tribal programs. In addition, in some programs these funds have become highly politicized. To ensure that the projects that are most likely to meet the intended goals of the program are funded, we recommend that OSMRE require:

A clear, standardized evaluation process that includes a scoring matrix. The grant review and selection process is not consistent across states and tribes. In Kentucky and West Virginia, for example, the only guidance used to evaluate applications is the federal guidelines document produced by OSMRE, but this document provides no weighted or ranking criteria that can be used to evaluate applications. The Virginia Department of Energy, on the other hand, has developed a project scoring matrix.⁵ Each proposed project is graded based on its expected outcomes, impact indicators, partnerships, funding sources, reclamation activities, populations served, completeness of project plans, and general innovation. It is important for the states and tribes to develop such protocols for evaluation in order to set clear expectations for project applicants, provide a score from which applicants whose projects are not funded can better understand their project's weaknesses in meeting program objectives, and to assure the public that projects are selected based on merit and promise of success. This would help ensure that project selection is truly objective and minimize local- and state- level political influence on

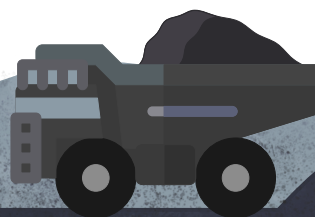
Set up practices that would promote strong community vetting and approval of projects. In order to increase opportunities for communities near the selected project to voice concerns or support for the project, we recommend that after the state has made initial project selections but prior to those applications being sent to OSMRE for vetting, that there is an opportunity for a public hearing. There is existing legislative language on "stakeholder collaboration" in the RECLAIM Act (H.R. 1733) that has been widely vetted by community stakeholders that could be a model for this process.

That projects be selected with input from both state/tribal agency AML program staff and local and regional economic development professionals. In some states/tribes, the AML program director recommends which projects should be selected, whereas in others, the AML program staff only determines which projects are eligible for funding. For these programs, the governor or a panel of elected officials and regional planners make final funding decisions. In order to ensure that projects are both consistent with regional and local economic development plans and meet the baseline requirements of the grant program, both AML program staff and local, regional, and/or state economic development professionals should participate in the decision-making process for project selection.

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Take steps to ensure that more projects have a reclamation component and that AMLER funds are used to create a unique and needed funding niche in coal-impacted communities. We recommend that OSMRE publicly track the amount of grant money that goes towards reclamation compared to economic development, and offer guidance requiring:

That more projects include a reclamation component (funded by AMLER or other AML funds) associated with priority 1, 2, or 3 sites. To encourage projects on sites that require reclamation, states should facilitate the use of Infrastructure Investment and Jobs Act (IIJA) or AML funds for applicants such that IIJA or AML funds can be used for the reclamation component and AMLER funds can be utilized for the economic development component. To ensure that this requirement does not inhibit the ability to spend funds in a timely manner, a waiver process could be created for states that do not receive any applications for these types of projects. The RECLAIM Act (H.R. 1733) provides model language for a waiver process: if a project with an economic development component cannot be identified, state programs would be permitted to apply for a waiver that would permit the use of funds on regular AML remediation projects. In the case of AMLER, the waiver language would be reversed such that states could apply for waivers to fund projects without direct reclamation components if no such projects were submitted by applicants.



Applicants should be required to justify why their project should be funded by AMLER as opposed to other available grants and loans. For example, waterline or water system projects, though needed, could qualify for funds through other state and federal funding programs like the Drinking Water State Revolving IFund. We suggest that applicants be required to explain in their project proposal why AMLER funds should be used for these kinds of projects rather than other funding sources that are unique to those types of brick and mortar infrastructure demands. OSMRE should coordinate with the IWG to use its new federal funding clearinghouse to identify other available sources of funding that might be better suited to support infrastructure projects.

7 Create program review requirements that will encourage new stakeholders and partners, and require justification for repeat awards. In some state programs, stakeholders have observed that single projects have been awarded funds in more than one grant cycle and that there are grantees that have received awards more than once for different projects. This occurs in spite of the fact that this program is highly competitive and there are significantly more requests than available funds. In order to assure the public that these projects are undergoing fair and rigorous review and that these repeat grantees continue to have the most deserving projects based on merit, we recommend:

- the creation of the aforementioned criteria document to be used for application evaluation;
- the opportunity for community hearings after the state has selected projects for funding but prior to submitting those projects to OSMRE for full vetting;
- that OSMRE consider the application development model historically used in Ohio. Because DNR has been responsible for estimating the engineering costs and projected impacts for all projects, the proposed projects are evaluated on equal footing because very similar metrics and models are used for each project.
- that the state and tribal programs report the impacts of the funded projects, to date, and share those impacts widely with the public as soon as possible.

8 Provide additional guidance to states and tribes on the redistribution of previously awarded AMLER funds for failed projects. As with any grant program, projects sometimes stall or fail for unexpected reasons, leaving unspent funds on the table. This has happened at a significant scale with the AMLER Program. In West Virginia, for example, it is estimated there is approximately \$100 million in unspent funds that have been awarded to projects that have been authorized by OSMRE but are not progressing. We recommend that OSMRE establish a process for evaluating whether or not projects are progressing and offer guidance to state and tribal programs regarding how to redistribute funds that were awarded to projects that have not made significant implementation progress in 2 or more years.



9 Increase AMLER Program transparency with regular public reports. Throughout the history of the program, OSMRE has only published one report about the AMLER Program covering FY 2016-FY 2019. OSMRE should provide annual public reports about the program including the following information:

A list of AMLER projects that received AMLER grants for each funding year, including project applicant, project description, and awarded funding level.

A summary of the process used by each state/tribe to solicit, develop and select projects.

Current status of each AMLER project, including:

- AMLER funding amount requested and actual amount received, and how much of each amount is dedicated for reclamation compared to other project expenses
- All other funding sources leveraged (e.g., in-kind services, private contributions, AML grants)
- Total amount expended on the project to date and the amount expected to be spent
- Project partners
- Economic benefits/performance measures accomplished to date
- Expected benefits/outstanding performance measures to be accomplished and timelines for completion
- The status of any real property purchased for AMLER-approved activities.

10 OSMRE should increase the funding level requested in its FY23 budget to expand the AMLER Program. In spite of the recommendations for improvement that we have

developed, it is important to emphasize the positive impacts of this program. The program has undoubtedly resulted in new economic activity, jobs, and wages for communities grappling with economic transition. Given these positive benefits and the administration's dedication to communities impacted by the energy transition away from coal, we urge OSMRE to consider including within their FY23 budget request an increase for AMLER Program funding such that the program can be expanded to states beyond Appalachia. These funds should be available for all disadvantaged communities across the nation who are confronted with AML problems and transitioning coal economies.



The Reclaiming Appalachian Coalition (RAC) is a multi-state coalition comprised of Appalachian Voices, Coalfield Development Corporation, and Rural Action, with technical assistance and added capacity provided by Downstream Strategies. RAC provides expert resources to

Appalachian coalfield communities to identify, develop, and fund innovative projects on former mine sites while supporting the growth of a regional community of practice and advocating for a more just and equitable implementation of federal funds through AMLER.

The Appalachian Citizens' Law Center (ACLC) is

a nonprofit law firm that fights for justice in the coalfields by using a high-impact three-pronged strategy for change: litigation, advocacy, and organizing.

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