Please see RAIN-2018-G04-R for details regarding changes to this GPI effective November 12, 2020.
Please see RAIN-2018-G04 for details regarding changes to this GPI effective November 6, 2018.
Please see RAIN-2018-G03 for details regarding changes to this GPI effective August 22, 2018.

Amended Grants Policy Issuance (GPI) 16-01
EPA Subaward Policy

1.0 Purpose

(a) This policy establishes the requirements and procedures for Grants Management Offices and Program Offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 CFR 200.331, 200.332, and 200.333 ("the applicable regulations"). This policy supersedes EPA's previous Subaward Policy contained in Part 2, Section 01 of EPA's Assistance Administration Manual.

(b) In order to effectively implement the EPA Subaward Policy, it is important at the outset for EPA personnel as well as pass-through entities to understand the difference between subawards and procurement contracts since the rules for these two types of transactions are different.

(1) Pass-through entities make subawards to other organizations to carry out a portion of the Federal award under terms that establish a financial assistance relationship to accomplish a public purpose that is authorized under a Federal program. Subrecipients only receive reimbursement for their actual direct or approved indirect costs such that they do not "profit" from the transaction and subrecipients are subject to the same Federal requirements as the pass-through entity. There is no requirement in the applicable regulations for pass-through entities to compete subawards.

(2) In contrast, procurement contractors (including individual consultants) typically provide goods and services on commercial terms, operate in a competitive environment and a reasonable profit is allowable. Additional guidance is available in Section 7.0 and Appendix A: Distinctions Between Subrecipients and Contractors of this policy. The Procurement Standards of 2 CFR Part 200 include competition requirements.

(c) A pass-through entity may use the term 'contract' to characterize a subaward arrangement. Therefore, it is important to examine the substance of the agreement using the characteristics discussed in 2 CFR 200.331 and Appendix A: Distinctions Between Subrecipients and Contractors of this policy to determine if the transaction is a subaward or a procurement contract.

2.0 Applicability and Effective Date

EPA's Subaward Policy applies to financial assistance agreements and incremental or supplemental funding amendments awarded to pass-through entities on or after March 29, 2016. The revision effective November 12, 2020, supersedes all prior versions of the Subaward Policy.

The Subaward Policy does not apply to collaborative relationships, including those documented in a written agreement, between recipients and third parties that do not involve the transfer of assistance funds or property purchased with assistance funds.

The Subaward Policy does not apply to financial assistance agreements for the capitalization of revolving loan funds (RLF). Requirements for RLF recipients and borrowers are addressed in more detail in 2 CFR Part 1500, national program guidance for EPA RLF programs or the terms and conditions of RLF assistance agreements. The Agency may apply the Subaward Policy, or selected provisions of it, to other financial assistance agreements with the consent of the pass-through entity.

3.0 Definitions

For purposes of this Subaward Policy, the following terms are defined at 2 CFR 200.1:

Contractor
Federal Award
Federal Financial Assistance
Fixed Amount Awards
Indian Tribe
Institutions of Higher Education
Local Government
Modified Total Direct Costs
Non-Federal Entity
Nonprofit Organization
Obligations
State

Contract. Defined at 2 CFR 200.1. A contract does not include a Federal award or subaward.

Individual: A natural person.

Pass-through entity: This term is defined at 2 CFR 200.1 and refers to a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient: This term is defined at 2 CFR 200.1 and does not include subrecipients. For the purposes of this Subaward Policy the term "Recipient" also includes individuals who receive awards under EPA statutes authorizing direct Federal financial assistance to individuals other than fellowship recipients under 40 CFR Part 46.

Simplified Acquisition Threshold: This term is defined at 2 CFR 200.1.

As of the date of the issuance of the Subaward Policy the Simplified Acquisition Threshold is $250,000. This amount is periodically adjusted for inflation and the revised threshold is published in the Federal Acquisition Regulation at 48 CFR 2.1 (Definitions).

Subaward: This term is defined at 2 CFR 200.1.

Subawards do not include payments to contractors (including consultants) or to program beneficiaries such as trainees, interns, fellows and subsidy or rebate program participants. Subawards may include loans, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or similar transactions entered into with borrowers by recipients of RLF capitalization agreements. Requirements

for RLF pass-through entities and borrowers for complying with the Uniform Grant Guidance (UGG) provisions relating to subawards are described in 2 CFR Part 1500, national program guidance for EPA RLF programs or the terms and conditions of the RLF agreements rather than this Subaward Policy.

Subrecipient: This term is defined at 2 CFR 200.1.

For the purpose of this Subaward Policy "subrecipient" includes both Federal and non-Federal entities and individuals (who are not program beneficiaries) who are eligible for subawards to the extent consistent with the authorizing statutes and regulations, 2 CFR Part 180, Office of Management and Budget (OMB) Guidance to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) and 2 CFR Part 1532, EPA's Nonprocurement Suspension and Debarment regulation.

4.0 Background

EPA's Subaward Policy implements regulatory requirements and addresses recommendations from Office of Inspector General (OIG) audits of assistance agreements containing subawards.

(a) The Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Grant Guidance or UGG) codifies standards for distinguishing between subawards and contracts at 2 CFR 200.331 and this Subaward Policy provides additional guidance consistent with that regulation.

(b) Under 2 CFR 200.332, pass-through entities must include a number of provisions in subaward agreements and implement effective systems to monitor and guide subrecipient performance; this Subaward Policy provides guidance on how EPA will oversee compliance with those requirements.

(c) The OIG has recommended that EPA enhance its oversight of pass-through entities to ensure that subawards are used in appropriate circumstances, costs are reasonable and that pass-through entities effectively monitor subrecipient performance. This Subaward Policy includes provisions that respond to the OIG's recommendations.

5.0 General Principles

It is EPA policy that subawards under Agency assistance agreements be properly awarded, managed and monitored in compliance with the applicable regulations and in a manner that promotes accountability while minimizing burdens on pass-through entities and EPA staff. The Agency will appropriately oversee pass-through entities on a pre-award and post-award basis. This includes ensuring that:

(a) Agency personnel identify pass-through entities during pre-award cost reviews or post-award requests to make subawards under 2 CFR 200.308(c)(1)(vi) and advise pass-through entities to have adequate systems in place to comply with 2 CFR 200.331, 2 CFR 200.332 and section 9.0 of this Subaward Policy during post-award monitoring.

(b) Pass-through entities effectively monitor the performance of subrecipients.

(c) Pass-through entities do not use subawards to transfer or delegate their responsibility for successful completion of their EPA assistance agreement.

(d) Financial assistance awards to pass-through entities do not circumvent the requirements of EPA Order 5700.5A1, Policy for Competition of Assistance Agreements (02/06/2014) ("EPA's Competition Policy").

(e) EPA personnel do not direct, recommend or suggest that pass-through entities make subawards to particular organization(s) except to the extent allowed under section 10.0(b) of this Subaward Policy.

6.0. National Term and Condition.

EPA has established a National Term and Condition for Subawards for all assistance agreements, which is located in Appendix B of this policy.

7.0 Eligibility for Subawards.

(a) Generally, unless prohibited or limited by statute, a non-Federal entity or individual is eligible to receive a subaward even if it is not eligible to receive an assistance agreement from EPA directly as long as the subaward is consistent with applicable regulations, policies, and EPA guidance. Federally Funded Research and Development Centers are eligible subrecipients provided the substance of the transaction is consistent with the guidance at 2 CFR 200.331 and Appendix A: Distinctions Between Subrecipients and Contractors.

(b) As provided in 2 CFR Part 25, Appendix A , Federal agencies are subrecipients for the purposes of the System for Award Management and Universal Identifier Requirements when they receive "subawards" from pass-through entities. Federal agencies may also be subrecipients for the purposes of 2 CFR Part 200 as indicated in the definition of *Subrecipient* in 2 CFR 200.1. Nonetheless, Federal agencies must have statutory authority to provide services to non-Federal entities on a reimbursable basis or otherwise receive and use funds from non-Federal entities under subawards. Examples of statutes available to all Federal agencies for receipt and use of EPA financial assistance funds are the Intergovernmental Cooperation Act for services to state and local governments, the Federal Technology Transfer Act for Cooperative Research and Development and Agreements, and the Omnibus Territories Act for reimbursable services agreements with U.S. Territories.

(c) For-profit organizations and individual consultants, with very few exceptions, are contractors rather than subrecipients under the standards in 2 CFR 200.331 and EPA's guidance; they are typically ineligible for subawards from pass-through entities. As provided in the National Term and Condition for Subawards, EPA's Award Official must approve subawards to these entities on the basis of either precise descriptions of the subawards in the EPA approved budget and work plan or on a transaction by transaction basis. See Appendix A: Distinctions Between Subrecipients and Contractors for additional guidance.

(d) Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards based on the Agency's policy for interpreting the Lobbying Disclosure Act, 2 U.S.C.1611.

(e) EPA program office staff should ensure that pass-through entities are aware of limitations on

subrecipient eligibility contained in statutes or regulations. EPA program offices may communicate applicable limitations to potential pass-through entities in announcements for competitive awards, program guidance for continuing environmental program grants or other noncompetitive awards, and programmatic terms and conditions.

(f) In consultation with OGD's National Policy, Training and Compliance Division and the Office of General Counsel or Office of Regional Counsel, as appropriate, Program offices may establish policies limiting eligibility for subawards to the extent permitted by statute or regulation. EPA program offices must communicate applicable policies to potential pass-through entities in announcements for competitive awards, program guidance for continuing environmental program grants or other noncompetitive awards, and programmatic terms and conditions.

8.0 Internal Controls for EPA Oversight of Pass-Through Entity Compliance with the Applicable Regulations and EPA Subaward Policy.

This section identifies policies and procedures designed to provide internal controls that promote pass-through entity compliance with applicable regulations and this Subaward Policy.

(a) EPA policy is to require that pass-through entities include the aggregate amount for subawards in the "Other" budget category of their Standard Form (SF) 424A, "Budget Information for Non-Construction Programs" or equivalent forms for construction agreements unless OMB revises the budget categories in the SF-424A to include one for subawards.

1. Pass-through entities may erroneously place costs for subawards under the "Contractual" budget category based on practices at other agencies. As part of their pre-award cost reviews, Project Officers (PO) and Grant Specialists (GS) must review budget justifications and amounts recipients budget for "Contractual" to ensure that subaward costs are classified as "Other".
2. The amount of funding a pass-through entity estimates that it will use for subawards costs must be documented in a separate line item in the budget justification for the "Other" budget category or another provision of the work plan.

(b) If necessary, POs should work with the pass-through entity to obtain approval for international subawards as provided in section 11.0 (a) of this Subaward Policy.

(c) During pre-award review, GS must check for compliance with the $25,000 limitation at in *Modified Total Direct Costs* as defined in 2 CFR 200.1 on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.

(d) Award Officials are responsible for ensuring that all awards (including those in which the recipient has not identified subawards) contain the National Term and Condition for Subawards. Additionally, the Award Officials may highlight this term and condition in the cover letter in the Notice of Award using either the following template or similar language:

> If your work plan and budget includes subawards of financial assistance (as defined in *Subawards* at 2 CFR 200.1 and 2 CFR 200.331), please pay particular attention to EPA's National Term and Condition for Subawards which is found in the programmatic terms and conditions for this

award. By accepting this assistance agreement, your organization is certifying that it either has systems in place to comply with the regulatory or EPA policy requirements specified in the National Term and Condition for Subawards or that it will refrain from making subawards with funding EPA provides under this agreement until the systems are designed and implemented. Also note that should your organization decide to make a subaward(s) that was not described in the work plan and budgeted for under this agreement you must obtain prior written approval from EPA's Award Official for the subaward as provided at 2 CFR 200.308(c)(1)(vi).

(e) POs must include the Model Programmatic Subaward Reporting Requirement contained in Appendix C, or a customized version of the model in the performance reporting terms and conditions for assistance agreements with pass-through entities. The reporting frequency must be the same as that for other performance reports.

1. Project Officers may customize the Model Programmatic Subaward Reporting Requirement based on programmatic information needs provided they do not create a form for the collection of identical data from 10 or more pass-through entities. Doing so may trigger the Office of Management and Budget's Information Collection Request regulations. Project Officers should consult with OGC or ORC as appropriate if there are questions regarding whether an ICR is required.

2. In situations in which a recipient advises EPA after award that it intends to make subawards, the PO must request that the Award Official amend the assistance agreement to add the Model Programmatic Subaward Reporting Requirement or a customized subaward reporting term and condition when granting approval under 2 CFR 200.308(c)(1)(vi) for the subawards.

(e) POs must review pass-through entity performance reports describing subrecipient progress towards achieving program objectives. If the pass-through entity's performance reports raise questions regarding whether a subrecipient is making adequate progress, POs should ensure that the pass-through entity considers measures such as those set forth at 2 CFR 200.332 (d)(2), (e)(1) and (2) or (h) to address the situation.

(f) POs are responsible for ensuring that, as appropriate, awards to pass-through entities include program-specific terms and conditions relating to subawards. Additionally, under cooperative agreements with pass-through entities, Program Offices may be substantially involved in subaward related activities under the terms and conditions of the agreement and POs may exercise EPA's approval rights under these T&Cs. Consistent with EPA Order 5700.1, examples of EPA substantial involvement include, but are not limited to:

1. EPA approval of or consultation on proposed subrecipients' eligibility provided the Agency does not direct, recommend, or suggest that the pass-through entity provide a subaward to a particular organization.

2. If not described in the approved work plan, EPA approval of competitive or noncompetitive procedures the pass-through entity will use to select subrecipients prior to the award of any subawards.

3. EPA participation in panels for subaward competitions to the extent permitted in section 10.0

(b) of the Subaward Policy.

4. EPA approval of the substantive terms of subawards.

(g) In situations in which EPA determines that a pass-through entity has not adequately monitored subrecipient performance, POs may participate in the pass-through entities' subaward monitoring activities if a specific award condition is added to the award pursuant to 2 CFR 200.208.

(h) As a component of post-award oversight, POs and GSs are responsible for inquiring whether pass-through entities have adequate systems in place for complying with:

1. 2 CFR 200.331, the subrecipient eligibility provisions of EPA's National Term and Condition for Subawards, and any program specific restrictions on subrecipient eligibility.

2. 2 CFR 200.332, *Requirements for pass-through entities*, as described in EPA's National Term and Condition for Subawards. A template for a subaward agreement that meets the requirements of 2 CFR 200.332(a) (a) is available at Appendix D of this Subaward Policy and may be provided to the pass-through entity subject to the limitations in Section 12 of this Subaward Policy.

The level of inquiry should be based on the PO's or GS's assessment of the pass-through entities' history of managing subaward programs as reflected in programmatic baseline and advanced monitoring reports, audit reports, and other information that has come to the POs attention. Inquiries may be made as part of programmatic or administrative base line monitoring, advance monitoring, desk reviews, discussions of progress reports with pass-through entities, or otherwise, as appropriate. Program offices may, in consultation with EPA's Office of Grants and Debarment, the Office of General Counsel and, if appropriate, Office of Regional Counsel develop program specific guidance for pass-through entities and their subrecipients on compliance with this Subaward Policy. OGD may also issue Agency-wide supplemental guidance as necessary.

9.0 Fixed Amount Subawards

(a) Under 2 CFR 200.333, EPA may allow pass-through entities to award subawards up to the simplified acquisition threshold on a fixed amount or "lump sum" basis such that the subrecipient does not account for actual costs. OGD will consider approving the use of fixed amount subawards on a pilot basis at the request of a Program Office. After completion of the pilot, OGD and the Program Office will consider whether fixed amount subawards will be a permanent feature of the grant program. Fixed amount subawards must meet the standards of 2 CFR 200.201(b).

Examples of potential fixed amount subaward pilot projects include:

1. Conference support for units of government, Institutions of Higher Education (IHE) and nonprofit organizations including general "sponsorships" in amounts up to $25,000 provided the recipient obtains in accordance with 2 CFR 200.201(b)(1) written assurance that the conference organizer will refund the entire amount of the subaward if the conference does not take place.

2. Studies or research projects that produce written reports funded on a milestone achievement

or project completion basis provided the subrecipient is a unit of government, an IHE, a nonprofit organization, or a student or post-doctoral fellow at an IHE.

3. Training classes funded on a milestone completion (e.g., preparation of curricula, rental of facility, course delivery, and submission of evaluation report) or a unit price basis upon project completion provided the subrecipient is a unit of government, an IHE or a nonprofit organization.

4. Community meetings funded on a milestone completion (e.g., outreach, preparation of agenda, rental of facility, meeting, and submission of attendee roster/meeting summary) or on a unit price basis upon project completion provided the subrecipient is a unit of government, an IHE or a nonprofit organization.

10.0 Subaward Competitions.

Unlike contracts subject to the Procurement Standards of 2 CFR Part 200, the applicable regulations do not require that pass-through entities select subrecipients competitively. Program Offices, however, may require that pass-through entities conduct competitions for subawards unless otherwise prohibited by statute, regulation or official EPA policy. Similarly, pass-through entities may choose to select subrecipients competitively provided this practice is consistent with applicable statutes, regulations and the terms of their EPA financial assistance agreement.

(a) EPA Required Subaward Competitions

1. Under some EPA assistance programs, pass-through entities may be legally required to conduct subaward competitions. Program Offices and Regions must ensure pass-through entities conduct these competitions consistent with any applicable legal requirements and provisions of this Subaward Policy.

2. Under both competitive and non-competitive EPA assistance agreement awards, if Program Offices require the pass-through entity to conduct a competition for subawards, they must determine that the subaward competition is necessary for the effective and efficient implementation of the assistance program. This determination must be in writing and placed in the official program office assistance agreement file.

a. Non-Competitive EPA Assistance Agreements - When a Program Office requires the pass-through entity to conduct a subaward competition under a non-competitive EPA assistance agreement, the award must include a programmatic term and condition requiring the recipient to conduct the subaward competition consistent with the negotiated work plan and the provisions of this Subaward Policy.

b. Competitive EPA Assistance Agreements - When a Program Office requires the pass- through entity to conduct a subaward competition under a competitive EPA assistance agreement, the Agency's competitive funding announcement must include ranking factors for evaluating the applicants' proposed procedure for conducting the subaward competition. In addition, the award must include a programmatic term and condition requiring the pass-through entity to conduct the subaward competition consistent with the subaward competitive process described in the approved work plan and the provisions of this Subaward Policy.

(b) EPA Participation in Subaward Competitions.

1. General. Pass-through entities are responsible for selecting their subrecipients and conducting their subaward competitions. In addition, EPA personnel may not direct pass-through entities to make subawards to particular organizations, suggest the use of specific subrecipients, interfere with the recipient's subaward selection decisions, or use subawards to circumvent EPA policies for competition of assistance agreements. For example, a Program Office may want to award a non-competitive grant to Organization A but is not authorized to do so because of restrictions under EPA's Assistance Agreement Competition Policy. EPA may not circumvent these restrictions by awarding a non-competitive grant to Organization B with the understanding that Organization B will then subaward all of the work to Organization A.

2. Participation as Technical Advisors. EPA personnel may serve as technical advisors to a pass-through entity's subaward evaluation panel as part of EPA's substantial involvement in a cooperative agreement provided that they do not unduly influence the panel or selection decisions and are free of any conflicts of interest, and actual or apparent violations ethical standards (*e.g.*, Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

3. Participation on Evaluation Panels. For subaward competitions conducted by pass-through entities under cooperative agreements, EPA personnel may serve as members of the recipient's subaward evaluation panel provided:

a. The pass-through entity uses objective, transparent criteria to rank and select subrecipients.

b. EPA and other federal agency personnel do not unduly influence the panel or selection decisions (*e.g.*, federal employees must comprise substantially less than a majority of the panel).

c. EPA employees are free of conflicts of interest, or actual or apparent violations of ethical standards (*e.g.*, OGE Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

11.0 Special Considerations for Specific Types of Subawards.

(a) In accordance with EPA Order 4540.1, EPA's Office of International and Tribal Affairs (OITA), must consent to proposed EPA financial assistance agreements, prior to award, where work will be performed by any recipient or subrecipient in whole or in part in a foreign country, or where work will be performed in the United States by a foreign government recipient and its subrecipient or an international organization recipient and its subrecipient. OITA must consent to any work by a subrecipient that meets these criteria either prior to award of the EPA assistance agreement to the pass- through entity or prior the pass-through entity's award of the subaward.

(b) EPA's National Subaward Term and Condition requires Agency approval for subawards to individuals. Although individuals are eligible for subawards under this Subaward Policy on the basis of several EPA statutes (e.g., section 103 of the Clean Air Act, section 104 of the Clean Water Act,

section 8001 of the Solid Waste Disposal Act) EPA Program Offices and GMOs must ensure that subawards are not made to individuals who are considered program beneficiaries (e.g., interns, fellows, trainees, community members attending conferences). The definition of *Subrecipient* at 2 CFR 200.1 program beneficiaries are excluded from the definition of *Subrecipient*. Stipends and other payments to program beneficiaries are properly characterized as *Participant Support Costs* under 2 CFR 200.1 and 2 CFR 200.456 and included as line items in the "Other" budget category.

(c) Program Offices and GMOs must carefully review situations in which a pass-through entity intends to make a subaward(s) for 100% of funds EPA will award under a financial assistance agreement. Competitive proposals with 100% pass through should be discussed with the Grant Competition Advocate's staff. If not adequately addressed in the work plan, the PO should request that the pass- through entity explain, in writing:

1. The reasons for subawards for 100% of the funds out to another organization(s) and;

2. How the pass-through entity will provide adequate resources to manage the award, including providing required financial and programmatic reports to EPA, and for monitoring subrecipients as required by 2 CFR 200.331.

This information must be reviewed by the Award Official or designee prior to awarding funds to the pass-through entity**.**

12.0 Template for Subaward Agreements.

Program Offices may provide the subaward template contained in Appendix D of the Subaward Policy to recipients of EPA financial assistance that are "*Pass-through entities*" as defined by 2 CFR 200.1 to assist them in complying with the "subaward content" requirements in 2 CFR 332(a). EPA does not mandate the use of this template. With OGD, OGC, and if appropriate ORC approval, Program Offices may use program specific subaward templates that are consistent 2 CFR 200.332(a). Pass- through entities may also use their own form of subaward agreements provided the requirements of 2 CFR 200.332(a) are met.

13.0 Evaluation

OGD, in coordination with the EPA grants management community, will periodically review this policy to assess its effectiveness.

14.0 Waivers

In response to a written request from the appropriate Senior Resource Official, or designee, the Director of OGD, or designee, may approve waivers to this Subaward Policy on a case-by-case or class basis in circumstances of compelling urgency or unique programmatic consideration or where a waiver would be in the public interest provided the waiver is consistent with statutes, the applicable regulations and Executive Orders. The Director of OGD, or designee, may also make exceptions to any regulatory requirements of mentioned in this policy on case-by-case basis as authorized by 2 CFR 200.102 and 2 CFR 1500.4(a). Exceptions will be granted only in extraordinary circumstances and when consistent with statutes and Executive Orders.

15.0 Roles and Responsibilities

A. Office of Grants and Debarment (OGD)

OGD is responsible for:

1. Posting the National Subaward Term and Condition described in Section 6.0 of this policy.

2. Developing cost review guidance to facilitate implementation of Section 8.0 of this policy.

3. Overseeing Agency compliance with this policy and providing necessary implementing guidance including approval of Program specific subaward guidance and subaward templates.

4. Consulting with Program Offices on their proposed policies to limit subaward eligibility under Section 7.0(e) of this policy.

5. Approving or disapproving pilots for fixed amount subawards under Section 9.0.

6. Evaluating the effectiveness of this policy under Section 13.0 of this policy including conducting periodic reviews of pass-through entity compliance with the requirements.

7. Approving or disapproving waiver requests under Section 14.0 of this policy and posting waiver decisions on the OGD Intranet page.

8. Developing training, responses to frequently asked questions, and, as necessary, Agency wide supplemental guidance on implementing this Subaward Policy.

B. Headquarters and Regional Program Offices

Program Offices are responsible for**:**

1. Adhering to the subaward eligibility provisions and consulting with OGD and OGC/ORC on program- specific eligibility restrictions as described in Section 7.0 of this policy.

2. Complying with applicable pre-award and post-award oversight requirements described in Sections 8.0, 10.0 and 11.0 of this policy including providing EPA approvals specified in substantial involvement terms and conditions for cooperative agreements.

3. Including (and modifying, if applicable) the Model Programmatic Subaward Reporting Requirement contained in Appendix C, in the performance reporting terms and conditions for assistance agreements with pass-through entities as described in Section 8.0.

4. Complying with subaward competition requirements as described in Section 10.0 of this policy.

5. Obtaining OITA consent for subaward work in a foreign country or subaward work performed in the U.S. by a foreign government or a foreign government subrecipient as described in Section 11.0(a) of this policy.

6. Working with GMOs to ensure that subawards are not approved to individuals who are considered program beneficiaries as described in Section 11.0(b) of this policy.

7. Reviewing proposals for 100% pass-through sub-awards as described in Sections 11.0(c) of this policy.

8. Requesting OGD approval for pilots of fixed amount subawards.

9. Providing pass-through entities with the template for subaward agreement in Appendix D or an OGD approved program specific template when requested to do so by the pass-through entities.

10. Subject to OGD approval, developing as appropriate program specific guidance and subaward templates for pass-through entities and their subrecipients to promote compliance with this Subaward Policy.

C. Office of General Counsel (OGC)/Office of Regional Counsel (ORC)

OGC/ORC is responsible for providing legal advice to ensure compliance with applicable statutes, executive orders, ethical standards, and OMB/EPA regulations.

D. Grants Management Offices (GMOs)

GMOs are responsible for:

1. Including the National Term and Condition for Subawards described in Section 6.0 and Appendix B of this policy in all assistance agreements, providing EPA approvals as specified in the T&C, and providing the notification described at 8.0(d).

2. Complying with applicable pre-award and post-award requirements described in Sections 8.0 and 11.0 of this policy.

3. Working with Program Offices to ensure that subawards are not approved to individuals who are considered program beneficiaries as described in Section 11.0 of this policy.

4. Working with Program Offices to prevent improper 100% pass-through sub-awards as described in Sections 11.0 of this policy.

E. Office of International and Tribal Affairs (OITA)

OITA is responsible for acting on requests for EPA consent for subawards involving any work to be performed in a foreign country or any work to be performed in the U.S. by a foreign recipient or international organization as provided in section 11.0 of this policy.

EPA Subaward Policy Appendix A: Distinctions Between Subrecipients and Contractors

This Appendix uses 2 CFR 200.331 as the basis for distinguishing between subrecipients and contractors.

Pass-through entities make subawards to other organizations to carry out a portion of the Federal award under terms that establish a financial assistance relationship to accomplish a public purpose that is authorized under a Federal program. Subrecipients only receive reimbursement for their actual direct or approved indirect costs such that they do not "profit" from the transaction and subrecipients are subject to the same Federal requirements as the pass-through entity. In contrast, consistent with 2 CFR 200.331, procurement contractors (including individual consultants) typically provide goods and services on commercial terms, operate in a competitive environment and a reasonable profit is allowable.

The regulations require that non-Federal entities award contracts following full and open competition with the exception of transactions in amounts below the micro-purchase level or when a sole source contract is properly justified; 2 CFR 200.319; 2 CFR 200.320. Pass-through entities may enter into subawards without competition unless a statute, regulation, or the terms of the EPA award provide otherwise. This distinction makes accurate determinations regarding whether a transaction is with a subrecipient or a contractor particularly important.

A subaward may be provided by any form of legal agreement that complies with 2 CFR 200.332(a)(1). A pass-through entity may use the term 'contract' to characterize a subaward arrangement. It is, therefore, important to examine the substance of the agreement using this appendix to determine if the transaction is a subaward or a procurement contract.

The legal status of an organization as a governmental unit, non-profit organization, institute of higher education, or for-profit organization while not necessarily determinative of whether the transaction at issue is a subaward or procurement contract is an important factor to consider. As provided in 2 CFR 200.331 recipients must exercise sound judgment in deciding whether a transaction is a procurement contract or subaward subject to this EPA guidance. Based on the standards at 2 CFR 200.331(a) and (b) EPA has determined that transactions:

1. Between legally distinct units of government (e.g. a state providing funds to a local government) will in almost all cases be either subawards or intergovernmental agreements under 2 CFR 200.318(e) rather than procurement contracts since governmental units do not provide services on commercial terms.

2. Between institutions of higher education (IHE), or between IHEs and units of government or nonprofit organizations, are typically subawards particularly when the transactions relate to joint research, training (including technical assistance and public education) or demonstration projects.

3. Between nonprofit organizations for collaborative projects that further the missions of both organizations are typically subawards although situations in which one nonprofit provides ancillary services that are widely available in the competitive market such as accounting or information technology for operations (e.g., payroll) to another nonprofit are characteristic of a procurement contract.

4. Between any recipient and a for-profit firm or individual consultant, in almost all cases, would be a procurement contract subject to the competitive requirements of 2 CFR 200.319 and 2 CFR 200.320. For-profit firms and individual consultants operate in a competitive environment and provide goods and services on commercial terms to many different purchasers rather than carrying out a program for public purposes under the statute authorizing EPA to award financial assistance.

EPA's National Term and Condition for Subawards requires EPA Award Official approval for subawards to for-profits and individual consultants. Examples of situations in which a for-profit firm may be an eligible subrecipient would be an EPA financial assistance program that provides funding for pollution control projects at a company's production facilities and the firm will receive reimbursement for personnel and contractor costs. The for-profit firm in that case would not be providing goods and services to the pass-through entity.

As provided in 2 CFR 1500.1, EPA considers rebates and similar subsidies for the purchase of commercially available "off the shelf" pollution control equipment or to encourage participation in environmental stewardship programs by companies and individuals to be participant support costs. These payments to program beneficiaries are not subawards. EPA's Guidance on Participant Support Costs provides additional information on the distinction between participant support costs and subawards.

EPA Subaward Policy Appendix B: National Term and Condition for Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at https://www.epa.gov/sites/production/files/2016-02/documents/grants_policy_issuance_gpi_16_01.pdf.

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

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

(a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

(b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in 2 CFR 200.1 *Participant support costs*, 2 CFR 200.1 *Subaward*, and EPA's Guidance on Participant Support Costs.

(c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's Guidance on Participant Support Costs.

2. 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 for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

3. Prior to making subawards, ensure that each subrecipient has a "unique entity identifier." This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.332(a)(1). The unique entity identifier currently is the subrecipient's Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's agreement with EPA entitled **"Central Contractor Registration/System for Award Management and Universal Identifier Requirements"** T&C of the pass-through entity's agreement with the EPA.

4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

(a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

(b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled **"Reporting Subawards and Executive Compensation."**

(c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled **"Consultant Fee Cap."**

(d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees**."

(e) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322.

Other statutes, regulations and Executive Orders that may apply to subawards are described at Information on Requirements that Pass-Through Entities must "Flow Down" to Subrecipients. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

(a) Results of previous audits;

(b) Whether new or substantially changed personnel or systems, and;

(c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 include:

(a) Requiring payments as reimbursements rather than advance payments;

(b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(c) Requiring additional, more detailed financial reports;

(d) Requiring additional project monitoring;

(e) Requiring the non-Federal entity to obtain technical or management assistance, and

(f) Establishing additional prior approvals.

8. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

9. Establish and maintain an accounting system which ensures compliance with the $25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

10. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

11. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR 200.308.

12. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

13. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

14. Establish and maintain a system under 2 CFR 200.332(d)(3) and 2 CFR 200.521 for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

EPA Subaward Policy Appendix C: Model Programmatic Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.

2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.

3. Environmental results the subrecipient achieved.

4. Summaries of audit findings and related pass-through entity management decisions.

5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.331(e), 2 CFR 200.208 and the 2 CFR Part 200.339 Remedies for Noncompliance.

Note: EPA Project Officers may customize this reporting requirement based on programmatic information needs.

EPA Subaward Policy Appendix D: Subaward Agreement Template

OVERVIEW: Program Offices may provide this subaward template to recipients of EPA financial assistance that are *Pass-through entity* as defined by 2 CFR 200.1 to assist them in complying with the "subaward content" requirements in 2 CFR 200.332(a). EPA does not mandate the use of this template. Pass-through entities may use their own form of subaward agreements provided the requirements of 2 CFR 200.332(a) are met. Any changes to the data elements that are required under 2 CFR 200.332(a) must be reflected in subsequent modifications to subawards. If any of the information required by 2 CFR 200.332(a) is not available, pass-through entities must provide the best information that is available to describe the Federal award and subaward.

Section I. [Title and Description of Subaward including whether the Subaward is for Research and Development]

Section II. Federal Requirements.

A. Federal Award Identification.

1. Subrecipient name--which must match registered name in the System for Award Management (SAM). If the subrecipient is not yet registered in SAM, then information about registration procedures may be found at the SAM Internet site (currently at http://www.sam.gov).

2. The subrecipient's "unique entity identifier" in SAM. The unique entity identifier currently is the subrecipient's Data Universal Numbering System (DUNS) number. DUNS numbers may be obtained without charge at http://fedgov.dnb.com/webform.

Note: Additional information regarding obtaining a DUNS number and registering in SAM is available in the **"General Term and Conditions"** (T&Cs), under the **"Central Contractor Registration/System for Award Management and Universal Identifier Requirements"** T&C, of the pass-through entity's agreement with EPA.

3. Federal Award Identification Number (FAIN) The FAIN corresponds with the "Assistance ID No." on the EPA Notice of Award.

4. EPA Award Date. This is the date the EPA Award Official signs the assistance agreement with the pass-through entity and may be found on page 1 of the EPA Notice of Award.

5. Subaward Period of Performance Start and End Date;

6. Amount of EPA Funds Obligated under the initial subaward. Subsequent funding actions may be documented by amendments to the subaward.

7. Total or cumulative amount of EPA Funds Obligated to the subrecipient under the initial subaward plus any subsequent funded amendments. These amounts may be documented in sequential amendments to the subaward.

8. Total Amount of the EPA funds committed to the subrecipient by the pass-through entity. This is typically the "ceiling" amount for the subaward that may not be exceeded in funded amendments.

9. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA). This information may be found in the "Project Title and Description" box on page 1 of the EPA Notice of Award.

10. Information identifying EPA as the Federal awarding agency, your organization as the pass-through entity, and contact information for your awarding official for the subaward.

11. Assistance Listing Number and Name for each EPA award used to support the subaward. Assistance Listing information for the pass-through entities' EPA award may be found on page 2 of EPA's Notice of Award form in the second chart under "EPA Award Information". (Note the Uniform Grant Guidance requires at 2 CFR 200.332(a)(1)(xii) that the Pass-through entities identify the dollar amount under each Federal award and the CFDA number at the time of disbursement of Federal funds to the subrecipient so it is important for pass-through entities to maintain accounting records to meet this requirement.

12. Indirect cost rate for the pass-through entity's Federal award. This rate may be found on page 3 of the pass-through entity's EPA Award in Table A, Object Class Category and may be the 10% de-minimis indirect cost rate described at 2 CFR 200.414(f).

B. All "flow down" requirements imposed on the subrecipient by the pass-through entity to ensure that the EPA award is used in accordance with Federal statutes, regulations and the terms of the EPA award. The subrecipient is accountable to the pass-through entity for compliance with Federal requirements. In turn, the pass-through entity is responsible to EPA for ensuring that subrecipients comply with Federal requirements.

These requirements include, among others:

1. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

2. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in General Condition of the pass-through entity's agreement with EPA entitled **"Reporting Subawards and Executive Compensation."**

3. Limitations on individual consultant fees as set forth in General Condition 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled **"Consultant Fee Cap."**

4. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled **"Management Fees."**

5. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at 2 CFR 200.322.

6. For states and other public recipients, a provision ensuring that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

Other statutes, regulations and Executive Orders that may apply to subawards are described at Information on Requirements that Pass-Through Entities must "Flow Down" to Subrecipients. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice, if necessary.

C. Any additional requirements such as financial and performance reports the pass-through entity imposes on the subrecipient to ensure that the pass-through entity meets its own responsibilities to the Federal awarding agency.

D. Subrecipient's Indirect Cost Rate. The indirect cost rate may be a rate negotiated and approved by the subrecipient's cognizant Federal agency. If the subrecipient does not have a Federal indirect cost rate, the pass-through entity may negotiate an indirect cost rate with the subrecipient that complies with 2 CFR Part 200, Subpart E or use the 10% de-minimis indirect cost rate described at 2 CFR 200.414(f).

E. Requirements for the subrecipient to provide access to subaward records so that the pass-through entity and Federal auditors may verify compliance with 2 CFR 200.332 as well as 2 CFR Part 200, Subpart D, Post Federal Award Requirements for Financial and Program Management, and 2 CFR Part 200, Subpart F, Audit Requirements. Examples of records include:

1. Subrecipient financial statements and reports;

2. Programmatic reports including information on environmental results

3. Audit findings

F. Additional Requirements imposed by the pass-through entity under 2 CFR 200.208 that reflect the pass-through entity's assessment of the subrecipient's risk of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward based on the factors described at 2 CFR 200.332(b).

1. Risk factors may include:

(a) Prior experience with same or similar subawards;

(b) Results of previous audits;

(c) Whether new or substantially changed personnel or systems, and;

(d) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

2. Examples of additional requirements authorized by 2 CFR 200.208 include:

(a) Requiring payments as reimbursements rather than advance payments;

(b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(c) Requiring additional, more detailed financial reports;

(d) Requiring additional project monitoring;

(e) Requiring the non-Federal entity to obtain technical or management assistance, and;

(f) Establishing additional prior approvals.

G. Terms and conditions concerning the close out of the subaward.

III. **Other requirements based on the pass-through entity's own laws, regulations, and policies to the extent that they do not conflict with applicable Federal laws, statutes, regulations and policies.**