

Subrecipient Relationships Under the Uniform Guidance

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What is a pass-through entity?

Definitions

- 200.74, **Pass-through entity** - non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
- 200.93, **Subrecipient** - a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.
- 200.23, **Contractor** (replaces term “vendor” (used in A-133)) – means an entity that receives a contract.

Types of Grant Agreements

- 200.201, Pass-through entity must decide on the appropriate instrument for the Federal Award:
 - Grant agreement
 - Cooperative agreement
 - Contract

Fixed Amount Awards

- Fixed amount awards (New) (See 200.332 and 200.45)
 - Requires prior approval from Federal awarding agency
 - Payments are based on meeting specific requirements of the Federal Award
 - Accountability is based on performance and results
 - Award amount is negotiated using cost principles as a guide (Up to Simplified Acquisition Threshold (currently \$150,000))
 - No governmental review of the actual costs incurred
 - Significant changes (i.e., principal investigator, project partner or scope) must receive prior awarding agency written approval

Determination of Nature of Funding

200.330

- * A Pass-through entity must make a case-by-case determination as to whether each agreement casts the party as a subrecipient or contractor. Look at the nature of the relationship. It does not matter what the agreement is called.

<u>Subaward</u>	<u>Contract</u>
<ul style="list-style-type: none">■ Allowable activities based on applicable statute, local plan, State rules■ Management rules<ul style="list-style-type: none">■ 2 CFR Part 200; and■ State law/policies and procedures	<ul style="list-style-type: none">■ Allowable activities based on terms and conditions of contract■ Management rules<ul style="list-style-type: none">■ Terms of the contract; and■ State contract law

Subaward vs. Contract

- * Subrecipient 200.330(a)
 - * Determines who is eligible to participate in a federal program
 - * Has its performance measured against whether the objectives of the federal program are met
 - * Is responsible for programmatic decision making
 - * Is responsible for complying with federal program requirements
 - * Uses the federal funds to carry out a program as compared to providing goods or services for a program

Subaward vs. Contract (cont.)

- * Contractor 200.330(b)
 - * Provides the goods and services within normal business operations
 - * Provides similar goods or services to many different purchasers
 - * Operates in a competitive environment
 - * Provides goods or services that are ancillary to the operation of the federal program
 - * Is not subject to compliance requirements of the federal program

Subgrant v. Contract (cont.)

How to Distinguish Between Them

- * A non-federal entity's designation of something as a contract or subgrant is not binding
 - * Auditors are required to use their professional judgment to determine the true nature of a document based on the previous criteria
- * Using proper terminology:
 - * Minimizes confusion;
 - * Ensures compliance with appropriate federal regulations; and
 - * Helps facilitate an effective audit.

When to Subgrant or Contract?

- * Generally, a program statute sets out when an entity can subgrant funds to eligible entities
- * When permitted, subgrants must be awarded to eligible entities.
 - * Defined in each federal program

Procurement by States

200.317

❖ Flexibility for States

- * Procurement of recovered materials (200.322)
- * Contract provisions (200.326, Appendix II to Part 200)

❖ All other nonfederal entities follow policies and procedures under Section 200.318-200.326.

Suspension and Debarment

- ❖ Cannot contract with vendor who has been suspended or debarred
 - ❖ Excluded Parties List System in the System for Award Management (SAM)
 - ❖ 2 CFR Part 180 (OMB Debarment Suspension Rules)
 - ❖ Appendix II(H)

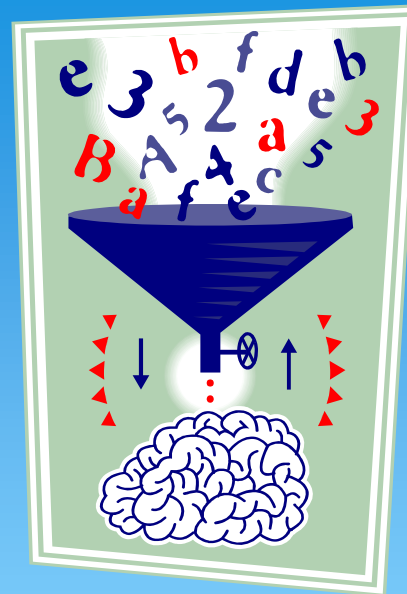
Suspension and Debarment

- ❖ For contracts over \$25,000 you must verify that the person with whom you intend to do business is not excluded or disqualified.
- ❖ This MUST be done by either:
 - a. Checking SAM; or
 - b. Collecting a certification from that person; or
 - c. Adding a clause or condition to the covered transaction with that person.
- 2 CFR 180.220 and 180.300

* OMB/COFAR
shifted many new
responsibilities to
the pass-through



GAN – New Information Requirements



Specific Requirements for Pass-Through Entities (200.331(a))

- * Ensure that every subaward contains the following information relating to federal award identification (13 data points):
 1. Subrecipient name (must match the name associated with its unique entity identifier)
 2. Subrecipient unique entity identifier
 3. Federal Award Identification Number (FAIN)
 4. Federal Award Date

Specific Requirements for Pass-Through Entities (200.331(a)) (cont.)

5. Period of performance start and end date
6. Amount of federal funds ‘obligated by this action’
7. Total amount of federal funds ‘obligated to the subrecipient’
8. Total amount of the federal award
9. Federal award project description for FFATA purposes

Specific Requirements for Pass-Through Entities (200.331(a)) (cont.)

10. Name of federal awarding agency, pass-through entity, and contact official
11. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement
12. Whether the award is for “research and development”
13. The indirect cost rate

Specific Requirements for Pass-Through Entities (200.331(a)) (cont.)

- The pass-through must reference the requirements of the federal grant and any additional requirements imposed by the pass-through (e.g., identification of any required financial and performance reports)

(incorporated by reference)

Specific Requirements for Pass-Through Entities (200.331(a)) (cont.)

- An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government
- Appropriate terms and conditions concerning closeout of the subaward

Specific Requirements for Pass-Through Entities (200.331(a)) (cont.)

- * Pass-through must seek an assurance from subgrantees that access will be provided to records and financial statements

New Risk Management Requirements for Pass- Through Entities



Risk Assessment (200.331(b))

What is Risk?

- A. A game of global domination;
- B. The possibility that an event will occur and adversely affect the achievement of objectives;
- C. The potential of losing something valuable; or
- D. All of the above.



Risk Assessment (200.331(b))

- Pass-through must evaluate each subrecipient's risk of non compliance (federal statute/regulations/terms of award) for purpose of monitoring.
- Timing??

Risk Assessment (200.331(b))

- * Risk Factors, may include consideration of:
 1. Subrecipient's prior experience with the grant program
 2. Results of previous audits
 3. New personnel or substantially changed systems
 4. Results of federal monitoring

Specific Conditions 200.331(b) and 200.207

Pass-through must consider imposing additional federal award conditions, if appropriate, such as:

- Require reimbursement;
- Withhold funds until evidence of acceptable performance;
- More detailed reporting;
- Additional monitoring;
- Require grantee to obtain technical or management assistance;
or
- Establish additional prior approvals.

Risk Assessment for Contractors?

- * “Responsible contractors” (2 CFR 200.318(h))
- * Factors include:
 - * Contractor integrity
 - * Compliance with public policy
 - * Record of past performance
 - * Financial and technical resources
 - * *See also* Suspension and debarment

New Enhanced Monitoring/ Performance Metrics



Monitoring (200.331(d))

- * Pass-through must monitor its subrecipients to assure compliance and performance goals are achieved

Monitoring (200.331(d))

- * Monitoring must include:
 1. Review of financial and programmatic reports
 2. Ensuring corrective action
 3. Issue a “management decision” on audit findings

Performance Metrics 200.328(b)(2)

- Non-construction performance reports: pass-through must submit “performance reports” at least annually, using “OMB-approved government-wide standard information collections”

Measuring Performance: “Performance Metrics” 200.328(b)(2)

- * The performance reports must include:
 1. Comparing actual accomplishments to the objectives established by the federal award
 - a. Where the accomplishments of the federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful
 - b. If performance trend data is useful, federal awarding agency should include this as a performance reporting requirement

Measuring Performance: “Performance Metrics” 200.328(b)(2) (cont.)

2. The reasons why established goals were not met, if appropriate
3. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs
4. Significant developments, problems, delays, adverse conditions
5. Favorable developments

Recommendations for Monitoring Tools (200.331(e))

- Depending on assessment of risk, the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
 1. Training + technical assistance on program-related matters
 2. On-site reviews
 3. Arranging for “agreed-upon-procedures” engagements (described in 200.425 Audit Services)

Monitoring for Contractors?

- * Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract (200.318(b))

Audit Resolution (200.331(e))

- * Pass-through must verify all required subrecipients have single audits
- * Audit threshold \$750K (uniform grant guidance)
 - Alternative procedures for subrecipients below threshold



Audit Resolution (200.331(g))

- * Pass-through must adjust its own financial records based on audits monitoring, on-site reviews



Cooperative Audit Resolution (200.513)

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- ❖ Cooperative Audit Resolution: means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust and developing an understanding between the Federal agency and non-Federal entity 200.25.
 - ❑ Required for federal agencies
 - ❑ Recommended for pass-throughs

Enforcement (new for IHEs, Hospitals and Non-Profits)



Enforcement (200.331(h); 200.338)

- * Pass-throughs must consider taking enforcement action based on noncompliance, including:
 - * Temporarily withholding cash payments pending correction
 - * Disallowing all or part of the cost
 - * Wholly or partly suspending the award
 - * Recommending suspension/debarment to federal awarding agency
 - * Withholding further federal awards
 - * Other remedies that may be legally available

Termination (200.339)

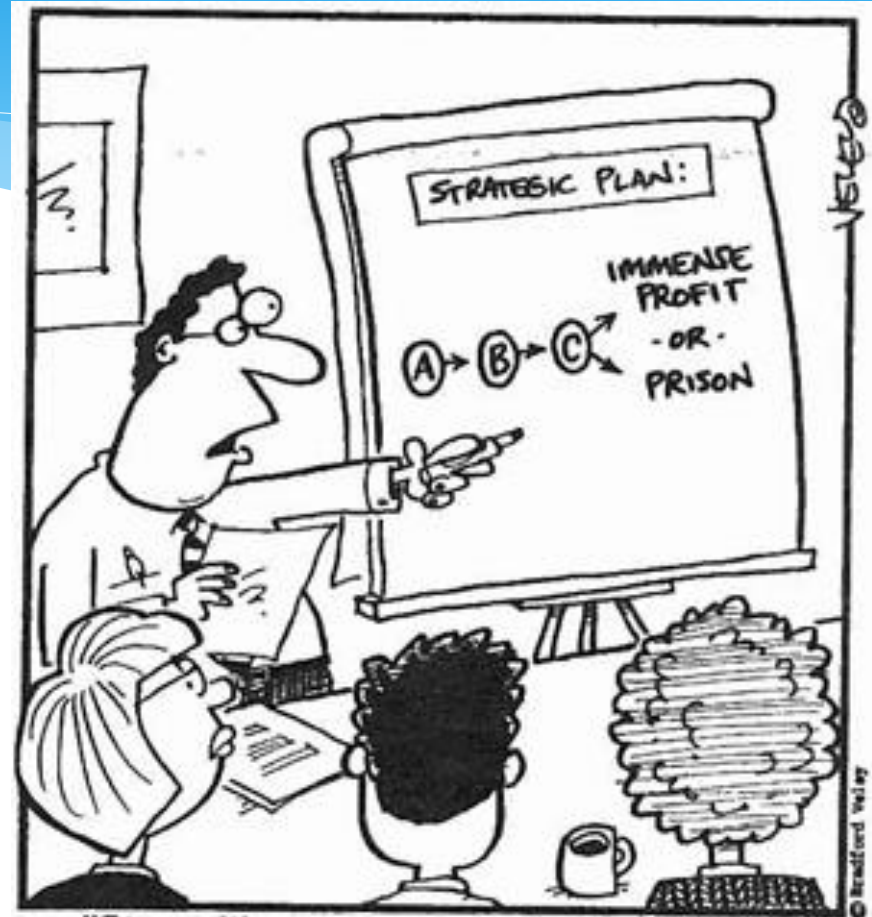
- * The pass-through may terminate the award for “cause” with notice and opportunity for hearing (200.340 and 200.341)



Compliance Supplement, Part 6: Internal Controls, Section M. Subrecipient Monitoring

- ▶ Written policies and procedures exist establishing:
 - ▶ Communication of Federal award requirements to subrecipients
 - ▶ Responsibilities for monitoring subrecipients
 - ▶ Process and procedures for monitoring
 - ▶ Methodology for resolving findings
 - ▶ Requirements related to subrecipient audits, including appropriate adjustment of pass-through's accounts

Why Do We Have Internal Controls?



"Stay with me now, people, because in step C, things get a bit delicate."

No. 1 Indication there is a Compliance Problem...

*“Because we’ve always
done it that way.”*

Internal Controls Requirements

200.303 Internal controls.

The non-Federal entity **must**:

- a. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

Internal Controls Requirements (cont.)

200.303 Internal controls (cont.)

These internal controls should be in compliance with guidance in:

- * “Standards for Internal Control in the Federal Government”, issued by the Comptroller General of the United States, or
- * The “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

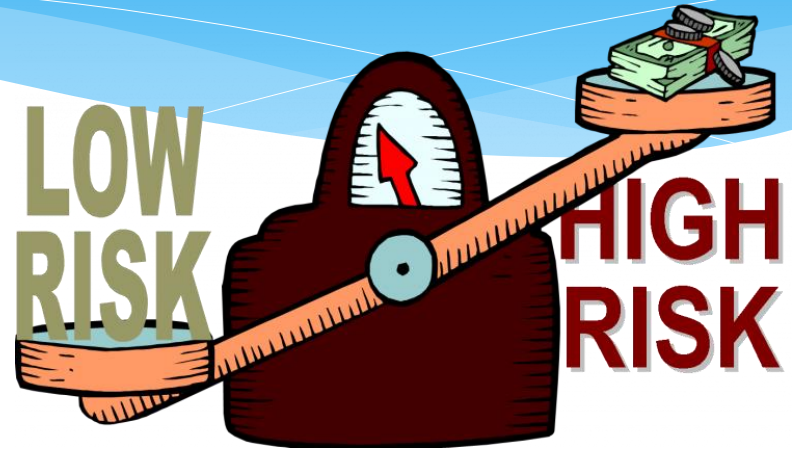
Internal Controls Requirements (cont.)

200.303 Internal controls (cont.)

- b. Comply with Federal statutes, regs, and the terms and conditions of the Federal awards.
- c. Evaluate and monitor the non-Federal entity's compliance with statutes, regs and the terms and conditions of Federal awards.
- d. Take prompt action when instances of noncompliance are identified including in audit findings.
- e. Take reasonable measures to safeguard protected personally identifiable info (PII) and other information designated or deemed sensitive

Internal Control Weaknesses

- * Magical Letters
- * Unsigned Forms
- * Automatic Signatures
- * Stolen Property
- * Employees in the News





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