

June 13, 2022

Secretary Deb Haaland
Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Deputy Director Glenda Owens
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Ave., NW
Washington, DC 20240
Submitted via electronic mail to: getinfo@osmre.gov

RE: Draft Guidance for Abandoned Mine Lands (AML) Funds under the BIL

To the Secretary of the Interior Deb Haaland and Deputy Director Glenda Owens:

We, the undersigned organizations, respectfully submit the following comments regarding the Draft Guidance for the implementation of the Abandoned Mine Land (AML) funds under the Bipartisan Infrastructure Law (BIL) of 2021. The BIL represents not only a historic investment in mine cleanup but includes critical updates and improvements to the longstanding program.

Historically, implementation of the AML program has not prioritized workforce impacts. President Biden has called for “good, union jobs” under the BIL, and the Draft Guidance represents a shift in the AML program to include the AML workforce as a key stakeholder in implementation and toward prioritizing job quality and other workforce components as core to the program. Many of the provisions in the Guidance will help the Department of the Interior recruit and maintain a skilled reclamation workforce, pay workers fairly and protect their rights, lower costs across agencies, and level the playing field for workers and contractors competing for AML contracts. We are encouraged by the inclusion of these workforce-related aspects of the Draft Guidance, and we offer recommendations here regarding aspects of the Guidance we think merit further clarification or detail. We have organized our comments by topic as outlined in the Draft Guidance. Our comments draw on a previous [set of recommendations](#) shared with the Department of the Interior regarding the program earlier this year.

As the Department of the Interior (DOI) embarks on this new phase in the AML program, we would like to offer our support and expertise. The signatories of this letter stand ready to help in solving problems that may stand in the way of cleaning up the nation’s abandoned coal mines and creating good, union jobs in so doing.

Regards,

International Brotherhood of Electrical Workers (IBEW), Third District
International Union of Operating Engineers (IUOE), Local 66
Jobs with Justice, East Tennessee
Kentucky State Building and Construction Trades Council
Laborers’ International Union of North America (LiUNA), Mid-Atlantic Region
Ohio AFL-CIO
Ohio River Valley Institute
Relmagine Appalachia
Statewide Organizing for Community eMpowerment
WV Appalachian Laborers' District Council

I. Regarding Davis-Bacon Regulations and Enforcement

<p>Text of Draft Guidance</p>	<p>Section V, page 6.</p> <p>The BIL requires that all laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project 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.</p>
<p>Comments</p>	<p>A substantial body of economic research and federal and state government experience suggests that payroll fraud in the construction industry is widespread and that violations of federal and state prevailing wage laws are pervasive. Ormiston et al. (2020) estimate that in 2017 “between 12.4% and 20.5% of the construction industry workforce [across the US] were either misclassified as independent contractors or working ‘off-the- books’ ... These actions inflict substantial harm on workers, who fail to receive overtime pay and are denied their legal rights to earned unemployment insurance, workers compensation, Social Security and Medicare benefits.” Through payroll fraud, employers were able to save, conservatively, an estimated \$6.23 billion in wages, benefits, and contributions to social insurance programs in 2017.</p> <p>Publicly funded federal and state construction work are not immune from fraudulent practices, including benefit fraud among contracts subject to prevailing wage regulations. On prevailing wage contracts, it is not uncommon for unscrupulous contractors to engage in fraud by claiming that they are providing the level of fringe benefits that are legally owed under prevailing wage laws while the actual costs to the employer for those fringe benefits are lower than what the contractor claims. (See McClatchy for an investigative series that outlines illegal employment practices on publicly funded construction projects; see Waddoups et al. (p14, 2021) and Ormiston and Juravich (p7, 2022) for examples of prevailing wage fraud on public construction projects in Nevada and Rhode Island, respectively; see Economic Policy Institute (2021) for a handful of prominent cases related to cheating on fringe benefit requirements, failing to pay required prevailing wages, falsifying records and underpaying workers, and demanding kickbacks of money back from workers; another prominent case involves Glenn O. Hawbaker, Inc., which in 2021 was sentenced by the Pennsylvania Attorney General regarding the wage theft of \$21 million in fringe benefits from its employees.)</p> <p>In light of the prevalence of payroll fraud in the construction industry and the risks of prevailing wage non-compliance, we support including provisions in the Guidance related to the enforcement of Davis-Bacon prevailing wage and benefit standards to AML reclamation as required by law. Given that applying Davis-Bacon prevailing wage regulations to AML contracts will be new for AML agencies, it will be important to ensure that the regulations are enforced effectively and across all of the AML programs. Historically, when agencies begin to implement Davis-Bacon regulations for the first time, it is not uncommon for staff to lack experience in dealing with enforcement (for example, how to handle reports of Davis-Bacon violations). In addition to the language included in the Draft Guidance, we recommend:</p> <ol style="list-style-type: none"> 1. In order to clearly outline the rights and responsibilities of agencies under the Davis-Bacon Act, we recommend including the following text from DOL Fact Sheet #66A directly in the Guidance:

"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 CFR 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 CFR 5.6."

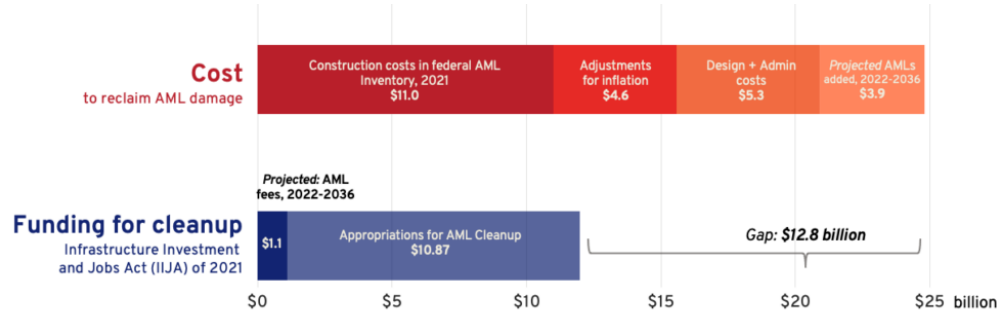
2. **We recommend that DOI require state and tribal AML programs forward certified payrolls and other documents related to meeting the requirement of sufficient monitoring of Davis-Bacon enforcement to DOI.** Maintaining a national database on the occupations, wages, and fringe benefits under AML contracts will enable DOI to identify and track trends in the AML reclamation workforce, such as regional gaps in certain occupations. These insights will enable DOI and AML agencies to more effectively develop and maintain a skilled workforce as well as help fulfill DOI's reporting requirement to Congress as it relates to the workforce aspects of the program (the BIL requires the Department of Interior to deliver a report on the AML program within six years of the first BIL AML grant allocation).
3. **We recommend that DOI require directors or other relevant officials of AML agencies certify that they have attended a Department of Labor-sponsored training on Davis-Bacon enforcement or have previous experience with Davis-Bacon enforcement.** OSMRE could streamline this process by working with the Department of Labor to develop a training course customized for AML agencies. According to the OSMRE Federal Assistance Manual (see Chapter 4-210), OSMRE currently reviews annual AML grant applications to ensure that applicants are not debarred or suspended from federal assistance, to ensure that applicants are in compliance with audit requirements, and to "assess the risks associated with awarding [the applicant] a grant." Certifying that officials are trained to enforce Davis-Bacon requirements will help OSMRE verify that the applicant is prepared to spend federal funds under the BIL and will help OSMRE lower the risk of wages or fringe benefits being stolen under BIL AML contracts due to poor enforcement.
4. **We recommend that DOI clarify that state and tribal reclamation plans should be updated for Davis-Bacon enforcement** (this could be added in Section III on page 3 of the Draft Guidance). This should include plans for a sufficient monitoring system for Davis-Bacon enforcement (as required by law) and plans to ensure that relevant officials stay informed of the latest in Davis-Bacon enforcement (such as new rulemaking or other applicable federal guidelines as/if they change over time).

	<p>5. We recommend that DOI encourage states and tribes to use an active monitoring system. An active monitoring program helps verify that workers know their rights, aren't being lied to by their employer, and are actually being paid what the contractor is reporting to the AML agency. For example, the Pennsylvania Department of Transportation uses a monitoring system that directly surveys workers on a monthly basis (which is then compared with certified payroll data provided by the contractor, to ensure compliance).</p> <p>6. We recommend that DOI encourage states and tribes to establish protocols for routinely communicating with the public about Davis-Bacon violations, such as by issuing a press release if a contractor violates the Davis-Bacon provisions under a BIL AML contract. Recent research (2020) by Matthew Jonhson in the <i>American Economic Review</i> found that when the Occupational Safety and Health Administration published a press release of a health and safety violation it "led other facilities to substantially improve their compliance," suggesting that if AML agencies routinely publicize Davis-Bacon violations it is likely to improve compliance across the program.</p> <p>Payroll records, on-site monitoring and interviews with workers, and publicity about companies convicted of violating standards are all necessary to achieve the Congressional goal on AML of enforcement of standards. In addition to the efficiency and skill benefits of aggregating AML work and using Project Labor Agreements to attract more large, experienced bidders as outlined below, contracting with unions and using PLAs has the advantage of ensuring compliance with Davis-Bacon prevailing wage and benefit standards.</p>
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II. Regarding Project Aggregation

Text of Draft Guidance	<p>Section III, page 4.</p> <p>In carrying out their programs with BIL AML funding, OSMRE encourages States and Tribes to: ...</p> <ul style="list-style-type: none"> ● 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;
Comments	<p>Encouraging state and Tribal agencies to aggregate (or, "bundle") more AML projects—by similar problem type and geography—into larger contracts (at least \$1 million) can lower reclamation costs and time. It can also help attract bids from more (larger)—and union—contractors, while continuing to provide a portion of work for smaller contractors who have historically done AML construction.</p> <p>The BIL represents the largest investment in mine cleanup ever, but it is still unlikely to address all remaining AML damage. According to an estimate by the Ohio River Valley Institute, the BIL investments will address half of the approximately \$25 billion in remaining damage. So, in spite of the large increase in funding, there remains a need to keep reclamation costs low in order to clean up the most damage possible with limited funding—especially given that reclamation costs likely increase over time as sites deteriorate.</p>

Figure 1. BIL AML investments compared to projected AML costs



Bundling similar construction projects in a similar geographic area is a common practice among transportation agencies across the country, and is [promoted by the US Department of Transportation](#) as a proven cost- and time-savings tool. Bundling contracts to include multiple AML projects of the same problem type in a similar geographic area could achieve cost savings through economies of scale, as has been achieved by other agencies. For example, the [Pennsylvania Department of Transportation bundled](#) the rebuilding, replacement, or removal of 67 county-owned structures in five geographic districts for \$33 million, saving up to 50% on design and up to 15% on construction. By bundling 2-3 bridges per contract, the [Ohio Department of Transportation](#) was able to complete 210 bridges with a \$110 million budget, 10 more bridges than expected (some cost savings may have been realized by bundling 100 or more of the bridges together for financing).

Bundling projects would also increase the speed at which projects could be completed by decreasing both construction time and design/administration time per project. Departments of Transportation across the country [report](#) time savings through bundling programs, as well as multiple cases where projects were finished ahead of schedule. By designing and permitting multiple like-projects in succession, bundling could decrease the time that designers and environmental scientists at AML agencies spend per project.

With BIL investments, total AML grants to states and tribes in 2022 will increase by 271% on average relative to 2021 [the annual percent increase ranges from 22% (Wyoming) to 781% (Illinois)]. Given the drastic increase in the demand for AML construction services, increased supply is necessary. Raising the dollar value of AML contracts through bundling will help attract contractors that are not interested in most AML contracts at their current size. Bundling will also require fewer contractors overall because multiple projects can be addressed with one contract.

Bundling could also help attract bids from contractors with unionized workforces. Though it is difficult to ascertain the specific degree of union density among AML contractors nationwide, there is reason to believe it is lower than the construction industry on average. Only a handful of contracts in Pennsylvania in 2019-21, for example, were awarded to union contractors, and the rate is likely lower or perhaps even zero in states like Kentucky. [The exception is in Illinois, where a state law requires many AML contracts be secured through Project Labor Agreements.]

Despite variation across states, many AML contracts as they are currently procured are much too small to garner the interest of union contractors, according to recent conversations with unions and union contractors in the Ohio River Valley. According to Ohio River Valley Institute and Appalachian Citizens' Law Center, AML contracts in Kentucky ranged from \$750 to \$1.6 million (median: \$46,000; average: \$130,000) in 2020-2021. AML contracts in Pennsylvania ranged from \$38,000 to \$26 million (median: \$390,000; average: \$1.6 million) in 2019-2021.

Using some of a state or tribe's AML budget on bundled contracts could help attract bids from union contractors. Circumstances and market conditions vary by state and region, impacting what union contractors consider large enough to be worth bidding on. For union contractors in more competitive markets, such as southwest Pennsylvania, a threshold of at least \$1 million appears to be a lower bound in terms of attracting union contractors—and they may need contracts upwards of \$3 to \$10 million in order to be attracted to bid. In other places like Kentucky, some smaller union contractors may not require projects that large in order to bid.

In light of the benefits of bundling and as permitted in statute, we support encouraging AML agencies to bundle projects in the Final Guidance. In addition to the language included in the current draft, we recommend:

7. **We recommend that DOI clarify that state and tribal reclamation plans should be updated to use bundling where applicable** (this could be added in Section III on page 3 of the Draft Guidance). Though bundling will not be applicable for many projects, working with AML agencies to operationalize in their reclamation plan a process for formally considering bundling (for similar projects in the same geography) can help ensure that cost savings are maximized.
8. **We recommend that DOI require grant applicants to explain how they plan to lower costs through bundling under the grant** (this could be added in the list in Section IV on pages 5-6 of the Draft Guidance). Per the Draft Guidance, applications will include in each grant application a description of each proposed project, the prioritization process for the selection of each project, and the benefits of each project. Along these lines, applicants should also enumerate plans for how they plan to aggregate some of these projects to lower costs and save time. Providing cost estimates of each project may be difficult because engineering plans are unlikely to be completed at this stage in the process, but applicants could at least be given the opportunity to explain which projects they are planning to bundle and the general expected benefits.
9. **We recommend that DOI require a state or Tribe to provide an explanation in each grant report in the event that a state or Tribe did not bundle any projects in a given year.** In each annual grant report, a state or tribe could a) certify that it bundled at least one project and considered bundling for applicable projects, *or* b) if it did not bundle any projects it should provide an explanation, especially with regard to cost savings.

III. Regarding Apprenticeship and Pre-Apprenticeship

<p>Text of Draft Guidance</p>	<p>Section III, page 4.</p> <p>In carrying out their programs with BIL AML funding, OSMRE encourages States and Tribes to: ...</p> <ul style="list-style-type: none"> ● Support pre-apprenticeship, registered apprenticeship, and youth training programs that open pathways to employment; and
<p>Comments</p>	<p>According to the Illinois Economic Policy Institute, “Registered apprenticeships are training programs in which participants get the opportunity to ‘earn while they learn,’ with tuition costs covered by employers and labor-management organizations who gain access to a pool of skilled, productive, and safe workers.” Linking AML contracts with the utilization of workers who have come through apprenticeship programs can both help address the workforce needs of the new program and provide on-ramps to the AML construction industry for local residents.</p> <p>Given the DOI’s out-sized role in AML construction (federal grants fund 100% of AML construction costs in most states), DOI should take steps to ensure that increased AML investments can be met by a corresponding increase in AML construction supply, especially in terms of a qualified workforce. With the 271% increase in annual AML funding under BIL, some agencies are concerned about securing the workforce necessary to meet this increase in AML construction demand. Growing relevant apprenticeship programs are among the most effective ways to grow the AML construction workforce in regions with significant AML damage. And joint apprenticeship programs are directly linked to an employer, so workers get paid while they train to become AML construction workers and AML contractors have a skilled pool of workers.</p> <p>According to a report from the Illinois Economic Policy Institute, “Joint labor-management apprenticeship programs are the bachelor’s degrees of the construction industry, delivering training hours, diversity outcomes, competitive earnings, and positive social and fiscal effects that rival universities and community colleges.”</p> <p>By incentivizing the growth of apprenticeship programs for AML construction careers, DOI can help create new pathways out of poverty for people in regions with AML damage. ILEPI found that “The annual income gain from participating in a registered apprenticeship program [in Illinois] is greater than the effect of having an associate’s degree, as well as many bachelor’s degrees.” ILEPI also claims that joint (employer-union) apprenticeship programs include a higher percentage of people of color than employer-only apprenticeship programs, underlining their potential to open up new opportunities to people of color.</p> <p>In light of the benefits of apprenticeship and pre-apprenticeship programs, we support encouraging AML agencies to support pre-apprenticeship, registered apprenticeship, and youth training programs. In addition to the language included in the Draft Guidance, we recommend:</p> <ol style="list-style-type: none"> 10. We recommend that DOI clarify that state and tribal reclamation plans should be updated to include routine consultation with unions, other labor organizations, and contractors about apprenticeship and pre-apprenticeship programs relevant to AML construction (this could be added in Section III on page 3 of the Draft Guidance). This sort of routine engagement and planning alongside unions can provide the certainty

	<p>and stability that employers and unions need to grow existing and new apprenticeship programs specific to AML construction occupations.</p> <p>11. We recommend that DOI require states and Tribes to report per project a) the number of jobs hours completed by apprentices and b) the share of a contract spent on supporting pre-apprenticeship programs and related support services (e.g., purchasing tools or boots, mentoring). Tracking the number of job hours worked by apprentices will enable AML agencies and DOI to understand a) the extent of apprenticeship utilization on AML projects, and b) trends in apprenticeship utilization by region and over time. With this data, AML agencies and DOI can better anticipate future gaps in qualified AML reclamation workers by region, and inform planning to address such needs. It will also help fulfill DOI’s reporting requirement to Congress as it relates to the workforce aspects of the program (in particular it can help DOI understand to what extent AML investments are creating new pathways to employment in struggling coal regions).</p> <p>Job hours worked by apprentices could be reported per project in e-AMLIS or per project in annual grant reports. Pre-apprenticeship and related support services help workers outside the construction industry access new careers. Encouraging a small percentage of a contract with apprenticeship utilization to be spent on pre-apprenticeship and support services can help ensure these new careers are accessible. Tracking pre-apprenticeship spending can help AML agencies and DOI understand what areas may need more programs or resources to make AML construction jobs more accessible.</p> <p>12. We recommend that DOI clarify that states and Tribes should explain plans for promoting apprenticeship and pre-apprenticeship utilization in annual grant applications (this could be added in the list in Section IV on pages 5-6 of the Draft Guidance). The Draft Guidance does require grant applicants to include “Plans for promoting workforce training and development, including how activities encouraged under Section III will be implemented...” We recommend that DOI clarify this section by explicitly listing the promotion of apprenticeship and pre-apprenticeship as aspects that grant applicants should speak to in their applications. Applicants could outline programs or planned outreach to unions and employers regarding apprenticeship utilization for applicable projects under the grant.</p>
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IV. Regarding Project Labor Agreements and Workforce Continuity Plans

<p>Text of Draft Guidance</p>	<p>Section IX, page 9.</p> <p>For projects or aggregated projects in excess of \$1 million, States or Tribes may provide a certification that a Project either uses a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). In lieu of such certification, the Recipient may develop a project workforce continuity plan, detailing:</p> <ul style="list-style-type: none"> • How the State or Tribe will ensure the Project has 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
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	<p>in-house training, registered apprenticeships or labor-management partnership training programs, and partnerships like unions, community colleges, or community-based groups;</p> <ul style="list-style-type: none"> • How the State or Tribe will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project; • How the State or Tribe will provide 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 will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; • Whether the Project has a Community Benefit Agreement, with a description of any such agreement; and • Whether the Project prioritizes local hires. <p>These plans should maintain sufficient records to substantiate this information upon request.</p>
<p>Comments</p>	<p>Project Labor Agreements (PLAs) are already used on many AML contracts in Illinois where state law requires them for public construction projects. The Illinois AML Reclamation Division and state procurement agencies work with the Illinois AFL-CIO and the Building Trades Council in the region where the project is located to secure a PLA and contractor for eligible projects. However, this practice is not yet widespread across the states and Tribes with AML programs.</p> <p>The White House underlined the benefits of PLAs in a recent executive order requiring PLAs on federal construction projects above \$35 million. Given the federal government’s out-sized role in AML construction (federal grants fund 100% of AML construction costs in most states), the AML program presents a particular opportunity for the federal government to lower the dollar threshold for which to utilize PLAs on construction projects. Recent reports by Reimagine Appalachia and the Economic Policy Institute outline the cost, pay, and quality benefits of PLAs, which are used extensively across the country. By addressing coordination challenges and uncertainty in the contracting process that can be associated with large construction projects, PLAs could help lower costs on both the administration and the construction side. Using PLAs on large projects would also increase the likelihood that union workers would complete a significant share of AML construction.</p> <p>In light of the benefits of PLAs and apprenticeship utilization (as outlined above), we strongly support DOI requiring states and Tribes to either certify each AML contract in excess of \$1 million will use a unionized workforce/PLA or that the state or Tribe provide a workforce continuity plan for that contract. Community Benefit Agreements (CBAs) and local hiring preferences can help ensure that the direct and indirect benefits of AML reclamation are shared broadly throughout struggling coal regions and workers affected by the coal industry’s downturn. In lieu of a PLA or unionized workforce, enumerating a workforce continuity plan can help ensure that AML reclamation workers are not subject to unsafe or unhealthy working conditions and that they are paid fair wages and benefits; it could also help ensure that the project is completed on-time by minimizing labor disputes and that a skilled workforce is secured for the project.</p> <p>In addition to the language included in the Draft Guidance, we recommend:</p>

	<p>13. We recommend that DOI clarify that—for projects in excess of \$1 million—either a pre-hire collective bargaining agreement or a workforce continuity plan is required; this could be clarified by replacing “may” with “must” in both instances in the following section of the Guidance:</p> <p>“For projects or aggregated projects in excess of \$1 million, States or Tribes may must provide a certification that a Project either uses a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). In lieu of such certification, the Recipient may must develop a project workforce continuity plan, detailing:</p>
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V. Regarding Hiring Preference for Coal Sector Workers

Text of Draft Guidance	<p>Section III, page 3.</p> <p>Under Section 40701(f) of the BIL, States and Tribes should prioritize projects that provide employment opportunities to current and former employees of the coal industry, and OSMRE will work with States and Tribes to incorporate such prioritization into their reclamation plans. Measures to implement these priorities include: (1) requiring contractors to affirm they will give preference to miners in any hiring for BIL-funded AML projects; (2) requiring contractors to report on the extent to which miners 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) priority, States and Tribes should engage with 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.</p> <p>Section III, page 4.</p> <p>In carrying out their programs with BIL AML funding, OSMRE encourages States and Tribes to:</p> <ul style="list-style-type: none"> • Utilize procurement processes that incentivize AML contractors to hire miners when bidding on BIL-funded AML projects and require the collection of information from AML contractors on the number of former and current miners they employ; <p>Section IX, page 9.</p> <p>As discussed above, States and Tribes should engage with 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) priority and provide OSMRE with certifications of this engagement.</p>
Comments	<p>In pursuit of ensuring that the benefits of AML reclamation are experienced by workers impacted by the decline of the coal sector, Section 40701(f) of the BIL states “priority may also be given to reclamation projects ... that provide employment for current and former employees of the coal industry.” The Draft Guidance refers to this provision in three instances, in some instances referring to the target group as “miners” and in other instances referring to the target group as “current or former employees of the coal industry.”</p>

	<p>14. We recommend that DOI clarify guidance around Section 40701(f) by referring uniformly to “current and former employees of the coal industry” throughout the Guidance. Former and current coal industry employees are not limited to miners, and may include construction workers and others who perform work in and around a mine or for the industry.</p>
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VI. Regarding Data Reporting

Text of Draft Guidance	<p>Section X, pages 10-11.</p> <p>In order to enable robust reporting, States and Tribes are expected to track the following types of benefits that can be measured and reported:</p> <p>AML Reclamation Environmental Benefits</p> <ul style="list-style-type: none"> • 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 <p>AMD Remediation Project Benefits</p> <ul style="list-style-type: none"> • 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 • Number of polluted water supplies addressed • Miles of waterways improved • Volume of water treated • Number of outflows remediated <p>Socio-economic Benefits of BIL AML Projects</p> <ul style="list-style-type: none"> • Percent of overall benefits and types of benefits that accrue to disadvantaged community, community of color, low-income community, or Tribal or Indigenous community; • Number of former/current employees of the coal industry employed in AML reclamation; • Demographics/number of workers from under-represented groups; • Percent of workers from the local community; • If there is a community benefit agreement as part of the project; • Number of project partners involved in AML reclamation projects; • Electric generating capacity of renewable energy facilities installed on reclaimed AML sites; • Number of businesses constructed on reclaimed AML sites, and number of people employed at those sites; • Acres of new recreational facilities constructed; • 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; <p>and,</p> <ul style="list-style-type: none"> • Number of residents within [X] miles of BIL-funded projects.
Comments	<p>We support including new measures for reporting on BIL AML projects, including those listed under in the Draft Guidance. This data will enable AML agencies and DOI to understand the</p>

	<p>labor and socioeconomic impacts of the program across different groups, geographies, and over time – and to update planning and programming based on these insights. It will also help fulfill DOI’s reporting requirement to Congress as it relates to the socioeconomic aspects of the program. In addition to the language included in the Draft Guidance, we recommend:</p> <p>15. We recommend that DOI clarify that reporting for each metric should be done <i>on a project level</i>. By breaking down the reporting of these metrics (in e-AMLIS, annual grant reports, or both) at the project level rather than strictly an annual total reported by each state or Tribe, it will enable analysts at DOI and external researchers to develop a much richer and more insightful analysis regarding workforce and socioeconomic trends. Project level reporting will enable researchers to explore correlation between variables of interest and thus develop more targeted program interventions or improvements over time.</p> <p>16. We recommend that DOI include the following metrics under the reported socio-economic benefits of BIL AML projects.</p> <ol style="list-style-type: none"> a. If the project was bundled b. Estimated cost savings from bundling project (if applicable); an in-house engineer’s cost estimate of standalone project costs could be compared with actual bundled cost to generate estimated cost savings c. Wages and fringe benefits (based on underlying Davis-Bacon reporting) d. Occupations who worked on project (based on underlying Davis-Bacon reporting) e. Number of labor hours worked by apprentices f. Number of labor hours worked by former/current employees of the coal industry g. Number of labor hours worked by employees from under-represented groups h. Number of labor hours worked by employees from local community
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VII. Regarding Irresponsible Contractors

Text of Draft Guidance	<p>Section III, page 3</p> <p>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 to Plan’s compliance with the BIL.</p>
Comments	<p>17. We recommend that as DOI works with states and Tribes to update their AML Reclamation Plans, the Department prioritizes ensuring that operations are in place to verify that unscrupulous contractors are ineligible to bid on AML contracts.</p> <p>Increased AML funding risks attracting unscrupulous contractors who may rush to a new pot of public construction money. Risks from irresponsible contractors can be significant: in 2021, the Pennsylvania Attorney General sentenced Glenn O. Hawbaker, Inc. regarding the wage theft of \$21 million in fringe benefits from its employees.</p>

	<p>Under the current OSMRE Federal Assistance Manual (FAM), states and Tribes must “Make awards only to responsible contractors with the ability to perform successfully” (see FAM section 2-230-20) and states and Tribes must check the Applicant Violator System, or AVS (see FAM Chapter 2-250) and the System for Award Management, or SAM (see FAM Chapter 2-110) to ensure that contractors are not ineligible to bid on AML contracts. DOI should ensure that these protocols are operationalized and effectively enforced in updated reclamation plans, and should take steps to facilitate information sharing among states and Tribes with regards to debarred or irresponsible contractors. For example, Glenn O. Hawbaker, Inc. (the aforementioned firm that has been sentenced in Pennsylvania for \$21 million in wage theft) was in 2021 the apparent low bidder on a \$2.2 million AML reclamation project in Ohio (the “Baileys Trail System - Chauncey” project, or Project Number ATDv26).</p> <p>Without more action to ensure irresponsible contractors cannot bid on AML projects, firms like Hawbaker—a large general contractor that had been awarded \$1.3 billion in contracts from the Commonwealth of Pennsylvania from 2003-2018—could continue to win large AML contracts.</p>
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VIII. Regarding Authorizing Authorities

Text of Draft Guidance	<p>Section I, page 1.</p> <p>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. 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. 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.</p>
Comments	<p>18. In addition to Pub. L. No 117-58 and E.O. 14008, we recommend that DOI include <i>Executive Order 14052, Implementation of Infrastructure Investment and Jobs Act</i> and <i>Executive Order 14025, Worker Organizing and Empowerment</i> as relevant authorities for implementation of the BIL AML program. According to E.O. 14052, Implementation of Infrastructure Investment and Jobs Act all agencies shall prioritize investing BIL money efficiently and equitably, improve job opportunities by focusing on high labor standards, and developing projects that help combat climate change, among other things. E.O. 14025, Worker Organizing and Empowerment, states “it is the policy of my Administration to encourage worker organizing and collective bargaining.” Accordingly, AML projects should be considered for job quality and labor rights, standards, and protections to the full extent possible and consistent with E.O. 14025.</p>