NCIF & CCIA FAQs for Selected Applicants

Release Date: June 3, 2024

Note: New additions to the FAQs are denoted in blue.

T&Cs: Definitions

1. Why are acquisitions of Intangible Property treated as procurement contracts?
The term *Contract* is defined in 2 CFR 200.1 as "for the purpose of Federal Financial Assistance, a legal instrument by which a Recipient or Subrecipient purchases property or services needed to carry out the project or program under a Federal award." The term *Intangible Property* is defined in 2 CFR 200.1 as "property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible)." Equity investments and loan purchases are contracts, since they involve purchases of *Intangible Property,* as defined in 2 CFR 200.1.

Contracts are subject to competitive procurement requirements in 2 CFR Part 200, and there are no exceptions for acquisitions of Intangible Property. The Notices of Funding Opportunity placed applicants on notice that acquisitions of Intangible Property are procurement contracts. If a Recipient or Subrecipient believes that they have a compelling case for sole source procurement of Intangible Property at a price that exceeds the Micro-Purchase Threshold ($10,000 in most cases), they can ask the EPA Award Official to approve a sole source procurement pursuant to 2 CFR 200.320(c)(4). Please review the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements. EPA does not intend to provide case-by-case exceptions to the 2 CFR 200.318(c) prohibitions on personal or organizational conflicts of interest for purchases of intangible personal property.

EPA believes that there are viable pathways for Recipients and Subrecipient to conduct competitive procurement for acquisitions of Intangible Property that are fair, transparent, and without conflicts of interest to ensure that the Recipient or Subrecipient is achieving the best deal for the taxpayer (e.g., a "rolling RFP process" that could look similar to a previous RFP from the New York Green Bank).

2. Notwithstanding the requirement to hold cash reserves in an "insured depository institution", can Recipients hold more than $250,000 in the same bank account?
Yes. Recipients can hold more than $250,000 in the same bank account.

3. Are working capital loans to small businesses eligible as Financial Assistance to a Qualified Project?
Working capital loans (e.g., line of credit without a particular use of proceeds restriction) to small businesses are eligible so long as they are to a "Qualified Project," as defined in the terms and conditions of the award agreement. EPA plans to provide additional guidance on how working capital loans and other forms of corporate finance can meet the definition of Financial Assistance to Qualified Projects.

4. Are activities that enable emissions reductions, but do not reduce emissions directly, eligible as Qualified Projects?
Yes. Please refer to the relevant section of the six-part, technology-neutral Qualified Projects screen (emphasis added):

> *The project, activity, or technology would reduce or avoid emissions of other air pollutants. The project, activity, or technology may reduce or avoid such emissions through its own performance or* ***through assisting communities in their efforts to deploy projects, activities, or technologies that reduce or avoid such emissions.***

5. Can origination and servicing fees that would be typically charged to the counterparty instead be covered by the Recipient or Subrecipient? If so, how should the Recipient or Subrecipient pay for these fees, and would these fees count as part of the costs of Financial Assistance to a Qualified Project?
Origination and servicing fees that would be typically charged to the counterparty instead can be covered by the Recipient or Subrecipient if they are structured appropriately. If the Recipient or Subrecipient makes a loan and includes in the loan package a subsidy that is used to cover the origination and servicing fees, then the subsidy is eligible as it is part of the loan package—and the loan package meets the definition of Financial Assistance within the award agreement. However, if the Recipient or Subrecipient pays for origination and servicing fees without making the loan itself, then this payment does not meet the definition of Financial Assistance (as it is purely a subsidy rather than a debt, equity, hybrid, or credit enhancement instrument) and therefore it would not fall within the allowable Financial Assistance activities under NCIF and CCIA.

EPA advises a Recipient or Subrecipient providing such a subsidy to include the subsidy within the Financial Assistance package, with funds being transferred to the counterparty and then transferred back to the Recipient or Subrecipient originating the Financial Assistance transaction. In this way, the Recipient or Subrecipient would be *charging the counterparty* for these fees (with the counterparty provided with grant funds to pay for them), rather than the Recipient or Subrecipient *charging the grant* for these fees directly.

6. Can Financial Assistance to a Qualified Project that is construction be used for the entire construction project?
It depends. If the entire construction project is itself an eligible project, then Financial Assistance may be used for the entirety of the construction project (e.g., a net zero multi-family building). However, if the construction project only contains certain elements that are eligible projects (e.g., limited energy efficiency elements), then only related expenditures that are necessary and reasonable for the deployment of the elements that are eligible projects are eligible for Financial Assistance.

7. What is the difference between a Subrecipient, Subawardee, and a Subgrantee?
The terms "Subrecipient" and "Subawardee" are interchangeable. The term "Subgrantee" reflects a particular type of Subrecipient, which is a Subrecipient that receives a Subaward in the form of a grant.

Consistent with 2 CFR 200.1, "Subrecipient" means an entity that receives a Subaward from a pass-through entity to carry out part of a Federal award but does not include an entity that is a Program Beneficiary of such an award. 2 CFR 200.1 defines a Subaward as "an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity." Since Subawards may come in other forms (i.e., loans), the term "Subgrant" denotes a Subaward in the form of a grant.

8. Will EPA provide more guidance on the definition of "Qualified Projects?"
Under the NCIF, each project must meet the six-part definition of a "Qualified Project" to be eligible for funding. The six-part definition requires each project to reduce greenhouse gas emissions; reduce other air pollutants; deliver benefits to communities; meet the requirement that it may not have otherwise been financed; mobilize private capital; and support only commercial technologies. Under the CCIA, each project must meet the six-part definition of a "Qualified Project" and be within at least one of three "Priority Project categories:" (i) distributed energy generation and storage; (ii) net-zero emissions buildings; and (iii) zero-emissions transportation.

EPA may provide additional guidance on the definition of "Qualified Projects" post-award. However, EPA intends to maintain the six-part, technology-neutral screen that is intended to "update" as market conditions change. For example, the types of projects that "may not have otherwise been financed" and that may meet the definition of "commercial technologies" will change over time, and those changes are intended to be captured by the definition of "Qualified Projects."

9. How can a CCIA Recipient provide transaction-level subsidies to Community Lenders?
As previously mentioned, CCIA Recipients must provide Capitalization Funding to Community Lenders in the form of Subgrants. This requirement is an update from the Notice of Funding Opportunity, which stated that Capitalization Funding could be in the form of either Subgrants and/or Participant Support Costs.

However, there are still mechanisms by which CCIA Recipients can provide Capitalization Funding to Community Lenders via Subgrants that function as transaction-level subsidies. For example, the Recipient could provide a Subgrant that requires a 3:1 match for use of the funds, with every dollar of the Subgrant required to be matched with 3 dollars of other funds prior to its use in a financial transaction. As the Subrecipient Community Lender collects interest and principal repayments from the transaction (assuming it is a loan), it would designate 25% of those interest and principal repayments as Program Income earned under the award agreement.

Note: While the Recipient may provide Capitalization Funding in the form of transaction-level subsidies, as described above, the Community Lender may not provide Financial Assistance to CCIA-Eligible Projects in the form of transaction-level subsidies, as those subsidies do not meet the definition of Financial Assistance in the programmatic terms and conditions.

10. Can a Recipient under the CCIA provide Technical Assistance Services, such as through a solar lending training program, to its own network of Community Lenders as well as to other financial institutions?
Generally, yes. The Recipient should keep in mind the following:

1. Technical Assistance Services may be provided to "build the capacity of existing Community Lenders," which includes (i) any Community Lender within the Recipient's network or (ii) any other eligible Community Lender, including but not limited to Community Lenders served by other CCIA Recipients as well as Recipients/Subrecipients within NCIF that meet the definition of "Community Lender."
2. Technical Assistance Services may be provided to "establish new…Community Lenders," which means that Technical Assistance Services can be provided to individuals or entities that are seeking to create entities that are eligible as Community Lenders.

However, if a portion of the Technical Assistance Services are not being used to build the capacity of existing Community Lenders or establish new Community Lenders, then grant funds may not be used to fund that portion of the Technical Assistance Services.

11. Is the definition of "Financial Assistance in low-income and disadvantaged communities" based on the location of the project or the type of counterparty?
It depends. There are four categories of low-income and disadvantaged communities, three of which are based on the location of the project and one of which is based on the type of counterparty.

1. *CEJST-Identified Disadvantaged Communities:* Location of project (by geography).
2. *EJScreen-Identified Disadvantaged Communities:* Location of project (by geography).

3. *Geographically Dispersed Low-Income Households:* Type of counterparty.
4. *Properties Providing Affordable Housing:* Location of project (by building).

12. Can rating systems other than ENERGY STAR be used to define "highly energy efficient" within the definition of "Net-Zero Emissions Buildings?"
The definition of "Net-Zero Emissions Building" is in accordance with the National Definition for a Zero Emissions Building. EPA plans to maintain alignment of its definition with the National Definition. If a rating system other than ENERGY STAR is more appropriate (for example for new net-zero emissions buildings) then Recipient can raise that request with their EPA Project Officer.

13. Do the caps on Capitalization Funding and Technical Assistance Subawards apply at the consolidated or legal entity level?
The $10,000,000 cap on Capitalization Funding and $1,000,000 cap on Technical Assistance Subawards apply at the consolidated level, rather than the legal entity level. For example, a Community Lender cannot accept Capitalization Funding and also create a new, wholly-controlled subsidiary to accept Capitalization Funding that would count toward a separate "cap."

EPA understands that there are some instances in which several Community Lenders operate distinctly within the same consolidated entity. If these are instances in which Selected Applicants seek to surpass the caps, then they should be clearly delineated as an exception that has been specified in the EPA-approved workplan (or else would need to be approved separately by the EPA Award Official.)

14. Will EPA provide a methodology for determining if a project, activity, or technology "may not have otherwise been financed," in accordance with the definition of a Qualified Project?
Prior to award, EPA will not provide a methodology for determining if a project, activity, or technology has met this criteria. After awards are made, EPA may provide additional guidance on the definition of Qualified Projects, which may cover this and the other requirements of what constitute a Qualified Project.

T&Cs: National Programmatic

1. Which Subrecipients are subject to the Quality Assurance Programmatic Term and Condition?
The Quality Assurance Programmatic Term and Condition "flows down" to Subrecipients, in accordance with 2 CFR 200.332(a)(2) and the Establishing and Managing Subawards General Term and Condition. However, the term and condition will not be applicable to all Subrecipients. The term and condition is only applicable to Subaward agreements that involve "environmental information operations.

Note that EPA would not approve a Quality Management Plan (QMP) or Quality Assurance Project Plan (QAPP) from a Subrecipient. Rather, the Recipient would be responsible for approving the QMP and QMPP from a Subrecipient.

2. What is considered "environmental information operations?"
The Environmental Information Quality Policy defines "environmental information" and "environmental information operations" as follows:

> **Environmental Information**—Includes data and information that describe environmental processes or conditions which support EPA's mission of protecting human health and the environment. Examples include but are not limited to:
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> - direct measurements of environmental parameters or processes;
> - analytical testing results of environmental conditions (e.g., geophysical or hydrological conditions);
> - information on physical parameters or processes collected using environmental technologies;
> - calculations or analyses of environmental information;
> - information provided by models;
> - information compiled or obtained from databases, software applications, decision support tools, websites, existing literature, and other sources;
> - development of environmental software, tools, models, methods and applications; and
> - design, construction, and operation or application of environmental technology
>
> **Environmental Information Operations**—A collective term for work performed to collect, produce, evaluate, or use environmental information and the design, construction, operation or application of environmental technology.

Under the Greenhouse Gas Reduction Fund's grant programs, grant Recipients will be required to complete performance reporting requirements to EPA, as authorized under 2 CFR 200.329 *Monitoring and reporting program performance.* The collection, production, evaluation, or use of environmental information to remain in compliance with these performance reporting requirements are therefore within the scope of the Environmental Information Quality Policy. Prior to completing these performance reporting requirements, or using grant funds to support the completion of these performance reporting requirements, the Recipient will need to have an EPA-approved Quality Management Plan and Quality Assurance (QA) Project Plan.

3. When can Program Income be accessed by the Recipient or Subrecipient?
Program Income can be accessed once the award (or Subaward) is fully used for actual and allowable project costs. However, EPA will allow Program Income to be accessed in advance of the award (or Subaward) being fully used provided that (i) it is necessary to execute the activities in the workplan and

(ii) the EPA Project Officer has given prior approval to use Program Income in advance of the award or Subaward being fully used. Please note that the use of Program Income instead of the award or Subaward delays the ability to enter into the Closeout Agreement.

A Recipient will be able to access Program Income even if not all of its Subrecipients have fully used their Subawards for actual and allowable project costs. A Subrecipient will be able to access Program Income once it has fully used its Subaward for actual and allowable project costs.

4. If a Recipient hosts a GGRF-related event and raises funds from that event (e.g., ticket fees), are those funds considered Program Income?
It depends on the specifics.

- If the Recipient paid for the event with grant funds, then funds raised from the event are considered Program Income and subject to the corresponding requirements.
- If the Recipient did not pay for the event with grant funds, then funds raised from the event would not be considered Program Income.
- If the Recipient paid for a portion (e.g., 50%) of the event with grant funds, then that same portion (e.g., 50%) of funds raised from the event would be considered Program Income.

2 CFR 200.442 provides coverage on allowable fund raising costs, with additional details contained in Item 4 of the EPA Guidance on Selected Items of Cost for Recipients.

5. How does the Real Property Programmatic Term and Condition apply to Recipients and Subrecipients under this program?
If a Recipient or Subrecipient directly acquires *Real property*, as defined in 2 CFR 200.1, then this term and condition will be applicable. If a Program Beneficiary directly acquires real property, then this term and condition will not be applicable.

If a Recipient or Subrecipient acquires real property and then sells the real property for the "originally authorized purpose" (i.e., sales proceeds used for a "Qualified Project"), then the proceeds from the sale would be treated as *Program Income* as defined in 2 CFR 200.1. However, if the real property is sold for another purpose (i.e., sales proceeds not used for a "Qualified Project"), then the disposition requirements would apply to the transaction. For example, if a Recipient or Subrecipient forecloses on real property pledged as collateral for a loan that goes into default and subsequently sells that property, then the proceeds for the sale are subject to the Real Property Programmatic Term and Condition. As long as the Recipient or Subrecipient uses the proceeds to support a Qualified Project through another loan or similar form of Financial Assistance, then the disposition provisions of the term and condition would not be triggered.

This term and condition will flow down to Community Lenders receiving Subawards under the Clean Community Investment Accelerator and will be applicable to some of those Community Lenders. For example, if a Community Lender uses capitalization funding to make an equity investment in a physical asset that meets the definition of *Real property* in 2 CFR 200.1, then this term and condition will be applicable.

6. What do "best efforts" and "reconsider the legitimacy of the award" mean within the Leveraging and Fund Raising Programmatic Term and Condition?
The Recipient must make "best efforts" to achieve the private capital mobilization described in its EPA-approved workplan. If market conditions change, EPA and the Recipient may mutually agree to amend

the award agreement to reflect changes to private capital mobilization and other targets. However, such changes must be mutually agreed upon. EPA will regularly review whether the Recipient demonstrates "sufficient progress" as detailed in the Sufficient Progress Programmatic Term and Condition. EPA maintains rights and remedies to deal with non-compliance under 2 CFR 200.339 and/or 2 CFR 200.340 and 200.341.

7. If a CCIA Recipient raises private funds, are those funds treated as Program Income?
It depends on whether grant funds were used to raise those private funds. If the Recipient uses grant funds to pay for personnel or other expenses to raise those private funds, then those private funds will be treated as Program Income. Refer to the coverage of fund raising within the EPA Guidance on Selected Items of Cost. However, if the Recipient uses its own funds to raise the private funds, then the private funds will not be treated as Program Income—even if they are intended to provide supplementary funding for the grant's activities.

8. How should a Recipient enforce signage requirements?
The Recipient is responsible for complying with the terms and conditions of its award agreement. EPA expects that the Recipient will enforce signage requirements within the agreements governing financial transactions where signage requirements apply.

Further the Recipient must "flow-down" the terms and conditions of its award agreement to Subaward agreements, as detailed in the Flow-Down Requirements Programmatic Term and Condition. EPA expects that Recipients will flow-down the signage requirements to Subaward agreements.

9. Do signage requirements only apply during the construction phase?
The requirement is that signage is posted at "construction sites" such that the sign no longer applies when the project is no longer considered at a "construction site" (i.e., in the construction phase). EPA provides agency-wide guidance on the applicability of signage requirements at https://www.epa.gov/invest/investing-america-signage.

10. Are Recipients required (or recommended) to use EPA's logo or materials?
Please refer to the Use of Logos Programmatic Term and Condition:

> If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the Recipient or Subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the Recipient received financial support from the EPA under an Assistance Agreement. More information is available at: https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy.

T&Cs: Additional Programmatic

1. How does EPA anticipate that Recipients will be involved in compliance with the Endangered Species Act, Coastal Zone Management Act, and National Historic Preservation Act?
Recipients are responsible for complying with, or assisting EPA in complying with, all applicable federal cross-cutting requirements and ensuring that the flow-down requirements of federal grant awards are enforced by Subrecipients. For example, if a Subrecipient makes a loan for a Qualified Project to install energy efficient technology in a historic structure, then EPA and the Recipient/Subrecipient may need to work with the State Historic Preservation Officer to ensure that appropriate signage or mitigation measures are taken to preserve the historic character of the structure. These compliance or compliance assistance costs may be charged to awards and Subawards. Please refer to the coverage on these statutes available at this link: https://www.epa.gov/sites/default/files/2020-11/documents/epa_subaward_cross_cutter_requirements.pdf

2. What is the definition of "equipment" within the Allowable and Unallowable Activities Programmatic Term and Condition, which requires "*prior approval from the EPA Award Official prior to the expenditure of the award for activities that involve acquiring real property, including related equipment purchases?"*

Equipment is defined in 2 CFR 200.1:

> *Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also the definitions of capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment, and supplies in this section.

As stated in the term and condition: "The Recipient may meet this requirement by specifying the framework for all acquisitions of real property in its EPA-approved workplan." EPA encourages Selected Applicants to specify the types of real property that they or their Subrecipients plan to acquire with EPA award funds such that the expenditures to acquire real property can be approved through the award agreement, mitigating the need for case-by-case approvals post-award.

3. How will EPA exercise its authority to "review the qualifications of key personnel" as stated in the EPA Project Officer Oversight and Monitoring Programmatic Term and Condition?
The Recipient should send to the EPA Project Officer the resumes of key personnel that reflect a change from the workplan included in the award agreement. Note that, as provided in 2 CFR 200.308(c)(2), the Recipient must request prior approval for a "change in a key person specified in the application or the Federal award." Note that, while EPA has authority to review and approve qualifications of key personnel, EPA does not have authority to direct Recipients to hire specific individuals.

EPA does not have the authority to approve other types of personnel actions taken by Recipients.

4. Is EPA exercising prior approval on the documents listed in the Recipient Organizational Plan and Recipient Policies and Procedures Programmatic Terms and Conditions?
No; this is a notification requirement, not a pre-approval requirement. The language within the terms and conditions intends to make this clear (emphasis added): "If changes are made during the annual

review or in between annual reviews, the Recipient agrees to submit **updated documents and notify the EPA Project Officer** at least 15 calendar days prior to the updated documents become effective."

5. Does EPA have additional guidance on how the terms and conditions will "flow-down" to different types of Subrecipients in accordance with the Flow-Down Requirements Programmatic Term and Condition?
EPA does not currently have additional guidance on the flow-down of the terms and conditions to different types of Subrecipients but plans to provide such guidance post-award. Please note that terms and conditions only flow down to the extent they are applicable and that the EPA Project Officer is authorized to waive the applicability of programmatic terms and conditions to Subawards, unless the term and condition implements statutory, regulatory, or executive order requirements.

6. Does SAM.gov need to be checked prior to providing Financial Assistance in the form of Participant Support Costs?
For Financial Assistance in the form of Participant Support Costs, the Recipient (or Subrecipient providing the Financial Assistance) must either check SAM.gov directly or obtain an eligibility certification from the counterparty that the counterparty is not currently suspended, debarred, or otherwise declared ineligible under 2 CFR Part 180. This accords with the following requirement in the Participant Support Costs Programmatic Term and Condition: "(1) checking the System for Award Management (SAM) or (2) obtaining eligibility certifications from the program participants."

7. What are the requirements of the Legal Counsel Programmatic Term and Condition?
There are four key requirements:

1. That the Recipient has appropriate legal counsel;
2. That the Recipient has counsel review all agreements associated with any form of Financial Assistance prior to execution;
3. That the Recipient maintains and updates documentation of those agreements;
4. That the Recipient provides certification from legal counsel, upon the request by the EPA Project Officer, that the form of Financial Assistance complies with the terms and conditions, workplan, and applicable state and local laws. Certification may come via a letter from legal counsel or another form deemed appropriate by the Recipient.

Note that, if the costs for compensating outside legal counsel are charged directly to the assistance agreement or Subaward, the legal services must be acquired in compliance with the competitive procedures described in the 2 CFR Part 200 Procurement Standards. Costs for compensating in-house counsel are subject to the standards for personnel costs at 2 CFR 200.430 and 200.431.

8. Do the committees listed in the governance requirements need to be at the legal entity level?
No. The committees may be at the parent level and still be in compliance with the governance requirements described in the terms and conditions. For example, if a Recipient is wholly controlled by a parent entity that has a compensation committee that covers the Recipient, then the parent entity's compensation committee may cover the Recipient and still be in compliance with the governance requirements.

9. How can Recipients and Subrecipients implement the following element of the Financial Risk Management Requirements Programmatic Term and Condition? "*The Recipient agrees to not subordinate its interests in any asset that the Recipient acquires with EPA funds or Program Income in*

a manner that waives EPA's claim for compensation under any applicable statutory claims, 2 CFR Part 200, or common law."
EPA's intention with this term and condition is to restrict the Recipient's ability to waive EPA's interest in grant funds that have not yet been used for program purposes. This protects EPA's interests in the event of the Recipient's bankruptcy and the remedies available to EPA under 2 CFR 200.339. For example, the Recipient cannot waive EPA's claim for compensation for funds that have been obligated but not yet been used. However, once a Recipient uses grant funds for program purposes (e.g., makes a loan, sets aside grant funds as loan loss reserves for a particular project or set of projects, etc.), EPA understands that the Recipient will have incurred *Financial obligations* under 2 CFR 200.1 and that EPA will no longer have claims on funds used or reserved to pay for those financial obligations (unless, for example, EPA is seeking recovery of funds used by the Recipient, Subrecipient or Program Beneficiary that were used for unallowable purposes under the award agreement). EPA will clarify applicability in the final version of the terms and conditions.

The definition of Financial Assistance remains unchanged such that equity investments, subordinated debt, and other similar forms of Financial Assistance remain eligible.

10. Under the NCIF, will the Program Income Programmatic and Closeout Agreement Programmatic Terms and Conditions "flow-down" to Subrecipients that are financial intermediaries (i.e., that receive loans to then provide Financial Assistance to Qualified Projects)? If so, how does this work in practice?
EPA does not currently have additional guidance on the flow-down of the terms and conditions to different types of Subrecipients but plans to provide such guidance post-award. The flow-down of these terms and conditions would work as follows for a $1 million loan (note that steps 1-3 may be done in quick succession):

1. The Recipient makes a $1 million loan to a financial intermediary;
2. The financial intermediary uses the proceeds of that $1 million loan to make its own loans to Qualified Projects and then disburses the funds to borrowers;
3. The Recipient and financial intermediary enter into a Close-Out Agreement, as the financial intermediary has used the full amount of the proceeds under the conditions of the Subaward agreement once funds are disbursed to the borrowers;
4. The financial intermediary receives interest and principal repayments from the loans that it originated, with the interest and principal repayments first being used to repay the Recipient for the loan (the interest and principal repayments are treated as Program Income for the Recipient);
5. After the loan is fully repaid, the funds remaining with the financial intermediary are considered Program Income of the financial intermediary and subject to the terms and conditions of the Close-Out Agreement for the Subaward. Note that the Recipient is responsible for ensuring that the terms and conditions of its close-out agreement with the financial intermediary track those in EPA's Close-Out Agreement Programmatic Term and Condition, although EPA does not currently have additional guidance on the flow-down of the terms and conditions to different types of Subrecipients.

The above description accords with 2 CFR 200.307(b), which states that "costs incidental to the generation of Program Income may be deducted from gross income to determine Program Income."

11. Would a Subaward made with the Subrecipient not fully expending the funds prior to the anticipated end date of the Performance Period prevent the Recipient from closing out its award agreement with EPA?

It depends. While all Subaward agreements between the Recipient and its Subrecipients must be closed out and financial obligations liquidated prior to EPA closing out the award agreement with the Recipient as provided in 2 CFR 200.344, the Recipient may structure a two-part agreement such that a portion is funded with the initial award funds (i.e., through a Subaward) and a portion is funded with Program Income (i.e., through a separate agreement) governed by a close out agreement. This approach will require the Recipient to obtain EPA approval for the use of Program Income prior to the end of the Performance Period.

12. What does the unallowability of "second-tier Subgrants for the purposes of providing Financial Assistance to Qualified Projects" mean within the NCIF Allowable and Unallowable Activities Programmatic Term and Condition?

Only the Recipient is authorized to provide Subawards in the form of Subgrants for the purposes of providing Financial Assistance to Qualified Projects (such as many of the Subgrants provided to Coalition Members). No Subrecipient is authorized to provide Subawards in the form of Subgrants for the purposes of providing Financial Assistance to Qualified Projects, although Subrecipients are authorized to provide Subawards for other purposes (including Subawards in the form of loans as Financial Assistance to Qualified Projects as well as Subawards in the form of Subgrants for predevelopment, market-building, and program administration activities). EPA will clarify this point within the final terms and conditions.

13. How will a Subrecipient Community Lender access funds prior to the establishment of an account for the Subrecipient at a financial agent?

The Automated Standard Application Payments (ASAP) and Proper Payment Draw Down General Term and Condition will work as follows for a Community Lender that receives a Subaward from a CCIA Recipient:

1. A Subrecipient Community Lender will have “actual and immediate cash requirements to pay employees, Contractors, Subrecipients or to satisfy other obligations for allowable costs under this assistance agreement;”
2. The Subrecipient Community Lender will ask the Recipient to draw funds from ASAP to pay for the actual and immediate cash requirements;
3. The Recipient will draw the funds from ASAP and disburse the funds by paying the Subrecipient within five business days in an amount that reflects actual and immediate cash requirements, satisfying the requirements of the General Term and Condition;
4. The Subrecipient will receive the funds and disburse the funds for allowable costs within five business days of receiving them, satisfying the requirements of the General Term and Condition (which the Recipient must ensure “flow-down” to the Subaward agreement, as applicable);
5. Any funds not used by the Subrecipient must be treated in accordance with paragraph b of the General Term and Condition, with unused funds being transferred by the Subrecipient to the Recipient and then the Recipient back to EPA through ASAP.

14. If a Recipient provides Financial Assistance to a counterparty to purchase equipment as part of a Qualified Project, do the requirements at 2 CFR 200.310-316 (including but not limited to use and disposition requirements) apply to the equipment?

Generally, no. The requirements at 2 CFR 200.310-316 (as well as Program Income requirements) apply to Recipients and “flow-down” to Subrecipients but not Program Beneficiaries or to transactions with contractors for the purchase of intangible property. Under the NCIF and CCIA, entities that purchase Qualified Projects will be characterized as Program Beneficiaries (if receiving Participant Support Costs) or Contractors (if selling Intangible Property).

However, while the Federal Government would not retain an interest in equipment purchased by Program Beneficiaries or Contractors with proceeds of the financial transaction, EPA expects that any Selected Applicant proposing within the workplan to have Program Beneficiaries or Contractors purchase equipment to provide services for a fee (e.g., leasing) ensure that the activities are in accordance with the policy direction in 2 CFR 200.313(c)(3): "Notwithstanding the encouragement in § 200.307 to earn Program Income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment."

15. What does EPA consider "appropriate notices of record" on Intangible Property purchased, in accordance with the requirements on acquisitions of Intangible Property within the terms and conditions?

Notices of record may be, but are not required to be, public. For example, while a Recipient may file a Uniform Commercial Code instrument this is not required. A Recipient could simply record on the legally-binding transaction documentation for both parties to the transaction that "indicate that Intangible Property has been acquired with Federal funding and that use and disposition conditions apply to the Intangible Property." For a loan purchase, the documentation could be attached to the master purchase agreement. For an equity investment, the documentation could be attached to the schedule of membership interests. The Recipient must maintain records to demonstrate such notices are included in financial transactions where Intangible Property is purchased, which EPA or EPA's Office of Inspector General may review under 2 CFR 200.337.

T&Cs: Administrative

1. What are the implications of the Intergovernmental Review Administrative Term and Condition? Does it require a 60-day state/local government review period for all projects concerning construction or land-use planning?

Yes. The intergovernmental review requirement stems from section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 as implemented in EPA regulations in 40 CFR Part 29. Those regulations were promulgated pursuant to Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982. EPA cannot waive intergovernmental review unless there is an emergency. However, there may be ways to efficiently comply with the requirement based on broad notices to State Single Points of Contact or directly affected units of government and regional or areawide planning agencies.

Some states, such as California, have single points of contact (SPOC) for intergovernmental review that will address EPA grant programs. EPA intends to encourage other SPOCs to cover our programs as well. For states without SPOCs, Recipients must ensure that directly affected State, areawide, regional, and local entities receive notice of Financial Assistance for construction or land use planning pursuant to 40 CFR 29.7(b). For example, if a Recipient or Subrecipient intends to finance Qualified Projects that involve construction in a metropolitan area with a Council of Governments (COG) and Metropolitan Planning Organization (MPO) or a rural area with a Regional Planning Organization (RPO), then a single notification advising the COG/MPO or RPO that EPA-funded construction will take place is sufficient to cover the entire Performance Period for the EPA grant. The notice can provide the name/email of the EPA Project Officer and advise the COG/MPO or RPO to contact the EPA Project Officer within 60 days if they have concerns. For areas not covered by a COG or RPO, a similar notice provided to the land use planning office or another appropriate agency would be sufficient.

Note: Intergovernmental review does not apply to projects on federally-recognized tribal lands.

2. How does EPA implement its remedies for non-compliance, as referenced in the EPA General Terms and Conditions?

The EPA General Terms and Conditions incorporates remedies for noncompliance that are provided to EPA through the grant regulations.

The process to address non-compliance may (but not always) work as follows:

1. The EPA Project Officer identifies non-compliance and advises the Recipient of concerns, asking the Recipient to resolve concerns prior to involvement of the EPA Award Official;
2. If the concerns are not resolved, then the EPA Award Official issues formal corrective action requirements under 2 CFR 200.208;
3. If the concerns are still not resolved, then the EPA Award Official takes action under 2 CFR 200.339 and/or 2 CFR 200.340 and 200.341; and
4. After such action has been taken, the Recipient has an opportunity to dispute remedial action under 2 CFR Part 1500 Subpart E.

Workplan

1. Are there any anti-trust or anti-competition standards to be aware of for Selected Applicants and/or Recipients coordinating or de-duplicating on grant activities?
EPA does not provide guidance on compliance with anti-trust laws or competition requirements relating to Federal or state trade statutes. We recommend that Recipients consult with their own attorneys on these matters.

2. Can a Selected Applicant change the list of named Subrecipients (i.e., Coalition Members) from what was included on the initial application package?
So long as the updates to the workplan mean that the workplan is still compliant with EPA Order 5700.5A1: EPA's Policy for Competition of Assistance Agreements ("EPA Competition Policy"), Selected Applicants may change the list of named Subrecipients as well as corresponding Subaward amounts from what was included on the initial application package. The following is the relevant excerpt from the EPA Competition Policy, and EPA will make determinations on compliance with the EPA Competition Policy after Selected Applicants submit their workplans and budgets on May 13, 2024.

> *(1) Following selection of an applicant for award, but before the award has been made, Program Offices may have communications with applicants to clarify issues with carrying out the project's scope of work or that serve to strengthen the selected application/proposal, to resolve administrative issues, or for determining if the applicant will accept partial funding so long as the communication is done consistent with the partial funding provisions in the announcement which includes not prejudicing other applicants.* ***Generally, these types of communications will be acceptable if they do not affect the basis upon which the proposal/application (or portion thereof) was evaluated and selected for award and do not prejudice other applicants.***
>
> *(2) Post-selection communications with an applicant that seek to materially change the proposal/application (or portion thereof) that was submitted, evaluated, and selected for award, or that allow the applicant to materially revise its proposal/application (or portion thereof) that was selected for award, are prohibited.*

Please note that EPA reviewed the named Subrecipients that were included on the initial application package—and that any additional named Subrecipients must still be eligible for Subawards under Appendix A of the EPA Subaward Policy.

3. Can Subawards be made after the award agreement is made? If so, what are the prior approvals required from EPA for those Subawards?
2 CFR 200.308 requires the Recipient to obtain prior agency approval for "subawarding, transferring or contracting out of any work under a Federal award." If a Subaward is named in the workplan that is approved by the EPA Award Official, then the Subaward has already received prior agency approval. If the *type of Subaward* is described in the workplan that is approved by the EPA Award Official, then Subawards that are made of that *type* have already received prior agency approval (e.g., Subawards to particular types of Community Lenders). OGGRF advises Selected Applicants to include a broad range of types of Subawards in the workplan to facilitate the prior agency approval through the award process.

4. Can contracts be made after the award agreement is made? If so, what are the prior approvals required from EPA for those contracts?

2 CFR 200.308 requires the Recipient to obtain prior agency approval for "subawarding, transferring or contracting out of any work under a Federal award." If a Contractor is named in the workplan that is approved by the EPA Award Official, then the Contract has already received prior agency approval. If the *type of Contract* is described in the workplan that is approved by the EPA Award Official, then contracts that are made of that *type* have already received prior agency approval (e.g., Contract to provide reporting services, Contract to support loan servicing, etc.). OGGRF advises Selected Applicants to include a broad range of types of contracts in the workplan to facilitate the prior agency approval through the award process.

Please note that, unlike Subawards, contracts are subject to competitive procurement requirements. Any Contract, including consultants, that is greater than the Micro-Purchase Threshold in 2 CFR § 200.320(a)(1) ($10,000 in most cases) must be in compliance with the fair and open competition requirements in 2 CFR Parts 200 and 1500. EPA provides guidance on complying with the competition requirements in the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

5. Should Selected Applicants provide top-line outputs and outcomes through year 7, even if their Performance Period ends prior to year 7?
Yes. All Selected Applicants should provide the top-line outputs and outcomes through year 7. EPA understands that not all of the outputs and outcomes will be achieved within the Period of Performance, given the timeline. However, the grant funds will continue to drive impact against the outputs and outcomes beyond the Period of Performance, in accordance with the Closeout Agreements.

6. Should Selected Applicants use amount of funds approved/committed or disbursed for the top-line outputs and outcomes table as it pertains to funding passed through to Community Lenders?
While OGGRF anticipates that it will be simpler for Selected Applicants to use approved/committed funds (i.e., reflecting the timing of the initial Subaward) rather than disbursed funds (i.e., reflecting the flow of funds into actual and allowable project costs), this is not a requirement. OGGRF expects Selected Applicants to choose a reasonable methodology, explain that methodology, and then use that methodology to complete the outputs and outcomes table.

7. Can other federal funds and tax credits be included in the private capital mobilization calculations within the workplan, including the topline outputs and outcomes?
Private capital mobilization should exclude public funds, including but not limited to federal funds as well as the value of tax credits within the capital stack of projects. However, Selected Applicants are welcome to included other mobilization metrics within their workplans that could include public funds.

Please refer to the definition of "capital mobilization" provided in the respective Notices of Funding Opportunity, which provided flexibility but made a clear distinction between "capital mobilization" and "private capital mobilization:"

> *For this competition, capital mobilization refers to capital contributions made toward Qualified Projects as a result of the grant's activities, excluding capital contributions made with grant funds. Private capital mobilization is defined as a subset of capital mobilization, excluding additional capital contributions (such as tax credits and other financial incentives) from federal, Tribal, state, territorial, and local government entities. Applicants may define their own methodologies to set goals and targets for capital mobilization for the purposes of their applications.*

8. How should Selected Applicants build ongoing coordination into the workplan, given that the plans for coordination are in flux and not yet finalized?
EPA encourages Selected Applicants to embed into the workplans as much detail as is currently available on the coordination plan, while providing room for additional details to be worked out that are still within the bounds of the initial workplan. To the extent that the initial workplans conflict with the activities that Recipients ultimately seek to pursue, then EPA will work with Recipients to amend the workplans post-award.

9. Are all Selected Applicants being partially funded?
Yes. All Selected Applicants are being partially funded relative to the funding requests in their initial application packages. Partial funding provided to each selected application is in accordance with *Section II.D: Partial Funding* of the respective NOFOs as well as EPA Order 5700.5A1: EPA's Policy for Competition of Assistance Agreements. EPA understands that partial funding means that Selected Applicants must make difficult choices to prioritize limited funds as they revise their initial application packages into proposed workplans.

10. Do all Selected Applicants need to prioritize, relative to their initial application packages?
Yes. All Selected Applicants need to prioritize, relative to their initial application packages. EPA anticipates that some of this prioritization (including to avoid duplication) will factor in the activities of other Selected Applicants, of which Selected Applicants were not aware when they submitted their initial application packages. For example, under the National Clean Investment Fund, EPA anticipates that Selected Applicants will account for areas in which other selectees proposed financing the same project categories. As another example, under the Clean Communities Investment Accelerator, EPA anticipates that Selected Applicants will account for areas in which other selectees proposed supporting the same Community Lenders.

11. If an application package was selected and funded under the expectation that it would prioritize its application in a specific way, will EPA provide specific benchmarks for what constitutes appropriate prioritization?
No. As previously discussed, Selected Applicants should make their own decisions on how to prioritize the funding provided. There is no maximum of any one kind of eligible Community Lender. Once Selected Applicants submit their revised workplans and budgets, EPA will review those revised workplans and budgets for compliance, including but not limited to compliance with EPA Order 5700.5A1: EPA's Policy for Competition of Assistance Agreements.

12. Does EPA intend to make revised workplans public?
Yes. EPA intends to disclose revised workplans, but EPA may also maintain the disclosure of the initial narrative proposals that were submitted to EPA as part of the initial application packages for purposes of transparency. As provided in the April 17, 2024, email to Selected Applicants with guidance on the workplan and budget: "Please note that the workplan as well as other documents may be made publicly available on the GGRF website or another public website after the awards are made. Therefore, clearly indicate which portion(s) of the workplan, if any, you are claiming contains confidential, privileged, or sensitive information. As provided at 40 CFR § 2.203(b), if no claim of confidential treatment accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant."

13. The maximum Performance Period is seven years for NCIF and six years for CCIA. What happens if Pre-Award costs mean that the Performance Period starts prior to July 1, 2024? Do the seven-year and six-year maximums hold?

The intent of the seven-year and six-year maximums was for the performance periods to end by June 30, 2031 and June 30, 2030, respectively. Therefore, if the Recipient's Performance Period begins earlier than July 1 due to Pre-Award costs that are approved under the award agreement, then the Recipient may have a Performance Period that is slightly longer than seven years (under the NCIF) or six years (under the CCIA).

Budget | Personnel and Fringe Benefits

1. What is the definition of an "employee" for purposes of charging the grant against the personnel and fringe benefits categories of the budget?

2 CFR 200.430 *Compensation—personal services* provides coverage of personnel costs, and 2 CFR 200.431 *Fringe benefits* provides coverage of fringe benefits. While the Interim General Budget Guidance Development for Applicants and Recipients of EPA Financial Assistance notes that "[e]mployees receive W-2 forms for Federal tax purposes," EPA is willing to consider other mechanisms to define employee for purposes of charging the grant award to both full-time and part-time employees under the National Clean Investment Fund and Clean Communities Investment Accelerator. For example:

1. A Selected Applicant may propose a mechanism to pay employees via a Professional Employer Organization (PEO). Note that any grant funds used to compensate the PEO for its services of managing compensation arrangements would likely be considered *Contractual* and therefore subject to competitive procurement requirements in 2 CFR Part 200 and 1500.
2. A Selected Applicant may propose a mechanism to pay employees via an Affiliated Entity, either with employees either partially or fully dedicated to the Selected Applicant but paid through the Affiliated Entity. Note that any grant funds used to compensate the Affiliated Entity for its services of managing compensation arrangements would need to be governed by the guidance on transfers of funds between Affiliated Entities (see next section).

Any mechanism that does not use the W-2 as determinative of employee status would need to be reviewed and approved by the EPA Award Official.

2. What should a Selected Applicant do if they propose not using the W-2 as determinative for defining employees?

If the Selected Applicant does not propose using the W-2 as determinative, then the selectee should:

1. Prepare a "Documentation of Personnel and Fringe Benefit Charges," which should include: (i) documentation of what types of individuals would have their personnel and fringe benefits charged against the grant; (ii) documentation of the flow of funds from the Recipient to the PEO or Affiliated Entity to the employees; (iii) references to relevant policies and procedures governing the relationship between the Recipient and the PEO or Affiliated Entity; and (iv) a justification for why the costs proposed to be charged to the grant for compensation and fringe benefits align with the grant regulations at 2 CFR 200.430 (for personnel costs) and 2 CFR 200.431 (for fringe benefits). The Selected Applicant should expect the documentation to be reviewed by internal auditors, for example as part of the Single Audit, or external auditors such as those from the EPA Office of Inspector General or the Government Accountability Office. *The documentation will be reviewed and subject to approval by EPA. EPA may request specific revisions upon review, and approval is not guaranteed.*
2. Submit the workplan and budget no later than May 29, 2024 to reflect the documentation. *If the documentation is not approved or needs revisions, EPA will ask the Selected Applicant to revise its workplan and budget accordingly.*

The plan will be reviewed by EPA staff, which may then meet with you, and if appropriate your attorneys, regarding required revisions. Staff attorneys from EPA's Office of General Counsel are available to answer questions from your attorneys as well.

3. What are the most important elements of the grant regulations that a Selected Applicant should consider when proposing a mechanism to charge personnel and fringe benefits against the grant award that does not use the W-2 as determinative?
The Selected Applicant should reference 2 CFR 200.430(b), which provides that "[c]ompensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity;" this part of the regulation may be particularly important for employees partially dedicated to executing the federal award. The Selected Applicant should also reference 2 CFR 200.430(i), which provides that "[c]harges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed" and specifies a number of requirements for those records. Recipients should also be cognizant of the rules for allocating charges for fringe benefits described in 2 CFR 200.431(c). EPA provides training on proper management of grants at https://www.epa.gov/grants.

4. If a Recipient records personnel time spent working on the federal award on a bi-weekly basis, does this comply with the requirements under 2 CFR 200?
Yes. As provided at 2 CFR 200.430(i)(1), "[c]harges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed." Recording personnel time spent working on the federal award on a bi-weekly basis can support compliance with this requirement.

5. Can grant funds be used to pay personnel through incentive compensation? If so, how should such incentive compensation be budgeted?
Yes. In accordance with 2 CFR 200.430(f) *Incentive compensation*, incentive compensation "is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment." A Selected Applicant should include the estimated amount of total compensation, including incentive compensation, as part of the personnel costs to the employee within the budget.

6. Can a Selected Applicant allocate as Direct Costs the salaries and fringe benefits of support staff, when such costs are typically general administrative costs?
Please review the definitions of *Direct Costs* within 2 CFR 200.413 and *Indirect Costs* within 2 CFR 200.414 as well as the general guidance on budget development in the Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance. EPA also provides guidance on Indirect Costs in the Indirect Cost Guidance for Recipients of EPA Assistance Agreements.

2 CFR 200.413 states: "Direct Costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy**. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs.**" (Emphasis added). As provided in 2 CFR 200.414(b), for nonprofit organizations "…typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting."

In accordance with this regulation, EPA anticipates that many program administration activities (as opposed to general administration of the organization) can be identified specifically with a particular

final cost objective and can be directly assigned with a high degree of accuracy—and therefore could be treated as a Direct Cost provided the same costs are not recovered through the Indirect Cost Rate. For example, if a Selected Applicant is purpose-built to execute the activities under its workplan, then many of its support functions that are costs of administering the EPA funded program may be eligible to be charged as Direct Costs, even if those functions are performed by administrative personnel. However, if a Selected Applicant is not purpose-built to execute the activities under its workplan, then it will need to keep detailed records of actual time that support staff spend on the grant activities to allocate that support staff as Direct Costs under the grant award (when such support staff spend less than 100% of their time on the grant award).

7. Is prior approval from EPA needed to change the personnel budget?
Recipients have some flexibility to update their budgets post-award without amending the award agreements, including updating the amount of funds used for personnel costs. However, in accordance with the Transfer of Funds General Term and Condition:

> *As provided at 2 CFR 200.308(f), the Recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.*

Budget | Contractual

1. Do federal procurement requirements apply to costs charged to the grant other than contractual costs (e.g., supplies, equipment, etc.)?
Yes. UGG Procurement Standards generally apply to contractual, supplies, and equipment costs. Please review the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

However, please note that micro-purchases in amounts of $10,000 or less (unless your organization has a lower Micro-Purchase Threshold or a higher threshold authorized under 2 CFR 200.320(a)(1)) without competition are permissible, since competition in the commercial market-place is likely to yield reasonable prices. The Micro-Purchase Threshold applies on a per-unit basis.

For example, if the Recipient were to purchase laptops with a per-unit cost of less than $5,000, the Recipient would treat these purchases as supplies that would not be subject to competitive procurement. See the excerpt below from the Interim General Budget Development Guidance:

> *Electronic devices including laptops, personal computers, tablets, and cell phones with a per item acquisition cost of less than $5,000 may be classified as supplies unless the Recipient's written property management systems policies classify these items differently. Recipients may define such items as equipment to ensure they are tracked in their inventory systems.*

2. Do the federal procurement requirements apply to new contracts as well as existing contracts that the Selected Applicant plans to charge against the grant award?
Yes; the requirements apply to both new contracts as well as existing contracts that the Selected Applicant plans to charge against the grant award. Existing contracts that are at amounts requiring competition, therefore, would have had to be competed in accordance with the competitive procurements standards in 2 CFR Part 200 and 1500 (even though the Contract was initially made prior to the Selected Applicant receiving the grant award) for the cost to be eligible. Note that EPA takes a broad view of whether the process followed for competing existing contracts complies with applicable requirements as long as some effort was made to hire the Contractor competitively, the prices are reasonable, and the transaction is not tainted by conflicts of interest.

3. When can a Recipient make a sole-source procurement Contract?
The Recipient must follow the regulatory coverage from 2 CFR 200.320(c) as well as the EPA's guidance within the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements. The regulatory coverage is included below.

> (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.

The guidance from the best practice guide is included below.

3. Long-term contracts.

a. Recipients may enter into competitively awarded long-term (generally not to exceed five years) contracts for professional services or equipment leases that include options for periodic renewals. If the long-term Contract precedes the EPA assistance agreement, Recipients may use that Contract if it was procured competitively consistent with Federal Financial Assistance regulations (including DBE considerations) in effect at the time. The use of such contracts in EPA assistance agreements does not constitute sole source procurement since the original Contract was competed.

b. Long-term contracts that were awarded without competition may not meet EPA's minimum requirements for compliance with the UGG Procurement Standards. Additionally, out of scope modifications to contracts in amounts that exceed the Simplified Acquisition Threshold are subject to EPA approval as provided at 2 CFR 200.325(b)(5).

4. Sole-Source Contracts.

a. Sole-source contracts in excess of the Micro-Purchase Threshold should be rare. Potential justifications are described at 200.320(c) and include such factors as only one source has the goods or is able to perform the service, an emergency, EPA approval, or after soliciting a number of sources the Recipient reasonably decided competition was inadequate.

b. EPA's general policy is to require competition in accordance with 2 CFR 200.319 and 2 CFR 200.320 for commercially available items (including consulting services). EPA recommends that Recipients consult with EPA prior to making sole source procurements. Situations in which EPA may approve sole source contracts are generally limited to those in which a patent, copyright, or equipment maintenance agreement with the manufacturer are in place; the service or product demonstrates that an item is available from only one firm; or there is an emergency (e.g. a natural disaster) that precludes competitive contracting. Recipients who procure sole source contracts without EPA approval do so at their own risk.

c. EPA staff may not suggest, recommend or direct Recipients to hire particular firms or individuals.

d. EPA does not require Recipients to identify Contractors in proposals. The fact that a Recipient has named a Contractor in its proposal as a "partner" or otherwise does not in and of itself justify a sole-source award. If, at any time, EPA finds that a sole-source Contract does not comply with EPA's interpretation of the UGG, EPA may disallow all or part of the cost of the Contract as provided at 2 CFR 200.339.

Note: Orders placed on contracts for operational services such as IT support that were entered into before a Recipient applied for the EPA grant that the Recipient uses for a wide range of services in

addition to those necessary for performing the grant are another example of a sole source arrangement that EPA may approve. On the other hand, contracts for services acquired specifically for the grant funded program such as consulting or project management do not meet the "only one source" requirement even if the Contractor is "uniquely qualified" or has a long standing relationship with the Recipient.

4. Does a Recipient need to go to the EPA Award Official for approval of sole source procurements? Does a Subrecipient?

While a Recipient does not need to obtain approval from the EPA Award Official, there is a substantial risk that the costs associated with sole source procurements will be questioned in an audit and subsequently disallowed by the EPA Award Official. Therefore, EPA recommends that the Recipients make requests for sole source procurements in writing to the EPA Award Official (through the EPA Project Officer).

EPA does not approve sole source procurements for a Subrecipient, as the Recipient is responsible for managing and monitoring the Subrecipient in accordance with the requirements in 2 CFR 200. Therefore a Recipient may exercise its discretion to approve (or reject) sole source procurements in a similar way as the EPA Award Official would exercise its discretion to approve (or reject) sole source procurements. Note that if evidence comes to EPA's attention that indicates the Recipient is not taking its responsibilities to promote full and open competition in Subrecipient contracting seriously, EPA has the discretion to impose specific conditions under 2 CFR 200.208 to require prior EPA approval of the Recipient's sole source decisions.

Budget | Additional

1. Can Selected Applicants reflect shared services procurements to support administrative activities (e.g., reporting and compliance) within their revised workplans while still remaining compliant with the EPA Competition Policy?
Yes. The EPA Competition Policy enables Selected Applicants to update the activities described in their initial application packages, subject to the following restrictions:

> *1) Following selection of an applicant for award, but before the award has been made, Program Offices may have communications with applicants to clarify issues with carrying out the project's scope of work or that serve to strengthen the selected application/proposal, to resolve administrative issues, or for determining if the applicant will accept partial funding so long as the communication is done consistent with the partial funding provisions in the announcement which includes not prejudicing other applicants.* ***Generally, these types of communications will be acceptable if they do not affect the basis upon which the proposal/application (or portion thereof) was evaluated and selected for award and do not prejudice other applicants.***
>
> *(2) Post-selection communications with an applicant that seek to materially change the proposal/application (or portion thereof) that was submitted, evaluated, and selected for award, or that allow the applicant to materially revise its proposal/application (or portion thereof) that was selected for award, are prohibited.*

In general, EPA expects the use of shared services to support administrative activities to not materially change the application package that was submitted, evaluated, and selected for award. Further, if the use of shared services were to materially strengthen the application, then EPA would not have EPA Competition Policy-related concerns, particularly given that under 2 CFR 200.318(e) EPA encourages Recipients to consider shared services agreements for efficient procurement. See next question.

2. If Selected Applicants seek to procure shared services to support administrative activities, how would this work in practice (e.g., joint request for proposals)?
For a procurement Contract, Selected Applicants may seek to pursue a joint competitive procurement process, issuing a joint request for proposals and then signing a multi-party Contract. As provided in 2 CFR 200.318(e), EPA encourages Recipients and Subrecipients to procure common services through joint competitive solicitations of Contractors. Here is the relevant coverage from pg. 6 of the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements (the "Guide"):

> *EPA encourages Recipients to enter into intergovernmental or inter-entity agreements to competitively procure common goods and services. 2 CFR 200.318(e). . . . Two or more Recipients or Subrecipients could also solicit offers for common services such as developing web sites or laboratory analysis and share the cost of the Contract. Recipients should document how the costs are allocated, the competitive procedures used to select the Contractor, and the basis for selecting the individual or firm awarded the Contract.*

Additionally, as noted on pg. 13 of the Guide:

> *Recipients may enter into competitively awarded long-term (generally not to exceed five years) contracts for professional services…that include options for periodic renewals.*

The competition requirements described in 2 CFR 200.319 and 2 CFR 200.320 apply to such common services procurements. EPA's Brownfields Grants: Guidance on Competitively Procuring a Contractor provides useful information on how to effectively compete for contractual services in compliance with these requirements.

3a. If a Recipient has an existing professional services Contract made in full compliance with the requirements under the grant program, how can another Recipient under the same grant program join that existing Contract?
The Recipient that entered into the compliant Contract would need to determine that the overall scope of work for the Contract is broad enough and the ceiling amount high enough to encompass providing the professional services to another Recipient. The contracting Recipient would then document that determination in the file.

Adjustments may need to be made to the detailed Contract terms, but that is permissible as long as the services that the Contractor would provide to the second Recipient are within the overall scope of the Contract. The two Recipients would need to agree upon the funding arrangement for the shared services Contract. However, both Recipients remain accountable for complying with the Financial Management requirements described in 2 CFR 200.302(b) with regard to accounting for the transfers of EPA funds between the Recipients.

3b. For contracts, how does this change if the new Recipient's component of the Contract raises the total contractual amount beyond the acquisition-related threshold that governed the initial Contract?
In the situation described, the ceiling amount for the contracting Recipient's Contract would probably not be high enough to encompass the services that the second Recipient needs. However, any change to the Contract terms that cause the amount of the Contract to exceed either the micro purchase competition threshold ($10,000 for most Recipients) or the simplified acquisition threshold ($250,000) would preclude the second Recipient from "buying in" to the Contract.

4. Can Recipients use noncompetitive Subawards rather than procurement contracts to fund administrative activities?

a. Subawards with for-profit firms or individual consultants?
No. Please refer to Appendix A of the EPA Subaward Policy, *Distinctions Between Subrecipients and Contractors* (EPA's official interpretation of 2 CFR 200.331), which states the following regarding EPA-funded transactions:

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

There are exceptions to this determination (i.e., Subawards to support installation of pollution control technology at a for-profit firm's facility), but the exceptions do not include administrative activities. Note that the NCIF and CCUA NOFOs included express guidance to applicants on the restrictions on providing Subawards to for-profit firms or individual consultants.

b. Subawards with another nonprofit organization?
Probably not. As provided in Appendix A of the EPA Subaward Policy, *Distinctions Between Subrecipients and Contractors,* EPA-funded transactions "[]Between nonprofit organizations for collaborative projects that further the missions of both organizations are typically Subawards although situations in which one nonprofit provides ancillary services that are widely available in the competitive market such as accounting or information technology for operations (e.g., payroll) to another nonprofit are characteristic of a procurement Contract."

While EPA does not require competition for Subawards, administrative activities are generally ancillary services that can be acquired through competitive procurements as opposed to non-competitive Subawards which, as provided at 2 CFR 200.331(a), establish a Financial Assistance relationship with the Subrecipient.

There may be situations in which a nonprofit organization's mission does encompass supporting other nonprofit organizations' financial management activities. EPA, therefore, is willing to consider on a case-by-case basis whether a proposed noncompetitive arrangement for administrative support is a proper Subaward. However, any such arrangements must be with another nonprofit organization, expressly preclude the Subrecipient from charging a management fee or otherwise profit from the transaction, and be more cost effective than acquiring administrative services competitively from commercial sources.

Note that Subawards to nonprofits other than Coalition Members may be appropriate for activities other than administration activities, such as market-building and predevelopment activities (under the NCIF) and Technical Assistance Services (under the CCIA).

5. Are there any special considerations if a Selected Applicant uses funds that are borrowed from a third-party (e.g., bank or philanthropy) to fund Pre-Award costs?
There are no special considerations if a Selected Applicant uses funds that are borrowed from a third-party (e.g., bank or philanthropy) to fund Pre-Award costs other than the provision in 2 CFR 200.449(a) on the unallowability of interest on borrowed funds as a grant cost. After the award is made to the Selected Applicant, if the Selected Applicant has incurred eligible Pre-Award costs, it could drawdown funding to pay for such Pre-Award costs. At this point, provided those Pre-Award costs are eligible, the funding that would then be drawn down would belong to the Selected Applicant, and the Selected Applicant would be able to use the funding for its own organizational purposes (including but not limited to repaying funds borrowed from a third-party).

Note that, as provided in 2 CFR 200.458, Recipients are authorized to incur Pre-Award costs, which are costs that would have been allowable if incurred after the date of the Federal award. For competitive grants, EPA interprets the requirement in the regulation that Pre-Award costs be incurred "directly pursuant to the negotiation and in anticipation of the Federal award" to limit allowable Pre-Award costs to those a Recipient incurs after EPA has notified the Recipient that its application has been selected for award consideration. The Pre-Award costs must be included in the workplan and budget to be eligible. As provided in 2 CFR 1500.9, Recipients incur Pre-Award cost at their own risk. Pre-Award costs may include costs to pay Subrecipients.

6. How should Selected Applicants reflect Pre-Award costs in the detailed budget table?

Please refer to the budget guidance pdf that was attached to the April 12, 2024, email from OGGRF, which states: "The budget table should reflect eligible Pre-Award costs within the first year of the budget, which otherwise would reflect costs from July 1, 2024 to June 30, 2025."

In accordance with this guidance, Selected Applicants that seek to charge Pre-Award costs should reflect them in the first year of the detailed budget table. For example, if a Selected Applicant began charging Pre-Award costs on April 1, 2024, then the first year of the detailed budget table would reflect April 1, 2024 to June 30, 2025.

7. If a Recipient is part of a set of legal entities all under a consolidated parent entity, how can the Recipient share overhead costs (e.g., rent, utilities, IT support, shared software licenses) with the other legal entities? Are Indirect Costs the only mechanism, or is there a mechanism to attribute some of these shared overhead costs as Direct Costs?
Nonprofit Recipients generally recover their proportionate share of overhead costs through Indirect Cost rates. For example, if a Selected Applicant is a subsidiary and will share physical space with its parent, the Selected Applicant will likely use the Indirect Costs it charges against the grant to pay for its portion of the physical space; there are no federal requirements on the use of funds paid out to Recipients through the Indirect Cost Rate.

However, as provided in Appendix IV to 2 CFR Part 200, Item B.4, there are situations in which a Direct Allocation Method for recovering a proportionate share of overhead costs such as the ones described in these questions as Direct Costs may be used. There is also a provision in Item B. 5 for Special Indirect Cost Rates that may provide flexibility. If a Recipient intends to use either of these methods for recovering overhead costs, approval by the EPA Award Official will be required.

8. How can a Selected Applicant get their own federally negotiated Indirect Cost Rate?
If your organization wants to negotiate an Indirect Cost Rate instead of using the 10% de minimis rate, then your organization must prepare an Indirect Cost Rate Proposal based on your most recent audited costs and submit to the Federal agency for Indirect Costs. For nonprofit organizations, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards as provided in 2 CFR Part 200, Appendix IV. Item C 2. a. EPA will be the cognizant Federal agency for NCIF and CCIA Recipients, although the U.S. Department of the Interior will act on EPA's behalf in the Indirect Cost Rate negotiations.

For additional details on how to prepare a proposal for a federally negotiated Indirect Cost Rate, please visit:

- Proposal Templates for Nonprofit Organizations | IBC Customer Central (doi.gov)
- Nonprofit Organizations Frequently Asked Questions | IBC Customer Central (doi.gov)

The indirect rate calculated in your proposal can be used to budget for your Indirect Costs within the award. Once the EPA grant is awarded to your organization, the Indirect Cost Rate Proposal must be submitted immediately to EPA for approval (within 90 days of the award being made through the EPA Award Official signing the Notice of Award). You cannot use the Indirect Cost Rate for Indirect Cost reimbursements until it is approved.

If your organization negotiates a rate with the cognizant federal agency, it can ask EPA to apply the rate during the Performance Period. However, the total award amount will not change, so you would have to

re-budget to account for any additional Indirect Costs. Please see the following excerpt from the Grants Policy Issuance (GPI) 18-02: Indirect Cost Policy for EPA Assistance Agreements:

> *After award, when Recipients use the 10% de minimis rate for grants, they are not required to provide proof of costs that are covered under that rate. The Recipient must use the 10% de minimis rate throughout the life of the assistance agreement, unless the Recipient negotiates and receives approval for an IDC rate with its cognizant Federal agency during the life of the agreement. The Recipient may request that EPA allow it to apply the negotiated rate any time after the effective date for the negotiated rate. EPA will allow the updated negotiated rate to apply for the period covered by the rate, unless the Recipient is an IHE (see section 6.8.a below). A re-budgeting and/or change to the scope of work may be necessary if the IDC rate changes, since the amount of the overall award will generally remain the same.*

9. Can Selected Applicants negotiate their own micro purchase threshold as part of the Indirect Cost Rate negotiation?
Yes. However, in order for the cognizant Federal agency for Indirect Costs to approve a Micro-Purchase Threshold higher than $10,000, the Selected Applicant will need meet requirements described in 2 CFR 200.320(a)(1)(iv) and (v).

10. Rapid hiring will necessitate the use of third-party recruiting efforts. Would such an expense be eligible as a Direct Cost?
All costs charged to the award for allowable activities must meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500. Paying third-party recruiters that meet the standards of "reasonable costs," as outlined in 2 CFR 200.404, could be allowable Direct Cost for program administration activities under the program. However, the transaction to pay the third-party recruiters would need to meet the corresponding requirements for the transaction. For example, if the transaction was a Contract (as is likely), then the Contract would need to comply with the competitive procurement requirements in 2 CFR Part 200, as described above.

11. How should Selected Applicants distinguish between Technical Assistance Services and program administration activities under the CCIA?
Please refer to the definitions of "Technical Assistance Services" and "program administration activities" that are included in the terms and conditions as well as the definition of *Direct Costs* in 2 CFR 200.413. When Recipients incur Direct Costs to "establish new and build the capacity of existing Community Lenders so that they can provide Financial Assistance to CCIA-eligible projects," then those Direct Costs will be categorized as Technical Assistance Services. Examples may include:

1. Costs of holding a conference or training session from Community Lenders
2. Costs of paying a consultant to develop training materials for Community Lenders
3. Costs of paying personnel that are dedicated to providing advisory services to Community Lenders

Where costs incurred by the Recipient do not fit within either the definitions of "capitalization funding," "Technical Assistance Subawards," or "Technical Assistance Services," but are still Direct Costs that are allowable under the award, then those Direct Costs will be categorized as program administration activities. Examples may include:

1. Costs of paying a Contract for data and tech infrastructure to meet reporting requirements

2. Costs of paying personnel or purchasing software licenses that are dedicated to compliance with statutes and regulations applicable to the EPA grant as well as the terms and conditions of the award.

In practice, EPA does not anticipate that the distinction between these terms will have significant bearing on the workplan and budget, which ask for the amount of capitalization funding passed through to Community Lenders as well as capitalization funding and Technical Assistance Subawards passed through to Community Lenders. Neither of these calculations require a distinction between Technical Assistance Services expenditures and program administration expenditures.

12. What is meant by the requirement that Indirect Costs can only be charged against the first $25,000 of each Subaward?
A *Pass-through entity*, as defined in 2 CFR 200.1, that provides a Subaward (which would be reflected as a Direct Cost) and uses the de minimis Indirect Cost Rate can only charge Indirect Costs against the first $25,000 of the Subaward. For example, if a Recipient makes a $1,000,000 Subaward and uses the de minimis Indirect Cost Rate, then the Indirect Costs on the Subaward equate to $25,000 * 10% = $2,500.

13. What Indirect Cost Rate should Subrecipients use in their Subaward agreements with Recipients?
Subrecipients that receive Subgrants (as opposed to loans) are permitted to charge Indirect Costs against their Subawards. The Indirect Cost Rate that they would charge is based on a rate approved by the Subrecipient's cognizant Federal agency or the 10% de-minimis rate authorized by 2 CFR § 200.414(f).

14. Are Pre-Award costs more than 90 days prior to award eligible?
Yes. As provided in 2 CFR 200.458, Recipients are authorized to incur Pre-Award costs, which are costs that would have been allowable if incurred after the date of the Federal award. For competitive grants, EPA interprets the requirement in the regulation that Pre-Award costs be incurred "directly pursuant to the negotiation and in anticipation of the Federal award" to limit allowable Pre-Award costs to those a Recipient incurs after EPA has notified the Recipient that its application has been selected for award consideration. Pre-Award costs may include costs to pay Subrecipients. As provided in 2 CFR 1500.9, Recipients incur Pre-Award cost at their own risk. Selectees must send the EPA Project Officer a request for more than 90 days of Pre-Award costs, include what Pre-Award costs are being requested, and include Pre-Award costs in the workplan.

15. When the de minimis Indirect Cost Rate gets updated to 15% on October 1, 2024, will Recipients be able to use that?
No. The increase in the de minimis rate will only apply to funds awarded after October 1, 2024, as indicated in OMB's April 22, 2024, Federal Register Notice. At this time, we do not anticipate that EPA will apply the increase in the de minimis Indirect Cost Rate prior to October 1, 2024.Further, even if there are amendments to the award agreements, the de minimis Indirect Cost Rate will remain the same given that EPA must award all funds under the Greenhouse Gas Reduction Fund by September 30, 2024. However, as previously mentioned, Recipients (and Subrecipients) may negotiate their own Indirect Cost rates that could be used during the Performance Period.

16. Will Recipients be able to use a new Indirect Cost Rate once it is negotiated and approved?
Yes. Please refer to section 6.2 of the EPA Indirect Cost Rate Policy regarding the use of proposed Indirect Cost rates for budgeting purposes. Notify your EPA Project Officer if and when you receive a new approved Indirect Cost Rate. Also, keep in mind that, even if your Indirect Cost Rate has changed, the total amount of the grant award will not change.

17. Is there an inflation assumption that Selected Applicants should build into their budgets?
There is no standard inflation assumption that Selected Applicants should build into their budgets for wage growth and other changes in prices over the Performance Period. Budgets that reflect changes in wages and prices over the Performance Period are expected. Note that EPA will not be able to add funds to any agreements, given that all funds must be awarded by September 30, 2024.

18. Are costs associated with responding to Freedom of Information Act (FOIA) requests or governmental inquiries and investigations allowable?
Recipients are not subject to the Freedom of Information Act (with exceptions not relevant here) as provided in 2 CFR 200.338. The allowability of costs for responding to governmental inquiries and investigations are governed by 2 CFR 200.435 or, in the case of a Congressional inquiry, 2 CFR 200.450. Additionally, all Direct Costs charged to GGRF funded agreements must meet the requirement in 2 CFR 200.403(a) that the costs be necessary and reasonable for the performance of the Federal award and allocable to the scope of work.

Please also note the following unallowable activity, as specified in the terms and conditions: "The Recipient also agrees not to use the award for activities associated with defending against, settling, or satisfying a claim by a private litigant, except when either (a) the claim stems from the Recipient's compliance with the terms and conditions of the award agreement and (b) the Recipient has obtained prior written approval from the EPA Project Officer. " Note also that, as provided in 2 CFR 200.441, costs for paying fines, penalties, damages, and other settlements are generally unallowable.

19. Can a Recipient *reimburse* a Subrecipient for actual and allowable project costs incurred prior to the Subaward?
It depends. The Recipient may reimburse a Subrecipient for actual and allowable project costs incurred only after the Subrecipient has been notified that it will receive a Subaward in order for the costs to comply with the standards for allowability of Pre-Award costs at 2 CFR 200.458. The Pre-Award Costs Administrative Term and Condition "flows down" to Subrecipients in that the Recipient should include in its Subaward agreements eligibility for Pre-Award costs, which would be eligible once the Subrecipient has been notified by the Recipient that it has been selected for a Subaward. Pre-Award project costs must comply with all Terms and Conditions in the Subaward that flow down to the Subrecipient in order to be eligible costs under the Subaward.
However, the Recipient may not reimburse a Subrecipient for project costs incurred before the Subrecipient has been notified that it will receive a Subaward. For example, prospective Community Lenders under the CCIA cannot incur Pre-Award costs in anticipation of receiving Subawards for capitalization funding for the purposes of 2 CFR 200.458 without having been notified that they have been selected for those Subawards through the process described in the Recipient's EPA-approved workplan.

20. How should grant funds used to purchase signs be categorized (i.e., contractual, equipment, supplies, etc.)?
If a Recipient or Subrecipient (rather than a Contractor or Program Beneficiary) is purchasing signs for construction sites, then it is most likely that these will be considered *Supplies* under 2 CFR 200.1 (i.e., "tangible personal property other than equipment with a per-item acquisition cost of $5000 or less). Please review the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements.

21. How should grant funds used for conferences, workshops, meetings, and/or outreach events be incorporated into the proposed workplan and budget?
If the Selected Applicant proposes to use grant funds for conferences, workshops, meetings, and/or outreach events, as reflected in the Selected Applicant checklist, then the Selected Applicant should ensure that the use of the grant funds in this way is clearly described separately in *1.4.2 Budget Description and Table* within the proposed workplan (e.g., below the descriptions of each category of costs), with the description in the budget narrative clearly tied to line items in the detailed budget table.

Speaker fees (including "honoraria" and travel expenses for non-employees), stand- alone contracts for audio-visual services and costs for hiring transportation services (vehicles and drivers) at conferences, meetings, workshops and similar events should be classified as contractual. Facility rental costs are classified as "Other" and may include audio-visual and catering services that are included in the rental fees. Personal vehicle rental costs for employees in travel status are typically considered travel expenses. Costs for rental vehicles for program participants receiving travel assistance are classified as "Other".

Conference/meeting facility rental charges may include meals and light refreshments per 2 CFR 200.432 as well as audio-visual services. Recipients must compete requirements for conference/meeting facilities when the amount of the charges are expected to exceed the current Micro-Purchase Threshold of $10,000.

EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

As provided at 2 CFR 200.432, costs for meals and light refreshments for conferences are allowable under certain circumstances with prior EPA approval.

a. Meals and light refreshments procured from caterers (separate from facility rental charges) should be classified as contractual.
b. If not explicitly described in the scope of work that the Award Official approves, Recipients must obtain prior approval from the GMO for meals and light refreshments post-award in accordance with the terms and conditions of the EPA agreement. In general, meals should only be allowable during conferences when the work continues during the meals.

22. Are coffee, coffee machines, kitchen items, light refreshments, etc. eligible for staff?
Costs for light refreshments and meals for Recipient staff meetings and similar day-to-day activities are not allowable as Direct Costs under EPA assistance agreements.

23. Does EPA require and/or allow insurance to be charged against the grant award?
In accordance with 2 CFR 200.447, insurance may be an allowable cost subject to requirements in 2 CFR 200.405 for allocability of Direct Costs. However, there is no requirement for Recipients to purchase insurance, as "the types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice."

24. Under the Federal Travel Regulation, can the Recipient book travel that exceeds the rates and amounts for Federal travel?

Yes, the Recipient may book travel that exceeds the rates and amounts for Federal travel, with several considerations for how to pay for the travel costs with grant funds and/or its own funds.

First, the Recipient may book travel that exceeds the rates and amounts for Federal travel and then only charge the grant award for the amount of funds that equals (not exceeds) the rates and amounts for Federal travel, with the Recipient covering the rest of the travel costs out of its own pocket. As provided in the Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance:

> *Under 2 CFR 200.475(d) allowable travel costs may not exceed the rates and amounts for Federal travel unless the Recipient's cognizant Federal audit agency (or EPA if requested by the Recipient to do so) has accepted a travel policy that provides differently. Federal lodging and per diem rates are available at http://www.gsa.gov/portal/content/104877.*

Second, the Recipient may charge the grant award for up to 300 percent of the maximum per diem allowance for lodging costs, in accordance with the following guidance in 41 CFR Part 301. However, costs must still meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500.

> *§ 301-11.30 What is my option if the Government lodging rate exceeds my lodging reimbursement?*
> (a) You may request reimbursement on an actual expense basis, not to exceed 300 percent of the maximum per diem allowance.
> (b) Approval of actual expenses is usually in advance of travel and at the discretion of your agency. (See § 301-11.302.) Also, see § 301-70.201 for when an agency can issue a blanket actual expense authorization.

25. Could a Recipient use travel policies that are different than the Federal Travel Regulation for purposes of charging the grant award?

Yes, but these travel policies are subject to prior approval by EPA. If the Recipient is interested in using travel policies that are different than the Federal Travel Regulation (such as an existing travel policy), then the travel policy should be submitted for approval as part of the Administrative Capability Assessment. If proposing a travel policy, EPA may ask for documentation of reimbursing travelers under the existing rates to demonstrate that the travel policy has been used in the past with non-federal funded travel. As provided in the Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance:

> *Under 2 CFR 200.475(d) allowable travel costs may not exceed the rates and amounts for Federal travel unless the Recipient's cognizant Federal audit agency (or EPA if requested by the Recipient to do so) has accepted a travel policy that provides differently. Federal lodging and per diem rates are available at http://www.gsa.gov/portal/content/104877.*

26. Can a Recipient book real estate leased as Direct Costs?

It depends. Generally, nonprofit Recipients recover their proportionate share of overhead costs indirectly by applying their Indirect Cost Rate. If a single Indirect Cost Rate is not appropriate for a Recipient, there

is a provision in Appendix IV to 2 CFR Part 200, Item B. 5 to allow a Recipient to negotiate Special Indirect Cost Rates with their cognizant Federal agency. The special indirect rates would be used to allocate joint costs that only benefit certain activities and not all the Recipient's activities.

However, there may be cases in with the leased space is treated as Direct Costs.

- If the leased space is fully dedicated to the federal award such that no other activities take place in the space, then the costs associated with the leased space are allowable Direct Costs if the requirements in 2 CFR 200.465 are met.
- If the leased space is not fully dedicated, as provided in Appendix IV to 2 CFR Part 200, Item B.4, this may be a situation in which a Direct Allocation Method for recovering a proportionate share of overhead costs as Direct Costs may be used. Each cost must be allocated separately using an appropriate basis of allocation. If a Recipient intends to use the Direct Allocation Method to recover overhead costs, approval by the EPA Award Official will be required. The formula for the allocation must be provided in the budget details that are included in the workplan; the EPA Award Official will not approve an allocation without sufficient documentation.

Note that directly charging all of the rental costs to the EPA grant will impact the amount of allowable Indirect Costs under the 10% de-minimis Indirect Cost Rate. The regulation governing the de-minimis Indirect Cost Rate at 2 CFR 200.414(f) states "As described in § 200.403, costs must be consistently charged as either indirect or Direct Costs, but may not be double charged or inconsistently charged as both." Because space rental is typically recovered through Indirect Cost rates, the 10% de-minimis rate is intended to compensate Recipients for the proportionate benefit to the grant for leasing space. Direct charging is not permissible if the Recipient's negotiated Indirect Cost Rate includes space rental in the calculations for the rate.

27. Should conference fees be categorized as a Participant Support Cost (within the "other" cost category)?
It depends.

If the conference fees are paid to non-employee program participants via stipends or on their behalf directly to the conference organizers, then they must be categorized as Participant Support Costs. EPA recognizes that Participant Support Costs as a characterization within the grant regulations has multiple potential applications under this program (i.e., not just to characterize certain forms of Financial Assistance). Please refer to the definition of *Participant Support Costs* in 2 CFR 200.1 as "Direct Costs for items such as stipends or subsistence allowances, travel allowances and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects." See also the EPA Guidance on Participant Support Costs.

If the conference fees are paid for employees of the Recipient, then the costs are categorized as either travel or contractual depending on whether the employee is in travel status.

28. Can using an insurance broker to purchase insurance comply with the competitive procurement requirements?
Yes, but the requirements for compliance will depend on the mechanics of the transaction. The two cases below assume a commission-based model for the broker.

Case 1: Insurance Company Pays Commission

If the insurance company pays the commission, there would only be one transaction between the Recipient and the insurance company, and that transaction would need to comply with the 2 CFR Part 200 Procurement Standards regarding competition.

The insurance broker would need to execute its procurement competitively on behalf of the Selected Applicant or Recipient in accordance with the 2 CFR Part 200 Procurement Standards if the cost for the insurance policy exceeds the Micro-Purchase Threshold ($10,000 for most Recipients). The existing brokerage process may already meet these requirements. Please refer to the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements for additional details.

Case 2: Recipient Pays Commission Directly

If the Recipient pays commission directly to the broker, there would be two separate transactions, each of which would need to comply with the 2 CFR Part 200 Procurement Standards:

1. The transaction to pay the insurance broker
2. The transaction to pay the insurance company

Given that the transaction to pay the insurance broker will likely involve a lower amount of costs, there may be fewer requirements on the procurement. For example, if the costs to pay the insurance broker are below the micro purchase threshold (currently set at $10,000 for most Recipients) or the simplified acquisition threshold (currently set at $250,000), then it may be relatively easy for a Selected Applicant or Recipient to comply.

The insurance broker would then need to execute its procurement on behalf of the Selected Applicant or Recipient in accordance with the 2 CFR Part 200 Procurement Standards on competition. The existing brokerage process may already meet these requirements. Please refer to the Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements for additional details.

29. Can Selected Applicants use a Micro-Purchase Threshold of $50,000 without an approved Indirect Cost Rate, in accordance with the regulations at 2 CFR 200.320(a)(1)(iv)?

Yes. Under 2 CFR 200.320(a)(1)(iv), a Recipient 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" as described in the regulation, for example an "annual internal institutional risk assessment to identify, mitigate, and manage financial risks." Note that Recipients must make the certification available to EPA and auditors upon request and it is likely that EPA Project Officers and Award Officials will want to review the certification.

Note: EPA may require review and approval by the EPA Award Official before the self-certification becomes effective. Note that a qualification as a low-risk auditee, in accordance with 2 CFR 200.320(A)(1)(IV)(a) and 2 CFR 200.520, would not require review and approval by the EPA Award Official.

30. If a Selected Applicant wants to use the Direct Allocation Method to charge leased real estate costs as Direct Costs, what are the implications for how they must calculate Indirect Costs?

If the Recipient is using the de minimis rate of 10% of Modified Total Direct Costs (MTDC), then the Recipient must exclude the leased real estate costs from its calculation of Modified Total Direct Costs so that it does not book Indirect Costs against those costs. Note that if the Recipient ends up using a

negotiated Indirect Cost Rate that includes real estate costs, then it is not permissible to charge the leased real estate costs as Direct Costs.

Davis-Bacon and Related Acts

1. Do the following types of common projects under GGRF meet the U.S. Department of Labor's definition of "construction" under the Davis-Bacon Related Acts (codified at 29 CFR Part 5), applicable to GGRF-assisted projects by way of Section 314 of the Clean Air Act (42 USC § 7614) and incorporated in the Terms & Conditions?

- **Installation of solar panels?**
- **Installation of heat pumps?**
- **Retrofits of buildings for energy efficiency?**
- **Pre-development work?**

Each of these projects, with the exception of pre-development, would meet the definition of "construction" under the applicable DBRA statute and each would trigger DBRA labor standards. Whether pre-development work triggers DBRA depends on the nature of that work. Pre-construction activities such as environmental assessments, site acquisition, permitting, and engineering and design work do not in and of themselves trigger DBRA. Site preparation activities such as remediation of contaminated soil, abatement of asbestos or lead based paint, demolition, and similar construction activities are subject to DBRA.

2. Are single-family residential construction projects subject to DBRA labor standards?
Yes, single-family residential construction projects will trigger DBRA labor standards. The DBRA statute governing the use of funds under the Clean Air Act is broad and extends to all construction projects funded under the GGRF, including single-family residential construction projects.

3. Why do some other federal agencies and grant programs exclude single-family residential projects from DBRA labor standards? Is EPA extending the scope of DBRA?
Some federal grant programs have statutory authority that provides for exclusions to DBRA labor standards on single-family residential construction projects. There are no similar exclusions in Section 314 of the Clean Air Act. Examples of federal grant programs with DBRA exclusions include the Community Development Block Grant Program (CDBG), HOME Investment Partnerships Program (HOME) – both of which are funded by HUD – and Energy Efficiency and Conservation Block Grant Program (EECBG) as implemented under the American Recovery and Reinvestment Act of 2009 (ARRA), funded by DOE. It is important to distinguish the DBRA statutory framework guiding other programs from the DBRA statutory framework that governs the Clean Air Act (42 USC § 7614).

Both the HOME and CDBG programs provide specific carve-outs which exclude many single-family properties from DBRA labor standards. However, these exclusions are expressly established in the DBRA statutes governing these programs. The DBRA statute governing the HOME program is Section 286 of the National Affordable Housing Act of 1990, which establishes that "Any Contract for the construction of affordable housing with **12 or more units** assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and participating jurisdictions shall require certification as to compliance with the provisions of this section prior to making any payment under such Contract."

The DBRA statue governing the CDBG program is Section 110 of the Housing and Community Development Act of 1974, which establishes that "All laborers and mechanics employed by Contractors and subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); *Provided*, that this section shall apply to the rehabilitation of residential property only if such property contains **not less than 8 units.**"

With respect to EECBG's DBA carve-out for individual homeowners under ARRA and questions on its potential application to GGRF, regulations regarding implementation of Recovery Act Section 1606 (Davis-Bacon wage rate requirements) specified that DBRA wage rate provisions applied to Recipients and Subrecipients of Recovery Act funds, but not to individuals. This guidance was incorporated in DOE's application of DBRA to the EECBG program and is reflected in the June 2010 FAQ document: "Individuals are not subject to DBA, but where the Recipient or Subrecipient becomes involved in the contracting process DBA will attach to the project." However, ARRA regulations implementing DOE's EECBG do not apply to EPA's implementation of the GGRF.

The DBRA statute that governs the Clean Air Act contains no language that excludes certain classes of construction projects from DBRA labor standards based on property size (or any other criteria). As such, EPA has determined that residential construction projects funded under GGRF cannot be categorically excluded from DBRA, and the U.S. Department of Labor's DBA Wage Determinations for Residential Construction will apply to such projects.

4. Is there a distinction on DBRA applicability as it relates to different forms of loan-based Financial Assistance transactions?

Yes, the form of the loan-based Financial Assistance transaction can be determinative. The question of **timing and purpose of the funding** is especially important. For example, the purchases of completed construction loans as a form of acquisition of Intangible Property after all construction work has been completed would not trigger DBRA requirements. DBRA cannot apply retroactively in this manner, and such Financial Assistance cannot be reasonably interpreted as assisting construction since the Recipient or Subrecipient would be acquiring Intangible Property rather than hiring a construction Contractor. A loan-based instrument originated or guaranteed to fund a construction project, on the other hand, would trigger DBRA requirements. As a general matter, GGRF Recipients and Subrecipients should apply this principle when determining whether certain forms of loan-based Financial Assistance are assisting construction or not.

5. Is there a distinction on DBRA applicability as it relates to different forms of equity-based Financial Assistance transactions?

The same principle described for loan-based products would apply if a Recipient or Subrecipient acquired an equity interest through purchase of stock or another form of *Intangible Property* as defined in 2 CFR 200.1 in a Clean Air Act 134(c)(3) Qualified Project such as the development of technology through a licensing arrangement or to carry out a manufacturing or service activity that reduces greenhouse gas emissions. Such a purchase does not require that the company selling the equity interest, licensing patented technology, or performing a manufacturing/service activity to use the funds for a specific construction project. On the other hand, if a Recipient or Subrecipient were to acquire an equity interest in a joint venture or similar arrangement to finance a **specific construction project**, DBRA would apply since GGRF funds would be used to assist construction within the meaning of Section 314 of the Clean Air Act.

6. Is there an exception to DBRA on tribal lands, or specific tribal wage scales projects on tribal lands must reference?
No. There is no statutory exception to the Section 314 Clean Air Act DBRA requirement for projects carried out on tribal lands. Unlike the Department of the Interior, as authorized under the Indian Self-Determination Act (25 USC 450e), the Department of Housing and Urban Development, through the Native American Housing Self-Determination Act (NAHASDA) (25 USC 4114(b)), and the Indian Health Service, 42 CFR § 137.379, EPA does not have statutory or regulatory authority to allow tribes to set their own prevailing market wage for construction projects funded with federal grants. There is nothing in the Department of Labor's DBRA regulations that indicates that tribal wage scales may be used in lieu of the Department of Labor's prevailing wage determinations.

However, the Department of Labor acknowledges that federally funded construction work **carried out by employees of tribal governments is not subject to DBRA**: "The Department has also considered work by Tribal governments using their own employees to be excluded from DBRA coverage in a similar manner and for the same reasons as work by the Federal agencies and instrumentalities and by State or local Recipients of Federal assistance. Under the final rule, the Department will continue to interpret DBRA coverage in this manner." (Footnote 172 of Preamble to DOL's August 2023 Final Rule Updating Davis Bacon Regulations).

7. Is DBRA compliance an allowable and allocable cost?
Yes. The cost associated with ensuring DBRA compliance is an allowable cost for Recipients and Subrecipients under GGRF and may be allocable as a Direct Cost to GGRF if certain requirements (described below) are met. Such Direct Costs would be deemed program administration activities for the Recipient or Subrecipient when those expenditures are reasonable and necessary for the implementation of Qualified Projects.

These costs must comply with requirements for allowability under 2 CFR Part 200, Subpart E including the provision in 2 CFR 200.403(d) on charging costs consistently as either direct or indirect as well as applicable provisions of 2 CFR Part 1500. Allowable Direct Costs include, but are not limited to, the procurement of a payroll reporting and compliance management software product to document and report DBRA compliance for all construction projects assisted under the award.

8. Will EPA be providing guidance regarding DBRA compliance and reporting? How will EPA ensure Disadvantaged Business Enterprises and Contractors in LIDACS have wealth creation opportunities consistent with DBRA compliance?
Yes. OGGRF intends to furnish Recipients and Subrecipients with additional material on DBRA compliance after awards are made. EPA recognizes the importance of LIDAC Contractor inclusion and wealth generation in this program, and welcomes future discussions on Technical Assistance opportunities related to DBRA that may be afforded under GGRF.

9. Will there be DRBA training specific to this program?
Yes. EPA intends to provide DBRA training specific to this program.

10. Is EPA the contracting agency responsible for collecting DBRA-related payroll reports?
No, EPA is not the 'contracting agency.' The Recipient or Subrecipient providing the Financial Assistance and executing the Contract for construction is the 'contracting agency.' 29 CFR Part 3 defines 'contracting agency' as a "State, local government or instrumentality, or other similar entity, that enters into a Contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, for a

project subject to the Davis-Bacon labor standards." EPA interprets the Recipient or Subrecipient under NCIF & CCIA to fall under the definition of 'other similar entity.'

11. What needs to be included in the DBRA-related reports?
It is important to draw a distinction between the DBRA reporting that construction Contractors must submit to the 'contracting agency' (Recipient or Subrecipient) versus the summary DBRA reporting that the Recipient will submit to their EPA Project Officer on a semi-annual basis as part of the performance reports.

In its capacity as the 'contracting agency', the Recipient (or Subrecipient, if the Subrecipient is the contracting agency) is required to collect and review the weekly certified payrolls and "Statement of Compliance" submitted to it by the prime Contractor. This review should verify compliance with DBRA, including ensuring the use of the correct wage rate determination, proper work classification, number of hours worked, and hourly rate of pay for each employee on a project. Additionally, the Recipient and any Subrecipient are responsible for maintaining organized, accessible records of all weekly certified payrolls (including the requirement to preserve such records for a minimum of 3 years after project completion).

Separately, on a semi-annual basis, the Recipient is responsible for aggregating select information from weekly certified payrolls for all covered projects under its program (i.e., financed by the Recipient and Subrecipients) and reporting them to EPA.

Aggregated by month and DBRA construction type ('Residential' or 'Business'):

1. Total number of projects,
2. Total number of workers,
3. Total hours worked,
4. Rate of pay (per worker median),
5. Share of workers above DBA prevailing wage.

12. Can a single consultant be paid by multiple lenders financing a single project using federal funds from different programs to support compliance against Davis-Bacon Act and BABA requirements?
Yes. Under 2 CFR 200.318(e), EPA encourages Recipients to procure common services in an efficient manner. However, please note that the acquisition of the consultant's services must comply with the requirements (e.g., competitive procurement requirements for procurement Contractors, limits on compensation for individual consultants) and that the requirements for Davis-Bacon and BABA may be different under this program than for other federal programs. Compliance with another program's implementation of the Davis-Bacon Act or BABA requirements does not mean compliance for the purposes of the Greenhouse Gas Reduction Fund programs. For example, Section 314 of the Clean Air Act is a statute for Davis-Bacon Act labor standards that is unique to the Clean Air Act and may be different than other statutes.

13. Is DBRA compliance training for Contractors an allowable and allocable cost? If so, could it be considered a Market-Building Activity, as opposed to a Program Administration Activity?
Yes. The cost associated with training Contractors for DBRA compliance is an allowable cost for Recipients and Subrecipients under GGRF and may be allocable as a Direct Cost to GGRF if certain requirements (described below) are met. Such Direct Costs would be deemed Market-Building Activities for the Recipient or Subrecipient if the definition of Market-Building Activities are met within the terms and conditions, which include the following three criteria: "(1) build the market for financeable Qualified Projects, (2) are not tied directly to Qualified Projects the Recipient intends to finance, and (3) are

necessary and reasonable for the deployment of Financial Assistance to Qualified Projects." EPA anticipates that DBRA compliance training for Contractors may meet this definition.

Note that these costs must comply with requirements for allowability under 2 CFR Part 200, Subpart E including the provision in 2 CFR 200.403(d) on charging costs consistently as either direct or indirect as well as applicable provisions of 2 CFR Part 1500.

14. If GGRF funds are braided with non-EPA funds (e.g. CDBG, DOE preWx, local government funding), do all funds need to follow DBRA? Or just those coming from GGRF?

Many projects funded by GGRF will have multiple sources of funding. EPA confirms that DBRA labor standards would apply to all construction work undertaken on a Qualified Project that is assisted by GGRF funds, even if that construction work is funded by both GGRF and non-GGRF funds, or if the GGRF funding only pays for non-construction activities on a project that includes construction. Consistent with other Federal programs, EPA applies the Purpose, Time, and Place (PTP) test to define the scope of a project. This ensures that projects are not intentionally separated into pieces as an attempt to avoid DBRA compliance. As an example, if GGRF funds provide $1 to a Qualified Project involving construction work, as defined under **29 CFR Part 5**, that also receives non-federal funds to ensure the completion of the same project, DBRA would apply to all construction work necessary to complete that project if the PTP test is met..

15. Can EPA provide additional detail/context on DBRA applicability by type of Financial Assistance?

The many financial products permitted under GGRF will vary across several dimensions. For example, some of these products can be directly linked to specific construction projects, while others will offer only indirect links or no link at all. Projects funded by GGRF will also be in diverse stages of project development. For example, some projects will be pre-construction (e.g., direct project loan), and some will be post-construction (e.g., refinancing, loan purchasing). Both the directness of the relationship between the federal Financial Assistance and the construction project as well as the specific circumstances of the project inform the applicability of DBRA requirements to various financial products.

To implement DBRA consistently across the program given this diversity, GGRF Recipients and Subrecipients must adhere to the below two principles to determine which financial products under GGRF are subject to DBRA requirements:

1. *Linkage to identifiable construction projects* – DBRA applies to forms of Financial Assistance that fund specific construction projects.
2. *Timing* – DBRA applies to construction projects that were not completed prior to the execution of the documentation governing the use of the GGRF Financial Assistance product.

EPA is providing the following illustrative guidance on this topic to assist GGRF selectees (note that not all financial products are eligible under all GGRF programs):

Financial Product	DBRA Applicability	Characteristics
Direct loans or loan guarantees for construction project	Yes	• Timing: pre or during construction • Linkage: direct to construction project
Loan participation / syndicated agreement for construction project	Yes	• Timing: pre or during construction • Linkage: direct to construction project

Rebates for construction projects **Applicable only to SFA*	Yes	• Timing: varies • Linkage: direct to construction project
Equity investment into a construction project* **Applicable only to NCIF & CCIA*	Yes	• Timing: pre or during construction • Linkage: direct to construction project
Purchases of construction loans for projects that had not commenced or were in-process on the date the documentation governing the transaction was executed* **Applicable only to NCIF & CCIA*	Yes	• Timing: pre or during-construction • Linkage: direct to construction project
Interest rate buydowns or refinancings of construction loans (where the underlying projects had not commenced or were in-process on the date the documentation governing the transaction was executed)	Yes	• Timing: pre or during-construction • Linkage: direct to construction project
Purchases of completed construction loans (project completed prior to the date the documentation governing the transaction was executed)* **Applicable only to NCIF & CCIA*	No	• Timing: post-construction • Linkage: direct to construction project
Interest rate buydowns or refinancings of construction loans (where the underlying projects were completed prior to the date the documentation governing the transaction was executed)	No	• Timing: post-construction (construction completed after award obligation) • Linkage: direct to construction project
Loan Loss Reserves or Loan Guarantees for pools of 3rd party lenders or Financial Assistance providers (where there is no direct link to specific construction projects)	No	• Timing: varies • Linkage: indirect to construction project
Equity investment into a company that may fund future construction projects, but is not required to fund construction projects and may use proceeds for other purposes* **Applicable only to NCIF & CCIA*	No	• Timing: pre-construction • Linkage: indirect to construction project

16. What DBRA compliance obligations do Program Beneficiaries have?

Program Beneficiaries do not have DBRA compliance obligations. However, in their role as the contracting agency, as defined under 29 CFR Part 3, Recipients and Subrecipients must ensure that

construction work undertaken as a result of Financial Assistance provided to Program Beneficiaries complies with DBRA labor standards.

Build America, Buy America

1. Will EPA be providing additional guidance for Recipients and Subrecipients with regards to what types of Qualified Projects constitute "infrastructure" for purposes of BABA?
Yes, EPA will provide further BABA guidance for GGRF programs as soon as possible. We expect this guidance will include additional examples of BABA applicability for different project types.

In the interim, selectees should presume that BABA applies to all Qualified Projects that meet the definition of "infrastructure", according to regulations and OMB guidelines. Selectees can find more information at 2 CFR 184, M-24-02, and existing EPA FAQs at: https://www.epa.gov/cwsrf/build-america-buy-america-baba.

In particular, EPA highlights the following statement in OMB's guidance M-24-02: "projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA." Based on this guidance, EPA is confirming that BABA does **not** apply to projects involving private homes.

2. Will there be BABA training specific to this program?
Yes. EPA intends to provide BABA training specific to this program.

3. What exactly is included and not included in the definition of "private home[s] for personal use"?
EPA does not have further guidance at this time on the definition of "private home[s] for personal use." We will provide additional guidance when possible. As previously discussed, we understand that there are questions on the definition of private homes.

4. Can EPA provide additional detail/context on BABA applicability by type of Financial Assistance?
GGRF Recipients and Subrecipients must adhere to the below two principles to determine whether financial products under GGRF are subject to BABA (which are similar, but slightly distinct from the principles established for DBRA applicability by Financial Assistance type):

1. *Linkage to identifiable construction projects* – BABA applies to forms of Financial Assistance that fund specific infrastructure projects.
2. *Timing* – BABA applies to infrastructure projects that were not completed before the date award funds are obligated.

EPA is providing the following illustrative guidance on this topic to assist GGRF selectees (note that not all financial products are eligible under all GGRF programs):

Financial Product	BABA Applicability	Characteristics
Direct loan or loan guarantee for infrastructure project	Yes	• Timing: pre-construction • Linkage: direct to infrastructure project
Loan participation / syndicated agreement for infrastructure project	Yes	• Timing: pre-construction • Linkage: direct to infrastructure project
Rebates for infrastructure projects **Applicable only to SFA*	Yes	• Timing: varies • Linkage: direct to infrastructure project

Equity investment into an infrastructure project* **Applicable only to NCIF & CCIA*	Yes	• Timing: pre-construction • Linkage: direct to infrastructure project
Purchases of infrastructure loans for projects that had not commenced or were in-process on the date of award obligation* **Applicable only to NCIF & CCIA*	Yes	• Timing: pre or during-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Purchases of completed infrastructure loans (project completed after the date of award obligation)* **Applicable only to NCIF & CCIA*	Yes	• Timing: post-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Purchases of completed infrastructure loans (project completed prior to the date of award obligation)* **Applicable only to NCIF & CCIA*	No	• Timing: post-construction (construction completed prior to award obligation) • Linkage: direct to infrastructure project
Interest rate buydowns or refinancings of infrastructure loans (where the underlying projects had not commenced or were in-process on the date of award obligation)	Yes	• Timing: pre or during-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Interest rate buydowns or refinancings of infrastructure loans (where the underlying projects were completed after the date of award obligation)	Yes	• Timing: post-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Interest rate buydowns or refinancings of infrastructure loans (where the underlying projects were completed prior to the date of award obligation)	No	• Timing: post-construction (construction completed prior to award obligation) • Linkage: direct to infrastructure project
Subsidies for subscriptions to existing (i.e., already built, but after date of award obligation) community solar assets* **Applicable only to SFA*	Yes	• Timing: post-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Loan Loss Reserves or Loan Guarantees for pools of 3rd party lenders or Financial Assistance providers (where there is no direct link to specific infrastructure projects)	No	• Timing: varies • Linkage: indirect to infrastructure project
Subsidies for subscriptions to existing (i.e., already built, prior to date of award obligation) community solar assets* **Applicable only to SFA*	No	• Timing: post-construction (construction completed after award obligation) • Linkage: direct to infrastructure project
Equity investment into a company that may fund future infrastructure projects* **Applicable only to NCIF & CCIA*	No	• Timing: pre-construction • Linkage: indirect to infrastructure project

5. Does the EPA Small Projects General Applicability Waiver apply to projects funded under GGRF

EPA's Small Project General Applicability Waiver expressly applies to "assistance agreements or Subawards under assistance agreements are less than $250,000" (p.3). The waiver cannot be interpreted to waive small projects financed via Participant Support Costs or Acquisitions of Intangible Property below $250,000 where the value of the award or Subaward financing those projects exceeds $250,000. Therefore, EPA's Small Project General Applicability Waiver is unlikely to apply to any Selected Applicants or Subrecipients under NCIF, CCIA, or SFA.

6. When will EPA be able to provide additional details on the definition of "public infrastructure" as it relates to BABA applicability under GGRF?

OGGRF continues to work on finalizing guidance, including examples of BABA applicability across common Qualified Projects expected under NCIF, CCIA, and SFA, with internal and external stakeholders and will include that guidance in an FAQ over the next few weeks. OGGRF appreciates selectee patience on this foundational issue.

Transfers of Funds with Affiliated Entities

1. What steps need to be taken to enable a Recipient or Subrecipient to transfer funds to Affiliated Entities?

The main step required prior to transferring funds to Affiliated Entities (or engaging in transactions that otherwise involve Affiliated Entities, such as co-investing with Affiliated Entities) is to have a plan to eliminate, neutralize, mitigate or otherwise resolve organizational conflicts of interest that are associated with such transfers, in compliance with 2 CFR 200.318(c), EPA Final Financial Assistance Conflict of Interest Policy (COI Policy), and the Conflict of Interest provisions of the NCIF and CCIA Programmatic Terms and Conditions that cover transfers of funds (collectively referred to as the "COI Standards").

The Recipient (or Selected Applicant, at this stage) will need to develop a "COI Mitigation Plan for Transfers of Funds with Affiliated Entities" that is reviewed and approved by the EPA Award Official. The plan must describe how organizational conflicts of interest will be eliminated, neutralized, mitigated or otherwise resolved in compliance with the COI Standards. In the unlikely event that there are no organizational conflicts, the Recipient must submit a document that identifies the types of transfers and explains why there are no actual or apparent conflicts of interest to be eliminated, neutralized, mitigated, or otherwise resolved in accordance with the COI Policy on the basis of existing internal controls. When developing such a plan, the Recipient should consider:

1. How to structure governance on decisions related to the transfers of funds (including not just the decision to transfer funds but also oversight of funds transferred) from the Recipient to the Affiliated Entity such that organizational conflicts of interests are eliminated, neutralized, mitigated or otherwise resolved;
2. How to ensure appropriate documentation of the plan, including integration into organizational policies and procedures; and
3. How to ensure that standards of conduct and similar personnel polices or internal controls comport with the personal Conflict of Interest restrictions in the COI Standards.

The plan should be submitted no later than Wednesday, May 29 (the deadline for the final version of the workplan and budget) and will be reviewed by EPA staff, which may then meet with you, and if appropriate your attorneys, regarding required revisions. Staff attorneys from EPA's Office of General Counsel are available to answer questions from your attorneys as well.

EPA will not approve a Subrecipient's plan. However, EPA expects that the Recipient will have a plan reviewed and approved by the EPA Award Official, with the requirements of the plan "flowing down" to Subrecipients, prior to Subrecipients making transfers of funds to Affiliated Entities as provided in 2 CFR 200.332(a)(2), which is implemented in the Establishing and Managing Subawards General Term and Condition and is supplemented by the Flow-Down Requirements Programmatic Term and Condition.

Note: The proposal must be limited to organizational conflicts of interest. Under no circumstances will EPA approve transactions tainted by personal conflicts of interest (e.g., purchases of intangible personal property in situations described in 2 CFR 200.318(c)(1)).

2. Are transfers of funds between Affiliated Entities treated similarly to transfers of funds between non-Affiliated Entities?

Not necessarily. Transfers of funds to non-Affiliated Entities are not subject to the organizational Conflict of Interest provisions of the COI Standards, since those transfers are presumed to be arms-length. The personal Conflict of Interest restrictions of the COI Standards do apply, as do the standards for

determining allowable grant costs in 2 CFR 200.403 and 2 CFR 200.404, which emphasize the importance of sound business practices.

3. How will transfers of funds between Affiliated Entities be characterized in the grant regulations?
Transfers of funds between Affiliated Entities will either be characterized as Subawards, procurement contracts, or Participant Support Costs, depending on the nature of the transaction. As noted above, all transfers of funds are subject to the COI Standards.

- *Subawards:* Subawards in the form of Subgrants (i.e., Subawards to Coalition Members) must comply with the EPA Subaward Policy and the EPA Financial Assistance Conflict of Interest Policy. Subawards in the form of loans are not subject to the EPA Subaward Policy, but must comply with *4. Additional Requirements* of the Financial Risk Management Programmatic Term and Condition, which includes coverage on conflicts of interest.
- *Contracts:* Contracts must comply with the Procurement Standards in 2 CFR Parts 200 and 1500, including the organizational Conflict of Interest requirements in 2 CFR 200.318(c).
- *Participant Support Costs:* Participant Support Costs must comply with the EPA Guidance on Participant Support Costs as well as with 4*. Additional Requirements* of the Financial Risk Management Programmatic Term and Condition, which includes coverage on conflicts of interest.

4. What is the primary challenge with complying with the requirements on these transfers of funds to Affiliated Entities?
EPA anticipates that the main challenge with complying with transfers of funds between Affiliated Entities are the organizational conflicts of interests that such transfers present. Organizational conflicts of interest must be eliminated, neutralized, mitigated or otherwise resolved for such transfers to occur.

Each of the types of transfers of funds present different but related organizational conflicts of interests.

- *Subawards:* When a *Pass-through entity*, as defined in 2 CFR 200.1, makes a *Subaward*, as defined in 2 CFR 200.1, the pass-through entity is responsible for implementing the requirements of 2 CFR 200.332 *Requirements for pass-through entities*. The pass-through entity may have difficulty monitoring and overseeing a Subrecipient that is an Affiliated Entity.
- *Contracts:* A *Contract*, as defined in 2 CFR 200.1, must comply with 2 CFR 200.318 *General procurement standards*, including 2 CFR 200.318(c)(2) covering conflicts of interest. The Recipient or Subrecipient procuring the Contractor may have difficulty executing a fair, competitive procurement process that involves one of its Affiliated Entities.
- *Participant Support Costs:* When a Recipient or Subrecipient provides Financial Assistance in the form of *Participant Support Costs*, as defined in 2 CFR 200.1 and expanded upon in 2 CFR 1500.1(a), the Recipient or Subrecipient is responsible for ensuring compliance with the statutes, regulations, and terms and conditions of the award agreement. Unlike a Subaward, the responsibility for compliance typically falls with the Recipient or Subrecipient rather than the Program Beneficiary (i.e., the entity receiving the Participant Support Costs). The Recipient or Subrecipient may have difficulty ensuring proper oversight, management, and accountability of Program Beneficiaries when those Program Beneficiaries are Affiliated Entities.

Note: EPA presumes that Recipient and Subrecipient standards of conduct for employees and internal controls cover potential personal conflicts of interest in transactions between Affiliated Entities. Further, as noted above, for transfers of funds between Affiliated Entities to be allowable grant costs, the sound business practice provisions of 2 CFR 200.403 and 2 CFR 200.404 will be relevant.

5. How detailed should Selected Applicants be regarding transfer of funds to Affiliated Entities within the workplan?
The types of transfers of funds to Affiliated Entities that Selected Applicants plan to execute should be clearly reflected in the workplan such that they can be subject to EPA's review and approval through the awards process, provided conflicts of interest are appropriately eliminated, neutralized, mitigated or otherwise resolved.

6. EPA asked for a "COI Mitigation Plan for Transfers of Funds with Affiliated Entities" that would mitigate organizational conflicts of interest. What if there are personal conflicts of interest that arise in these transfers?
It is highly unlikely that a selectee or Recipient will be able to effectively eliminate, neutralize of mitigate personal conflicts of interest given the concerns EPA may have over the appearance of those types of COIs even with recusals. We are, however, willing to consider such COI Mitigation Plans with that understanding.

7. Should the "COI Mitigation Plan for Transfers of Funds with Affiliated Entities" cover Subrecipients?
Yes. If the Selected Applicant is seeking to include Subrecipients transferring funds with Affiliated Entities in its workplan, then the COI Mitigation Plan should cover Subrecipient transfers of funds with their Affiliated Entities.

Reporting

1. Under 2 CFR 200.329, quarterly and semi-annual reporting must be submitted within 30 days of the end of the reporting period. For transaction- and project-level reporting, will there be a "lagged" approach that provides additional time for Recipients to conduct quality assurance with the data?
Yes. EPA is implementing a "lagged" approach that provides additional time for Recipients to conduct quality assurance with the data. This "lagged approach" will provide approximately 120 days, rather than 30 days, for the Recipient to conduct quality assurance with the data prior to submission to EPA.

Recipients under the National Clean Investment Fund will provide transaction- and project-level reporting quarterly but cover transactions originated in the preceding quarter. For example, if the quarterly reporting period ends September 30, Recipients will provide information on transactions originated from April 1 to June 30 rather than from July 1 to September 30.

Recipients under the Clean Communities Investment Accelerator will provide transaction- and project-level reporting semi-annually but cover transactions originated in the preceding two quarters. For example, if the quarterly reporting period ends December 31, Recipients will provide information on transactions originated from April 1 to September 30 rather than from July 1 to December 31.

2. Will Recipients be able to request an extension of the 30-day requirement for submission of quarterly and semi-annual reports?
Yes. EPA will update the terms and conditions to enable the Recipient to submit a request to their EPA Project Officer for an extension to 60 days after the end of the reporting period to submit reports. A request may be made once, and it must include (1) an explanation of the Recipient's unique circumstance as to why they need the extension; (2) the length of the extension (no more than 60 days after the end of the reporting period); and (3) the duration of the extension (up to the entire Period of Performance).

3. When does EPA expect the reporting instruments to be finalized, as authorized through an OMB-approved Information Collection Request (ICR)?
EPA plans to share the up-to-date reporting instruments, including the supporting data structures and data dictionary, in advance of the instruments being finalized and approved through the ICR. EPA does not have an anticipated date for when the instruments would be finalized and approved through the ICR.

4. What will be expected of Recipients to comply with EPA Order 1000.33, U.S. EPA Policy for Evaluations and Other Evidence-Building Activities?
Evaluation requirements are not specifically outlined in terms and conditions to allow Recipients flexibility in finalizing evaluation and evidence-building plans. The NOFOs clearly state expectations that Recipients conduct evaluations. Evaluation or evidence building work carried out by Recipients must comply with EPA Order 1000.33, U.S. EPA Policy for Evaluations and Other Evidence-Building Activities. EPA's Evaluation Officer intends to engage Contractor support for developing resources related to planning GGRF evaluations and evidence-building. The Evaluation Officer will make these resources available to Recipients to assist with their own evaluation and evidence-building activities; use of these resources by Recipients will be optional.

Other

1. Does EPA have existing FAQs on Subawards?
Yes. EPA has broadly applicable FAQs on Subawards available here.

2. Should Selected Applicants cc Project Officers on communications with EPA's Office of Grants and Debarment related to the Administrative Capability Assessment?
There is no need to cc Project Officers on communications with EPA's Office of Grants and Debarment (OGD) related to the Administrative Capability Assessment or to send Project Officers the final set of documents sent to OGD related to the Administrative Capability Assessment. As mentioned previously, while EPA's Office of the Greenhouse Gas Reduction Fund collected the initial documents as part of the Administrative Capability Assessment, those initial documents have been passed along to OGD—and OGD will reach out to Selected Applicants directly with any issues. However, your Project Officer is monitoring progress with the Administrative Capability Assessment to track toward completion prior to time of award.

3. Can a Selected Applicant submit an incomplete workplan and budget on Monday, May 13th?
EPA is asking for complete workplans and budgets from all Selected Applicants by Monday, May 13th such that we can be in a position to make awards by early July. Selected Applicants will have a chance to revise their workplan and budget in the end of May. Similarly to the initial applications, Selected Applicants will need to make assumptions to submit the workplans and budgets. EPA will work with Selected Applicants to understand how new information (such as feedback from the market on product uptake) influences options laid out in workplans and budgets.

4. When does EPA anticipate the administrative capability assessment, which is being conducted in accordance with EPA Order 5700.8: EPA's Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards, will be completed?
EPA anticipates that the administrative capability assessment will be completed several weeks prior to awards being made. While the administrative capability assessment does not technically need to be completed prior to award, it does need to be completed to enable Recipients to access grant funds through the Automated Standard Application for Payments (ASAP) after the award is made. EPA encourages Recipients to be responsive to the EPA Office of Grants and Debarment, which is conducting the assessment, and to let the EPA Project Officer if there are any roadblocks that arise as this process is completed.

5. Could award funds be used as a non-federal match for other federal programs?
Generally no, since as provided in 2 CFR 200.306(b)(5) funds from one federal grant may not be used as cost share on another grant unless there is specific authority in a federal statute authorizing that practice. There is no such authority in Section 134 of the Clean Air Act. An example of a statute that does allow federal grant funds as cost share is section 105 of the Housing and Community Development Act of 1974 which authorizes HUD's Community Development Block Grant program. Whether award funds could be used in this way is dependent on the requirements of the other federal programs, so EPA encourages Recipients to consult the relevant federal programs directly.