Subrecipient Monitoring: What Do Grantors Expect of Grantees?

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- She established My Grant Lawyer, PLLC.
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Disclaimer

- This presentation has been prepared as a service to the grants management community.
- This is designed to assist you in developing and implementing effective practices with respect to the terms and conditions of your federal awards and subawards.
- The materials are being issued with the understanding that the author is not engaged in rendering legal or other professional services.
- If legal advice or other expert assistance is required, the services of a competent professional should be sought.
Learning Objectives

- Know the definition of subrecipient
- Learn pass-through responsibilities
- Find out key terms for subrecipient agreements
- Analyze and assess subrecipient risk
- Discover subrecipient monitoring techniques
- Understand pass-through reporting requirements
- OMB Reforms affecting subrecipients
- Q & A Session
Grants and Cooperative Agreements Act of 1977
(31 U.S.C. Sec. 6301–6308)

- **Federal Government Award**
  - **Procurement**
    - If product or service for gov’t use
  - **Assistance**
    - If support or stimulation of activity
- **Grant**
  - If little or no government involvement
- **Cooperative Agreement**
  - If substantial government involvement
Flow of Federal Grant Funds

PRIME RECIPIENT of Grant or Cooperative Agreement or PASS-THROUGH ENTITY

VENDOR
If product or service obtained for carrying out the grant

Contract

SUBRECIPIENT
If support or stimulation of activity by another organization

Subaward
Subrecipient v. Vendor

- Determination Governed by OMB Circular A-133
- Document Determination
  - Create a Form to make determination
  - Keep with grant files
- Subjective determination
- Use judgment
- Consider each criteria
- Substance over form
Subaward

- Financial Assistance supporting entity
- Money or property
- Subrecipient award to lower tier subrecipients
- Administrative regulation defines
- Title of agreement not determinative
- Administrative Regulation applicable
- Cost Principles for type of entity applicable
- Indirect cost of each subrecipient
- Cost contract
Subrecipient

- Eligibility determinations
- Performance measured
- Programmatic decision making
- Compliance
- Essential to grant project
Vendor Contract

- Competitor provides good or service to others
- Ancillary but necessary
- Not subject to administrative regulations, cost principles, or terms of award
- Perform according to terms of contract
Pass Through Responsibilities

- Inform CFDA title and award number, name, award year
- Flow down requirements
- Monitor activities
- A-133 audit resolution
  - Exception for for-profit subrecipients
  - A-133-like audit
Pass Through Responsibilities

- Obtain proposal and budget
- Review financial and performance reports
- Resolve audit findings
Pre–Award Risk Assessment

- Develop questionnaire and certification form
- Assess subrecipient capabilities and prior grant experience
- Assess subrecipient’s familiarity with grant regulations
- Inquire as to financial accounting systems used by subrecipient
- Risk analysis will determine level of monitoring necessary by Prime Recipient
Meet and Greet

- Meet with your subrecipient at the beginning
- Include all flow-down requirements in your agreement and focus on those terms during your meeting
- Clearly define the relationship and expectations
- Develop a subrecipient agreement template with fill-in-the-blanks
Meet and Greet

- If subrecipient does not have policies and procedures, share yours
- Review accounting system
- What will be basis and frequency of payments
- State the governing law of agreement
- Inform subrecipient of your expectations regarding the monitoring methodologies
- Find mutually agreeable methodology to assure compliance

- **Terms and Conditions of the primary award**
  - Guidance documents whose requirements will also apply to subrecipients
  - Many program terms and conditions incorporated into award that must be included in subrecipient agreement
  - Include any prior approval requirements under the primary award
  - Incorporate Award Notice, Regulations, cost principles, special award terms, agency guidance

- Indemnification – subrecipient liable
- Renewal dependent on availability of grant funds
- Access of government to records
- National Policy Requirements
- Recordkeeping
Subrecipient needs written policies:
- Financial Management Standards
- Property Inventorying
- Procurement Standards
- Time and Effort
- Recordkeeping
Subrecipient Monitoring
Recommended Practices

- Tell Subrecipient that one of the most important things they can do is:

  DOCUMENT! DOCUMENT! DOCUMENT!
Why Subrecipient Monitoring?

- Stewardship and proper use of taxpayer dollars
- Regulatory requirement
- Financial and reputation risk
- Audit finding
What is Subrecipient Monitoring?

- Remote desk reviews
- On-site visits
- Ongoing assistance via communications
- Regular and consistently
- Address issues promptly
Risk Based Monitoring

- Assess probable adverse conditions
- The 3 P’s: Process, policies, procedures
- Internal controls in place
- Prior grant experience
- Personnel qualifications and experience
- Audit history
- Funding level
- Financial statement
Risk Based Monitoring

- Choose type
- Frequency
- What is to be reviewed
- Agreement
Remote Monitoring

- Lack of travel funds
- Desk Audit
  - Documentation Review
  - Ledger or spreadsheets
  - Expenditures and supporting documentation
- Document findings and corrective actions
- Teleconference exit interview
Periodic Documentation Review

- Financial Reports *plus*
- Request for one month or one quarter each year for the documentation supporting the financial report
Site Visit

- Request records
- Interview
- Assess internal controls
- Adequate documentation
- Procurement
- Time and Effort records
On-going Communication

- Set up regular conference calls
- Prompt review of reports and feedback
- Identify problems, resolutions
- Document interpretations of terms
- Request agency confirmation
- Amendments
- Expenditures to budget
- Enforcement
- Availability of funds
Subaward Reporting
Federal Funding and Accountability Transparency Act

- FFATA Regulations at 2 CFR 170
- Require data related to Federal financial assistance
- Public Access at http://usaspending.gov/
- User Friendly and Searchable by recipient and subrecipient name
- Back to 2006
- Effective October 2010

- Pub. L. 109-282
Federal Funding and Accountability Transparency Act

- See Webinars, FAQs and guidance at
  - http://usaSpending.gov
  - https://www.fpds.gov/help/index.jsp

- REGISTRATION: https://www.fsrs.gov/

- OMB Memorandum M-09-19
  - www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-19.pdf

- Pub. L. 109-282
Covers all Financial Assistance:
- Mandatory and Discretionary Grants
- Cooperative Agreements (not CRADAs)
- Additional funds added to award by amendment, renewal, continuation rises to $25,000
- Loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, other federal fund assistance

Agency includes in program announcement
Agency should not duplicate reporting
Prime Recipient Reports:
  ◦ For self and for first-tier subrecipients
  ◦ *Cannot delegate reporting to subrecipient*

Reports “subawards” not “vendor contracts”
  ◦ Supports substantive project or program

Subawards equal to or greater than $25,000

Not individuals
If subaward equal to or greater than $25,000
   ◦ Submit by end of month following the end of the month of recipient’s subaward to subrecipient

If subaward is less than $25,000, but then more funding added
   ◦ submit within one month when the amount reached $25,000

If initial subaward is greater than $25,000, but then funding is de-obligated
   ◦ continue to report!
Include FOREIGN recipients and subrecipients
Include states, local, tribal and universities, nonprofits and commercial for-profit orgs
Use DUNS numbers for Recipient and Subrecipient
Exclude individuals
Awards to entities that had a gross income, from all sources, of less than $300,000
Federal awards if reporting would disclose classified information
Information Required:
- Name of entity receiving award
- Amount of award
- Funding agency
- CFDA program number
- Program source
- Award Title
- Auditors should evaluate compliance
  - “good faith” effort to comply
  - Show emails, phone logs, screen shots
- Only see reports w/matching DUNS number
Information Required:

- Location of entity – congressional district
- Place of performance – congressional district
- Unique identifier of entity and parent
- FSRS uses [http://www.zip-codes.com/](http://www.zip-codes.com/) as the source of the Congressional District look-up table. The data set includes the 111th Congressional District alignment to the Zip+4 value
- If ERRORS: “Reopen” report and “Edit”
FFATA – Executive Compensation

- **PRIME RECIPIENT** Submits Compensation of subawardee
  - – Self and Subrecipient
- **Total compensation and names of top five executives IF:**
  - More than 80% of annual gross revenues from Federal government
  - More than $25 million annual Federal funds
  - Compensation information otherwise not available from:
    - Security Exchange Act
    - IRS 990
Executive means officers, managing partners, or any other employees in management positions

Compensation means salary, bonus, stock, and other for previous fiscal year, earnings under non-equity incentive plans

- Exclude life, health, hospitalization or medical if the same provided to all employees

Other compensation if exceeds $10,000
Consequences of Inadequate Monitoring

- Recipient bears **full responsibility** for its subrecipient
- Entire amount or certain cost disallowance
- Any disallowance of subrecipient funds is repaid by the recipient
- Government has no privity of contract
- Prime must collect from subrecipient
- Need to pursue collection against subrecipient
OMB Proposed Rule

- Super Circular clarifies recipient and subrecipient responsibilities
- Incorporates A-133 guidance and compliance supplement
- May ask agency to confirm your determination regarding vendor vs subrecipient
Subaward

- Subrecipient monitoring and management
  - “pass-through entity”

- Subrecipient and Contractor determinations
  - Uses OMB Circular A–133 criteria
  - Federal agencies may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.
  - Ask Agency to confirm your determination
Subaward Agreement must include:

- All required laws, regulations, guidance, Executive Orders
  - Administrative, national policy and program specific requirements
  - Requirements that pass-through needs to impose

- Indirect costs
  - Approved Federal indirect cost rate negotiated between subrecipient and federal government OR
  - Minimal indirect rate of 10% of Modified directs

- Auditors’ access to subrecipient’s records and financial statements

- Closeout instructions
Subaward

- **Monitor** financial and programmatic reports in accordance with
  - Follow up and take timely action on deficiencies
  - Issue management decision for audit findings

- **Evaluate risk of subawardees**
  - Previous audits
  - New subrecipient
  - New personnel or systems
  - Receives direct federal awards
Subaward

- Monitoring
- Onsite Reviews of sub’s operations
- Training and technical assistance
- Agreed-upon-procedures: .621 Selected Items of cost

- A-133 does not apply to For-Profits
  - Establish audits for commercial for-profit subrecipients
  - Use Subchapter G (A-133 audits) or develop own
Profits and Fees

- Increment above allowable costs
- May be paid to contractors
- May not be paid to recipient or subrecipient
Recipients and subrecipients will maintain records sufficient to detail the history of a procurement.
- rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Recipients and subrecipients may use time and material type contracts only
- (A) After a determination that no other contract is suitable, and
- (B) If the contract includes a ceiling price that the contractor exceeds at its own risk.
Property

- Report annually – *New*
  - on status of real property or if longer than 15 years, multi-year frequency
  - See Forms on OMB Website
- Include in subawards
- Federal share and fair market value
- Does not apply to vendors
- Electronic records okay
Indirect Costs

- Recognition of Federal Indirect Cost Rate!!!
  - Pass-through entities must recognize the federally established indirect cost rate
  - Agencies must accept negotiated indirect cost rates
  - Unless law or regulation requires otherwise
  - Agency head must notify OMB of deviation
Audit Threshold

- Raise threshold from $500,000 to $750,000
- Roughly 5,000 non-Federal entities expending less than $750,000
- Maintaining single audit coverage for 99% of funds currently covered
- If only one Federal program, elect to have a program-specific audit
- Auditee = recipient, subrecipient, contractor
  - Not contractor/vendor for goods and services
  - For-profit subrecipient: terms, pre-award audit, monitoring, post-award audit and see subrecipient monitoring
Limit testing to these areas:

- **A and B:** Allowable and unallowable Costs/Cost Principles
  - Reasonable, allocable, allowable
  - Incorporate Availability of funds
  - Incorporate Match

- **C. Cash Management**

- **E. Eligibility**

- **L. Reporting**

- **M. subrecipient monitoring**

- **N. Special tests and provisions**
Audit Reform – A–133 and A–50

- Reduce burdens on pass-through entities:
  - For subrecipients who receive direct federal funding
  - Cognizant agency will provide management decisions and prime recipient may accept or may issue their own decisions as appropriate

- What about publishing common rule on audit resolution procedures

- Other audits should be coordinated with A–133 audits
QUESTION AND COMMENTS?
Do you have a question that you would like answered during the Q&A session? Simply follow the instructions below.

To ask a question, please press *1 on your touchtone phone.

If you are using a speaker phone, please lift the receiver and then press *1.

If you would like to withdraw your question, press *1.
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