

Subrecipient Risk Assessment and Monitoring Best Practices

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Annual Conference

Scott S. Sheffler, Esq.
Edward ("Ted") Waters, Esq.

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AGENDA

- I. Overview
- II. Before the Award
- III. Structuring the Award
- IV. Managing the Award
- V. Questions

PRELIMINARY NOTES ON CITATIONS

Throughout this presentation, we cite to the Uniform Guidance as promulgated at 2 C.F.R. Part 200.

If your financial assistance award is from HHS, your award is governed by HHS's implementation of the Uniform Guidance at 45 C.F.R. Part 75.

There are no material differences between the portions of Part 200 and Part 75 addressed in this presentation.

Overview

OVERVIEW

- I. Before the Award: Risk management in the Subrecipient relationship should start before the award is made
 - Make sure the sub knows what it is getting into
 - Risk assessment / evaluating subrecipient systems

- II. Structuring the Award: If you want rights to oversee the subrecipient, you have to put them in your agreement

- III. Managing the Award: The routine and “non-routine”
 - Routine oversight
 - Oversight mechanisms in special circumstances
 - Monitoring plans

- IV. Closing Out the Subaward: Managing the long-term risk; you have ongoing liabilities vis-à-vis the federal government.

Before the Award

WHAT THE REGS SAY

- If you are a State or Local Government, follow your applicable administrative statutes, regulations, and policies.
 - Nondiscrimination
 - State Administrative Procedure Act
- Ensure potential Subrecipient is not debarred or suspended. 2 CFR Part 180 (Nonprocurement Suspension and Debarment).
 - Note – Though not specifically required, use SAM for this.
- Evaluate the Risk Posed by the Subrecipient.
 - Pass-through entity will be held accountable for many acts of noncompliance on the part of the Subrecipient.

WHAT THE REGS SAY

- Obligation to Mitigate Risk:
 - PTEs must “[e]valuate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining . . . appropriate subrecipient monitoring . . .” 2 CFR § 200.332(b) (Requirements for PTEs).
- Note the Similarity to the Internal Controls requirement:
 - “The [NFE] must . . . [e]stablish and maintain effective internal control over the Federal award that provides reasonable assurance that the [NFE] is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. . .” 2 CFR § 200.303(a) (Internal Controls).

EXTENSION INTERNAL CONTROLS CONCEPT (RISK MANAGEMENT)

GAO Green Book:

Definition of an Internal Control System

OV1.04 An internal control system is a continuous built-in component of operations, effected by people, that provides reasonable assurance, not absolute assurance, that an entity's objectives will be achieved.

Example:
Navy Risk Management Matrix.

Source:
Navy Instruction on Operational Risk Management
OPNAVINST 3500.39C (2010)

Risk Assessment Matrix			PROBABILITY				
			Frequency of Occurrence Over Time				
			A Likely	B Probable	C May	D Unlikely	
SEVERITY	Effect of Hazard	I	Loss of Mission Capability, Unit Readiness or Asset; Death	1	1	2	3
		II	Significantly Degraded Mission Capability or Unit Readiness; Severe Injury or Damage	1	2	3	4
		III	Degraded Mission Capability or Unit Readiness; Minor Injury or Damage	2	3	4	5
		IV	Little or No Impact to Mission Capability or Unit Readiness; Minimal Injury or Damage	3	4	5	5
Risk Assessment Codes							
1 - Critical 2 - Serious 3 - Moderate 4 - Minor 5 - Negligible							

WHAT THE REGS SAY

- 2 CFR § 200.332 (b):
 - “Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:”
 - Subrecipient’s prior experience with similar awards (past performance)
 - Financial stability
 - Results of prior OMB Circular A-133/Subpart F audits
 - New personnel or changed systems
 - Direct federal monitoring on concurrent direct federal award

WHAT THE REGS SAY (GOOD IDEAS, NOT REQUIREMENTS)

- Risk Evaluation Considerations:
 - PTEs have flexibility, but should (as good practice) also consider the Federal Agency evaluation factors at 2 CFR § 200.205(c):
 - Financial Stability
 - Quality of management systems
 - History of performance
 - Audit reports (soon to be detailed info online at <https://harvester.census.gov/facweb/Default.aspx>)
 - Note: Most of FAPIIS info will be publicly available too (2 CFR § 200.211(b)).
 - Applicant's ability to effectively implement requirements imposed on NFEs (redundant with above).

RISK ASSESSMENT THOUGHT PROCESS

- Fundamental Simple Questions:
 - Does the sub already receive direct federal funding?
 - Does the sub already receive passthrough funds?
 - Do we have an existing relationship with the sub (as a federal grant subrecipient), and how are they doing?
- Let's Assume No Direct Funding or Prior Relationship:
 - What is the subaward for?
 - What are its inherent risks, in terms of the underlying activities as well as grant management requirements?
 - Does the potential sub appreciate the risk profile?
 - Are the sub's financial management systems adequate to manage the award (*i.e.*, cost reimbursement with expenses tracked per § 200.302)?
 - How does the sub track time and effort?
 - Does the subrecipient have (i) written procurement policy, and (ii) standards of conduct policy?

POSSIBLE TOOLS

- Federal Audit Clearing House
<https://harvester.census.gov/facweb/Default.aspx>
- EPLS (SAM)
<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>
- Financial Management System Review Tool
NSF Prospective New Awardee Guide, Form 358 (Appx. 3)
<https://www.nsf.gov/pubs/policydocs/pnag/pnag151.pdf>
- Reviewed financials
AICPA Educational Material
<https://www.aicpa.org/interestareas/privatecompaniespracticesection/qualityservicesdelivery/keepingup/what-is-the-difference-between-compilation-review-audit.html> (see “brochure”)

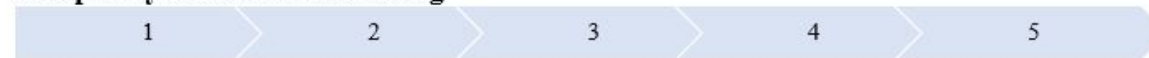
SAMPLE FORM

Subrecipient:

Subaward Description

Brief Description of Prime Award Activities	
Brief Description of Subrecipient's Role	

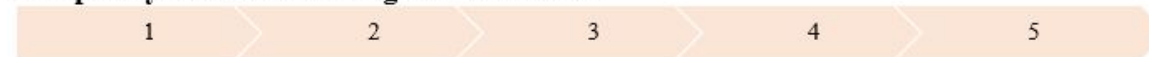
Complexity of Subaward Funding



1 = Technically straight-forward

5 = Technically complex, requiring highly specialized skills

Complexity of Subaward Programmatic Work



1 = Easy to manage (no match, no administrative cost caps, no special funding limitations)

5 = Difficult to manage (numerous issues of match, administrative costs, and special funding limitations)

SAMPLE FORM

Prior Experience with Subrecipient

Prior Subawards to Subrecipient	
Total Length of Prior Relationship with Subrecipient	
Prior Compliance Concerns (If Any)	

Suspension, Debarment, and Exclusion

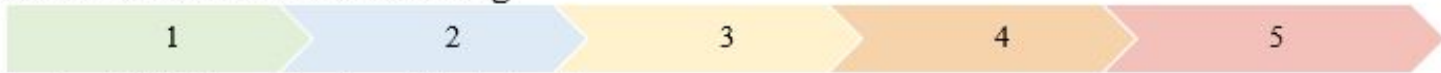
Database	Date (or N/A)	Result
SAM.gov EPLS check		
If federal funding is from an HHS “Health Care” Program, OIG Exclusion List check		

Subrecipient Capacity Indicators

Does Subrecipient Receive Direct Federal Awards?	Y / N
Does Subrecipient Perform Similar Awards to the Subaward Under Consideration?	Y / N
Assessment of Subrecipient Questionnaire (Consideration of Strengths and Weaknesses)	

SAMPLE FORM

Overall Risk Assessment Rating



1 = Low Risk Subaward to Low Risk Subrecipient
5 = High Risk Subaward to High Risk Subrecipient

Risk Mitigation Measures

For Overall Risk Ratings of 4 and 5, Tailored Measures to Mitigate Risk	
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Additional Comments (If Any):

Structuring the Subaward

PARTIES' INDIVIDUAL INTERESTS

2 CFR §200.101 –

All of the terms and conditions “Flow Down”:

(b)(1) Applicability to different types of Federal awards. The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D—Post Federal Award Requirements of this part, §§200.330 Subrecipient and contractor determinations through 200.332 Fixed amount Subawards, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

PARTIES' INDIVIDUAL INTERESTS

- PTE Perspective:
 - Accomplish the purpose of the federal award
 - Mitigate risk of Subrecipient causing compliance failure that affects PTE's award (*e.g.*, disallowance, specific award conditions, etc.)
- Subrecipient Perspective:
 - Acquire funding from the PTE
 - Comply with Terms and Conditions of the subaward
 - Minimize administrative burden

COMMON INTEREST CLARITY IN CORE TERMS

- That it is a subaward under a federal program
- Performance expectations
 - Purpose of award
 - Reporting requirements
 - Any performance metrics
 - Major ancillary compliance requirements (e.g., no transactions with suspended or debarred entities)
- Payment right
 - The nature of allowable and unallowable costs
 - Payment schedule and terms (e.g., advance payment)
 - Audit and reconciliation requirements / closeout

KEY SUBAWARD TERMS

Important:

1. Say it is a Subaward
2. Incorporating Prime Award Documents
3. Record Retention and Access
4. Governing Laws
5. Closeout

Really Important:

- A. Scope of Work / Scope of Project
- B. Payment Terms
- C. Financial and Administrative Management
- D. Insurance
- E. Oversight
- F. Termination

Plus:

- Special Considerations for Research Activities

SPECIFICALLY REQUIRED TERMS AND CONDITIONS 2 CFR § 200.332

Say it is a subaward

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

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

Provide details about the "prime" award, including information about the federal program (e.g., CFDA number)

SPECIFICALLY REQUIRED TERMS AND CONDITIONS

2 CFR § 200.332

- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

See key terms discussion above

- (4)
 - (i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:
 - (A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;
 - (B) The de minimis indirect cost rate.
 - (ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with [§ 200.405\(d\)](#).

SPECIFICALLY REQUIRED TERMS AND CONDITIONS

2 CFR § 200.332

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

In particular, consider:

- Timing
- Ongoing Reporting
- Ongoing Liability and Record Access

Managing the Subaward

WHAT THE REGS SAY

- 2 CFR § 200.332(b):
 - “Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:”
 - Subrecipient’s prior experience with similar awards (past performance)
 - Results of prior audits
 - New personnel or systems
 - Direct federal monitoring on concurrent direct federal awards
- 2 CFR § 200.332(d) – then “monitor” to extent “necessary”

WHAT THE REGS SAY

- 2 CFR § 200.332(d):
 - “Monitor” to extent “necessary” – must include:
 - Financial and Performance Reports
 - Follow-up on all deficiencies identified through audits, site visits, etc.
 - Issuing management decision on audit findings (*i.e.*, do your job in audit review)
- 2 CFR § 200.332(e):
 - Also may find useful:
 - Training and Technical assistance
 - On-site reviews
 - “Agreed Upon Procedures” audit services
- 2 CFR § 200.332(c):
 - Consider (when making award) specific award conditions

MONITORING METHODOLOGIES

- Monthly Invoices
 - Personnel costs
 - Supplies and equipment
 - Service contract costs

The routine invoice is your number one best tool – really put a lot of thought into your invoice format. What supporting data do you want?

- One Idea:
 - For personnel: Call for spreadsheet of all charged personnel, showing full cost (salary and fringe) by person, % effort, final line item, then total at the bottom.
 - For supplies and equipment: Call for spreadsheet showing item and total price.
 - For service contracts: Include on the supplies and equipment spreadsheet, but ask for a copy of the contract.

SAMPLE SUBAWARD INVOICE

SAMPLE INVOICE

(Letterhead)

Period Covered by Invoice: _____

Invoice Submission Date: _____

Personnel Expense (Personal Services Expense)					
Name	Invoice Period Salary	Invoice Period Fringe	Total	Percent FTE	Billed Amount
Personnel Total					



Other than Personal Services (“OTPS”) Expense		
Item	Description	Amount
OTPS Total		



Expense Type	Amount
Personnel	
OTPS	
Total	

Certification: Subrecipient hereby certifies that the expenses set forth above have been incurred in furtherance of its work under the subaward Agreement in relation to which this invoice is submitted. Subrecipient further certifies that the Personnel Expense amounts set forth above are supported by auditable documentation meeting the standards of 45 C.F.R. § 75.430. Signature: _____, Print: _____.

MONITORING PLANS

- A written Monitoring Plan is not specifically required by the Uniform Guidance.
- However, it is a very good idea, for three reasons:
 - If you have a standard document that you tailor to each subaward, it forces you and the sub to think about this stuff up front
 - You can incorporate it into the subaward via appendix, making your monitoring rights clear (from a legal standpoint) and facilitating a meeting of the minds about how the monitoring (at least routine monitoring) will occur.
 - When awarding agencies and auditors ask you to prove you are doing monitoring, it is a wonderful document to be able to show them.

RECENT HHS REAL LIFE EXAMPLE NORTHWESTERN UNIVERSITY

Northwestern (“NW”) received 229 NIH grants totaling more than \$268 million in FY15 and \$307 million in FY16. NW used a risk-based approach to subrecipient monitoring, assigning risk levels based upon:

- Size of subaward
- Size of subaward relative to subrecipient’s research portfolio
- Award complexity
- Prior experience with subrecipient
- Percentage of award passed down
- Subrecipient location or for-profit status
- Degree of external oversight by auditors or sponsoring agencies
- Sophistication of subrecipient’s administrative systems and operations

REAL LIFE EXAMPLE CONT'D

NW checked SAM for each subrecipient, for registration, exclusions, and any federal debts.

NW reviewed the FDP Financial Conflict of Interest (“FCOI”) Institutional Clearinghouse to determine compliance with PHS FCOI requirements.

229 of NW’s grants (\$447 million in value) contained subawards to other entities. OIG looked at 30 grants that had subrecipients.

OIG Found: “Although [NW] claimed allowable expenditures on subawards it awarded . . . it did not always perform required subaward risk assessments. For 24 of the 30 grants to subrecipients, [NW] did not perform a risk assessment on 1 or more.”

REAL LIFE EXAMPLE CONT'D

The finding was primarily driven by the fact that NW “categorized affiliates and FDP members as low risk solely because [NW]’s experience with these organizations was positive, and Federal awarding agencies had made awards to the organizations.”

According to the OIG: “Neither Federal statutes, regulations, nor the terms and conditions of subawards permit prime Federal award recipients to exempt affiliates, FDP members, or subrecipients from a risk assessment.”

The OIG recommended:

1. NW establish policies to perform risk assessments for affiliates, FDP members, and subrecipients; and
2. NW ensure the subrecipient risk assessments are performed on all subrecipients.

QUESTIONS?

Scott S. Sheffler, Esq.

ssheffler@ftlf.com

Edward (“Ted”) Waters, Esq.

ewaters@ftlf.com

Feldesman Tucker Leifer Fidell, LLP

1129 20th St. NW, 4th Floor

Washington, D.C. 20036

(202) 466-8960

www.ftlf.com

learning.ftlf.com