



OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS DRAFT NATIONAL PROGRAM GUIDANCE

FY 2023–2024



May 2022

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SECTION I. INTRODUCTION

The Office of Congressional and Intergovernmental Relations (OCIR) is issuing the FY 2023-2024 National Program Guidance (NPG) to provide direction for national grant work planning and fostering partnerships with states and Tribal Nations. OCIR leads two program areas with a focus on grants, serving as the National Program Manager for the National Environmental Performance Partnership System (NEPPS), and supporting the agencywide Evidence Act effort with a concentration on grants. This guidance will address how these program areas will be implemented to advance the goals and objectives of the [2022-2026 EPA Strategic Plan](#).

The [National Environmental Performance Partnership System](#) (NEPPS) was [created in 1995](#) to leverage resources and provide states and Tribal Nations greater administrative and programmatic flexibilities in joint priority setting to best advance our shared environmental goals. This is illustrated on the [NEPPS website](#), which emphasizes the agency's commitment to promoting and encouraging the use of Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs). Similarly, [EPA-Tribal Environmental Plans](#) (ETEPs) serve to improve the EPA-Tribal Nation partnership by promoting collaboration and priority setting of environmental commitments and ensuring their alignment with the [2022-2026 EPA Strategic Plan](#). Regions should rely on established ETEPs to guide federal environmental program activities in Indian country, including direct implementation and technical and financial assistance.

NEPPS has historically served as a model for advancing partnerships by providing flexibility to address the unique needs of individual states and Tribal Nations to achieve the best environmental outcomes. EPA Senior Leadership supports efforts to encourage and promote the numerous benefits of PPGs, which serve to leverage resources, provide flexibilities, and advance shared environmental priorities, while minimizing duplicative reporting requirements.

The agency is committed to working with states and Tribal Nations to find innovative approaches to achieving shared environmental priorities. The NEPPS program embodies this principal by providing administrative, financial, and programmatic flexibilities, along with joint environmental planning, which further provides states and Tribal Nations with the tools and opportunities for meeting their environmental goals.

The [Evidence Act](#) Grant Commitments Learning Agenda is an EPA effort that supports the governmentwide mandate for increased transparency and evidence-based policymaking (H.R.4174: [The Foundations for Evidence-Based Policymaking Act of 2018](#)). Through the Evidence Act Grant Commitments Learning Agenda, OCIR is committed to supporting evidence-building activities that align with the [2022-2026 EPA Strategic Plan](#). The goal of the effort is to evaluate the reporting and tracking of grant data to allow EPA to communicate environmental outcomes more effectively with the public.

The [EPA Overview to the National Program Guidance](#) addresses important background information and specific agency-wide direction that should be read in conjunction with this FY 2023-2024 OCIR National Program Guidance. This document should be used as programmatic guidance as it reflects EPA's commitment to its core mission, while uplifting state and federal partnerships. Additionally, this guidance should be used to promote joint priority setting through NEPPS and support evidence-based evaluation of grant activities through the Evidence Act to achieve the highest standard of public health and environmental protections.

SECTION II. PROGRAM PRIORITIES, STRATEGIES, AND ACTIVITIES

Section II.A. The National Environmental Performance Partnership System

Since 1995, OCIR has led the agency's effort to implement the National Environmental Partnership Program System (NEPPS). The program priority of NEPPS is to advance the goals and objectives of the [2022-2026 EPA Strategic Plan](#) by promoting joint priority setting, strategic thinking, and collaboration with EPA's state and Tribal partners. NEPPS serves as the model for advancing shared accountability and addresses the unique and changing environmental needs of states and Tribal Nations by providing programmatic and financial flexibilities.

NEPPS has made substantial progress in improving the efficiency and effectiveness of EPA's partnerships with states and Tribes. To implement NEPPS, the agency uses two primary tools — Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs).

As the National Program Manager (NPM) for implementing NEPPS, OCIR's fundamental strategy is to work closely with fellow National Program Offices and the Regions to ensure consistent interpretation and implementation of PPG regulations and grant policies that impact PPGs. OCIR works to ensure resources and information are readily available to our partners and assists with resolving nuanced issues as they arise in performance partnerships across the country. Additionally, OCIR emphasizes frequent and ongoing communication to foster partnership with state and Tribal co-regulators to tackle the climate crisis and advance environmental justice.

The vast majority of NEPPS partnership work with states and Tribal Nations takes place at the regional level. Regional leadership works side-by-side with state and Tribal leadership to ensure PPG workplans reflect the most important environmental and health priorities. NEPPS Coordinators represent each Region and provide program expertise by serving as the regional points of contact for matters related to NEPPS. NEPPS Coordinators work closely with the regional grant Project Officers, technical leads, and their state and Tribal counterparts on PPG work planning and grant negotiations. They also facilitate the exchange of information between the Regions and headquarters.

The following sections detail the specifics of PPAs and PPGs and provide key activities for implementation by the National Programs and Regions.

Performance Partnership Agreements

A Performance Partnership Agreement is a mutually agreed-upon document signed by the EPA Regional Administrator and state official that identifies joint priorities, strategic goals, objectives, and commitments by EPA and a state agency. PPAs typically establish goals, objectives, and priorities developed jointly by EPA and the states. Additionally, EPA and the state agency develop strategies used to meet goals and objectives, define roles and responsibilities, and jointly develop measures to assess progress. Among other priorities, states and Regions are encouraged to use PPAs to address the legacy of pollution in overburdened and underserved communities by setting joint priorities to advance environmental justice.

A state applicant may use a PPA, or a portion of a PPA, to serve as the workplan for an environmental program grant and/or a PPG, if it meets the requirements in 40 CFR 35.107. A state may apply for and

receive any grant, including a Performance Partnership Grant (PPG) without negotiating a PPA. However, a PPA can provide the strategic underpinning for the work a state plans to carry out with EPA financial assistance.

While PPAs are specific to state agencies, an EPA-Tribal Environmental Plan (ETEP) can serve a similar purpose for Tribes. ETEPs are unique documents that reflect the Tribal Nations' and EPA's government-to-government relationship, leading to a shared understanding of the most important environmental program issues facing the Tribal Nation, as discussed further in [Section III](#).

Performance Partnership Grants

A Performance Partnership Grant is a single grant that combines funds from two or more [categorical grant programs](#). A PPG requires only a single application, workplan, and budget. Once funds are awarded in a PPG, the recipient can direct the funds as needed to achieve workplan commitments and does not need to account for funds in accordance with the original program sources. States, Tribal Nations, and intertribal consortia are encouraged to use PPGs to fully capitalize on minimizing duplicative reporting requirements and financial constraints by leveraging EPA financial assistance and flexibilities through joint priority setting.

For a grant program to be considered eligible for inclusion in a PPG, it must be funded through the same Congressional Appropriation as PPGs, the State and Tribal Assistance Grants (STAG) Appropriation. Only funds included in the categorical grant earmark within the STAG Appropriation are available for inclusion in PPGs, as the statutory authority to award a PPG ([Public Laws 104-134](#) and [105-65](#)) is limited to those funds. As provided in [40 CFR Part 35](#), which contains the regulations specific to PPGs, the EPA Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of state environmental programs eligible for inclusion in Performance Partnership Grants.

Key Activities to Implement NEPPS

- National Programs will clearly identify their PPG-eligible grants in [Section IV](#) of their National Program Guidances. Their National Program Guidances should discuss all available flexibilities to recipients when including program funds in a PPG. As mentioned in [Section IV](#), greater administrative and financial flexibility is afforded to states and Tribal Nations that include their funding in a PPG. This information will aid grant work planning and negotiations between EPA Regions and state and tribal partners.
- Regions should communicate the benefits of PPGs to state and Tribal grant recipients and clearly explain the administrative and programmatic benefits of PPG participation.
- Regions should address all possible scenarios for flexibility with the states and Tribal Nations early in the negotiation of PPAs and PPGs.
- Regions should inform OCIR when a PPA is eligible for renegotiation and work with OCIR to amplify the announcement of the PPA after signature from Senior Leadership.
- Regions should provide OCIR with details and information from all requests for state and/or Tribal flexibility and innovation to document these requests as examples for best practices.

- Regions should work with PPG recipients to adjust workplans in the event of unanticipated environmental or budget variations. For additional reference, the Regions should refer to ECOS's [Field Guide to Flexibility](#).
- Regional NEPPS Coordinators should continually engage with their state and Tribal Project Officers and Regional contacts to provide OCIR with updates of all significant PPA and PPG-related issues.
- Regions should contact OCIR and make every effort to resolve NEPPS issues through direct communication and negotiation and use the formal dispute resolution process as a last resort. Should issues arise, the process for resolving any policy and implementation issues related to Performance Partnerships are outlined in EPA's [Best Practices Guide for Performance Partnership Grants with States](#), and [GPI 15-01, 2 CFR Part 1500 Subpart-E](#).
- All relevant managers and staff should continually seek NEPPS and PPA/PPG-specific training opportunities for continued understanding of changing regulations and/or Policy Issuances. There are online PPG training courses available for EPA employees on both state and Tribal PPGs (i.e. Project Officers, Grants Specialists, NEPPS Coordinators and managers per [GPI 15-01](#)).
- OCIR, in conjunction with the National Program Offices, have developed a new grant reporting template. OCIR will work with the Regions to ensure that the new optional grant workplan template addresses mutually identified priorities and commitments that align with the Goals and Objectives of the FY 2022 – 2026 Strategic Plan.
- In addition to using this OCIR National Program Guidance as direction and guidance for implementation of NEPPS PPAs and PPGs, the Regions should refer to the following documents for additional information:
 - [PPG Eligible Grants](#)
 - The [Best Practices Guide for PPGs and the States](#),
 - The [Best Practices Guide for PPGs with Tribes](#),
 - ECOS's [Field Guide to Flexibility and Results](#),
 - NEPPS resources can be found at: www.epa.gov/nepps.

Section II.B. Evidence Act

In January 2019, EPA established an agencywide Evidence Act workgroup in response to the [Foundations for Evidence-Based Policymaking Act](#) (Evidence Act). This led to the formation of an advisory body to coordinate and lead the Agency's implementation of Evidence Act activities and deliverables. OCIR is the lead on the grant commitments met learning priority, which focuses on how to effectively track Agency grant commitments and related achievements. OCIR is also exploring possible next steps to establish a comprehensive Agency grant reporting system.

Work under the Agency's Learning Agenda is a first step towards a better understanding of current grant reporting and tracking processes across the Agency's 100+ current grant programs. EPA annually awards over \$4 billion in grants, with additional funds also coming from the [American Rescue Plan](#) (H.R. 1319) and the [Bipartisan Infrastructure Law](#) (H.R. 3684). The management and tracking of the individual

awards are dispersed amongst staff throughout headquarters and EPA's ten regional offices, which makes tracking results at the national level challenging. The Agency's current structures for tracking grant-related activities creates challenges in reporting and evaluating environmental outcomes on a national scale. Gathering information on current grant reporting and tracking processes will help EPA inform the development of a sustainable and consistent process for negotiating and tracking the environmental outputs and outcomes resulting from EPA's grant funding.

To achieve the goals outlined in this Learning Agenda, OCIR will implement these in three, year-long phases. The initial phase of work in Year 1 (FY 2021) addressed the priority question: "How do EPA's existing grant award and reporting systems identify and track grant commitments?" In Year 2 (FY 2022), the Agency anticipates addressing the question: "What EPA practices and tools effectively track whether grantees are fulfilling their workplan grant commitments, including outputs and environmental outcomes?" In the final year, FY 2023, the Agency anticipates addressing the question: "Are the commitments established in EPA's grant agreements achieving the intended environmental results?" In addition to continued engagement with EPA regions in FY 2023, the Agency anticipates engagement with state and tribal partners and other EPA grantees.

Key Activities to Implement Evidence Act: Grant Commitments Learning Agenda

- OCIR will work with the NPMs and Regions to learn 'What EPA practices and tools effectively track whether grantees are fulfilling their workplan grant commitments, including outputs and environmental outcomes' in Year 2 (FY 2022).
- OCIR will work with NPMs and regions to learn if 'the commitments established in EPA's grant agreements are achieving the intended environmental and/or human health results, particularly for overburdened and underserved communities' in Year 3 (FY 2023).
- OCIR will coordinate with NPMs and Regions to conduct interviews with individuals from selected programs throughout Year 2 and Year 3.
- NPMs and regions should support OCIR's efforts to implement the learning agenda by confirming regional interview contacts and providing supporting documentation as needed.
- OCIR will coordinate and communicate with the Environmental Council of the States (ECOS) and the states as the learning agenda progresses.

SECTION III. IMPLEMENTING TRIBAL WORK

As discussed in the [FY 2022-2026 EPA Strategic Plan](#), OCIR is committed to collaborating and strengthening our nation-to-nation relationship with our Tribal government partners. NEPPS fosters EPA's continuing efforts to improve partnerships with its Tribal recipients by increasing flexibility in using environmental program funding. The regulations found at 40 CFR 35.530-538 reflect efforts by EPA and its Tribal partners to increase administrative and programmatic flexibilities for Tribes to move towards improved environmental protection in Indian Country.

Tribal governments and intertribal consortia can gain greater financial flexibility in achieving joint environmental priorities by choosing to combine eligible funds into a PPG. Under 40 CFR §35.535, a Tribal government or consortium can use their PPG funds on any environmental activity eligible under the environmental programs listed in 40 CFR 35.501. This allows Tribal governments and consortia to use PPG funds for any eligible activity regardless of whether a Tribe applied for or was selected for funding for that particular environmental program, provided the Tribal government has the required delegation, approval, or authorization to carry out the activities and that the Regional Administrator consults with the appropriate National Program Managers (NPMs).

When a Tribal government or consortium decides to combine funds in a PPG, their total match requirement is reduced to zero percent. EPA approved a [regulatory class exception](#) that waives cost share requirements for Tribal PPGs at 40 CFR 35.536. This allows Tribes to reduce their cost share requirements to zero percent when new or supplemental PPG funds are awarded on or after October 1, 2021. The class exception is in place until EPA can revise or remove cost share requirements from 40 CFR 35.536.

EPA-Tribal Environmental Plans

Tribal Nations follow the same process described in [Section IV](#) when applying for, managing, and closing out PPGs. When it comes to developing a PPG workplan, Tribal Nations and intertribal consortia have the option to use their EPA-Tribal Environmental Plans (ETEPs) as their PPG workplan, or as a part of the workplan if it meets the workplan requirements listed in 40 CFR 35.507(b).

ETEPs are jointly developed documents outlining how EPA and each Tribal government will work together to protect human health and the environment within the context of EPA authorities. ETEPs are also a planning and communication tool for the Tribe and EPA that provides a road map for future decision-making.

While an ETEP is a requirement under the GAP, Tribal Nations are not required to negotiate an ETEP with EPA in order to combine multiple programs into a PPG. An ETEP can be a standalone document that is referenced when developing a PPG workplan or combined with the PPG workplan. Addressing both the ETEP and PPG activities in a single document can be beneficial for strategic planning since it draws a direct link between short and long-term goals.

SECTION IV. FLEXIBILITY AND GRANT PLANNING

OCIR, as the National Program Manager for NEPPS, has provided the following information to use as programmatic guidance. This section outlines the critical areas in PPA and PPG implementation, the mechanics in developing a workplan, identifying the accompanying regulations and fostering the benefits in optimizing available flexibilities and workload tradeoffs through the E-Enterprise (EE) partnership to achieve environmental results. National Program Offices are instructed to identify [PPG-eligible grants](#) and provide links to their most recent grant guidance on EPA's website. Additionally, OCIR has ensured that all other National Program Guidances do not negate or conflict with [PPG regulations](#).

Implementing PPAs

Developing a PPA

PPAs are a high-level document signed by state and Regional Senior Leadership to identify joint environmental priorities to be accomplished. While the scope and content may vary, PPAs typically address joint goals and objectives, the roles and responsibilities of each partner, and how progress will be assessed. PPAs may include details of program implementation needs, as well as the planned approach to bring about the greatest environmental results.

Negotiating and Signing a PPA

A fundamental concept underlying PPAs is the recognition that all states have unique capacities, interests, and environmental priorities. Many states use the process of negotiating a PPA with its EPA Region as a mechanism for reaching mutual agreement on joint priorities and workplans. Each EPA-state partnership negotiation accommodates for these differences and considerations. While the length and content of the document may vary, individual PPAs can range from a general statement about how the state and EPA will work together as partners, to a more comprehensive multi-program document that details each party's roles and responsibilities.

Notification of Expiring and New PPAs

Approaching the expiration of a PPA, the Regions and states convene to begin initial conversations and negotiations for developing a new PPA. During this negotiation phase, the Regions should notify OCIR, as well as their senior leaders and communications departments to alert them of when a PPA is due to expire. Through this process, the Regions and OCIR can amplify accomplishments of expired PPAs as well as promote the recently identified joint priorities between the state and EPA upon the signing of a new PPA.

Implementing PPGs

Development of a PPG Workplan

A PPG workplan is negotiated between the applicant and EPA. It reflects consideration of national, regional, state, or Tribal environmental and programmatic needs and priorities. A successful workplan depends upon a mutual understanding about what will be accomplished and by whom under the agreement. The applicant and EPA should ensure that program goals, priorities, and resource needs are considered in the planning process and are adequately reflected in PPG workplans. To do this, applicants and EPA begin working closely together early in the planning process to exchange EPA guidance, state or Tribal directives, results of environmental and program assessments, and other information for consideration in developing the PPG workplan. From these discussions, the joint EPA-state or Tribal priorities are developed.

Either a PPA or a portion of the PPA can serve as the grant workplan for a PPG and must be clearly identified. Applicants must ensure their workplans meet the requirements outlined in [40 CFR Part 35](#).

While developing their workplans, states have the option to use a state PPG workplan template. This simplified document offers a user-friendly approach to capturing the essential elements for a grant

workplan. This template may also serve as a tool for tracking and reporting environmental results. In its pilot year, several states have adopted this template with considerable favorability and Regions are encouraged to explore this template option to help facilitate commitment tracking and reporting. States interested in learning more about the template and integrating it into the PPG process should contact their Project Officer (PO) and/or regional NEPPS Coordinator.

How to Apply

Applicants submit their application into [grants.gov](https://www.grants.gov) at least 60 days before the beginning of the proposed funding period. The steps to apply are listed below:

1. Go to www.grants.gov.
2. Under the “Applicants” tab, click “How to Apply for Grants.”
3. Near the bottom-right of the page, click the red button, “Search for Opportunity Package.”
4. In the field “Funding Opportunity Number,” type **EPA-CEP-01** (leave the “Opportunity Package ID” field blank) and click “Search.”
5. CFDA number **66.605** can be found at the bottom of the list; users can click “Preview” to download the required forms or “Apply” to begin the application process.

The application must contain the following:

1. List of the environmental programs and the amount of funds from each program to be combined in the PPG
2. A consolidated budget
3. A consolidated workplan which addresses each program that is combined in the grant and meets the requirements of [40 CFR 35.107](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-35/subpart-1/section-35.107).

Applicants with questions about submission requirements should contact their regional Grants Management Officer (GMO) or their regional NEPPS Coordinator.

Cost Sharing

As part of the consolidated budget, the applicant for a state PPG must provide a non-federal match or cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs in the PPG. Cost share requirements for the individual environmental programs are described in [40 CFR 35.140](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-35/subpart-1/section-35.140) and [35.418](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-35/subpart-1/section-35.418).

When an environmental program included in a PPG has both a matching and maintenance of effort requirement, the greater of the two amounts is used to calculate the cost share attributed to that environmental program. Just as federal funds in the PPG do not need to be accounted for based on their original program source, the non-federal share of a PPG may be expended on workplan commitments without regard to the original source of the cost share requirement.

As of October 1, 2021, the EPA Office of Grants and Debarment (OGD) approved a [regulatory class exception from 40 CFR 35.536](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-35/subpart-1/section-35.536), to reduce the required tribal PPG cost share to 0% for all included programs, with the following conditions:

- The class exception is effective October 1, 2021 and applies only to new Tribal or intertribal consortia PPGs and new funding awarded via supplemental amendments to Tribal or intertribal consortia PPGs awarded on or after October 1, 2021.

- The class exception is in place until EPA can revise or remove cost share requirements from 40 CFR 35.536.

If cost share was included in the budget of a new award or supplemental amendment to a Tribal or intertribal consortium PPG awarded after October 1, 2021, the recipient is required to comply with the cost share contribution and reporting requirements; however, the recipient can request removal of the voluntary cost share. Cost share associated with funds approved and/or awarded prior to October 1, 2021, remain unaffected by this regulatory exception.

Reporting

EPA must regularly evaluate the grant recipient's performance. This is necessary to demonstrate achievement of the program's commitments, share lessons learned, improve program outcomes, and foster adoption of effective practices. Recipients are responsible for managing each project activity supported by the award to assure compliance with applicable federal requirements and that performance expectations are being achieved. States should submit annual reports addressing all included programs, and semi-annual reports addressing those programs with semi-annual reporting requirements. Alternatively, and at the state's discretion, states may submit semi-annual reports addressing all programs included in the PPG.

In effectively managing the funds, especially in the event of unexpended funds, or unliquidated obligations (ULOs), for assistance agreements and grants, the regions should follow the procedures outlined in EPA's [Grants Policy Issuance-11-01](#). The policy requires that a ULO review is performed at least annually and that EPA Project Officers maintain adequate documentation of project management activities from inception to the closeout of the assistance agreement.

Closeout

The recipient is required to submit a Final Financial Report (FFR), a Final Technical Report (FTR), and other reports as indicated in the terms and conditions of the award, no later than 120 calendar days after the end date of the period of performance. Once EPA receives the required documents and has determined that all applicable administrative actions and required work of the federal award have been completed by the recipient, the grant award will be closed.

If the recipient does not submit all final reports within one year, EPA must report the recipient's material failure to comply with the terms and conditions of the award in the Federal Awardee Performance and Integrity Information System (FAPIIS). Additionally, EPA may, in accordance with applicable regulations, take enforcement action, including potential recovery of funds reimbursed to your organization.

For more information, please reference [OGD's website](#) and the closeout regulations found at [2 CFR Part 200](#).

Training

For EPA Project Officers, state and tribal staff, and others interested in learning more about the implementation of PPGs, there is online training available. This training provides an overview of NEPPS, a discussion of the regulations and policies related to PPGs, and other valuable information pertaining to

the negotiation, management, and closeout of PPGs. While this training provides helpful information to all interested parties, OCIR anticipates a companion training specific to tribal PPGs to be developed.

PPG Flexibilities

One of the fundamental benefits of PPGs is the range of flexibilities available in meeting environmental goals. EPA issued [GPI-15-01](#) with the specific intent to foster awareness of the administrative and programmatic flexibilities in managing PPGs.

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, workplan, and budget, regardless of how many environmental programs provide funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve workplan commitments, and do not need to account for funds in accordance with their original funding program sources.

Just as the accounting of federal funds in the PPG are not based on the original program source, the non-federal share of a PPG may be expended on workplan commitments without regard to the original source of the cost share requirement. These administrative features also make it possible for states to negotiate a workplan that includes cross-media or innovative strategies for addressing environmental problems.

Another benefit of PPGs is that states have the option to submit one overall progress report rather than an individual progress report for each grant program. Because of the financial flexibility inherent in PPGs, reporting on workplan commitments is crucial for ensuring PPG success. PPGs can also provide efficiencies by reducing costs, streamlining paperwork, and accounting procedures.

If approved by the EPA Regional Administrator, a PPG can also provide the recipient with flexibility to increase efforts in some program areas where its needs are greater and decrease them in other areas where the needs are less. In applying for programmatic flexibility, the PPG applicant must provide a rationale, commensurate with the extent of any flexibility being proposed in the workplan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort in the PPG.

The recipient must also assure that basic program commitments are maintained for all programs combined in the grant. The Regional Administrator and recipient will negotiate and reference information in determining an application for flexibility. Information useful in supporting a state's proposal for programmatic flexibility may be found in existing PPAs, a recent water quality report or a previous grant evaluation. Such information should be used to the extent possible to minimize duplication of effort.

As cited in [40 CFR §35.107\(a\)\(2\)](#), the Regional Administrator and applicants are to consider the National Program Guidance in place at the time of the award in negotiating a workplan. If an applicant proposes a workplan that deviates significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Administrator must then consult with the appropriate NPM before agreeing to the workplan.

Since the inception of NEPPS, defining and applying PPG flexibilities can also pose challenges to EPA and grant recipients. Thus, it is helpful to track instances where PPG flexibilities are applied and to document these examples. Regions are encouraged to track examples of flexibility included in PPAs and PPGs and share these examples of flexibilities broadly with states and regions to accelerate consideration of innovative practices. State and Tribal recipients will benefit from identifying possible new areas of flexibility to pursue based on the experience of peer states and Tribal Nations.

PPG flexibility also includes workload tradeoffs under the E-Enterprise initiative as described below.

E-Enterprise and Workload Tradeoffs

The E-Enterprise for the Environment (EE) partnership is comprised of environmental leaders from EPA, states, and Tribal governments, and it exemplifies the Agency's commitment to optimizing new ways of doing business with partners. All three parties hold the EE partnership model up as the standard for collaboration and shared governance. Relying on the trusted and longstanding E-Enterprise Leadership Council (EELC), EPA, states, and Tribal Nations work together to improve how we implement environmental programs. The EE governance structure is led by the EELC setting the strategic direction and driving activities for EE participants. The EELC is comprised of 10 representatives each from EPA, states (agency commissioners, directors, et al) and Tribal Nations (Tribal environmental professionals). The EPA Deputy Administrator co-chairs the EELC along with a state commissioner and Tribal leader.

In summary, three principles serve as the building blocks for E-Enterprise, modernizing the federal, state, and tribal business of protecting the environment and human health:

- 1) Operate as a transformative model of shared governance, in which the partnering environmental agencies jointly identify priorities, define, and solve problems, and improve and implement environmental programs
- 2) Improve environmental protection by enhancing program performance, streamlining, and modernizing environmental programs, and sharing best practices
- 3) Find technological solutions that partners can share, adapt, and deploy across organizations and media where possible.

Through E-Enterprise and as reflected in the Agency's FY 2022-2026 Strategic Plan, EPA, Tribal and state leaders prioritize shared concerns, address challenges, and build efficient and effective solutions. EPA, along with the states and Tribes, are encouraged to make the best use of new IT tools and technologies to improve environmental results. EE supports a variety of projects: the Agency may better understand the use of "participatory science" in environmental data management, develop a robust compliance [Learning Agenda](#), and advance environmental monitoring technologies. States and Tribes are encouraged to use Workload Tradeoffs to adjust grant workplans to focus on collaborative projects such as these related to work modernization.

The EPA E-Enterprise Regional Coordinators (EERCs) actively engage in building strong relationships with state and Tribal partners, including supporting work on innovative solutions. One way to accomplish this is to offer greater flexibility in EPA state/Tribal cooperative agreements, including PPGs. These temporary workload tradeoffs allow states and Tribal Nations to focus on improving business processes and efficiencies. States and Tribes work with EPA regional offices to consider workload tradeoffs, which permit a temporary decrease of existing work to allow for new, modernization work to occur. Workload tradeoffs do not always include federal grant resources or may be managed within a program covered by a single grant. Furthermore, there may be occasions in which the funding demands within a program,

or the technical and/or expertise needs of a particular project, deem a tradeoff as not practical/eligible. For additional information, please refer to the [EPA's E-Enterprise tradeoff Guidance](#).

EPA programs and Regions, along with the rest of the EE community, use the [E-Enterprise Community Inventory Platform](#) (EECIP) as a comprehensive information-sharing tool providing updated information and resources about specific EE-related projects. Specifically, EECIP can be used to share flexibilities grant recipients have successfully negotiated into their PPAs/PPGs. An example of an approved workload tradeoff request in a PPG workplan can be found in EECIP, along with other examples of PPA workload trade-off language and workload trade-off reporting in an annual PPG progress report. Lastly, the EERCs have produced a [Best Practices Sheet](#) which speaks to the benefits of using [EECIP](#) for sharing information on workload trade-offs and much more.

SECTION V. FEDERAL CIVIL RIGHTS RESPONSIBILITIES, INCLUDING TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

In 1994, Executive Order 12898¹ was issued to direct Federal agencies to incorporate achieving environmental justice into their mission. The Presidential Memorandum² accompanying that Executive Order required in part, that consistent with Title VI, each Federal agency “...ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.”³

EPA has a responsibility to ensure that recipients and subrecipients of federal financial assistance from EPA – including states, municipalities, and other public and private entities – comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin (including limited English proficiency), disability, sex, and age, including Title VI of the Civil Rights Act of 1964.⁴ EPA’s implementing regulation generally prohibits discrimination in any programs, activities and services receiving federal financial assistance.⁵ In addition, EPA’s implementing regulations at 40 Code of Federal Regulations Section 7.35 states that programs or activities receiving EPA assistance “shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, or national origin...”:

- Subject a person to segregation or separate treatment.
- Deny a person or group the opportunity to participate as members of any planning or advisory body.

¹ [E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994.](#)

² [Presidential Memorandum on E.O. for Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations \(pdf\).](#)

³ *Id.*

⁴ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., 29 U.S.C. § 794, Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92 500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

⁵ See 40 Code of Federal Regulations (C.F.R.) Section 7.30.

- Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program.
- Use criteria or methods of administration “which have the effect of subjecting individuals to discrimination.”
- Choose a site or location of a facility with “the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination,” among other things.

EPA’s nondiscrimination regulations at 40 Code of Federal Regulations Parts 5 and 7 also contain longstanding procedural requirements applicable to applicants for and recipients (including sub-recipients) of EPA financial assistance.⁶ These regulations require recipients to have a notice of nondiscrimination, nondiscrimination coordinator, grievance procedures, a process for collecting and maintaining nondiscrimination compliance information, and pursuant to Title VI and the Rehabilitation Act of 1973, to develop policies and procedures for ensuring meaningful access to programs and activities for individuals with limited-English proficiency and individuals with disabilities. In addition, recipients’ public participation processes must also be implemented consistent with the federal civil rights laws.⁷

EPA intends to carefully evaluate the implementation of EPA financial assistance programs for compliance with civil rights laws by recipients of EPA funding to ensure that no community is excluded from receiving or denied benefit of funding based on race, color, national origin (including limited English proficiency), age, disability, or sex.

For more information about the federal civil rights laws enforced by EPA, including Title VI, please visit: <https://www.epa.gov/ocr/title-vi-laws-and-regulations> and <https://www.epa.gov/ogc/external-civil-rights-compliance-office-title-vi>.

⁶ EPA’s nondiscrimination regulation at 40 C.F.R. Parts 5 and 7 requires recipients to establish and implement their own nondiscrimination programs. See 40 C.F.R. §§ 7.80-7.100.

⁷ See Title VI, 42 U.S.C. 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient’s Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. [69 FR 35602, June 25, 2004](#); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, [71 FR 14207, March 21, 2006](#); U.S. EPA, [Procedural Safeguards Checklist for Recipients](#) (rev. Jan. 2020), which provides a more detailed explanation of nondiscrimination obligations and best practices; U.S. EPA, [Disability Nondiscrimination Plan Sample](#) (2017).

SECTION VI. CONTACTS

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