

F. APPLICANT ELIGIBILITY

F.1 Who is eligible to apply for a Brownfields Grant?

CERCLA, as amended by the 2002 Small Business Liability Relief and Brownfields Revitalization Act and the 2018 BUILD Act, defines entities eligible to receive grants, based on the type of grant requested:

- *Multipurpose Grants, Community-wide Assessment Grants, and RLF Grants** – eligible entities include:
 - State, local, and tribal governments (with the exception of Indian tribes in Alaska), a range of government entities, including general purpose units of local governments, land clearance authorities or other quasi-governmental entities operating under the supervision and control of, or as agents of local governments, governmental entities; or redevelopment agencies created or sanctioned by a state; and regional councils of governments.
 - Alaska Native Regional Corporations and Alaska Native Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community.
 - Nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code.
 - Limited liability corporations in which all managing members are 501(c)(3) nonprofit organizations or limited liability corporations whose sole members are 501(c)(3) nonprofit organizations.
 - Limited partnerships in which all general partners are 501(c)(3) nonprofit organizations or limited corporations whose sole members are 501(c)(3) nonprofit organizations.
 - Qualified community development entities as defined in section 45D(c)(1) of the Internal Revenue Code.

RLF Grants* – Only eligible entities who **do not have or **are not part of** (i.e., a coalition member) an open cooperative agreement for a Brownfields RLF at the time of application may apply for funding in the FY23 competition.

- *Assessment Coalition Grants* – eligible entities include:
 - State.
 - County government.
 - Indian tribe other than in Alaska.
 - Alaska Native Regional Corporations and Alaska Native Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community.
 - Regional council established under a governmental authority (e.g., regional planning commissions).
 - Group of general purpose units of local government established under Federal, state, or local law (e.g., councils of governments) to function as a single legal entity with authority to enter into binding agreements with the Federal Government.
- *Community-wide Assessment Grants for States and Tribes* – eligible entities include:
 - State.

- Indian tribe other than in Alaska and Intertribal Consortia, comprised of eligible Indian tribes.
- Alaska Native Regional Corporations and Alaska Native Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.
- *Cleanup Grants* – include those eligible entities identified above for Multipurpose Grants, Community-wide Assessment Grants, and RLF Grants as well as “other nonprofit organizations.” The term *Nonprofit organization* is defined in [2 CFR § 200.1](#) as any corporation, trust, association, cooperative, or other organization (including institutions of higher education) that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest and is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization even if the organization is not exempt from taxation under 501(c)(3).
- Individuals, for-profit organizations, and nonprofit organizations exempt from taxation under section 501(c)(4) that lobby are not eligible for Brownfields Grant funding from EPA.

F.2. Added on 10/20/22: How does the Brownfields Program determine if an entity is an agency or instrumentality or affiliated with another entity?

Based on the IRS guidance, the Brownfields Program may use the following factors (among others) to determine if an entity is an agency or instrumentality or affiliated with another entity:

- Is the applicant’s organization staffed primarily/entirely by city employees?
- How independent is the applicant from control by the Mayor? In other words, does the applicant’s Board or someone from the City acting on behalf of the Mayor make decisions on what federal grants the applicant will apply for and, if successful, how the grants will be carried out?
- Even if the applicant and the City have different UEI numbers, does the City’s accounting department draw down federal funds via ASAP and use those funds to directly pay the applicant’s contractors or other grant-related expenses?
- Are contracts or subawards financed with federal funds between the applicant and the third party or between the City and the third party?

F.3. Are nonprofit organizations eligible for Brownfields Grant funding?

Yes, nonprofit organizations are eligible to receive Brownfields Grant funding. Per the BUILD Act of 2018, nonprofit organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code, including certain limited liability corporations, and qualified community development entities as defined in section 45D(c)(1) of the Internal Revenue Code of 1986 are eligible to receive Brownfield Multipurpose, Assessment, Cleanup, and Revolving Loan Fund Grants. Other nonprofits that are not tax exempt under section 501(c)(3) that meet the definition of *Nonprofit organization* at [2 CFR § 200.1](#) are also eligible for Cleanup Grants, cleanup subawards (both subgrants and loans), and grants for training, research, and technical

assistance under CERCLA § 104(k)(7).

F.4. Added on 9/26/22: Is non-profit organization that does not have a 501(c)(3) Federal tax-exempt status eligible for a Brownfields Grant?

Such an entity is only eligible for a Cleanup Grant. Applicants must provide documentation that the organization is recognized as a non-profit organization under state law. There is no requirement for Federal tax-exempt status in the definition of Nonprofit in 2 CFR § 200.1.

Having 501(c)(3) Federal tax-exempt status is, however, required for nonprofits to be eligible for Multipurpose, Assessment, and RLF Grants because only “eligible entities” as defined in CERCLA § 104(k)(1) are eligible for those grants. Further, Congress specified in CERCLA § 104(k)(1) that only nonprofits with 501(c)(3) status are “eligible entities.”

F.5. Are Indian tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfield Grant funds to pay for response costs at a site for which they are potentially liable under CERCLA § 107?

EPA has not considered Indian tribes to be liable as PRPs under CERCLA because tribes are not included in the CERCLA definition of “person.” Therefore, tribes are not subject to the statutory prohibition. Applicants should contact their Regional Brownfields Contacts for additional information.

F.6. Are Federally Recognized Tribes in Alaska eligible for competitive grant funding?

No, only Indian Tribes other than those located in Alaska are eligible for competitive grant funding. However, Alaska Native Regional Corporations, Alaska Native Village Corporations, and Metlakatla Indian Community are eligible for competitive grant funding. Alaska Native Regional Corporations and Alaska Native Village Corporations are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following). For a listing of these corporations, please see the following websites. Please note that the U.S. government does not maintain these websites and is not responsible for their content or accuracy.

[Alaska Department of Natural Resources - Alaska Native Region - Village - Corporation Index](https://dnr.alaska.gov/mlw/trails/17b/corpinde.htm)
dnr.alaska.gov/mlw/trails/17b/corpinde.htm

[National Congress of American Indians - Alaska Native Corporations](https://www.ncai.org/tribal-directory/alaska-native-corporations)
www.ncai.org/tribal-directory/alaska-native-corporations

[University of Alaska Anchorage Justice Center](https://www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/)
www.uaa.alaska.edu/academics/college-of-health/departments/justice-center/