

## Crosscutters

Crosscutting federal authorities are the requirements established by federal laws and executive orders that apply in federal financial assistance programs. Certain projects and activities receiving assistance under the SRFs may be required to comply with the federal crosscutters. These requirements are not cited in the SRF programs' authorizing statutes or regulations but apply broadly by their own terms in federal statutes, regulations, or executive orders to a wide range of federal financial assistance programs.

	<b>Equivalency Only?</b>	<b>Crosscutter</b>	<b>Resource(s)</b>	<b>Updated On</b>
<b>Environmental Authorities</b>	✓	<b>Archaeological and Historic Preservation Act</b> , 16 U.S.C. 469 et seq.	Archeological and Historic Preservation Act_October 2003	October 2003
	✓	<b>Clean Air Act Conformity</b> , 42 U.S.C. 7401 et seq.	Clean Air Act Conformity_October 2003	October 2003
	✓	<b>Coastal Barriers Resources Act</b> , 16 U.S.C. 3501 et seq.	Coastal Barriers Resources Act_October 2003	October 2003
	✓	<b>Coastal Zone Management Act</b> , 16 U.S.C. 1451 et seq.	Coastal Zone Management Act_October 2003	October 2003
	✓	<b>Endangered Species Act</b> , 16 U.S.C. 1531 et seq.	Endangered Species Act_October 2003	October 2003
	✓	<b>Farmland Protection Policy Act</b> , 7 U.S.C. 4201 et seq.	Farmland Protection Policy Act_October 2003	October 2003

	✓	<b>Floodplain Management Executive Order No. 11988 (1977)</b> , as amended by <b>Executive Order No. 12148 (1979)</b>	Floodplain Management_October 2003	October 2003
	✓	<b>Magnuson-Stevens Fishery Conservation Management Act</b> , 16 U.S.C. 1801 et seq.	Magnuson-Stevens Fishery Conservation Management Act_October 2003	October 2003
	✓	<b>National Historic Preservation Act</b> , 54 U.S.C. 300101 et seq.	National Historic Preservation Act_October 2003	October 2003
	✓	<b>Sole Source Aquifer, Section 1424(e) of Safe Drinking Water Act</b> , 42 U.S.C. 300h-3e	Sole Source Aquifer_October 2023	October 2023
	✓	<b>Wetlands Protection - Executive Order No. 11990 (1997)</b> , as amended by <b>Executive Order No. 12608 (1997)</b>	Wetlands Protection_October 2003	October 2003
	✓	<b>Wild and Scenic Rivers Act</b> , 16 U.S.C. 1271 et seq.	Wild and Scenic Rivers Act_October 2023	October 2023
<b>Social Policy Authorities</b>		<b>Civil Rights Laws</b> - <b>The Age Discrimination Act of 1975</b> , 42 U.S.C. 6102 et seq. - <b>Section 13 of the Federal Water Pollution Control Act Amendments of 1972</b> , (CWSRF only) 33 U.S.C. 1251 et seq.	Civil Rights Laws_October 2003	October 2003

		<ul style="list-style-type: none"> <li>- <b>Section 504 of the Rehabilitation Act of 1973</b>, 29 U.S.C. 794</li> <li>- <b>Title VI of the Civil Rights Act of 1964</b>, 42 U.S.C. 2000d et seq.</li> </ul>		
	✓	<b>Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs</b> , <a href="#">40 CFR Part 33</a>	Disadvantaged Business Enterprises_October 2003.pdf	October 2003
<b><i>Economic and Miscellaneous Authorities</i></b>	✓	<p><b>Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants, or loans, Executive Order No. 11738 (1973)</b></p> <p><b>-Section 306 of the Clean Air Act</b>, 42 U.S.C. 7606 et seq.</p> <p><b>-Section 508 of the Clean Water Act</b>, 33 U.S.C. 1368 et seq.</p>	Administration of the CAA and the FWPCA_October 2003	October 2003
	✓	<b>Build America, Buy America Act</b> , Pub. L. 117-58, Sections 70901-70927	<a href="#">EPA BABA Website</a> ; <a href="#">Build America, Buy America Act Implementation Procedures for EPA Office of Water Federal Financial Assistance Programs</a> ; <a href="#">Supplemental BABA Questions and Answers</a>	May 2023
	✓	<b>Federal Funding Accountability and Transparency Act</b> , Public Law 109-282	Guidance on FFATA reporting through CWSRF and DWSRF data systems (2011); Clarification of FFATA	November 2023

			Guidance on FFATA reporting Programs (2023)	
	√	<b>Intergovernmental Review</b> <b>-Demonstration Cities and Metropolitan Development Act</b> , 42 U.S.C. 3331 et seq. <b>-Intergovernmental Cooperation Act of 1968</b> , 42 U.S.C. 4201 et seq. <b>-Executive Order 12372, as amended (1983)</b> , 40 CFR Part 29	Intergovernmental Review Revisions_October 2023	October 2023
	√	<b>Prohibition on Certain Telecom and Video Surveillance Services/Equipment</b> , 2 CFR 200.216	Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs	December 2020
	√	<b>Suspension and Debarment, Executive Order 12549 (1986)</b> , 2 CFR Part 180, 2 CFR Part 1532	Suspension and Debarment_October 2023	October 2023
		<b>Uniform Grant Guidance Subaward Procurement and Monitoring, (grants only)</b> 2 CFR 200.317 through 2 CFR 200.327 and 2 CFR 200.331 through 2 CFR 200.333	Understanding State Revolving Fund Additional Subsidy as a Grant	July 2022

	✓	<b>Uniform Relocation and Real Property Acquisition Policies Act</b> , 42 U.S.C 4601 et seq., 40 CFR Part 4, 49 CFR Part 24	Uniform Relocation and Real Property Acquisition Policies Act_October 2003	October 2003
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## **CROSCUTTER: ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT**

**Updated:** October 2003

### **Description**

The intent of the Archeological and Historic Preservation Act (AHPA) is to limit the loss of important historical data that would result from federal, or federally authorized, construction activities. Unlike section 106 of the NHPA, which principally addresses adverse effects to historic properties identified within a project area prior to project initiation, the requirements of the AHPA are typically invoked when historic properties are discovered after the project has begun and potential adverse effects may occur. (The NHPA regulations do have a provision that addresses late discoveries of historic properties).

The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeologic data that may be lost during the construction of federally sponsored projects and to nominate for the register resources under the agency's control, to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. If such items are discovered, the DOI must be notified to recover the data or recommend measures to mitigate potential losses. The Department's standards and guidelines (48 Fed. Reg. 44716 (Sept. 9, 1983)) detail accepted archeological preservation activities and methods. This publication is the standard for all data recovery activities undertaken in the SRF programs for discovery situations under the AHPA, or for avoiding or mitigating adverse impacts on known historic properties under the NHPA.

16 U.S.C. § 469a-1 reads in part:

(a) Notification and request for preservation of data

Whenever any federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any federal construction project or federally licensed project, activity or program, may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary [of the Interior], in writing, and shall provide the Secretary with appropriate information concerning the program, project or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data...

When discoveries are made on a project that required the involvement of the SHPO/THPO during the early planning stages of the project, compliance with the AHPA can be satisfied by continuing to work through the SHPO/THPO under procedures of the NHPA. Alternatively, whether or not it is necessary to consult with the SHPO/THPO on a project involving NHPA

compliance, compliance with the AHPA may be accomplished by working directly with the DOI, National Park Service's Departmental Consulting Archeologist.

## **Implementation in the SRF Programs**

The SRF agency may involve the SHPO/THPO in determining the significance of discoveries of scientific, prehistoric, historical, or archeological data made during construction. Agreements for data recovery, and mitigation measures, if necessary, made between the SRF agency and the SHPO/THPO will satisfy EPA's compliance obligations. The EPA regional office needs to be notified and involved only when disputes cannot be resolved. If, however, the SRF agency fails to work through the SHPO/THPO, the EPA regional office must be notified and will coordinate with the DOI to ensure compliance with the AHPA.

Recovery or mitigation measures may require alteration of the project's approved plans. The results of the consultations and approved data recovery mitigation plan must be included in the assistance recipient's environmental documentation for the project.

## **CROSCUTTER: CLEAN AIR ACT CONFORMITY**

**Updated:** October 2003

### **Description**

Because of the nature and scope of the problem to be remedied, the Clean Air Act (CAA) imposes responsibilities for its implementation on all levels of government. Among other things, the Act directs EPA to set ambient air quality standards, which are airborne pollutant levels that are sufficient to protect the public health and welfare. Each state must develop an implementation plan (SIP), describing how it will attain, maintain and enforce the air quality standards. Developing the SIP, and implementing its provisions for controlling direct and indirect emissions, is done in consultation with state air agencies and other government organizations. Section 176(c) of the Act prohibits any federal assistance for an activity within a nonattainment or maintenance area that fails to conform to an applicable SIP. This broad provision reads in part:

- (c) Activities not conforming to approved or promulgated plans
  - (1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a [State Implementation Plan].

42 U.S.C. § 7506(c)

### **Implementation in the SRF Programs**

Section 176(c) is implemented through regulations published by the EPA (40 C.F.R. § 93.150 et seq (Determining Conformity of General Federal Actions to State or Federal Implementation Plans)). If a state has adopted its own set of general conformity regulations and EPA has approved them into the SIP, those regulations must be followed. The SRF assistance recipient must first determine the direct and indirect emissions from the proposed project. If a project's emissions for each nonattainment pollutant are below the de minimis thresholds set forth in the applicable regulation, no further analysis is necessary and the project is presumed to conform. If the total of direct and indirect emissions is above the applicable de minimis levels and the project is otherwise not exempt from a conformity determination, the project must be found to conform to the SIP pursuant to one of the criteria listed in the regulation. The SRF agency, in consultation with the responsible state air agency and others, must take public comment on a proposed conformity determination. Projects cannot proceed unless they are found to conform. The conformity analysis can be included in the environmental review documents.

## **Additional References**

- General Conformity Guidance: Question and Answers (July 13, 1994 and October 19, 1994 (which addresses issues with respect to SRF funded projects) found at: [www.epa.gov/ttn/oarpg/genconformity.html](http://www.epa.gov/ttn/oarpg/genconformity.html).

## **CROSCUTTER: COASTAL BARRIERS RESOURCES ACT**

**Updated:** October 2003

### **Description**

In 1982, Congress enacted legislation intended to discourage development in the Coastal Barrier Resources System<sup>1</sup>, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes. The Coastal Barrier Resources Act restricts federal financial expenditures and assistance that would encourage development in the Coastal Barriers Resources System and the adjacent wetlands, marshes, estuaries, inlets, and near-shore waters.

16 U.S.C. § 3504(a) reads in part:

#### **Limitations on Federal Expenditures Affecting the System**

- (a) ...no new expenditures or new financial assistance may be made available under authority of any federal law for any purpose within the [Coastal Barrier Resources System], including, but not limited to --
  - (1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure...

16 U.S.C. §3505 provides a number of exceptions to this limitation on federal funding, including exceptions for facilities necessary to explore and extract energy resources and for "the maintenance, replacement, reconstruction, or repair, but not the expansion of, publicly-owned or operated... structures or facilities that are essential links in a larger network or system."  
16 U.S.C. §3505(a)(3).

### **Implementation in the SRF Programs**

During the planning phase of a proposed project and with the assistance of the state SRF agency, the SRF assistance recipient should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the Coastal Barrier Resources System and, if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

The state SRF agency must then provide the state Coastal Zone Management agency and the U.S. Fish and Wildlife Service with a certification, supported by sufficient documentation, that the proposed project will not affect the system, or documentation on the alternative site or

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<sup>1</sup> The Coastal Barrier Resources System is established at 16 U.S.C. §3503. The areas in the system are depicted on maps on file with the Secretary of DOI titled, "Coastal Barrier Resources System."

mitigating measures that will be taken to avoid any effect on the system. The U.S. Fish and Wildlife Service is responsible for commenting on this information directly to the state SRF agency or the Coastal Zone Management program. Any recommendations offered by the U.S. Fish and Wildlife Service or the Coastal Zone Management agency to further minimize the effect of the proposed project must be considered for integration in the project's design by the SRF agency before it may provide assistance.

## **Additional References**

- 48 Fed. Reg. 45664 (1983): DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines.

## **CROSCUTTER: COASTAL ZONE MANAGEMENT ACT**

**Updated:** October 2003

### **Description**

In 1972, Congress amended the Marine Resources and Engineering Development Act to establish a national policy for the protection, beneficial use, and effective management and development of the nation's coastal zones.<sup>1</sup> The Act is also applicable to the coasts of the Great Lakes. The Coastal Zone Management Act, Pub. L. No. 101-508, 104 Stat. 1388-300 (1990), authorizes the Secretary of Commerce to assist states in the development of management plans designed to regulate land and water use in coastal areas. The Act also calls on all federal agencies to ensure that their activities in coastal areas are consistent with the state coastal zone management plans that have been approved by the Department of Commerce.

16 U.S.C. §1456(c)(1)(A) states:

(c)(1)(A) Each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs.

Generally, before any federally supported activity can be undertaken in a coastal zone, a determination that the project is consistent with the coastal zone management plan (consistency determination) must be secured from the responsible state agency.

### **Implementation in the SRF Programs**

The Coastal Zone Management Act places primary responsibility for complying with its provisions in the state Coastal Zone Management agency. SRF assistance recipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the project will be consistent with the state's coastal zone management plan. Consistency can be achieved through appropriate siting of the facility and its components or by incorporating adequate mitigating measures in the project's design. The SRF assistance recipient must then provide the SRF agency with documentation that the project is consistent with the coastal zone management plan. The SRF agency will review the documentation and may propose additional mitigating measures before forwarding a certification of consistency to the state Coastal Zone Management agency. If the Coastal Zone Management agency

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<sup>1</sup> The coastal zone encompasses coastal waters including the lands therein and thereunder and the adjacent shore lands and the waters therein and thereunder. The coastal zone includes islands, intertidal areas, salt marshes, wetlands, and beaches. The zone extends inland from the shorelines only to the extent necessary to control the shore lands. See 16 U.S.C. § 1453(1)

determines that the project is consistent with the state management plan (a consistency determination), the SRF assistance may be provided.

If the Coastal Zone Management agency cannot issue a consistency determination, the SRF agency must resume consultation with the assistance recipient and the Coastal Zone Management agency in an effort to resolve consistency issues. Conflicts can be addressed through informal discussions with the Coastal Zone Management Act's administering agencies, the National Oceanic and Atmospheric Administration (NOAA), or through mediation by the Department of Commerce, Office of Ocean and Coastal Resource Management.

## **Additional References**

- 15 C.F.R. Part 930 Subpart F: Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Programs.
- 15 C.F.R. Part 923: Coastal Zone Management Program Regulations.

## **CROSCUTTER: ENDANGERED SPECIES ACT**

**Updated:** October 2003

### **Description**

Congress passed the Endangered Species Act in response to the risks posed to plants, fish, and wildlife by development and economic growth. The DOI's U.S. Fish and Wildlife Service and the Department of Commerce's National Marine Fisheries Service prepare and maintain a list of endangered and threatened species. The Act requires all federal agencies to ensure that their activities are not likely to jeopardize, destroy, or adversely modify listed or proposed endangered and threatened species, or the designated critical habitat on which they depend. The Act also prohibits federal agencies and all other "persons" from "taking," e.g., harming (including, in some cases, habitat modification), harassing, or killing, endangered, and most threatened, animal species, without prior authorization for incidental taking from the applicable Service.

Actions that may affect listed species or their critical habitat must be reviewed through a consultation process between the federal agency and either the U.S. Fish and Wildlife Service, which is responsible for terrestrial and freshwater species, or the National Marine Fisheries Service, which is responsible for most marine species. Federal agencies also must "confer" with the Service(s) if their actions are likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of habitat proposed for designation as critical. The consultation and conference processes are established by Section 7 of the Act, which reads in part:

(a) Federal Agency Actions and Consultations.

\* \* \* \* \*

(2) Each federal agency shall, in conjunction with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected states, to be critical...

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(4) Each federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed . . . or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

*16 U.S.C. §§1536(a)(2)and (4)*

Finally, all "persons" in the U.S., including federal agencies, states, and other nonfederal entities, are prohibited from "taking" (e.g., harming, harassing, or killing) individuals of listed

animal species under section 9 of the ESA. Detailed regulations governing consultation, conferences, and take issues associated with agency actions are set forth at 50 CFR Part 402. These regulations allow for federal agencies to fulfill certain ESA duties through designated non-federal representatives. 50 CFR § 402.08.

## Implementation in the SRF Programs

During project planning, the SRF assistance recipient should obtain a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area and consult with the regional office of the appropriate Service to determine whether any listed or proposed species or critical habitat may be affected by the proposed project. The project can proceed if the state SRF agency conclusively determines that listed or proposed species or critical habitat will not be affected in any way -- adversely or beneficially, directly or indirectly -- by the project or interrelated or interdependent activities.

If the proposed project may affect a listed or proposed species or critical habitat, the state SRF agency and the appropriate Service must consult to determine the nature of that effect. A biological assessment must be prepared by the SRF agency (with the SRF assistance recipient's assistance, if appropriate) to serve as a basis for the determination that there will be no likely adverse effect on any listed species or critical habitat, or to support EPA in formal consultation with the appropriate service<sup>1</sup>. In order for the consultation to be concluded through an informal process, the appropriate service must provide written concurrence with the determination that the action is not likely to adversely affect listed species or critical habitat. In other words, the consultation does not conclude until the Service issues either (1) a biological opinion or (2) a concurrence letter agreeing that the action is not likely to adversely affect any listed species (informal consultation).

When formal consultation is necessary, the appropriate Service will render a biological opinion. If the opinion concludes that a proposed project is likely to jeopardize a listed species or destroy or adversely modify a critical habitat, the Service will propose reasonable and prudent alternatives to the project that will not result in jeopardy of destruction or adverse modification, if possible. The EPA regional office, after consulting with the state SRF agency, will likely require an alternative or modified plan for the project that is not likely to jeopardize the species or habitat. In addition, if the opinion concludes that the proposed project will result in the incidental "taking" of a listed animal species, the Service generally will provide an incidental take statement that authorizes take so long as the state SRF agency and the SRF assistance recipient comply with specified reasonable and prudent measures necessary or appropriate to minimize impact on the species, and terms and conditions to implement those reasonable and prudent measures.

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<sup>1</sup> While biological assessments are mandated for "major construction activities" as defined by the Act's regulations, they are not mandatory for projects that are not "major construction activities." In that case, however, a biological evaluation or other analysis similar to a biological assessment that analyzes the project's potential effects on species and critical habitat is required in order for the consultation process to proceed.

For either informal or formal consultation, ESA consultation does not conclude until the Service issues either (1) a concurrence letter agreeing that the action is not likely to adversely affect any listed species (informal consultation) or (2) a biological opinion (formal consultation). There are time frames by which the Service is supposed to respond, but the SRF agency cannot proceed until the Service acts.

## **Additional References**

- 50 C.F.R. Part 402: DOI and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act.
- 50 C.F.R. 17.11 and 17.12: U.S. Fish and Wildlife Lists of Endangered or Threatened Species.
- 50 C.F.R. 17.95, 17.96 and Part 226: U.S. Fish and Wildlife Critical Habitats.
- 50 C.F.R. 222.23(a) and 227.4: National Marine Fisheries Service's List of Endangered or Threatened Marine Species.
- Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and National Marine Fisheries Service (March 1998), found at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>

## **CROSCUTTER: FARMLAND PROTECTION POLICY ACT**

**Updated:** October 2003

### **Description**

In the 1970s, federal assistance for large-scale construction projects became pervasive and concerns developed in several agencies that many projects were being undertaken without due regard to their effect on the productive capacity of the nation's agricultural lands. These concerns gave rise to a series of policy statements, issued by the U.S. Department of Agriculture, the Council on Environmental Quality and the EPA (*EPA Policy to Protect Environmentally Significant Agricultural Lands*, signed by the Administrator on September 8, 1978), instructing federal program managers to more carefully consider the effect of a project on agricultural land and to take alternative or mitigating measures, when appropriate, to ensure that valuable farmland is preserved.

This policy direction culminated in 1981 with the passage of the Farmland Protection Policy Act, which was included in the 1981 Farm Bill (Agriculture and Food Act of 1981, Pub. L. No. 97-98, 7 U.S.C. § 4201 *et. seq.*). In the Act, Congress directed federal agencies to use criteria developed by the Soil Conservation Service (SCS) to identify the potential adverse effects of federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is compatible with the farmland preservation policies of state and local governments, and private organizations.

7 U.S.C. § 4202(b) calls upon all federal agencies to:

...identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with state, unit of local government, and private programs and policies to protect farmland.

### **Implementation in the SRF Programs**

Early in the planning phase of a project, the SRF agency and SRF assistance recipient should seek technical assistance from the state conservationist or local representative regarding the alternative sites proposed for the project. The state conservationist can offer advice on what further actions must be taken by the assistance recipient and the SRF agency to further evaluate important farmlands; the significance of all identified important farmlands; the sizing of the project as it relates to secondary growth; the continued viability of farming and farm support services in the project area; and alternatives or mitigation measures the SRF agency

and assistance recipient should take to reduce potential adverse effects on important farmlands.

Before proceeding with the project, the SRF agency must notify the state conservationist or local representative about measures that the SRF assistance recipient will take to avoid, minimize, or mitigate effects on important farmlands.

## **Additional References**

- 7 C.F.R. Part 658: Department of Agriculture criteria for identifying and taking into account the adverse effects of federal programs on the preservation of farmlands.
- *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978.

## **CROSCUTTER: FLOOD PLAIN MANAGEMENT**

**Updated:** October 2003

### **Description**

Federal policy designed to promote the prudent management of flood plains has been in effect since 1968, with the passage of the National Flood Insurance Act. Pub. L. No. 90-448, 42 U.S.C. § 4001 *et seq.* By providing federal subsidies for private flood insurance and by requiring flood-prone communities to have the insurance as a condition to receiving federal assistance, that law and the Flood Disaster Protection Act of 1973, Pub. L. No. 93-234, 87 Stat. 975 (1973), recognized the serious economic and environmental damage that can result from flooding in developed lowland areas.

Executive Order No. 11988 regulates the actions of federal agencies that affect flood plains.<sup>1</sup> This order requires all agencies undertaking, financing, or assisting proposed activities to determine whether they will occur in or affect a flood plain and to evaluate potential measures to avoid adversely affecting the plain. Locations of flood plains can be determined by examining maps available from the Federal Emergency Management Agency (FEMA), and state water resource planning agencies. Agencies must select, if they are available, viable alternative locations for their undertakings that will not affect flood plains.

If construction or improvements will be undertaken or supported in a flood plain because no practicable alternative locations are available, and the SRF agency has otherwise complied with the Executive Order, measures must be taken to minimize the risk of flood damage to or within the flood plain, such as flood proofing the facility to be constructed, elevating structures above base flood levels, or providing compensatory flood storage. In addition, public review is required for each plan or proposal for action taking place within a flood plain.

### **Implementation in the SRF Programs**

In consultation with the state SRF agency, the SRF assistance recipient must first determine whether the proposed project will be located in or affect a flood plain by utilizing maps prepared by FEMA or other state or local floodplain resources. If the project will not be located in or affect a floodplain, no additional action is needed.

If the proposed project will be located in or will affect a flood plain, the assistance recipient must prepare a flood plain/wetlands assessment. If there are no practicable alternatives to the proposed site, the assistance recipient must document the mitigating measures or design modifications that will be taken to reduce the threats from locating the project in the flood

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<sup>1</sup> Executive Order No. 12148, 3 C.F.R. §412, transferred functions for flood plain management to the Federal Emergency Management Agency.

plain. In conjunction with the public notice procedures in the SERP, the project area community must be informed why the proposed project is to be located in a flood plain.

The environmental information documentation describing mitigating and design measures must be submitted by the assistance recipient to the SRF agency, which prepares a preliminary finding on whether the assistance recipient has complied with Executive Order No. 11988. Notice of this finding should be given to FEMA, which may provide recommendations for improving mitigation measures or further modifying the project's design to enhance flood protection.

## **Additional References**

- 40 C.F.R. Part 6 Appendix A: Statement of Procedures on Flood Plain Management and Wetlands Protection.
- 43 Fed. Reg. 6030 (1978): Water Resources Council's Flood Plain Management Guidelines issued to aid all other federal agencies in amending their regulations and procedures to comply with Executive Order No. 11988. The Guidelines include an eight- step decision-making process.
- "Further Advice on Executive Order 11988 Flood Plain Management," issued by FEMA and the Interagency Task Force on Flood Plain Management, in 1987.

## **CROSCUTTER: MAGNUSON-STEVENS FISHERY CONSERVATION MANAGEMENT ACT**

**Updated:** October 2003

### **Description**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, was designed to manage and conserve national fishery resources. Eight Regional Fishery Management Councils (RFMC) were established to maintain the fisheries in their geographic region through Fishery Management Plans (FMP). The National Oceanic and Atmospheric Administration (NOAA), through the National Marine Fisheries Service (NMFS), evaluates FMP and issues necessary regulations.

In 1996, reflecting Congressional concern with marine habitat loss, the MSA was amended. The Sustainable Fisheries Act of 1996 added new requirements for the identification and protection of Essential Fish Habitat (EFH)<sup>1</sup> for species included in the fishery management unit. Each RFMC was required to designate EFH in its region, as well as identify adverse effects on EFH. Federal agencies are required to consult with the NMFS regarding “any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this chapter.” 16 U.S.C. § 1855(b)(2).

The NMFS issued final EFH regulations in 2002 for coordination and consultation with federal and state agencies concerning actions that may adversely effect EFH. (50 C.F.R. 600.905 et. seq.). Actions completed prior to an EFH designation will not require a consultation; however renewals, reviews or substantial revisions will require a consultation if the renewal, review or revision may adversely affect EFH. Importantly, “EFH consultation is required for any federal funding of actions that may adversely effect EFH.” (50 C.F.R. 600.920(a)(1)).

### **Implementation in the SRF Programs**

EFH consultations are only required for actions that may adversely effect EFH. Thus, with the assistance of the SRF agency, the assistance recipient must first determine whether a proposed project may adversely effect EFH. The NMFS will make maps and/or other information on the locations of EFH available as well as provide information on ways to promote conservation of EFH, in order to facilitate this assessment. If an action may adversely effect EFH, the SRF assistance recipient must complete an EFH consultation in conjunction, generally within the SERP process.

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<sup>1</sup> EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” 16 U.S.C. 1802(10). The NMFS has further interpreted this statutory definition at 50 C.F.R. 600.10.

When a SERP document is transmitted to the NMFS for comment, the document or the transmittal letter should clearly state that the agency is initiating EFH consultation. For example, if the agency wants to use the EA process for EFH consultation, it must give the NMFS a draft EA and delay signing a Finding of No Significant Impact (FONSI) until after the agency responds to NMFS EFH recommendations. If an agency does not wish to provide a draft EA to the NMFS, it may use some other process for EFH consultation.

If an SRF assistance recipient prepares an EFH Assessment, it must provide that assessment to NMFS for comment. The NMFS will respond informally or in writing. The NMFS comments may include EFH Conservation Recommendations, if appropriate. If so, the SRF recipient must respond to any NMFS EFH Conservation Recommendations, explaining the project's proposed measures for addressing, avoiding or mitigating the adverse effect of the project on EFH. In the event that such a response is inconsistent with the Conservation Recommendations, the SRF agency should first consult with the EPA regional office before explaining the reasons for not following the recommendations.

## **Additional References**

- 50 C.F.R. 600.920 Federal agency consultation with the Secretary. Includes details on the requirements of EFH Assessments. "EFH Assessment Template issued by Habitat Conservation Division, National Marine Fisheries Service, June 14, 2001, available at [www.nwr.noaa.gov/1habcon/habweb/efh/templates/efh\\_assessment\\_template.pdf](http://www.nwr.noaa.gov/1habcon/habweb/efh/templates/efh_assessment_template.pdf).
- "Essential Fish Habitat Consultation Guidance" issued by Office of Habitat Conservation, National Marine Fisheries Service, available at: [www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html](http://www.nmfs.noaa.gov/habitat/efh/Consultation/TOC.html).
- "Guidance for Integrating Magnuson-Stevens Fishery Conservation and Management Act EFH Consultations with Endangered Species Act Section 7 Consultations" issued by National Marine Fisheries Service, January 2001, available at: [www.nmfs.noaa.gov/habitat/habitatprotection/images/guidance1.pdf](http://www.nmfs.noaa.gov/habitat/habitatprotection/images/guidance1.pdf).
- "National Finding for use of Endangered Species Act Section 7 Consultation Process to Complete Essential Fish Habitat Consultations" issued by National Marine Fisheries Service, February 28, 2001, available at: [www.nwr.noaa.gov/1habcon/habweb/efh/national\\_finding\\_2-01.pdf](http://www.nwr.noaa.gov/1habcon/habweb/efh/national_finding_2-01.pdf)

## **CROSCUTTER: NATIONAL HISTORIC PRESERVATION ACT**

**Updated:** October 2003

### **Description**

The National Historic Preservation Act (NHPA) embodies a long-standing national policy to preserve historic sites, buildings, structures, districts, and objects of national, state, tribal, local, and regional significance and, among other things, to protect such historic properties from adverse impacts caused by activities undertaken or funded by federal agencies. NHPA expanded the scope of the 1935 Historic Sites Act, Pub. L. No. 74-292 by establishing the National Register of Historic Places, a listing of historical and cultural resources maintained by the U.S. Department of the Interior (DOI).

The fundamental responsibilities of federal agencies are expressed in Section 106 of the Act, which reads:

The head of any Federal agency having direct or indirect jurisdiction over a proposed or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act (16 U.S.C. §§ 470i *et. seq.*) a reasonable opportunity to comment with regard to such undertaking.

*16 U.S.C. §470(f)<sup>1</sup>*

The NHPA is administered by the DOI and the Advisory Council on Historic Preservation (the Council). The Council implements section 106 of the NHPA and has promulgated regulations for consultation regarding how to determine the effects of federal agency undertakings on historic properties. 36 C.F.R. Part 800. Although under certain circumstances the Council may become directly involved in such consultations, the procedures generally call for consultation between the federal agency and relevant state or tribal historic preservation officers (SHPOs and THPOs) and other interested parties.

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<sup>1</sup> Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including: those carried out by or on behalf of the agency; those carried out with federal financial assistance; those requiring a federal permit, license, or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency. 16 U.S.C. § 470w(7), 36 C.F.R. § 800.16(y).

## Implementation in the SRF Programs

The SRF agency, in consultation with the Advisory Council or SHPO/THPO, as well as other interested parties, must first determine whether a project might affect historic properties that are included or eligible for inclusion on the National Register. This step is done by identifying whether there are historic properties in the project area. The SRF agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Unlisted properties are evaluated against the National Park Service's published National Register criteria, in consultation with the SHPO/THPO and any Indian Tribe or Native Hawaiian organization that may attach religious or cultural importance to them. If the SRF agency finds that historic properties are present, the next step is to assess possible adverse effects. Again, consultation must occur with the SHPO/THPO and other interested parties. If they agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed upon conditions. If the parties cannot agree or they find that there is an adverse effect, the agency begins consultation to identify ways to avoid, minimize, or mitigate adverse effects. This process also requires consultation with the SHPO/THPO and others, including Indian Tribes and Native Hawaiian organizations, local governments, and members of the public.

Before the SRF agency issues its environmental decision document on the project, the 106 process should be completed. If, because of disagreement among the appropriate parties, the SRF agency cannot issue a determination that no historic or cultural properties are in the project area, that resources do exist in the project area but will not be adversely affected, or that adequate mitigating measures will be taken to avoid or reduce adverse effects to resources in the project area, the SRF agency must notify the EPA regional office. The EPA regional office will then enter into consultations with all parties to resolve the dispute.

## Additional References

- 36 C.F.R. Part 800. Protection of Historic Properties. See also [www.achp.gov](http://www.achp.gov) for additional reference materials and guidance.
- Programmatic Agreement Among the Environmental Protection Agency, The Advisory Council On Historic Preservation, And The National Conference Of State Historic Preservation Officers Concerning Compliance With The National Historic Preservation Act Under EPA's State Water Pollution Control Revolving Fund Program (1991).<sup>2</sup>

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<sup>2</sup> EPA has entered into a Programmatic Agreement with the Council and the National Conference of State Historic Preservation Officers establishing procedures for NHPA compliance in the CWSRF program. Because the two programs are similar, the DWSRF program follows the programmatic agreement as a matter of practice. Under this agreement, the SRF agency in the first instance carries out the responsibilities of the NHPA section 106 process.

## **CROSCUTTER: SOLE SOURCE AQUIFER, SAFE DRINKING WATER ACT SECTION 1424(E)**

**Updated:** October 2023

### **Description**

In 1974, Congress passed the Safe Drinking Water Act of 1974 (SDWA). SDWA requires water supply systems in the United States to meet certain minimum national standards to protect the public health. Pursuant to SDWA, EPA is required to set standards for the wide range of contaminants that can be present in drinking water supplies. EPA's drinking water regulations are codified at 40 CFR parts 141-143.

The Sole Source Aquifer (SSA) program is authorized by Section 1424(e) of SDWA ([42 U.S.C. § 300h-3e](#)). In SDWA, Congress emphasized preventing contamination of aquifers that are the sole source of drinking water for a community. A sole source aquifer is an aquifer that the Administrator determines "is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health." EPA guidance identifies a sole source aquifer as one where:

- The aquifer supplies at least 50 percent of the drinking water for its service area, and
- There are no reasonably available alternative drinking water sources should the aquifer become contaminated.

Sole source aquifers must be designated by the EPA Administrator on his own initiative or upon petition through a *Federal Register* notice. After the Administrator or Regional Administrator designates a sole source aquifer:

[N]o commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer. 42 U.S.C. § 300h-3e.

EPA reviews proposed projects that will receive federal financial assistance and are located within a designated boundary of a sole source aquifer.

## Implementation in the SRF Programs

The SRF applicant should determine whether a project planning area is located within or intersects a designated SSA boundary by referencing the EPA webmap ([Interactive map of SSAs](#)) and confirming SSA program applicability with the respective [EPA regional SSA program contact](#). This should occur before the state SRF agency approves the project plans.

### If the project planning area intersects a sole source aquifer area:

- The SRF applicant or state SRF agency should consult with the EPA regional office SSA program to determine if a project review by the EPA regional office SSA program is necessary.
- Once the need for a project review is identified, the SRF applicant or state SRF agency should send project information to the appropriate EPA regional office for review and evaluation. If EPA's evaluation indicates that the project does not have significant potential to contaminate the SSA, EPA will notify the state SRF agency that the project may continue as planned.
- If there is insufficient information to evaluate the project, EPA will request further information.
- If the project has the potential to contaminate the aquifer, EPA will begin negotiations with the state SRF agency and the SRF applicant to modify the project. If negotiations are not successful, federal funding may not be awarded. Specifically, if the Administrator determines that the project may contaminate the aquifer so as to create a significant hazard for public health, no commitment of Federal financial assistance may be entered into for the project.

### If there is no SSA in the vicinity of the project planning area:

- No further action is required by the state SRF program or the SRF applicant.
- The state SRF program should note the finding in the SRF project file.

### Projects not receiving SRF equivalency funds:

A project within a designated SSA area without SRF equivalency funding may still be subject to EPA's SSA project review if the project will receive another form of federal financial assistance.

## Additional References

- [Sole Source Aquifers for Drinking Water](#)
- [EPA webmap of SSAs](#)
- [EPA regional office SSA Program Contacts](#)

## **CROSCUTTER: WETLANDS PROTECTION**

**Updated:** October 2003

### **Description**

A national policy aimed at protecting wetlands, which include marshes, swamps, bogs, ponds, and other areas that are regularly inundated with water, has been pursued, at least implicitly, since the passage of the Rivers and Harbors Act of 1899. A number of laws, including the CWA and the Coastal Zone Management Act, Pub. L. No. 92-583, 16 U.S.C. §1451 et. seq., in some manner regulate the management of wetlands.

National wetlands policy applicable to the activities of federal agencies is set forth in Executive Order No. 11990, which was issued by President Carter in 1977 and which President Clinton amended 20 years later by Executive Order No. 12608. The Executive Order broadly directs all agencies of the federal government to carefully consider the effects on wetlands from the discharge of any of their responsibilities, and to minimize the destruction, loss, or degradation of wetlands in any manner when there are feasible alternatives to the action.

Section 2(a) of the order requires that:

...each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

The Executive Order also requires public notice of any plans to support new construction in wetlands.

### **Implementation in the SRF Programs**

SRF assistance recipients must first determine, in consultation with the state environmental agency, whether a proposed project will be located in or affect a wetland.<sup>1</sup> If so, further consultations must be held to develop and evaluate alternative locations for the project or other mitigating measures.

If this evaluation determines that there are no practicable alternatives that would avoid impacts to wetlands, the assistance recipient, in consultation with the state environmental

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<sup>1</sup> Under 16 U.S.C. § 3931, the DOI is directed to prepare the National Wetlands Inventory Maps and other documents as part of the National Wetlands Inventory Project. (1998).

agency, shall design or modify the project to minimize adverse impacts to the wetlands and provide an opportunity for public review and comment on the proposed project.

Two other important aspects of complying with Executive Order No. 11990 in the SRF programs must be considered by the assistance recipient. Under the EPA's "no net loss of wetlands" policy, where natural wetlands will be destroyed by project construction, assistance recipients must devise plans to construct substitute or "mitigation" wetlands. Secondly, the recipient should seek the assistance of the U.S. Fish and Wildlife Service when developing measures to mitigate adverse impacts on wetlands, to ensure that these measures adequately protect the diversity and the habitat of species living in the affected wetland.

During the environmental review of the project, the SRF agency must furnish both the U.S. Fish and Wildlife Service and the EPA regional office with documentation demonstrating that (1) all alternatives to locating the project in or affecting the wetland were carefully considered, (2) the alternative selected was the only practicable one, and (3) adequate measures will be taken to mitigate damage to the wetland, including its natural systems. The SRF agency will be responsible for ensuring that any comments by the Service and the EPA regional office are taken into account in the project's design.

## **Additional References**

- 40 C.F.R. Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.

## **CROSCUTTER: WILD AND SCENIC RIVERS ACT**

**Updated:** October 2023

### **Description**

Congress passed the Wild and Scenic Rivers Act (the Act) to preserve the special scenic, cultural, historic, recreational, geologic, and fish and wildlife values of the nation's free flowing rivers and related adjacent land. The Act established the National Wild and Scenic River System, which includes rivers designated by Act of Congress or the Secretary of the U.S. Department of Interior (DOI). The Act established requirements for proposed projects that may affect the river, river segments, or the adjacent land.

The Act prohibits federal assistance for water resource projects<sup>1</sup> that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a designated wild and scenic river.<sup>2</sup> This prohibition is contained in Section 7 of the Act, [16 U.S.C. § 1278\(a\)](#), which reads in part:

[N]o department or agency of the United States shall assist by loan, grant, or otherwise in the construction of any water resource project that would have a direct and adverse effect on the values for which such river was established.

Rivers that are being reviewed for possible inclusion in the National Wild and Scenic River System are called "study rivers."<sup>3</sup> The Act describes similar protections afforded to study rivers at [16 U.S.C. § 1278\(b\)](#).

### **Implementation in the SRF Programs**

#### **SRF Applicant Responsibilities:**

##### **Determine whether the project may affect a designated river or study river:**

During the planning of a proposed project, the SRF applicant should determine whether the project or any alternatives under consideration may affect a designated river or study river. The SRF applicant can do so by using the [Designated Rivers Mapping Tool](#) on the National Wild and

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<sup>1</sup> "Water resource project" is defined by regulation to include "construction of developments which would affect the free-flowing characteristics of a designated or proposed Wild and Scenic River or Study River." [36 CFR 297.3](#). "Construction" is defined as "any action carried out with federal assistance affecting the free-flowing characteristics or the scenic or natural values of a Wild and Scenic River or a Study River." [36 CFR 297.3](#).

<sup>2</sup> A "wild and scenic river" is defined as "a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System pursuant to section 3(a) or 2(a)(ii) of the Act." [36 CFR 297.3](#).

<sup>3</sup> A "study river" is defined as "a river and the adjacent area within one quarter mile of the banks of the river which is designated for study as a potential addition to the National Wild and Scenic Rivers System pursuant to section 5(a) of the Act." [36 CFR 297.3](#).

Scenic Rivers System website. The tool lists the designated rivers in each state and Puerto Rico and includes the responsible federal agency(ies). The responsible agency is the federal agency with jurisdiction over the designated river and includes the National Park Service, the U.S. Forest Service, the U.S. Fish and Wildlife Service, or, in some cases, the DOI's Bureau of Land Management (BLM).

If the SRF applicant has difficulty verifying whether the project in question may impact a designated or study river on their own, they can contact the appropriate National Park Service office for verification. The NPS office contact information can be found on the [Section 7 Project Review page](#) on the National Wild and Scenic Rivers System website. A list of rivers currently under study can also be found on the [website](#).

If there are NO designated or study rivers in the project area:

- The project does not implicate the requirements of the Act.
- The state SRF program should note the finding in the SRF project file.

If there ARE designated or study rivers in the project area:

- The SRF applicant should further evaluate the alternatives under consideration that may affect a designated or study river.
- If an alternative will have an adverse effect on a designated or study river, it should be eliminated from consideration and other alternatives or planning adjustments should be pursued.
- Once the evaluation of alternatives is complete, the SRF applicant should submit the documentation to the state SRF agency.
- The documentation should demonstrate that the possible impacts of the proposed alternatives were evaluated and that the selected plan will not adversely affect the designated or study river.

### **State SRF Agency Responsibilities:**

- If there are designated or study rivers in the project area, the state SRF agency is required to submit the evaluation documentation to the responsible federal agency with jurisdiction for the river for review and comment.
- [Appendix C](#) of the October 2004 Technical Report from the Interagency Wild and Scenic River Coordinating Council includes the standard evaluation procedure that a responsible federal agency follows.
- If the responsible federal agency finds that the project will create a direct and adverse effect on the values for which such river was established, SRF assistance cannot be provided to the SRF applicant for that project.
- The state SRF agency should include the responsible federal agency's determination in the project file.

## Additional References

- [Wild and Scenic Rivers Act](#)
- [36 CFR Part 297 Subpart A: Wild and Scenic Rivers, Water Resources Projects](#)
- [National Wild and Scenic River System Website](#)
  - [Designated Rivers Mapping Tool](#)
  - [Wild and Scenic Study Rivers](#)
  - [Section 7 Project Review Guidance](#)
  - [Section 7 Flowchart](#)
- [Interagency Wild and Scenic Rivers Coordinating Council Technical Report, \(October 2004\).](#)  
[Wild & Scenic Rivers Act: Section 7](#)

## **CROSCUTTER: CIVIL RIGHTS LAWS**

**Updated:** October 2003

### **Description**

These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, handicap or age, in programs or activities receiving federal financial assistance. If, for example, a municipality receives SRF assistance to build a wastewater treatment plant, it may not decline to provide service from that plant to a particular neighborhood because of its racial composition. As the preface to this section noted, Title VI, the Rehabilitation Act, and the Age Discrimination Act were amended in 1988 to clarify that their anti-discrimination provisions apply to the entire operations of an assistance recipient, not just to the specific program, project, or activity that is the objective of the assistance. The reach of these statutes and Section 13, which contains language instructing EPA to treat its sex discrimination provisions in a manner similar to the Civil Rights Act, extends beyond that of other cross-cutting authorities.

The following excerpts from the four laws demonstrate their prohibition of various forms of discrimination that are prohibited in federally assisted programs and activities:

#### *Title VI*

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

#### *Section 13<sup>1</sup>*

No person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal assistance under... the federal Water Pollution Control Act...

#### *Rehabilitation Act*

(n)o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance...

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<sup>1</sup> Section 13 only applies to the CWSRF.

*Age Discrimination Act*

(n)o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving financial assistance.

## Implementation in the SRF Programs

Because of the extraordinary reach of the civil rights laws, all assistance recipients must comply with these “super crosscutters.” Pursuant to EPA’s regulations on “Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency,” the SRF agency must agree, and require all assistance recipients to agree, not to discriminate on the basis of race, color, national origin or sex. 40 C.F.R. Part 7.<sup>2</sup>

Recipients of federal assistance are required to collect and maintain information to show compliance with the laws. This information includes a list of discrimination complaints, reports of any compliance reviews conducted by other agencies, descriptions of any pending discrimination-based lawsuits, and data on the racial, ethnic, national origin, sex, and handicap characteristics of populations served. If there is "reason to believe" that discrimination may be occurring based on this review, the matter will be referred to the EPA Regional Director of Civil Rights for appropriate action.

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<sup>2</sup> The fact that the regulations do not address discrimination on the basis of age *does not* exempt recipients from compliance with the later-enacted Age Discrimination Act.

## **CROSCUTTER: DISADVANTAGED BUSINESS ENTERPRISES**

**Updated:** October 2003

### **Description**

Since the early 1970s, the federal government has pursued a policy designed to increase the participation of disadvantaged business enterprises (DBEs) in the financial assistance programs of federal agencies and in contracts awarded by state and local recipients of federal assistance.

The inception of this policy was Executive Order No. 11625, which was signed by President Nixon on October 13, 1971. The Executive Order directed the Secretary of Commerce to coordinate the activities of all federal agencies in promoting opportunities for minority-owned business. This directive was followed by President Carter's Executive Order No. 12138 (May 18, 1979), which extends the policy to include business enterprises owned by women and prohibited discrimination against these entities by recipients of federal assistance. President Reagan's Executive Order No. 12432 (July 14, 1983) sets forth in more detail the responsibilities of federal agencies for monitoring, maintaining data, and reporting on the results of their efforts related to minority business development.

The Executive Orders impose far-reaching responsibilities on agencies and departments of the Federal Government, first through the Secretary of Commerce, who:

(W)ith the participation of other federal departments and agencies as appropriate, (is authorized to) develop comprehensive plans and specific program goals for the minority enterprise program, establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of federal support in achieving the objectives established by this order. (*Executive Order No. 11625, §1(b)(1)*)

Later Executive Orders impose obligations directly upon each federal agency and department. For example, President Carter's National Women's Business Enterprise Policy requires that:

(E)ach department or agency empowered to extend federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. (*Executive Order No. 12138, §1-101(c)*)

EPA's fiscal year 1993 Appropriations Act, Pub. L. No. 102-389, is the primary source of the Agency's DBE program for procurement under federal financial assistance. In the Appropriations Act, Congress established a goal of eight percent DBE participation in procurement under EPA financial assistance programs.

Following the Supreme Court decision in *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995), federal affirmative action programs that use racial or ethnic criteria as a basis for decision-making are subject to strict judicial scrutiny. In response to *Adarand*, EPA has modified its DBE program to replace the 8% statutory goal with a fair share goal for procurement under assistance that is negotiated with recipients based on the availability of DBE businesses in the relevant geographic market. EPA is currently revising its various specific DBE regulatory provisions to reflect the narrow tailoring requirements of *Adarand* which will be promulgated as a new Part 33.

## **Implementation in the SRF Programs**

Requirements for states to encourage participation by disadvantaged businesses in the SRF programs are set forth in the EPA's regulations at 40 C.F.R. §35.3145(d) and (e)(CWSRF) and 40 C.F.R. § 35.3575(d). Generally, recipients of assistance in an amount equal to the capitalization grant must take "six affirmative steps" that are intended to promote the participation of disadvantaged business enterprises in their projects and activities, and thereby increase the likelihood that the state will achieve its fair share objective. During the procurement phase for the project, the assistance recipients must, to the extent practicable:

- place qualified disadvantaged businesses on solicitation lists;
- assure that disadvantaged businesses are solicited whenever they are potential sources;
- divide project requirements into smaller tasks when possible to maximize participation by disadvantaged businesses;
- establish delivery schedules that encourage disadvantaged business participation;
- obtain assistance from Federal offices responsible for promoting disadvantaged business participation and;
- require prime contractors to follow the previous steps when awarding subcontracts.

There may be additional SRF-specific provisions of the new DBE Part 33 once it has been finalized.

## **CROSCUTTER: PROVIDING FOR THE ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS**

**Updated:** October 2003

### **Description**

Both the CAA and the CWA prohibit federal agencies from procuring goods or services from—or extending assistance by way of grant, loan or contract to — persons who have been convicted of violations of either law. Executive Order No. 11738 was issued to coordinate enforcement of these provisions by conferring certain responsibilities on the EPA Administrator. Under section 2(b) of Executive Order No. 11738, the Administrator

shall... designate facilities which have given rise to a conviction for an offense under (the criminal provisions of the CAA and the CWA).

The Executive Order also prohibits federal agencies from extending assistance to facilities that are not in compliance with either Act. Section 3(b) of Executive Order No. 11738 provides that:

(N)o federal agency authorized to extend federal assistance by way of grant, loan or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

The prohibition of section 3(b) does not apply if the purpose of the assistance is to remedy the cause of the CAA or CWA violation.

### **Implementation in the SRF Programs**

The SRF agency must agree to advise assistance recipients that they may not procure goods, services, or materials from listed suppliers. The state must also certify that assistance to facilities that are not in compliance with the laws will be extended to remedy the problems giving rise to the violation.

### **Additional References**

- Excluded Parties Listing System: <http://epls.arnet.gov/>

# Federal Funding Accountability and Transparency Act



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

MAR 23 2011

### MEMORANDUM

OFFICE OF  
WATER

**SUBJECT:** Guidance on Federal Funding Accountability and Transparency Act (FFATA) reporting through Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) data systems.

**FROM:** Cynthia Dougherty, Director  
Office of Ground Water and Drinking Water

James A. Hanlon, Director  
Officer of Waste Water Management

**TO:** Water Management Division Directors  
Regions I-X

Two handwritten signatures are present on the right side of the memo. The top signature is for Cynthia Dougherty and the bottom one is for James A. Hanlon.

#### **Introduction**

This memorandum provides information on using the Clean Water Benefits Reporting (CBR) system for CWSRF and the Project Benefits Reporting (PBR) system for DWSRF reporting for FFATA. This supplements guidance issued on October 22<sup>nd</sup>, 2010, by EPA's Office of Administration and Resources Management (Attachment A). A state is not required to use CBR and PBR for FFATA reporting and may report directly to the federal system.

The Federal Funding Accountability and Transparency Act, Public Law 109-282 as amended, along with associated Office of Management and Budget (OMB) directives, requires non-ARRA recipients of federal dollars to report recipient and subrecipient information into the FFATA Subaward Reporting System (FSRS) at [www.fsrs.gov](http://www.fsrs.gov), by the end of the month following recipient or subrecipient award for any amount equaling \$25,000 or greater, starting Oct. 1, 2010. For states that wish to use the CBR and PBR system for reporting, please use the following process:

#### **Initial Steps**

1. States need to register in [www.fsrs.gov](http://www.fsrs.gov) to allow for batch reporting. A Central Contractor Registration (CCR) number is required to register in [www.fsrs.gov](http://www.fsrs.gov)
2. States will need to report any grant received in FFY 2011 and beyond.
3. States will need to inform all subrecipients covered by FFATA reporting that they will need to register for a Dun and Bradstreet Universal Numbering System (DUNS) number.

#### **Required Fields**

1. See Attachment B for a list of all required FFATA fields in CBR and PBR. Additionally, a button to highlight the required fields for FFATA will be added to the systems.

2. For fields pertaining to subrecipient compensation, the state will need to determine, with the help of the subrecipient, whether reporting for those fields is triggered.

#### **Business Process**

1. After receiving a grant in FY 2011, and from there on, a state is required to report to [www.fsrs.gov](http://www.fsrs.gov) by the end of each month for all activity that occurred within the preceding month. For example, by November 30<sup>th</sup>, 2010, a state would need to have reported all loan activity for October 2010.
2. Because FFATA only applies to federal funds, states must also make an equivalency decision and choose loans that equal the amount of their SRF grants. Therefore, states must label which loans, or portions of loans, are to be considered federal for FFATA reporting. A checkbox for labeling a loan for FFATA and a field to allow for portions of loans will be added and is required for reporting. For the DWSRF, set-asides are considered to be federal funds.
3. CBR and PBR will report the initial loan amount only. If the final loan amount differs, states will not need to recalculate for equivalency.

#### **Reporting**

1. In CBR and PBR, a reporting option specific to [www.fsrs.gov](http://www.fsrs.gov) will be available which will generate a spreadsheet populated with the required fields for FFATA for those projects selected.
2. The state will log into fsrs.gov and select the batch upload option to upload the excel file.

#### **Conclusion**

Please note that the FFATA required fields are a subset of fields that were also required for ARRA, with the same definitions. If you require any assistance with reporting, please feel free to contact Kelly Tucker at (202) 564-0608 or Howard Rubin at (202) 564-2051. For additional information on fsrs.gov and for information on reporting directly to the system, please see [https://www.fsrs.gov/documents/FSRS\\_Awardee\\_User\\_Guide.pdf](https://www.fsrs.gov/documents/FSRS_Awardee_User_Guide.pdf).

Attachment A



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT

October 22, 2010

**MEMORANDUM**

**SUBJECT:** Initial Guidance on Federal Funding Accountability and Transparency Act Requirements for Subaward and Executive Compensation Data Reporting for non-ARRA Assistance Agreements

**FROM:** Howard F. Corcoran /s/ *Howard F. Corcoran*  
Director, Office of Grants and Debarment

**TO:** Senior Resource Officials

This memorandum provides initial guidance on subaward and executive compensation reporting and related requirements established by the Federal Funding Accountability and Transparency Act (FFATA), Public Law 109-282 as amended, and associated Office of Management and Budget (OMB) directives. This memorandum applies only to non-ARRA, EPA assistance agreements, including grants and cooperative agreements. It will be updated as necessary to reflect any additional guidance from OMB. Prime recipients of EPA ARRA assistance agreements will continue to comply with ARRA Section 1512 reporting requirements.

**1. Applicability and Effective Date**

This guidance addresses requirements for prime EPA assistance agreement recipients to report information on: i) first-tier subawards; ii) first-tier subrecipient executive compensation; and iii) prime recipient executive compensation. It also addresses requirements for registration in the Central Contractor Registration (CCR) database and having a current Dun and Bradstreet Data Universal Numbering System (DUNS) number.

a. Subaward/Executive Compensation Reporting - New Awards  $\geq \$25,000$

The subaward/executive compensation reporting requirements generally apply to “new” discretionary and mandatory EPA assistance agreements, equal to or exceeding \$25,000, awarded on or after October 1, 2010 (see Section 6 below for guidance on the term “new award”). EPA must notify affected prime recipients of these requirements using a standard award term published by OMB at 2 C.F.R. Part 170 Appendix A. Grants Management Offices (GMOs) must include the standard term and condition in all new awards of \$25,000 or more, except for awards to individuals (i.e., where the recipient receives the award as a natural person unrelated to any business or non-profit organization they may own or operate in their name).

While a new award of less than \$25,000 is not subject to reporting, EPA may subsequently add funds to meet or exceed the \$25,000 threshold. If that occurs, the reporting requirements apply absent an OMB-specified exception and the Agency would have to amend the award to include the standard OMB award term. If funding is deobligated from the agreement to reduce the award amount to less than \$25,000, the reporting requirements continue to apply.

b. CCR/DUNS Numbers

OMB has published a standard award term at 2 C.F.R. Subtitle A, Chapter I, Part 25 that requires:

- Prime recipients to maintain a current registration in the CCR; and
- Prime recipients and first-tier subrecipients to have DUNS numbers.

GMOs must include the standard award term in all new awards, as defined in Section 6, made on or after October 1, 2010, except for awards to individuals (i.e., where the recipient receives the award as a natural person unrelated to any business or non-profit organization they may own or operate in their name). There are other exceptions to the Part 25 CCR/DUNS number requirements, including certain situations involving foreign entities or protected information (for more information on these exceptions, see 2 C.F.R. § 25.110 or contact Frank Roth, Office of Grants and Debarment (OGD) or Jim Drummond, Office of General Counsel (OGC)).

As described in Section 4 below, the Part 25 CCR/DUNS number requirements apply to competitive awards made on or after October 1, 2010, even if the underlying competitive announcements were issued prior to October 1, 2010.

GMOs will verify compliance with CCR/DUNS number requirements as part of the administrative review process.

## 2. Required Data for Subaward/Executive Compensation Reporting

For first-tier subawards involving an obligation of \$25,000 or more in federal funds, prime EPA recipients must report the following information.

### a. Subaward data

- Name of the entity receiving the award;
- Amount and date of the award;
- Funding agency;
- Catalog of Federal Domestic Assistance (CFDA) number;
- Award title descriptive of the purpose of each funding action;
- Location of the sub-recipient receiving the award and primary location of performance under the award, including city, State, congressional district, and country;
- DUNS number of the sub-recipient receiving the award and the parent entity of the sub-recipient, should the entity be owned by another entity.

### b. Subrecipient Executive Compensation Data

- Names and total compensation of the five most highly compensated officers of the sub-recipient if the entity in the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1).
- Total compensation is the cash and noncash dollar value earned by an executive during the recipient's or subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock; earnings for services under non-equity incentive plans; change in pension value; and, above-market earnings on deferred compensation which is not tax-qualified.

### c. Exception

- A prime recipient is not required to report subaward or subrecipient executive compensation data if, in the previous tax year, the prime recipient had gross income, from all sources, under \$300,000.

Prime recipients must also report the names and total compensation of the five most highly compensated officers of their organization subject to the same gross revenue thresholds and information accessibility conditions listed in paragraph b.

### **3. Subaward/Executive Compensation Reporting Architecture**

#### **a. Prime EPA Recipients**

Prime recipients will report first-tier subaward/subrecipient executive compensation information in the FFATA Subaward Reporting System (FSRS), located at [www.fsrs.gov](http://www.fsrs.gov). To do so, the prime recipient must maintain an active registration in CCR. They must report this information by the end of the month following the month a subaward obligation is made. For example, for a subaward made by a prime recipient on October 21<sup>st</sup>, the information must be reported to FSRS no later than November 30<sup>th</sup>.

For prime recipient executive compensation data, the prime recipient must include the data in its CCR registration profile by the end of the month following the month it receives an award, and annually thereafter.

For both subaward reporting and executive compensation reporting, prime recipients must have a DUNS number.

Prime recipients may not delegate FSRS reporting responsibilities to subrecipients.

#### **b. First-Tier Subrecipients**

First-tier subrecipients must have a DUNS number before receiving a subaward, but do not have to maintain a CCR registration.

#### **c. EPA**

On a bi-monthly basis, EPA submits information on its assistance awards, including reference data about prime recipients, to [USASpending.gov](http://USASpending.gov) (USASpending) in a government-wide format known as the Federal Assistance Award Data System (FAADS) Plus. Grants Specialists, Project Officers and others, who enter data into IGMS fields required for the USASpending.gov upload, should follow the guidance at Attachment A when entering or reviewing data in IGMS. This attachment includes the most problematic data elements. For the complete list of FFATA data elements, see Attachment B.

On a quarterly basis the Agency must provide an assurance to OMB about the timeliness and quality of its FAADS Plus submissions.

To reduce the reporting burden on prime recipients, FAADS Plus reference data about prime recipients will pre-populate FSRS records to the maximum extent possible. The Agency will therefore need to ensure the accuracy of its FAADS Plus data and work to reconcile any data inconsistencies identified by prime recipients.

#### **4. Competitive Assistance Agreement Announcements**

All competitive assistance agreement announcements issued on or after October 1, 2010, as well as competitive assistance agreement announcements issued prior to October 1, 2010 that have application due dates on or after October 1, 2010, must include the following two clauses in Section VI of announcements:

- “1. Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR Part 170 unless they qualify for an exception from the requirements, should they be selected for funding.
2. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at 2 CFR Part 25 (e.g., individuals), applicants must:

1. Be registered in the CCR prior to submitting an application or proposal under this announcement. CCR information can be found at <https://www.bpn.gov/CCR/>
2. Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or proposal under consideration by an agency, and
3. Provide its DUNS number in each application or proposal it submits to the agency. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711, or visiting the D&B website at: <http://www.dnb.com>.

If an applicant fails to comply with these requirements, it will, should it be selected for award, affect their ability to receive the award.”

Please note that while the DUNS/CCR clause requires that applicants be registered in the CCR and have a DUNS number at time of proposal submission, applicants who fail to do so will not be rejected from the competition. Rather, as provided in the OMB guidance, the effect of non-compliance is measured at the time of award and the Agency may not make an award to an entity if they have not complied with the CCR/DUNS requirements. In such cases, the Agency may determine that the applicant is not qualified to receive an award and may use that determination as a basis to make an award to another applicant. Please call Bruce Binder or Val Swan Townsend of the Grants Competition Advocate's Office if these situations arise.

#### **5. Terms and Conditions**

The standard OMB CCR/DUNS number and Subaward/Executive Compensation reporting terms and conditions have been posted in IGMS (see Attachment C). These terms and conditions should not be edited or altered.

We have designated both standard OMB terms and conditions as an administrative term and condition, where the GMO is responsible for monitoring as part of administrative baseline and advanced monitoring. Baseline monitoring will focus on asking a recipient if it is complying with the standard OMB terms and conditions. OGD will also address compliance with the terms and conditions in its administrative advanced monitoring reviews.

## **6. Definition of “New Awards”**

For purposes of this guidance, new awards include discretionary or mandatory assistance agreements (other than awards to individuals) that GMOs award ending in “-0.” At this time, new awards do not include monetary amendments to existing assistance agreements. OMB is in the process of developing clarifying guidance on the applicability of FFATA reporting requirements to those award actions. OGD will update this memorandum to be consistent with that guidance.

## **7. Subaward Definition, Intragovernmental/Intergovernmental agreements and Avoiding Duplicative Reporting**

As noted in the standard award term, OMB has defined “subaward” very broadly for FFATA reporting purposes. It covers legal instruments, *other than procurement transactions*, that prime recipients use to provide support to an eligible subrecipient to perform any portion of the substantive project or program that EPA funds through an award of a grant or cooperative agreement. This definition extends the term “subaward” to loans and principal forgiveness of \$25,000 or more in federal funds under EPA’s grant-funded Revolving Loan Fund Programs. In implementing the standard award term, EPA will follow the guidance in the Agency’s Subaward Policy to distinguish between subaward and procurement relationships.

OGC has indicated that intragovernmental agreements involving the internal transfer of funds between State agencies are exempt from reporting. Also exempt are intergovernmental agreements which allow different units of government to take advantage of economies of scale through central purchasing of commercial goods and services. An example would be a local government purchasing supplies under a State contract. On the other hand, if a State provided funding directly to a local government to perform a substantive activity under a State grant, the transaction between the State and the local government would be a subaward subject to FFATA reporting even if the State characterizes the relationship as an intergovernmental agreement. An example of a subaward would be an intergovernmental agreement between a State and local government under which a State transfers Clean Water Act 319 grant funds to a local government for water quality monitoring.

The OMB regulation at 2 C.F.R. § 170.200(c) directs agencies that collect subaward obligation data under other authorities to take steps to ensure that prime recipients do not submit the same or similar data multiple times during a given reporting period. EPA Program Offices that currently collect subaward obligation information will need to consult with OGD on how to address the OMB directive.

## **8. Subaward Reporting: Amendments, Subawardees under Multiple Grants and Subdividing Subawards**

A prime recipient is required to report subawards where the obligations are equal to or greater than \$25,000 in federal funds. If a subaward is initially funded at less than \$25,000, the prime recipient does not have to report the subaward to the FSRS. However, if the prime recipient subsequently provides additional funding to increase the subaward amount to \$25,000 or more, the subaward must be reported in the FSRS.

Subaward reporting is specific to each assistance agreement. For example, if a prime recipient makes a subaward to an organization under one grant for \$20,000 and another subaward for less than \$15,000 to the same organization for different work under a different grant, the prime recipient would not have to report either subaward to the FSRS, even though the cumulative value of the two subawards exceeds \$25,000.

Prime recipients should not subdivide subawards equal to or greater than \$25,000 into smaller subawards in order to circumvent FSRS reporting requirements.

## **9. Alignment of Public Address Book with USASpending and CCR**

Given that the prime recipient information in FSRS will be pre-populated with information from EPA's FAADS Plus submission to USASpending and from CCR, it is imperative that EPA align the IGMS Public Address Book (PAB) with both USASpending and CCR entries. OGD will coordinate this alignment with assistance from GMOs, their Grants Automation Coordinators (GACs) and others who enter data into the PAB. Attachment D provides guidance for the entry of data into the PAB.

## **10. Principle Place of Performance and Award Number Information**

The FSRS will also be pre-populated with information on: the principle place of performance under an assistance award; and the award number. To help ensure place of performance accuracy, OGD will add an item(s) to the Funding Recommendation where POs can verify that an applicant's place of performance information is correct. For award numbers, the Agency will use the eight-digit number contained in USASpending.

## **11. FSRS Point of Contact**

OMB has requested that each agency designate points of contact (POCs) to whom the FSRS Help Desk can send agency-specific programmatic questions. Cleanzo Vollin of OGD will serve as EPA's initial POC. He will coordinate with the FSRS POCs designated by Headquarters and Regional Senior Resource Officials.

## **12. USASpending Assurance**

As described in Sections 9 and 10, heightened scrutiny is necessary for data that is pre-populated in the FSRS from EPA's FAADS Plus submissions. This will affect the USASpending assurance OGD must provide to the Chief Financial Officer. Working with the GMOs, GACs, and Junior Resource Officials (JROs), OGD will provide additional guidance to strengthen the assurance process.

## **13. Outreach Strategy**

- Internal
  - OGD will coordinate federal-wide messages with the GMOs and JROs
  - Regional GMOs will distribute information to their Regional offices
  - JROs will distribute information to their program offices
  - OGD will conduct State Grants Subgroup/Tribal Grants Council outreach
  - OGD will send an e-mail message to current grantees announcing OMB webinars
  - OGD will post FAQ's and links to resources to the Grants Internet web site
  - OGD will prepare a notice that will be incorporated in new award packages
  - OGD will convene a GCRC meeting to provide a Q&A session with OMB
- External
  - OMB hosted a town hall meeting via webinar 9/23/10. The recorded webinar is available at USASpending.gov;
  - GSA hosted a training session for Prime Awardees via webinar 10/7 10:00 a.m. to 11:00 a.m. (Eastern). The webinar will be recorded and available at USASpending.gov;
  - OMB will conduct a variety of outreach to constituencies throughout the country – please see Attachment E
  - GSA hosted an overview webinar for Agencies 9/29/10 from 1:30 – 2:30 p.m. (Eastern).
  - GSA hosted a training session for Agencies via webinar 10/14/10 10:00 a.m. to 11:00 a.m. (Eastern).

## **14. Roles and Responsibilities**

### **OGD**

- Issue initial guidance and provide additional guidance as necessary
- Coordinate alignment of PAB with CCR and FAADS Plus Submissions
- Modify the Funding Recommendation to allow Project Officers to verify principle place of performance information
- Coordinate Agency outreach program and conduct outreach to State Grant Subgroup and Tribal Grants Council
- Serve as initial point of contact for FSRS Help Desk inquiries
- Coordinate and prepare the quarterly USASpending assurance for assistance agreements

- Include FFATA-related requirements in advanced administrative monitoring reviews
- Serve as the Agency liaison to OMB
- Resolve implementation issues with program offices that have existing systems for subaward obligation reporting

#### Grants Competition Advocate

- Issue required clauses
- Work with program offices to amend previously issued competitive announcements as necessary

#### Program Offices

- In the Funding Recommendation, confirm principle place of performance information
- Resolve programmatic issues raised by FSRS Help Desk
- Include required clauses in competitive announcements and amend previously issued competitive announcements as necessary
- If subaward obligation data is currently collected under other authorities, consult with OGD on how to minimize the prime recipient's reporting burden.

#### Grants Management Offices:

- Incorporate the standard OMB terms and conditions in covered new awards
- Address CCR/DUNS number requirements during the administrative review process
- Conduct baseline monitoring of CCR/DUNS number requirements
- Conduct baseline monitoring of subaward reporting/executive compensation terms and conditions
- Work with OGD to align PAB with CCR entries
- Respond to FSRS Help Desk inquiries if designated as a point of contact

## 15. Informational Resources

- CCR Registration: [http://grants.gov/assets/E-Biz\\_POC\\_Checklist.pdf](http://grants.gov/assets/E-Biz_POC_Checklist.pdf)
- DUNS Registration: <http://fedgov.dnb.com/webform>
- Federal Assistance Award Database System (FAADS)  
<http://www.census.gov/govs/www/faads.html>
- FFATA Subaward Reporting System (FSRS): <https://www.fsrs.gov/>
  - FSRS Reporting: Sub-award reporting user guides, FAQ and on-line demonstrations will be available October 29, 2010
- OMB, "Open Government Directive - Federal Spending Transparency", August  
[http://www.whitehouse.gov/sites/default/files/omb/open/Executive\\_Compensation\\_Report\\_08272010.pdf](http://www.whitehouse.gov/sites/default/files/omb/open/Executive_Compensation_Report_08272010.pdf)
- Federal Funding Accountability and Transparency Act of 2006, PL 109-282:  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ282.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ282.109.pdf)

- The Supplemental Appropriations Act, 2008, PL 110-252:  
[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h2642enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2642enr.txt.pdf)
- USA Spending.gov Data Submission and Validation Tool:  
<https://ffataidata.usaspending.gov/>
- Subawards Under EPA Assistance Agreements  
[http://intranet.epa.gov/ogd/competition/compet/subaward\\_policy\\_part\\_2.pdf](http://intranet.epa.gov/ogd/competition/compet/subaward_policy_part_2.pdf)
- OMB Sub-award Presentations  
<http://www.usaspending.gov/sub-award-documents>

If you have any questions about this initial guidance, please feel free to contact me at (202) 564-1903.

cc: Craig Hooks  
Nanci Gelb  
Marian Cooper  
Linda Gerber  
Denise Benjamin-Sirmons  
Kathie Herrin  
Catherine Vass  
Stephen Daniels  
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William Etheredge  
Dennis Finney  
Cleanzo Vollin  
Bruce Binder  
Val Swan-Townsend  
Elizabeth January  
Wendel Askew  
James Drummond  
Melissa Heist  
Janet Kasper  
Stefan Silzer  
Jeanne Conklin  
Steve Erickson  
Don Flattery  
Barbara Schrot  
Troy Hill  
Patty Bettencourt  
Rick Coffman, Illinois EPA  
Tom Lamberson, Nebraska DEQ  
Tribal Grants Council  
Grants Management Officers  
Junior Resource Officials  
Grants Customer Relations Council

## Attachment A - Guidance for Select USA Spending.gov Data Elements

**Recipient Name** – Should match the name in the CCR  
<http://www.ccr.gov>

**Recipient Residence City** – Spelling, spaces, hyphens, and capital letters are all important and must conform to Geographic Names Information System standards.  
<http://geonames.usgs.gov>  
GNIS <http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:848314263894103>

**Recipient Residence County** - Spelling, spaces, hyphens, and capital letters are all important and must conform to Geographic Names Information System standards. Cannot be statewide.  
<http://geonames.usgs.gov>  
GNIS <http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:848314263894103>

**Recipient Residence State** – Recipient state code

**Recipient Zipcode** – Use either 5 digits or 9 digits with no dash. The nine digit zipcode is preferred.

**Recipient Residence Congressional District** – Cannot be statewide. Congressional District of recipient residence address. District is based on zip code, and zip plus four.  
<http://www.congress.org/congressorg/officials/congress/?azip=02110&state=MA>

**Federal Award Identifier Number** – This is the EPA grant number. It is an 8 digit number that currently follows the program code at the top of the award document.

**Federal Award Identifier Number (Modification)** – This is the EPA amendment number. It is the 9<sup>th</sup> digit following the grant number at the top of the award document.

**Principle Place of Performance Code** – Code is based on city, county, state where the grant work is performed.

**Principle Place of Performance (State)** – Two digit state code. May be more than one state, or statewide.

**Principle Place of Performance (County)** – May be more than one county, or county wide. Spelling, spaces, hyphens, and capital letters are all important and must conform to Geographic Names Information System standards.

<http://geonames.usgs.gov>  
GNIS <http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:848314263894103>

**Principle Place of Performance (City)** - Spelling, spaces, hyphens, and capital letters are all important and must conform to Geographic Names Information System standards.  
<http://geonames.usgs.gov>  
GNIS <http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:848314263894103>

**Principle Place of Performance (Zip)** - Spelling, spaces, hyphens, and capital letters are all important and must conform to Geographic Names Information System standards.

<http://geonames.usgs.gov/>

GNIS <http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:848314263894103>

**Principle Place of Performance (Congressional District)** – Districts where work is performed, may be more than one or statewide. District is based on zip code, and zip plus four.

<http://www.congress.org/congressorg/officials/congress/>

**Principle Place of Performance (Country code)** – Based on the country entered in IGMS

## Attachment B - Complete List of FFATA Data Elements

### USASpending data elements (see below for web sites)

CFDA Program Number	Only one CFDA
State Application Identifier (SAI Number)	If blank, "SAI Exempt" is entered by data routine
Recipient Name	Name should match the CCR Name
Recipient City Code	City code is populated based on the GNIS Feature ID, Official Feature Name, and Official Feature Location are American National Standards Institute standards as specified in ANSI INCITS 446-2008 (Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas, and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone).
Recipient City Name	City Name must be spelled correctly according to the USGS U.S. Board on Geographic Names
Recipient County Code	County code is populated based on the GNIS Feature ID, Official Feature Name, and Official Feature Location are American National Standards Institute standards as specified in ANSI INCITS 446-2008 (Identifying Attributes for Named Physical and Cultural Geographic Features (Except Roads and Highways) of the United States, Its Territories, Outlying Areas, and Freely Associated Areas, and the Waters of the Same to the Limit of the Twelve-Mile Statutory Zone).
Recipient County Name	County name spelling is critical according to the USGS U.S. Board on Geographic Names
Recipient State Code	Two digit state code
Recipient Zip Code	Zip plus four is preferred
Type of Recipient	The IGMS code is converted to FFATA format during data process routine
Type of Action	The IGMS code is converted to FFATA format during data process routine
Recipient Congressional District	District will pull from IGMS recipient award data. This field will contain "00" for a congressional district at large, "98" for jurisdictions with a nonvoting delegate, "99" for jurisdictions with no representative. Field will be blank for foreign recipients. <b>Multiple districts should not be entered for recipient residence address.</b> Cannot be statewide.
Federal Agency/Organizational Unit Code	FIPS EPA code is entered
Federal Award Identifier Number (FAIN)	IGMS Grant number (first 8 digits)
Federal Award Identifier Number (Modification)	IGMS amendment number
Federal Funding Sign	Used for negative numbers
Federal Funding Amount	EPA Amount This Action
Non-Federal Funding Sign	Used for negative numbers
Non-Federal Funding Amount	Recipient Contributions

Total Funding Sign	Used for negative numbers
Total Funding Amount	Total This Action
Obligation/Action Date	Award Date
Starting Date	Project Start Date
Ending Date	Project End Date
Type of Assistance Transaction	The IGMS code is converted to FFATA format during data process routine
Record Type	The IGMS code is converted to FFATA format during data process routine
Correction/Late Indicator	Used for corrections
Fiscal Year and Quarter Correction	Used for corrections
Principal Place of Performance Code	Calculated based on Place of Performance State code and Place of Performance City code
Principal Place of Performance (State)	Uses 'Areas Affected by Project' data from IGMS. Spelling is critical
Principal Place of Performance (County or City)	Uses 'Areas Affected by Project' data from IGMS. Spelling is critical
Principal Place of Performance Zip Code	Data provided by recipient, however IGMS does not have field for this data.
Principal Place of Performance Congressional District	District will pull from IGMS recipient award 'areas affected by project' data. This field will contain "00" for a congressional district at large, "98" for jurisdictions with a nonvoting delegate, "99" for jurisdictions with no representative, and "90" for multiple districts. Field will be blank for foreign recipients. If multiple districts are entered in IGMS, the data process routine will code "90".
CFDA Program Title	Data pulled from IGMS
Federal Agency Name	Coded
State Name	Based on Recipient State
Project Description	Data pulled from IGMS <b>149 characters</b>
DUNS Number	Nine digit numeric string. Should be validated against CCR
DUNS Number PLUS 4	Plus 4 should be validated against CCR
Dun & Bradstreet Confidence Code	Provided by D&B based on recipient name, address, DUNS
Program Source/Treasury Account Symbol: Agency Code	Coded
Program Source/Treasury Account Symbol: Account Code	IGMS data
Program Source/Treasury Account Symbol; Sub-Account Code (OPTIONAL)	IGMS data
Recipient Address Line 1	IGMS data
Recipient Address Line 2	IGMS data
Recipient Address Line 3	IGMS data
Face Value of Direct Loan/Loan Guarantee	Blank

Original Subsidy Cost of the Direct Loan/Loan Guarantee	Blank
Business Funds Indicator (BFI)	Coded based on Recovery Act program code
Recipient Country Code	IGMS data
Principal Place of Performance Country Code	IGMS data
Unique Record Identifier (URI)	Only used for Fellows, we use the fellow grant number here

The U.S. Board on Geographic Names

<http://geonames.usgs.gov/>

USBGN Search Domestic Names

<http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:4034810516388205>

CCR

<http://www.ccr.gov>

Look up Congressional Districts by Zip

<http://www.congress.org/congressorg/officials/congress/>

CCR Vendor Code Search in the FDW

[http://iasint.rtpnc.epa.gov/neis/CCR\\_vend.inquiry](http://iasint.rtpnc.epa.gov/neis/CCR_vend.inquiry)

## Attachment C - Term and Conditions

### DUNS/CCR Term and Condition - Administrative

#### I. Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

**4. Subaward:**

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. -210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

**5. Subrecipient** means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

## **Subaward Term and Condition - Administrative**

### **I. Reporting Subawards and Executive Compensation.**

**a. Reporting of first-tier subawards.**

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

**2. Where and when to report.**

- i. You must report each obligating action described in paragraph a.1. of this award term to [www.fsrs.gov](http://www.fsrs.gov).
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov) specify.

**b. Reporting Total Compensation of Recipient Executives.**

- 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
  - ii. in the preceding fiscal year, you received—
    - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
  - i. As part of your registration profile at [www.ccr.gov](http://www.ccr.gov).
  - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --
  - i. in the subrecipient's preceding fiscal year, the subrecipient received—
    - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. subawards,  
and
- ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

- 1. Entity means all of the following, as defined in 2 CFR part 25:
  - i. A Governmental organization, which is a State, local government, or Indian tribe;
  - ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- 2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## Attachment D - PAB Organization Record

<b>PAB Organization Record</b>	
Name:	The name should match the CCR registered official name
Abbreviation:	Unique
DUNS:	Required 9 numbers, no dashes, just nine numbers
EPA Region:	Region
Applicant Type:	Applicant type
EIN:	EIN 9 numbers no dashes
Organization Code:	Org code (optional)
Server(s):	
Active Status:	(optional)
Main phone:	Main phone 10 numbers no dashes
FAX phone:	FAX phone 10 numbers no dashes
Vendor Code:	Vendor Code - entered by Las Vegas Finance Center
Location:	Location (optional)
ACH:	ACH entered by Las Vegas Finance Center
Organizational Unit:	Org unit (optional)
Sub Organizational Unit:	Sub org unit (optional)
Manager:	Manager (optional)
Title:	Title (optional)
Agency Location Code:	Location Code (optional)
<b>Organization Address</b>	
Street address:	Street
City:	City must be spelled correctly according to the USGS U.S. Board of Geographic Names
State/province:	State Code, FC if foreign country
Zip/postal code:	Zip code may be 5 digits or 9 digits no dashes
Country:	Country of applicant
County:	Applicant residence county, cannot be statewide, must be the correct county and spelling based on USGS U.S. Board of Geographic Names
Congressional Dist:	Applicant residence congressional district, cannot be statewide
NSF Code:	National Science Foundation code per codebook- IT Team enters
Minority Institution Flag:	Minority Institution codes- enter if known
Web Site:	Web site (optional)
<b>Payment Office Address</b>	
Name:	Name - enter if different from recipient address
Street address:	Street- enter if different from recipient address
City:	City - enter if different from recipient address
State/province:	State - enter if different from recipient address
Zip/postal code:	Zip - enter if different from recipient address
Pmt Request To:	enter if different from recipient address
County:	enter if different from recipient address

The U.S. Board on Geographic Names	<a href="http://geonames.usgs.gov/">http://geonames.usgs.gov/</a>
USBGN Search Domestic Names	<a href="http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:4034810516388205">http://geonames.usgs.gov/pls/gnispublic/f?p=139:1:4034810516388205</a>
CCR	<a href="http://www.ccr.gov">http://www.ccr.gov</a>
Look up Congressional Districts by Zip	<a href="http://www.congress.org/congressorg/officials/congress/">http://www.congress.org/congressorg/officials/congress/</a>
CCR Vendor Code Search in the FDW	<a href="http://iasint.rtpnc.epa.gov/neis/CCR_Vend.inquiry">http://iasint.rtpnc.epa.gov/neis/CCR_Vend.inquiry</a>
NSF codes	<a href="http://www.nsf-surveys.net/FedSupport/help/download_codebook.cfm">http://www.nsf-surveys.net/FedSupport/help/download_codebook.cfm</a>

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder (s)	Status/ Notes	Who can attend/ pass along material?
National Contract Management Association (NCMA)– Virtual Conference	September 9, 2010	Contract managers	<a href="http://www.ncmahq.org/Events/GC.cfm?PreviewContentItemID=47251&amp;token=38717&amp;userID=32519&amp;navItemNumber=7860">http://www.ncmahq.org/Events/GC.cfm?PreviewContentItemID=47251&amp;token=38717&amp;userID=32519&amp;navItemNumber=7860</a>	
Chief Information Officers (CIO)– Full Council Meeting	<ul style="list-style-type: none"> <li>September 15, 2010</li> <li>November 16, 2010</li> </ul>	Federal Chief Information Officers (CIO)	<a href="http://www.cio.gov/events.cfm">http://www.cio.gov/events.cfm</a> Contact: John Andre <a href="mailto:John.andre@gsa.gov">John.andre@gsa.gov</a> (ALSO in charge of CFO and CAO meetings)	
National Indian Health Board (NIHB)– 27 <sup>th</sup> Annual Consumer Conference Information Meeting	September 20-23, 2010	Expecting 600-900 attendees. Includes Health Care providers, Tribal Leaders, Public Health Officials, Health Educators, etc	<a href="http://www.nihb.org/communications/conferences_events.php">http://www.nihb.org/communications/conferences_events.php</a> The theme for this year's conference is: "Tribal-State Relations and American Indian/Alaska Native Health Care."	
Council of the Great City Schools (CGS)– Chief Financial Officers Conference	September 20-23, 2010	Around 100 CFOs representing nation's largest school districts.	<a href="http://cgcs.org/conferences/calendar/home.aspx">http://cgcs.org/conferences/calendar/home.aspx</a> Contact Conference Manager. Terry Tabor (202) 393-242 Talked to Terry said we could pass along materials to distribute (may be hard to get on agenda).	
Chief Financial Officers (CFO)– Full Council Meeting	<ul style="list-style-type: none"> <li>September 21, 2010</li> <li>October 19, 2010</li> <li>December 21, 2010</li> </ul>	CFOs and Deputy CFOs of the largest federal agencies and senior officials of OMB and Treasury. (prob over or around 100 people)	<a href="http://www.cfoc.gov/index.cfm?function=calendardrill&amp;specific=meetings&amp;id=CFO%20Full%20Council%20Meeting&amp;currentdate=09/01/2010">http://www.cfoc.gov/index.cfm?function=calendardrill&amp;specific=meetings&amp;id=CFO%20Full%20Council%20Meeting&amp;currentdate=09/01/2010</a> Contact: John Andre; <a href="mailto:john.andre@gsa.gov">john.andre@gsa.gov</a>	
National Contract Management Association (NCMA)– Webinar Meetings	<ul style="list-style-type: none"> <li>September 21, 2010</li> <li>October 05, 2010</li> <li>October 19, 2010</li> <li>November 02, 2010</li> <li>November 16, 2010</li> <li>December 21, 2010</li> </ul>	Contract managers	<a href="http://www.ncmahq.org/learn/webinarlist.cfm?navItemNumber=6234">http://www.ncmahq.org/learn/webinarlist.cfm?navItemNumber=6234</a> Contact <a href="mailto:learningcenter@ncmahq.org">learningcenter@ncmahq.org</a> for additional information <ul style="list-style-type: none"> <li>September 21: Contracting for Services</li> <li>October 05: Federal Grants</li> <li>October 19: Government Contract Audits: Dealing with Auditors and Mitigating Risks</li> <li>November 02: Managing Subcontracts</li> <li>November 16: Government</li> </ul>	

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder (s)	Status/ Notes	Who can attend/ pass along material?
			Contract Law • December 21: Teaming Agreements and Advanced Subcontracting Issues	
Contracts and Grants Workshop	September 23, 2010	Federal Grants and Procurement Representatives		
National Association of State Chief Information Officers (NASCIO)-Conference	September 26 – 29, 2010	500-550 attendees to include state/territory CIOs, policy officials, government, universities, non-profits, and corporations.	<a href="http://www.nascio.org/events/2010Annual/">http://www.nascio.org/events/2010Annual/</a> contact NASCIO Headquarters at (859) 514-9153. Talked with Shawn. Theme: Innovation and Opportunity: Transforming Government Through IT.	
Chief Acquisition Officers (CAO)-Full Council Meeting	• October 7 , 2010 • December 2, 2010	Federal Chief Acquisition Officers (CAO)	<a href="http://www.caoc.gov/index.cfm?function=calendar&amp;current_date=%7Bts%20%272010%2D10%2D01%2000%3A00%3A00%27%7D&amp;CFID=3390658&amp;CFTOKEN=17f54549643fc765-4879309A-5056-8F64-36D8E86CD3484AF9">http://www.caoc.gov/index.cfm?function=calendar&amp;current_date=%7Bts%20%272010%2D10%2D01%2000%3A00%3A00%27%7D&amp;CFID=3390658&amp;CFTOKEN=17f54549643fc765-4879309A-5056-8F64-36D8E86CD3484AF9</a> Contact: John Andre; <a href="mailto:john.andre@gsa.gov">john.andre@gsa.gov</a>	
National Grants Partnership (NGP)-Meeting	October 19, 2010	Federal officials, representatives of state, local and tribal governments; executive branch grants offices; and nonprofit organizations.  30-50 to come and the rest there is a webcast on-demand.	<a href="http://thengp.org/index.html">http://thengp.org/index.html</a> Participating organizations: AAGP, AFP, AGA, FDP, GWSCPAs, NASACT, NASCIO, NCCS, NCNA, NGMA  Tony Cavataio <a href="mailto:Tony.Cavataio@ed.gov">Tony.Cavataio@ed.gov</a> (202) 245-6151  Talked to Tony, if want to come, just send an email to NGP to attend so can come in the door.	
Executive Leadership Conference (ELC) 2010 – American Council for Technology (ACT) – Industry Advisory Council	October 24-26, 2010 CALLED AND LEFT VM EMAILED	Provides a forum for government employees to collaborate on high priority IT issues.	<a href="http://www.actgov.org/EVENTS/EXECUTIVELEADERSHIP/ELC%202010/Pages/default.aspx">http://www.actgov.org/EVENTS/EXECUTIVELEADERSHIP/ELC%202010/Pages/default.aspx</a> Theme: Delivering Transformation Government is adopting new tools and methods of doing business to embrace accountability and transparency, enhance	

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder (s)	Status/ Notes	Who can attend/ pass along material?
			<p>collaboration, accelerate innovation, and engage citizens in more effectively and efficiently delivering mission results.</p> <p>Cont: Angela Owens aowens@actgov.org or (703)208-4800 ext: 206</p>	
Contracts and Grants Workshop	October 25 or 26, 2010	Federal Grants and Contracts Representatives		
General Services Administration (GSA)– 2010 Small Business Procurement and Networking Conference	October 28, 2010	GSA program managers, building managers, IT professionals, contracting officers, and Small Business Advocates from DoD and other federal agencies.	<p><a href="http://www.gsa.gov/portal/content/118009">http://www.gsa.gov/portal/content/118009</a>  <a href="http://www.fbcinc.com/gsa">www.fbcinc.com/gsa</a>  One day - procurement and marketing workshops.  Attendees will also be exposed to prime contractors seeking to partner with small businesses to help meet and exceed their company's subcontracting plan goals.</p>	
National Council of University Research Administrators (NCURA) Federal Demonstration Partnership– Annual Meeting	October 31 – Nov 3, 2010	1800-2000 members from universities, colleges, teaching hospitals, and other non-profit organizations.	<p><a href="http://www.ncura.edu/content/educational_programs/sites/52/">http://www.ncura.edu/content/educational_programs/sites/52/</a></p> <p>The meeting theme, "At the Confluence of Creation and Collaboration" represents the interdependent relationship between the researcher and the research administrator. \$650 before Sept. 27, \$700 after (at the Hilton in DC).  Tara Bishop, NCURA Associate Executive Director at (202) 466-3894 or <a href="mailto:bishop@ncura.edu">bishop@ncura.edu</a> Talked to Tara.</p>	
American Association of Grant Professionals (AAGP)– Annual Conference	November 3 – 6, 2010	700 grant professionals from across the country and internationally.	<p><a href="http://grantprofessionals.org/annual-conference/about.aspx">http://grantprofessionals.org/annual-conference/about.aspx</a></p> <p>Annual conference. Nearly 4000 active members representing 49 states, Puerto Rico, Canada, and the United Kingdom.</p>	

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder (s)	Status/ Notes	Who can attend/ pass along material?
National Congress of American Indians (NCAI)– 67 <sup>th</sup> Annual Convention & Trade Show	November 14-19, 2010	National Congress of American Indians (NCAI)	<a href="http://www.ncai.org/Registration_496.0.html">http://www.ncai.org/Registration_496.0.html</a> Phone: (202) 466-7767 Left VM for Anmaray. Ask about Feb 28 mtg.	
American Association of State Colleges and Universities (AASU – Grant Resource Center Conference	November 21 – 23, 2010	450-500 university presidents and chancellors throughout US, Guam, Puerto Rico, Virgin Islands. (Invite to conference by board request)	<a href="http://www.aascu.org/meetings/annual10/index.htm">http://www.aascu.org/meetings/annual10/index.htm</a> Theme: Stewardship for America's Future. Will focus on specific institutional strategies that can be used to help advance public progress in such areas as P-20 education, economic competitiveness, and charting the future of our regions and communities. Spoke with Kevin Finkelstein <a href="mailto:finkelsteink@aascu.org">finkelsteink@aascu.org</a> 202-478-4690 Program: Program: Rosemary Lauth <a href="mailto:lauthr@aascu.org">lauthr@aascu.org</a> 202-478-4689	
National Association of Counties (NACo)– Fall Board of Directors Meeting	December 2, 2010 LEFT VM FOR JOHN	Represents counties across America. NACo's Executive Committee is comprised of four officers elected by the membership, along with a regional representative from each of the four regions in the country.	<a href="http://www.naco.org/meetings/dates/Lists/Event%20Calendar/DispForm_naco.aspx?List=0f08eeb5%2De5e1%2D441f%2D8034%2D18f3e879f28f&amp;ID=31&amp;RootFolder=%2Fmeetings%2Fdates%2Flists%2Fevent%20Calendar&amp;Source=http%3A%2F%2Fwww%2Enaco%2Eorg%2Fmeetings%2Fdates%2Fpages%2Fdefault%2Easpx">http://www.naco.org/meetings/dates/Lists/Event%20Calendar/DispForm_naco.aspx?List=0f08eeb5%2De5e1%2D441f%2D8034%2D18f3e879f28f&amp;ID=31&amp;RootFolder=%2Fmeetings%2Fdates%2Flists%2Fevent%20Calendar&amp;Source=http%3A%2F%2Fwww%2Enaco%2Eorg%2Fmeetings%2Fdates%2Fpages%2Fdefault%2Easpx</a> -State associations nominate seventy-seven (77) members -Affiliates, WIR, LUCC, RAC nominate twenty-six (26) members -President appoints ten (10) at-large members - Past presidents currently serving as elected county officials eight (8) members -Executive Committee five (5) members <a href="tel:202-942-4278">John Samartzis</a> 202-942-4278 Director of Corporate Programs	
National Contract	December 9–10,	Contract managers	<a href="http://www.ncmahq.org/Event">http://www.ncmahq.org/Event</a>	

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder (s)	Status/ Notes	Who can attend/ pass along material?
Management Association (NCMA)– 2010 Conference	2010		<a href="#"><u>s/ConferenceList.cfm?navItemNumber=532</u></a>	
National Congress of American Indians (NCAI)– Executive Council Winter Session	February 28 – March 2, 2011	National Congress of American Indians (NCAI)	<a href="http://www.ncai.org/Conferences-Events.7.0.html">http://www.ncai.org/Conferences-Events.7.0.html</a> Talk to Anmaray – ask about Nov. 19 <sup>th</sup> tradeshow.	
Government Information Technology Executive Council (GITEC) – Summit 2011	March 6-9, 2011	Approximately 800 federal government and senior-level industry IT executives. This includes government representatives with the following titles: SESs, CIOs, CTOs and IT PMs.	<a href="https://sites.google.com/site/gitecorg/">https://sites.google.com/site/gitecorg/</a> Key focus areas for the conference include: What are the biggest challenges for the largest upcoming projects What new technologies can be helpful What new Program Management Techniques can be useful to move initiatives to implementation Engaging the millennial (Generation Y)	
Associated General Contractors of America (AGC)– Annual Convention	March 21-25, 2011	Represents member firms from every state and construction market.	<a href="http://convention.agc.org/">http://convention.agc.org/</a> From the latest impact of state and federal regulations on the construction industry, to best practices for BIM and contract negotiations, to practical advice on labor management and green building, AGC's Annual Convention delivers the working knowledge contractors need to improve operations, expand into new markets and build their business.	
General Services Administration – Interagency Resources Management Conference (IRMCO) – 50 <sup>th</sup> Annual Conference	April 10-13, 2011	OMB, CIOs, CFOs, CAOs, CHCO, senior managers of GSA	<a href="http://www.irmco.gov/">http://www.irmco.gov/</a> For information about speaking, John André, Program Manager, GSA 202-501-9069 john.andre@gsa.gov	

## Attachment E - OMB Outreach for FFATA Reporting

Conferences	Timeline (Date)	Stakeholder(s)	Status/ Notes	Who can attend/ pass along material?
American Council for Technology (ACT)/Industry Advisory Council (IAC) 2011 Management of Change Conference – 31 <sup>st</sup> Annual Conference	June TBD, 2011	Federal, state, and local government IT professionals together with the Industry Advisory Council's (IAC) wide range of IT industry participants.	<a href="http://www.actgov.org/events/managementofchange/Pages/default.aspx">http://www.actgov.org/events/managementofchange/Pages/default.aspx</a> Information for the 2011 MOC Conference is not available yet. In 2010 had Martha N. Johnson, Administrator, GSA, as keynote speaker and Martha Doris, Deputy Associate Administrator, GSA, as panelist.	

**Attachment B**

**Required Fields for FSRS reporting through CBR/PBR**

**1. The following data about sub-awards greater than \$25K**

- a. Name of entity receiving award
- b. Amount of award – SRFs will use initial award amount for this purpose.
- c. Award Date
- d. Funding agency
- e. NAICS code for contracts / CFDA program number for grants
- f. Award title descriptive of the purpose of the funding action
- g. Location of the entity (including congressional district)
- h. Place of performance (including congressional district)
- i. DUNS Number
- j. Is this a FFATA project for equivalency purposes (Y/N)?
- k. Percent of project to be considered FFATA for equivalency purposes
- l. PWS ID # or NPDES permit #
- m. Grant Year

**2. The Total Compensation and Names of the top five executives if:**

- a. More than 80% of annual gross revenues from the Federal government, and those revenues are greater than \$25M annually and
- b. Compensation information is not already available through reporting to the SEC.



**OFFICE OF WATER**  
WASHINGTON, D.C. 20460

November 7, 2023

**MEMORANDUM**

**SUBJECT:** Clarification of Federal Funding Accountability and Transparency Act Reporting Requirements in the State Revolving Fund Programs

**FROM:** Anita Maria Thompkins, Director  
Drinking Water Infrastructure Development Division  
Office of Ground Water and Drinking Water

Raffael Stein, Director  
Water Infrastructure Division  
Office of Wastewater Management

**TO:** Regional SRF Branch Chiefs  
Regions I-X

This memorandum further clarifies Federal Funding Accountability and Transparency Act (FFATA) reporting requirements for the Clean Water and Drinking Water State Revolving Fund (CWSRF and DWSRF) programs. This memo supplements EPA's guidance in the March 23, 2011, SRF FFATA memo.<sup>1</sup>

**Background**

FFATA reporting is a crosscutting federal requirement intended to provide clarity and transparency to the public about the recipients and subrecipients of federal grants. In the SRF programs, the requirement applies only to a subset of projects and activities that a state funds. States report subaward data into the [FFATA Subaward Reporting System](#) (FSRS).

**Applicability to the CWSRF and DWSRF**

For the CWSRF and DWSRF infrastructure funds, states identify particular assistance agreements that represent federal dollars and must meet all federal requirements, including FFATA reporting. This concept is referred to as "equivalency." *Please note:* For those states that choose (as a state policy) to apply most or all federal requirements to all projects, these states **must** select a *subset* of assistance agreements to report into FSRS to represent the "federal awards" (i.e., "equivalency projects"). Those assistance agreements must add up to, but not exceed, the amount of the capitalization grant, with the important caveats explained below.

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<sup>1</sup> See *Guidance on FFATA Reporting Through CWSRF and DWSRF Data Systems* memorandum, March 23, 2011.

In the CWSRF, the only circumstance in which a state would report less than the full amount of the capitalization grant into FSRS is if they selected equivalency assistance agreements that were each less than the \$30,000 threshold set by FFATA regulations.<sup>2</sup>

In the DWSRF, the set-aside funds are federal dollars. As described below, many of the typical activities funded under the set-asides are exempt from FFATA subaward reporting. Because of these statutory exemptions, the total dollar amount of DWSRF FFATA subaward reporting for most DWSRF capitalization grants will likely be *less* than the total dollar amount of the DWSRF capitalization grant. For example, for a \$10 million DWSRF capitalization grant, a state might be required to report only \$9 million worth of assistance agreements and activities into FSRS, given the FFATA reporting exemptions. States must not report additional DWSRF infrastructure assistance agreements to account for set-aside usage or other exemptions.

### **Specific Reporting Instructions**

Per the March 23, 2011, SRF FFATA memo, states are still reported as grant recipients into USASpending.gov. The state's program contact for the capitalization grant award, or their designee, must continue to ensure that the state's profile in SAM.gov has all required information (e.g., top five earning executives and pay, address, etc.). EPA uses that profile to report the capitalization grant award to USASpending.gov for the state.

*These SRF projects and activities must be reported in FSRS as subawards to comply with FFATA:*

- Equivalency assistance agreements that exceed the \$30,000 threshold.
- All DWSRF set-aside activities (which are all federal funds) that exceed \$30,000 *and* are not listed below as exempted. This includes the following:
  - Grants to public water systems (PWSs) exceeding \$30,000 for infrastructure planning and design using set-aside funds. These grants are considered subawards.
  - DWSRF SDWA 1452(k) source water protection (SWP) loans of more than \$30,000. See bullet below about SWP loans originating from *repayments* from previous SWP loans.

*These SRF projects and activities must not be reported in FSRS as subawards:*

- Non-equivalency assistance agreements.
- Assistance agreements or activities under the \$30,000 threshold.
- Activities funded as an interstate transfer. This includes DWSRF set-asides for state level Public Water System Supervision (PWSS) program funding, statewide operator certification programs, statewide capacity development programs, and state in-house technical assistance programs.
- DWSRF set-aside activities acquired under a procurement action. This includes state services contracted out through state contract processes, such as hiring an auditor, hiring a circuit rider or technical assistance provider, and equipment purchases.
- DWSRF SDWA 1452(k) SWP loans made with repayments from previous 1452(k) SWP loans.
- DWSRF salaries, indirect costs, and other internal expenses.
- CWSRF administrative expenses and activities.
- CWSRF 2% technical assistance activities.

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<sup>2</sup> The dollar threshold is set in Title 2 of the Code of Federal Regulations. States should monitor fsrs.gov to see if this threshold changes in the future.

If you have questions, contact Howard E. Rubin at [Rubin.HowardE@epa.gov](mailto:Rubin.HowardE@epa.gov) or Mark Mylin at [Mylin.Mark@epa.gov](mailto:Mylin.Mark@epa.gov).

## **CROSCUTTER: INTERGOVERNMENTAL REVIEW**

**Updated:** October 2023

### **Description**

During the 1960s, as the pace of growth in the nation's urban areas quickened, a host of federal programs were established to provide assistance for housing, roads, hospitals, water supply, and wastewater treatment. The sheer number of these programs began to complicate the planning efforts of local officials. In 1966, Congress enacted Section 204 of the Demonstration Cities and Metropolitan Development Act (Section 204), and in 1968, Section 401 of the Intergovernmental Cooperation Act (Section 401), which require intergovernmental review and consultation for certain proposed federal financial assistance.

Under Executive Order 12372, which was signed on July 14, 1982, and amended on April 8, 1983, states have the option to develop their own processes to review and coordinate proposed federal financial assistance. This includes designating a state Single Point of Contact (SPOC) to facilitate intergovernmental review.<sup>1</sup> The Executive Order instructs federal agencies to utilize State processes when they are established.

[40 CFR part 29](#) governs EPA's implementation of the intergovernmental review requirements under Section 204, Section 401, and Executive Order 12372. These regulations outline EPA's responsibilities as they pertain to communicating with state and local officials on EPA programs and activities subject to intergovernmental review.

EPA also provides a [list](#) of programs subject to intergovernmental review, titled "EPA Financial Assistance Programs Subject To Executive Order 12372 And Section 204 Of The Demonstration Cities And Metropolitan Development Act (Section 204) And Section 401 Of The Intergovernmental Cooperation Act (Section 401)." The list clarifies that DWSRF and CWSRF capitalization grants are subject to intergovernmental review. It also clarifies that states receiving SRF capitalization grants meet their intergovernmental review responsibilities under [40 CFR part 29](#) by complying with the public notice requirements for Intended Use Plans prescribed under the CWSRF and DWSRF regulations.<sup>2</sup> The public notice requirements are found under [40 CFR 35.3150](#) for the CWSRF and [40 CFR 35.3555](#) for the DWSRF.

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<sup>1</sup> Currently, only California and Utah have deemed EPA financial assistance applications to be subject to SPOC review.

<sup>2</sup> An SRF project that is co-funded with funds from another federal financial assistance program may need to comply with intergovernmental review requirements of the other federal program. The state SRF agency should verify these requirements with the federal program providing co-funding to the project.

## Implementation in the SRF Programs

### **State SRF Agency Responsibilities:**

The state SRF agency satisfies the intergovernmental review requirements under [40 CFR part 29](#) by posting its Intended Use Plans for public comment and review per the public notice requirements in [40 CFR 35.3150](#) (CWSRF) and [40 CFR 35.3555](#) (DWSRF).<sup>3</sup>

### **SRF Assistance Recipient Responsibilities:**

SRF assistance recipients do not have responsibilities for satisfying intergovernmental review requirements under [40 CFR part 29](#).

## Additional References

- [40 CFR Part 29: Intergovernmental Review of Environmental Protection Agency Programs and Activities](#)
- [EPA Financial Assistance Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act \(Section 204\) and Section 401 of the Intergovernmental Cooperation Act \(Section 401\)](#)

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<sup>3</sup> Note: There may be requirements for submission of capitalization grant applications to SPOCs or other state agencies based on state laws or policies that are independent of EPA's requirements at 40 CFR Part 29. EPA encourages applicants to comply with state requirements but does not enforce those requirements.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

### **MEMORANDUM**

**SUBJECT:** Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

**FROM:** Kiri Anderer, P.E., Acting Associate Branch Chief  
Infrastructure Branch, OGWDW

Michael Deane, Branch Chief  
State Revolving Fund Branch, OWM

**TO:** SRF Branch Chiefs  
Regions 1-10

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, must comply with regulations at [2 CFR 200.216](#), *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of [Public Law 115-232](#). The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **Applicability in the State Revolving Fund (SRF) Programs**

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition [provided by EPA's Office of Grants and Debarment](#) (OGD) in OGD's most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements.

There is no exhaustive list of components and services that fall under the prohibition. State SRF managers and local assistance recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts.

If you have questions on the implementation of this grant condition, please contact Michael Deane at [Deane.Michael@epa.gov](mailto:Deane.Michael@epa.gov) or Kiri Anderer at [Anderer.Kirsten@epa.gov](mailto:Anderer.Kirsten@epa.gov).

## **CROSCUTTER: SUSPENSION AND DEBARMENT**

**Updated:** October 2023

### **Description**

Executive Order 12549 instructed the Office of Management and Budget (OMB) to coordinate a government-wide policy for suspension and debarment programs which would exclude certain individuals and entities from participation in federal assistance programs. OMB subsequently issued a “common rule” on suspension and debarment in non-procurement activities, and these guidelines are found at [2 CFR part 180](#). EPA adopted the common rule and supplemented it with [2 CFR part 1532](#).

Under these regulations, a person, which is defined in the regulations to include any individual or legal entity, however organized, can be suspended or debarred from participation in federal assistance programs. The Suspension and Debarment official has a great deal of discretion in deciding whether suspension or debarment will serve the public interest. Some causes for suspension or debarment include conviction or civil judgment for offenses such as fraud, antitrust violations, embezzlement, or theft, or for serious violations of the terms of public agreements or transactions. Additional causes for debarment can be found at [2 CFR 180.800\(a\)-\(c\)](#).

Suspension can be imposed when adequate evidence exists that a person or business is engaging in activities that would give rise to debarment and immediate action is necessary to protect the public interest. Some persons enter into voluntary exclusion agreements, which also exclude them from participating in a non-procurement program. In addition, EPA administers Section 306 of the Clean Air Act ([42 U.S.C. § 7606](#)) and Section 508 of the Clean Water Act ([33 U.S.C. § 1368](#)), which disqualify persons convicted for certain offenses under those statutes from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see [2 CFR 1532.1105](#)).

[2 CFR part 180](#) outlines the due process standards that a federal agency, including EPA, must follow before finding a person ineligible. It also details the consequences of a suspension or debarment action, which can include the exclusion for a period of time from participation in non-procurement covered transaction administered by any federal agency. See [2 CFR 180.970](#). Guidance for appealing an EPA suspension or debarment can be found at 2 CFR part 1532, [subpart G](#) and [subpart H](#), respectively.

The list of suspended, debarred, or voluntarily excluded persons can be found on the [System for Award Management \(SAM\) Exclusions website](#). The SAM Exclusions list is maintained by the U.S. General Services Administration and contains information about persons and businesses who are suspended, debarred, or otherwise ineligible for federal contracts and certain types of federal assistance.

## Implementation in the SRF Programs

The following actions apply to equivalency projects, including projects using DWSRF set-aside funds.

### **Verifying Suspended or Debarred Parties**

A company or individual who is suspended, debarred, or otherwise excluded cannot participate in primary and lower tiered covered transactions. These transactions include SRF loans, grants, contracts, and subawards awarded with SRF funds. To prevent excluded parties from participating in assistance agreements or contracts, [Subpart C of 2 CFR part 180](#) requires participants who enter into an assistance agreement or contract with another party in the next lower tier to verify whether that party is not excluded or disqualified.

This means that:

- The state SRF Agency should verify that the SRF applicant is not suspended or debarred.
  - The SRF assistance recipient should verify that the principal contractor is not suspended or debarred.
    - The prime contractor should verify that any subcontractor is not suspended or debarred.

All of the above parties should ensure the next lower tier is not suspended or debarred. Ways to ensure this include:

- Checking the [SAM Exclusions list](#) and
- Including a clause and/or condition in covered transactions requiring compliance with [2 CFR part 180, Subpart C](#).<sup>1</sup>

### **Annual Review Requirements**

As part of the Annual Review Project File Review, EPA Regions will verify that the bid specifications and/or construction contracts contain the suspension and debarment prohibitions per [2 CFR part 180](#).

### **Additional References**

- [2 CFR part 180: OMB Guidelines to Agencies on Governmentwide Debarment and Suspension](#)
- [2 CFR part 1532: Nonprocurement Debarment and Suspension](#)
- System for Award Management (SAM) Exclusions list: <https://sam.gov/content/exclusions>

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<sup>1</sup> See [EPA's General Term and Condition on Suspension and Debarment](#), which also supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Understanding State Revolving Fund Additional Subsidy as a Grant

**FROM:** Kiri Anderer, Acting Associate Chief  
Infrastructure Branch  
Drinking Water Protection Division  
Office of Ground Water and Drinking Water

Michael Deane, Chief  
State Revolving Fund Branch  
Water Infrastructure Division  
Office of Wastewater Management

**TO:** SRF Branch Chiefs & Regional Coordinators  
Regions I-X

This memorandum explains the additional procurement and monitoring requirements for states and assistance recipients under the Clean Water and Drinking Water State Revolving Fund (SRF) programs where a state provides additional subsidization in the form of a grant, as opposed to a loan with principal forgiveness or a negative interest rate. These requirements are in addition to the standard requirements for all SRF financial assistance.

EPA anticipates that state SRF programs will work with many new local assistance recipients as a result of the unprecedented federal investment from the Bipartisan Infrastructure Law (BIL), also known as the Infrastructure Investments and Jobs Act (IIJA), P.L. 117-58. The purpose of this memorandum is to assist states and EPA in understanding the “grant” additional subsidy option available under the BIL and base appropriations to SRF programs.

**Background**

The SRF programs are inherently “subsidized” financial assistance programs. By law, the programs offer below-market interest rates and extended financing terms that result in significant long-term cost savings to local recipients. “Additional subsidization” refers to particular SRF financial assistance options that go *beyond* that inherent SRF subsidization. Additional subsidization is a tool for SRF managers to help make critical public health and water quality infrastructure more affordable, particularly in disadvantaged communities.

Each additional subsidy option available to state SRFs under the Clean Water and Safe Drinking Water Acts has pros and cons, and state SRF managers should carefully weigh each option when designing their state's program. Additional subsidy may take several forms, but most commonly, states issue additional subsidy as 1) loans with principal forgiveness and 2) grants.

A grant may be a preferable additional subsidy option in certain circumstances. Some prospective local assistance recipients might seek SRF additional subsidy as a grant if they are near or at their local debt ceiling. In some areas, even a fully principal-forgiven loan (i.e., a loan that requires no repayment) might count against that local debt ceiling. In some states, issuing a grant may avoid underwriting fees and other expenses associated with loans, even for fully principal-forgiven loans.

A “grant” is a distinct legal instrument, and federal grant regulations impose additional requirements on the entity receiving the grant (e.g., an SRF assistance recipient, such as a public water system) and on the state SRF administrating the grant. Additional subsidy in the form of a grant is considered a *subaward* under 2 CFR 1500.3(b), and recipients of additional subsidy “grants” are “subgrantees” under federal grant regulations. In addition to other SRF requirements, as a subaward, entities receiving additional subsidy in the form of a grant and state programs providing the grant must comply with the following requirements:

- Subaward procurement requirements in 2 CFR 200.317 through 2 CFR 200.327, and the
- Subaward monitoring requirements in 2 CFR 200.331 through 2 CFR 200.333.

In accordance with 2 CFR 1500.3(b), SRF additional subsidy awarded as principal forgiveness or negative interest is *not* considered a subaward, and therefore, is not subject to the additional requirements identified above.

Below are summaries of the subaward procurement and monitoring requirements associated with subawards.

### **Subaward Procurement Requirements**

Attachment A lists the provisions of 2 CFR 200.317 through 2 CFR 200.327. In summary, these provisions require subawardees and state programs to have, among other requirements:

- Transparent and fair competition on the use of these funds,
- Oversight of subawards and contractors to ensure terms are met,
- Records for third party verification of compliance, and
- Solicited proposals from minority and women owned businesses.

### **Subaward Monitoring Requirements**

Attachment B lists the provisions of 2 CFR 200.331 through 2 CFR 200.333. In summary, these provisions require subawardees and state programs to have, among other requirements:

- Their risk assessed in receiving federal funds and proper steps taken to protect those funds, including subaward monitoring, subaward training, and special conditions as needed to ensure funds are used appropriately, and
- State documentation of their subaward assessment process and oversight efforts.

## **Conclusion**

Attachment C contains a non-exhaustive list of commonly asked questions and answers about this topic. Recipients are encouraged to thoroughly review the applicable regulations. If you have questions, contact us or Howard Rubin ([Rubin.HowardE@epa.gov](mailto:Rubin.HowardE@epa.gov)).

## Attachment A: Procurement Requirements for Subawards with Additional Subsidy as a Grant

### **2 CFR § 200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with [§§ 200.321](#), [200.322](#), and [200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

### **2 CFR § 200.318 General procurement standards.**

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

## **2 CFR § 200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state

licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

## **2 CFR § 200.320 Methods of procurement to be followed.**

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

- (1) ***Micro-purchases*** -

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to \$50,000.*** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over \$50,000.*** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases -***

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate

quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

## **2 CFR § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

## **2 CFR § 200.322 Domestic preferences for procurements.**

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **2 CFR § 200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **2 CFR § 200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

## **2 CFR § 200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

## **2 CFR § 200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **2 CFR § 200.327 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in [appendix II to this part](#).

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## Attachment B: Sub-Award Monitoring Requirements for Additional Subsidy as a Grant

### **2 CFR § 200.331 Subrecipient and contractor determinations.**

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

**(a) Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1)** Determines who is eligible to receive what Federal assistance;
- (2)** Has its performance measured in relation to whether objectives of a Federal program were met;
- (3)** Has responsibility for programmatic decision-making;
- (4)** Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5)** In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

**(b) Contractors.** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- (1)** Provides the goods and services within normal business operations;
- (2)** Provides similar goods or services to many different purchasers;
- (3)** Normally operates in a competitive environment;
- (4)** Provides goods or services that are ancillary to the operation of the Federal program; and
- (5)** Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

**(c) Use of judgment in making determination.** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

## **2 CFR § 200.332 Requirements for pass-through entities.**

All pass-through entities must:

**(a)** Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

**(1)** Federal award identification.

- (i)** Subrecipient name (which must match the name associated with its unique entity identifier);
- (ii)** Subrecipient's unique entity identifier;
- (iii)** Federal Award Identification Number (FAIN);
- (iv)** Federal Award Date (see the definition of *Federal award date* in [§ 200.1 of this part](#)) of award to the recipient by the Federal agency;
- (v)** Subaward Period of Performance Start and End Date;
- (vi)** Subaward Budget Period Start and End Date;
- (vii)** Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
- (viii)** Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
- (ix)** Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
- (x)** Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
- (xi)** Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
- (xii)** Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
- (xiii)** Identification of whether the award is R&D; and
- (xiv)** Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.

**(2)** All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

**(3)** Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

**(4) (i)** An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

**(A)** The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

**(B)** The de minimis indirect cost rate.

**(ii)** The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

**(5)** A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

**(6)** Appropriate terms and conditions concerning closeout of the subaward.

**(b)** Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

**(1)** The subrecipient's prior experience with the same or similar subawards;

**(2)** The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;

**(3)** Whether the subrecipient has new personnel or new or substantially changed systems; and

**(4)** The extent and results of Federal awarding agency monitoring (*e.g.*, if the subrecipient also receives Federal awards directly from a Federal awarding agency).

**(c)** Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.

**(d)** Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

**(1)** Reviewing financial and performance reports required by the pass-through entity.

**(2)** Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

**(3)** Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

**(4)** The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

**(e)** Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

**(1)** Providing subrecipients with training and technical assistance on program-related matters; and

**(2)** Performing on-site reviews of the subrecipient's program operations;

**(3)** Arranging for agreed-upon-procedures engagements as described in § 200.425.

**(f)** Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

**(g)** Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

**(h)** Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

## **2 CFR § 200.333 Fixed amount subawards.**

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

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## Attachment C: Sample Questions from SRF Assistance Recipients Receiving Additional Subsidy in the Form of a Grant

### **May I use my usual support contractors?**

*These SRF assistance recipients must follow procurement requirements in 40 CFR - 200.17-200.20. These requirements vary depending on the size of the procurement but can include a requirement for transparent Request for Proposals (RFPs) with documented selection criteria and scoring.*

### **May I use rules favoring local hiring?**

*These SRF assistance recipients are prohibited from having requirements favoring state, local, or tribal service providers.*

### **Do special monitoring requirements apply to me?**

*These SRF assistance recipients must have their risk specifically assessed and documented, which will determine the level of oversight required.*

### **What indirect cost rate must I use?**

*If an already-negotiated rate does not exist, the SRF assistance recipient must establish a rate through discussion with the state SRF.*

### **May I implement special local requirements?**

*Special requirements may not run afoul of the procurement requirements, which in addition to prohibiting preferences for state and local hiring, also prohibit clauses that can be seen as limiting competition.*

## **CROSCUTTER: UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT**

**Updated:** October 2003

### **Description**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act establishes a uniform policy for fair and equitable treatment of persons who are displaced from their homes, farms, or businesses to make way for federal or federally assisted projects. It provides basic guidelines for negotiating the acquisition of real property by the federal government. The Act also requires agencies to reimburse individuals for actual and reasonable expenses incident to relocation, such as moving costs, direct loss of tangible personal property associated with moving or discontinuing a business, and expenses involved in searching for a replacement home or business site.

Section 305 of the Act prohibits federal agencies from:

approv(ing) any program or project or any grant to, or contract or agreement with, a state agency or person provided such authority by regulation under which federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property... unless (the state provides assurances) that—

- (1) in acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies (of title III of the Act), and
- (2) property owners will be paid or reimbursed for necessary expenses as specified (in the title III provisions). (42 U.S.C. § 4655 (1988))

The Act was significantly amended in 1987 by the Surface Transportation and Uniform Relocation Assistance Act, Pub. L. No. 100-17, 101 Stat. 132 . The 1987 Amendments assigned implementation responsibility to the Department of Transportation. The amendments also enhanced state and local autonomy by authorizing certification of state and local programs which are carried out in accordance with state laws that are consistent with the Act. (42 U.S.C. § 4606 (1988)).

The Act was further amended in 1997 to provide that a displaced person is not eligible to receive relocation payments or any other assistance under the Act if the displaced person is an alien not lawfully present in the United States, unless such ineligibility would result in exceptionally and extremely unusual hardship to the alien's spouse, parent, or child and such relative is a citizen or an alien admitted for permanent residence. (42 U.S.C. § 4605).

## **Implementation in the SRF Programs**

Projects or activities receiving SRF assistance in an amount equal to the capitalization grant must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105. The cost of complying with the Act is an eligible cost that can be included in the SRF loan. The state SRF agency must certify that state rules governing land acquisition and relocation assistance are consistent with the purposes of the Uniform Relocation Act or that SRF assistance recipients will comply with federal law, and that assistance recipients will be required to comply with the appropriate rules. A key aspect of the law is to require use of a professional appraisal to determine the fair market value as a basis for establishing the offer price. In the DWSRF program there is a specific requirement in the SDWA that any land acquired must be from a willing seller. SDWA §1452(a)(2)). The term "willing seller" means that the property owner voluntarily agrees to the terms and conditions of the purchase without compulsion to sell.

## **Additional References**

- 49 C.F.R. Part 24 (Department of Transportation regulations incorporated by reference at 40 C.F.R. Part 4)