



Training for EPA Pass-Through Grant Applicants, Recipients, and Subrecipients

Office of General Counsel
Office of Grants and Debarment

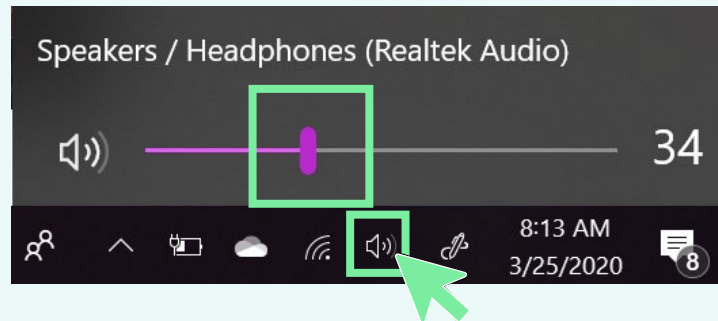
Housekeeping



Meeting Audio

- ✓ Attendees must use **Device Audio** (computer, headset, tablet, or smart phone)
- ✓ Presenter Audio Only (like a TV broadcast)
- ✓ If you cannot hear, ensure your system/device audio is turned up and not muted and that you have not paused the broadcast

Computer audio is located at the bottom right of the Windows desktop.



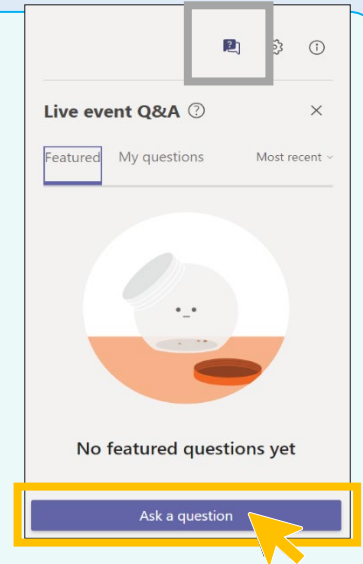
This webinar will be recorded and posted to the EPA Grants website:
<https://www.epa.gov/grants/epa-grants-webinars>



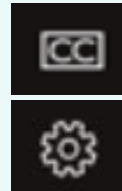
Ask a Question

- ✓ Ask a question under Live Event Q&A panel
- ✓ Click “Ask a question”

Q&A panel is located on the top right side of the Live Event window.

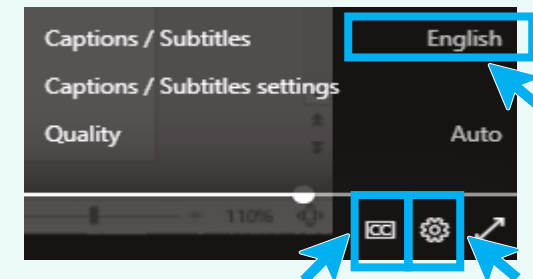


Closed Captions/Translation



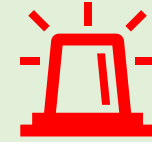
- Turn on/off Live Captions
- Change Settings/Language

CC panel is located on the bottom right side of the Live Event window.





2 CFR 200 Updates



- Effective October 1, 2024
- **Section 200.1 (Definitions):**
 - **Equipment and unused supplies:** Increased threshold from \$5,000 to \$10,000.
 - **Modified Total Direct Costs (MTDC):** Subawards threshold increased from \$25,000 to \$50,000.
 - **Pass-through entity:** Added language to clarify that the authority of the passthrough entity under part 200 flows through the subaward agreement.
- **Section 200.333:** Increased monetary cap for fixed amount subawards from \$250,000 to \$500,000.
- **Section 200.317:** Indian tribes will be allowed to follow their own policies and procedures for procurements and equipment disposition. [*Tribes will be subject to the procurement standards in effect at the time of award].
- **Section 200.319:** Removed existing prohibition on geographic hires in procurement contracts.
- **Section 200.414:** Increased *de minimis* rate for indirect costs from 10 percent to “up to” 15 percent (when allowed by statute and regulation).
- For more information visit: <https://www.cfo.gov/resources/uniform-guidance/>



Subaward Basic Concepts

EPA Subaward Policy

EPA Subaward Policy implements the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (**Uniform Grant Guidance or UGG**) regulatory requirements.

- UGG codifies standards for distinguishing between subawards and contracts at [2 CFR 200.331](#).

The National Term and Condition for Subawards can be found in Appendix B of the EPA Subaward Policy.

EPA grantees must include a number of provisions in subaward agreements and implement systems to monitor and guide subrecipient performance. (Appendix D of the Subaward Policy provides a model agreement).



Policy Attachments

The [EPA Subaward Policy](#) has several appendices, including:

- Appendix A: [Distinctions Between Subrecipients and Contractors](#)
- Appendix B: [National Term and Condition for Subawards](#)
- Appendix C: [Model Programmatic Subaward Reporting Requirement](#)
- Appendix D: [Subaward Agreement Template](#)

Additionally, EPA posted an [EPA Subaward Policy Frequently Asked Questions](#).



What are Subawards?

Subawards are financial assistance transactions between the EPA grant recipient and an eligible subrecipient (or by a subrecipient to a lower subrecipient). This does not include:

- Payments to a contractor.
- Payments to an individual that is a beneficiary or participant in a Federal program.

Profit is NOT allowable.



Subawards and Unique Entity Identifier (UEI)

EPA grant applicants and EPA subawardees are required to obtain (and maintain) a Unique Entity Identifier (UEI).

- This identifier is required by 2 CFR Part 25 and 2 CFR 200.332(a)(1).
- UEIs can be obtained by going to the System for Awards Management at SAM.gov

For potential EPA grantees, in addition to obtaining a UEI, you must also register in SAM.gov

- Registration in SAM.gov is required for any non-federal entity that plans to apply for grants directly from the federal government.
- Registration is not required for entities that will only apply for subawards.

More information about this requirement is available through:

<https://www.epa.gov/grants/rain-2021-g01-r1>, or contact your Grant Specialist for additional information.



Substance of a Subaward

A subaward may be provided by any form of legal agreement, even if the recipient considers it a contract; the *substance* of the agreement is more important than the form.

- See the definition of *Subaward* at [2 CFR 200.1](#) and [EPA's Subaward Policy](#) for more information.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

For example, if EPA receives an assistance agreement application and the applicant has identified funding for a “contract,” EPA will work with the applicant to determine whether the relationship was appropriately categorized as a procurement contract or subaward.



Identifying Procurement Contracts

In contrast to subawards, as provided in [2 CFR 200.331\(b\)](#), procurement contractors (including individual consultants) typically:

- Provide goods and services on commercial terms;
- Provide similar goods and services to many different purchasers;
- Operate in a competitive environment; and
- A reasonable profit is allowable.

Transactions with for profit companies and individual consultants are (with very, very few exceptions) procurement contracts.



Subawards and Partnership Agreements

Q: Does EPA consider all "partnership agreements" that establish funding relationships to be subawards that are not subject to competition?

A: NOPE.

- Transactions are either subawards, procurement contracts, intergovernmental/inter-entity agreements for common procurement, interagency service agreements or services, or participant support costs.
- Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement.



Some recipients refer to their contractors (particularly consultants) as "partners" so the label the recipient places on the transaction is not determinative.



Specific EPA Determinations

The following transactions are generally subawards rather than procurement contracts:

- Between units of government and nonprofit or public institutions of higher education (IHEs) to support training. **Community colleges are IHEs.**
- Between IHEs or between IHEs and units of government or nonprofit organizations, particularly when the transactions relate to training (including technical assistance and public education) or demonstration projects.
- Between nonprofit organizations for collaborative projects that further the missions of both organization provided the transaction is not for commercially available ancillary services such as accounting.

These are most often the case unless there are *unique* circumstances.



What is NOT Considered a Subaward?

In addition to procurement contracts, subawards do not include:

- Funding transfers between departments of the same unit of government are generally not subawards.
- Participant support costs, such as:
 - Stipends for trainees, including transportation and compensation/childcare stipends;
 - Program participant interns that are not employees of the recipient;
 - EPA provides [Guidance on Participant Support Costs](#).



Subawards: When Prior Approval Is Needed

Q: When is EPA approval required before an EPA grantee makes a subaward?

- When the type of subrecipient was not identified in the workplan
- When the grantee significantly changes the type of subawards or decides not to make subawards at all
- When the grantee described a named subrecipient's qualifications in a competitive proposal and then decides to provide the subaward to a different organization
- Remember, approval by EPA's Grants Management Office is required before making a subaward to a for-profit firm or individual.



Subawards: When Prior Approval Is NOT Needed

Q: When is EPA approval NOT required before a recipient makes a subaward?

- If the EPA grantee has described the types of subawards it intends to make in the workplan scope and budget.
- Example of an EPA grantee making a subaward to a university or non-profit research institution or research project - research project to support technical assistance



Examples of Requirements that “Flow Down”

- Build America, Buy America (BABA)
 - Established a domestic content procurement preference for all Federal financial assistance obligated for *infrastructure* projects after May 14, 2022.
 - The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States.
- Davis Bacon and Prevailing Wages Act
 - Davis-Bacon labor standards only apply to a federal financial assistance program if the statute (i.e., typically the statute authorizing the grant program) mandates compliance with Davis-Bacon prevailing wage requirements
 - If Davis Bacon applies to your grant **and** you or your subrecipient are procuring services that trigger Davis Bacon compliance, the prevailing wage determination **must** be included in the solicitation documents.

For more information on flow down requirements: https://www.epa.gov/sites/default/files/2020-11/documents/epa_subaward_cross_cutter_requirements.pdf

Overview of Civil Rights Obligations

| Civil Rights Requirement | Primary Recipient | Subrecipient(s) |
|--|-------------------|---|
| 1) Review programs and activities to ensure they comply with civil rights statutes that prohibit discrimination on the basis of race, color, national origin, sex, age, and disability, and retaliation. See Title VI of Civil Rights Act , Section 504 of Rehab Act , Age Discrimination Act , Title IX of Education Amendments , and Federal Water Pollution Control Act Amendments , as applicable. | Yes | Yes |
| 2) Complete the Form 4700-4 at time of financial assistance application to provide compliance assurances. | Yes | No |
| 3) Adopt the required procedural safeguards under 40 C.F.R. Parts 5 and 7, as applicable, and may consider incorporating additional best practices as described in the Checklist . | Yes | Yes |
| 4) Manage Subrecipient compliance – for example, through active monitoring and procedures to investigate complaints | Yes | Yes, if contracting with additional Subrecipients |
| 5) Collect, maintain, and provide data and information to EPA, including in response to complaint investigations, pre-award Form 4700-4 reviews, post-award audits and affirmative compliance reviews | Yes | Yes |

Visit the EPA Office of External Civil Rights Compliance [website](#) for more information.

Subawards: Conflict of Interest

EPA recipients and subrecipients* must comply with [EPA's Financial Assistance Conflict of Interest Policy \(COI Policy\)](#).

- The COI Policy is authorized by [2 CFR 200.112](#).

EPA requires compliance with the COI Policy through the General T&C: Disclosing Conflicts of Interest, which applies to all EPA assistance agreements.

***These requirements flow down to subrecipients.**



Additional Information

EPA staff work with pass-through entities to:

- Include the aggregate amount for subawards in a line item in the narrative for the “Other” budget category of the Standard Form (SF) 424A, “Budget Information for Non-Construction Programs” or equivalent forms for construction agreements.
- Ensure that every subaward includes the required information in [2 CFR 200.331\(a\)](#).
 - An optional template is provided in [Appendix D of the EPA Subaward Policy](#).



National Subaward T&C



What is it?

EPA has established a National Term & Condition (T&C) for Subawards that is applicable to all assistance agreements, regardless of whether they contain subawards.

The National T&C for Subawards:

- Is included in the [EPA General T&Cs](#), that are applicable to every grant.
- Can be found in [Appendix B of the EPA Subaward Policy](#).

The next several slides will take us through some of the components of the National Term and Condition for Subawards.



T&C: EPA Involvement in Selecting Subrecipients

Pass-through entities are responsible for selecting their subrecipients.

EPA personnel may not:

- Direct pass-through entities to make subawards to particular organizations;
- Interfere with the recipient's subaward selection decisions unless necessary to enforce an authorized eligibility restriction; or
- Suggest the use of specific subrecipients — **Do not ask your PO!!!**

EPA personnel may participate in competitive selection panels as technical advisors or panelists at the request of the pass-through entity as provided in section 10.0(b) of EPA's Subaward Policy.



T&C: System for Documenting Subawards

As a pass-through entity, the recipient agrees to establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by [2 CFR 200.332\(a\)](#).

- EPA has developed a template (in [Appendix D of the EPA Subaward Policy](#)) that pass-through agencies may use to document the “subaward content” requirements in 2 CFR 200.332(a).



T&C: Subaward Reporting Requirement

When EPA determines that a recipient is a pass-through entity for subawards, EPA will include:

- The Model Programmatic Subaward Reporting Requirement; or
- [Appendix C of the EPA Subaward Policy](#), or
- A program specific requirement in the performance reporting terms and conditions of the award.

EPA's Terms and Conditions reference the requirement in [2 CFR 170, Appendix A](#) which requires pass-through entities to report subawards of \$30,000 or more to the [Federal Funding Accountability and Transparency Act Subaward Reporting System](#).



T&C: Subaward Competitions

Federal regulations do not generally require pass-through entities to select subrecipients competitively, though EPA may require competition in some cases.

Program Offices may require or encourage pass-through entities to conduct competitions for subawards, unless otherwise prohibited.

Pass-through entities may choose to select subrecipients competitively when consistent with applicable:

- Statutes;
- Regulations; and
- The terms of their EPA financial assistance agreement.



T&C: Prior Approval

As a pass-through entity, the recipient agrees to:

- Obtain written approval from EPA's Award Official for any types of subawards that are not described in the approved work plan in accordance with [2 CFR Part 200.308](#).
 - EPA does not require that applicants for funding name specific subrecipients in competitive proposals or scopes of work, but applicants may choose to do so.





Financial Management

Financial Management Common Sense Tips

Records must tell a complete story – tracing costs from planning through drawdown and payment, showing need, approvals, proper accounting, and receipt of goods and services.

You can only have one set of books. Your financial management system must be used for all accounts.

Payroll records, including timesheets, must account for 100% of the time of every employee. This includes non-working hours (leave, etc.) and all activities charged by each employee.

Employees charged to more than one cost center must charge actual hours spent on each; they cannot be paid based on a pre-determined allocation. Non-working hours must be properly prorated among all cost centers, or charged to the general ledger.

Charges have to make sense. For example, you cannot charge an employee's travel to a different account than his/her payroll for the same day. The appropriate account should be charged for both.



Timely Disbursement of EPA Funds

Recipients, other than states, must minimize time elapsing between draw down and disbursement as required by [2 CFR 200.305\(b\)](#).

- State draw downs are covered by agreements with U.S. Treasury.

Drawdowns should be based on actual costs incurred (e.g., payroll, payment of contractor invoices) rather than estimates or “even” amounts each month or week based on anticipated cash flow.

ASAP system allows almost instantaneous payment. No need to wait for check in mail.



Timely Disbursement of EPA Funds (cont.)

EPA policy, as reflected in General T&Cs, requires recipients to enroll in ASAP.

EPA will measure compliance with 2 CFR 200.305(b) based on disbursement of at least 95% of drawn down funds within 5 business days. Clear audit standard.

5 business day disbursement standard does not apply to states.



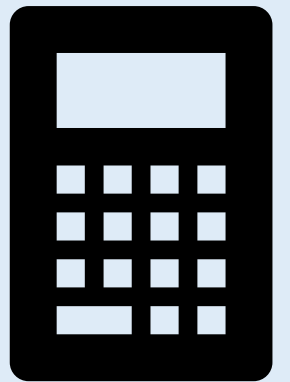
How to Survive an Improper Payment Review

EPA conducts reviews of a sample of recipient drawdowns to monitor compliance with regulatory requirements.

Recipients must provide accounting documentation to support the amount of funds drawn down and timely disbursement.

Examples of documentation include:

- ✓ Payroll records showing compensation charged to EPA assistance agreement based on contemporaneous estimates of actual hours performing work under the assistance agreement. Charges based on percentage of time in budgets must be adjusted to reflect after the fact determinations of hours worked.
- ✓ Invoices from contractors or payment requests from subrecipients.
- ✓ Travel vouchers, receipts from hotels, etc. to support travel reimbursement.
- ✓ Procurement records documenting compliance with competition requirements.



Subrecipient
Oversight:
Preventing
Fraud, Waste,
Abuse, &
Mismanagement



FRAUD

Subrecipient Oversight

- Pass-through entities are accountable for overseeing subrecipient performance in accordance with [2 CFR 200.332](#).
- EPA requires pass-through entities to ensure that subrecipients only incur eligible and allowable costs and effectively perform the programmatic activities under their subawards.
- Although under [2 CFR 200.305\(b\)\(1\)](#) pass-through entities pay subrecipients in advance, if the pass-through entity's monitoring of a subrecipient's activities indicate that reimbursement is the appropriate payment mechanism to ensure compliance with federal requirements, EPA will support the pass-through entity's determination.



Subrecipient Monitoring

Subrecipient monitoring activities should include:

- Reviewing financial and performance reports;
- Ensuring timely and appropriate action on any deficiencies detected through audits, on-site reviews;
- Depending on risk assessment results, providing training and technical assistance and performing on-site reviews;
- Verifying Single Audits were conducted, when required; and
- Evaluate impact of subrecipient activities on the pass-through entity's ability to comply with Federal regulations.

What is Fraud, Waste, Abuse, & Mismanagement?

Fraud: An intentional deception designed to unlawfully deprive the government of something of value for an individual benefit, privilege, allowance, or consideration to which they are not entitled

Waste: Extravagant, careless or needless expenditure of government funds that results from deficient practices, systems, controls, or decisions

Abuse: An intentional and unacceptable use of grant funds or misuse of one's position

Mismanagement: Failure to appropriately manage budgets, expenditures, or documentation for grant funds



Preventing Waste, Fraud, Abuse, etc.

As an EPA recipient, you are responsible for carrying out your EPA grant as described in the award document and T&Cs. Oversight of your subrecipients is crucial.

Subrecipient Monitoring and Management – 2 CFR 200.332(b) – (h)

- Subrecipient Risk Assessment (2 CFR 200.332(b))
 - Consider subrecipient's prior experience with similar awards or sub awards;
 - Results of any prior audits;
 - Consistency of personnel and systems;
 - Suspension & Debarment check; and
 - Review Responsibility/Qualification (R/Q) on SAM.gov.
- Document your subrecipient monitoring.
- Establish and maintain effective internal controls over federal awards
- Take prompt action when instances of noncompliance arise.
- Ensure Subaward Agreement includes all requirements (i.e. flow down provisions) to ensure the award is used in accordance with Federal statutes, regulations, and terms and conditions of the award.



Watching for Waste, Fraud, Abuse, etc.



Please watch for suspicious activities, such as:

- Subawards were not awarded properly, or they were awarded to excluded entities (this information is available in SAM.gov); and/or
- Subawardees are not using the grant funds on agreed-upon activities under the subaward; and/or
- Subrecipients are not providing financial or reports as required, and/or the funds requested do not match the amount of work completed.

What Happens if a Recipient/Subrecipient Does Not Follow the Rules?

If a recipient or subrecipient fails to comply with the regulations or terms/conditions of the EPA grant, EPA or the pass-through entity can impose specific conditions (i.e., more requirements) [[2 CFR 200.208](#) or [2 CFR 200.332](#)]:

- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
- (3) Requiring additional, more detailed financial reports;
- (4) Requiring additional project monitoring;
- (5) Requiring the non-Federal entity to obtain technical or management assistance; or
- (6) Establishing additional prior approvals, including approval of a corrective action plan.



What Happens if a Recipient/Subrecipient Does Not Follow the Rules? (cont'd)

If a recipient fails to follow the additional requirements or EPA does not think the additional requirements will solve the issue, EPA *may* take action for noncompliance. Pass-through entities can take similar actions as provided in 2 CFR 200.332(h).

EPA's first option for remedies comes from the grant statute if it speaks to this issue (e.g., [CERCLA 104\(k\)\(8\)\(c\)](#) – *Violations*).

Additional remedies for noncompliance are discussed in 2 CFR 200.339 – 200.343. For example:

- Temporarily withhold cash payments pending correction of the deficiency.
- Disallow all or part of the cost of the activity or action not in compliance.
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings.
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

▼ Remedies for Noncompliance

- § 200.339 Remedies for noncompliance.
- § 200.340 Termination.
- § 200.341 Notification of termination requirement.
- § 200.342 Opportunities to object, hearings, and appeals.
- § 200.343 Effects of suspension and termination.

Reporting Fraud, Waste, Abuse, and Mismanagement

DO:

- [Contact the Office of Inspector General \(OIG\) Hotline](#)
- Discuss your concerns with the OIG
- Seek answers to your questions in the normal course of business
- Cooperate with the OIG and expect to be contacted and involved

DON'T:

- “Tip off” subjects of actual or pending investigation
- Feel compelled to “prove” a case or intent
- “Stop” your normal course of business unless otherwise directed

EPA OIG Hotline Complaint Form

Anyone with knowledge of fraud, waste, abuse, misconduct, or mismanagement involving the U.S., Environmental Protection Agency should contact the Office of Inspector General's hotline.

Further details are provided on the [EPA OIG Hotline Information](#) webpage about:

- reporting to the Hotline
- understanding fraud, waste and abuse
- information about whistleblowing
- information about mandatory disclosures

The easiest way to submit a hotline complaint is to fill out and submit the following form.

General

I am providing my name and I agree that EPA OIG can disclose my name and other information I provide, if necessary, to ensure my issues are addressed.

Confidential

I wish to be confidential, meaning I am providing the OIG my name, but I request that the OIG not disclose my name outside the OIG. This option is appropriate for complainants who fear reprisal.

Anonymous

I wish to be anonymous, meaning the OIG will not know my name. If



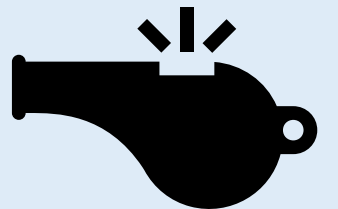
Whistleblower Protections

The [EPA OIG's Whistleblower Protection page](#) provides helpful information on protections for those who report suspected waste, fraud, abuse, and/or mismanagement.

- Complainants who are not EPA employees do not have an automatic right to confidentiality under section 7(b) of the [Inspector General Act of 1978](#). However, non-EPA employees may specifically request confidentiality, and the OIG will protect the confidentiality of such complainants to the maximum extent permitted by law (for example, by using applicable exemptions and exclusions of the Freedom of Information Act and applicable exemptions of the Privacy Act).

Anonymity

- If you do not wish to disclose your identity, you may remain anonymous when contacting the OIG. However, please keep in mind that anonymity may impede a quick or thorough investigation or the success of a later prosecution.



Questions?

EPA has posted answers to questions regarding Subawards at <https://www.epa.gov/grants/epa-subaward-frequent-questions>.

EPA Grant Policies are available at <https://www.epa.gov/grants/epa-grants-policy-resources>.

In addition, answers to questions asked during this webinar will be provided in the next few weeks and will be available on the Training for EPA Pass-Through Grant Applicants, Recipients, and Subrecipients page.

Reach out to your agency POC!

