



# Basics of Subrecipient Monitoring

NCAP Annual  
Convention

August 28, 2025





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- Basics of Subawards
- Subaward v. Subcontract
- Pre-Award Risk Assessment
- Creating an Agreement
- Monitoring a Subrecipient
- Particular Issues



# **BASICS OF SUBAWARDS**

# Basics of Subawards

## What and When to Use?

- A subaward is an award provided by a pass-through entity to a subrecipient which it uses to contribute to the goals and objectives of the award
  - Subawards can assist a CAA in carrying out projects under its federal award
  - CAA might subaward:
    - If it lacks project-related expertise or capacity
    - To a subrecipient it thinks can better achieve program goals
    - If another subrecipient has existing infrastructure to run the program

# Basics of Subawards

## Flow of Funds



# Basics of Subawards

## Monitoring

- Monitoring is a continuous process that occurs:
  - Pre-award
  - When awarding
  - Post-giving the award

# Basics of Subawards



# Basics of Subawards

## Legal Framework of Subaward Process

- **Federal law**

- Authorizing statute and regulations of Federal award
- Federal appropriations act
- Uniform Guidance (2 C.F.R. Part 200)

- **State law**

- State program statute and regulations
- Any other statutes, rules, regulations, or other laws incorporated by reference in the above
  - E.g., restrictions on lobbying and political activity

- **Federal award agreement**

# **SUBAWARD V. SUBCONTRACT**

# What is the Relationship?

- Need to determine whether other entity is a **contractor** or **subrecipient** (2 CFR §§ 200.331– 333)
  - **Subrecipient** (subaward)
  - **Contractor** (subcontract)
- The **recipient** is always solely responsible to the federal government for the execution of the award

<b>Subrecipient (Subaward)</b>	<b>Subcontractor (Procurement)</b>
Funds used to carry out the federal program	Provides goods and services within normal business operations
Determines eligibility for assistance	Provides similar goods and services to many different purchasers
Performance measured according to federal program objectives	Performance measured according to contract terms
Responsible for program decision-making	Normally operates in a competitive environment
Responsible for adherence to federal program requirements	Not subject to program requirements, though may apply for other reasons
Implements program for public purpose, as specified in statute	Goods or services are ancillary to the operation of the federal program

# What is the Relationship

## Subrecipient

- Funds used to carry out federal program
- Determines eligibility
- Performance measured against federal program objectives
- Responsible for program decisions
- Must adhere to federal program requirements
- Implements program for public, statutory purpose

# What is the Relationship

## Contractor

- Provides goods/services within normal business operations
- Provides similar goods/services to multiple purchasers
- Performance measured against contract terms
- Normally operates in a competitive environment
- Not subject to program requirements automatically, but may apply for other reasons
- Goods/services provided are ancillary to operation of program

# Key Determination Points

- The substance of the relationship is more important than the form of the agreement
- The characteristics in the Uniform Guidance may not be present in all cases
- A pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract

*2 C.F.R. § 200.331*

# Rules Applicable to Subcontracts

- State laws (likely case law)
- Negotiated terms & conditions
- Standard terms & conditions
  - Contract terms required by Appendix II to the Uniform Guidance, 2 C.F.R. Part 200, as applicable
    - E.g., Davis-Bacon, Contract Work Hours and Safety Standards, Debarment and Suspension, Byrd Anti-Lobbying Amendment, etc.
- Funding-based contract terms

# Subaward v. Subcontract

A subcontractor's performance on a federally-funded contract will be measured according to federal program objectives.

**True**

**False**



# **PRE-AWARD RISK ASSESSMENT**

# Pre-Award Risk Assessment

## **Conduct a pre-award risk assessment to:**

- “Monitor” a subaward recipient prior to the agreement
- Determine whether to make a subaward
- Evaluate a subrecipient’s risk of noncompliance with:
  - Federal statutes and regulations
  - Terms and conditions of the subaward
- Determine the appropriate level of monitoring to undertake if an award is made

# Pre-Award Risk Assessment

## **When evaluating subrecipient's risk of noncompliance, consider:**

- a. Subrecipient's prior experience with the same or similar subawards;
- b. Results of previous audits;
- c. If the subrecipient has new personnel or new or substantially changed systems; and
- d. If the subrecipient receives direct federal awards, the extent and results of the federal awarding agency's monitoring process.

*2 C.F.R. § 200.332(c)*

# Pre-Award Risk Assessment

**Based on pre-award risk assessment, CAAs should consider imposing specific subaward conditions, as appropriate, such as:**

- Requiring reimbursements rather than advance payments;
- Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- Requiring additional, more detailed financial reports;
- Requiring additional project monitoring;
- Requiring the non-Federal entity to obtain technical or management assistance; or
- Establishing additional prior approvals.

*2 C.F.R. § 200.208*

# Pre-Award Risk Assessment

## **Make sure to notify the subrecipient about:**

- Nature of and reason(s) for the additional requirements;
- Action needed to remove the additional requirement, if applicable;
- Time allowed for completing the actions, if applicable, and
- The method for requesting reconsideration of the additional requirements.

*2 C.F.R. § 200.208*

# Pre-Award Risk Assessment

## **Remember, issues identified pre-award will inform:**

- Eligibility for the subaward
- Terms and conditions of the subaward agreement
- Specifics on monitoring
  - Overall approach
  - Content and conditions
  - Timing

# Pre-Award Risk Assessment Tool



## Sample Subrecipient Pre-Award Risk Assessment Tool

- Financial, Subawards, Uniform Guidance
- Executive Director, Finance Director, Finance Staff, Program Director, Program Staff
- 2017

CAPLAW's Sample Pre-Award Risk Assessment Tool helps a CAA conduct the required pre-award risk assessment prior to subawarding federal funds. The tool also describes the differences between a subcontractor and subrecipient relationship under the Uniform Guidance.

[View Resource](#)

## CAPLAW

### WORK PRE-AW.

#### Working with Subrecipients: Pre-Award Risk Assessment Tool

CAAs may, at times, decide to engage the services of another entity to assist the CAA in carrying out projects under its federal award. A CAA can do so by entering into subrecipient or contractor (vendor) relationships. This tool is intended to assist a CAA that is contemplating entering into a subaward agreement to pass through federal funds to a subrecipient. It describes the pre-award risk assessment that a CAA must conduct in accordance with the Uniform Administrative Requirements for Federal Awards, 2 C.F.R. Part 200 (the Uniform Administrative Requirements). Based on the results of the pre-award risk assessment, the CAA must determine whether to enter into a subaward agreement that implements appropriate risk management strategies to ensure that the subrecipient uses the funds in accordance with applicable laws.

*This subrecipient pre-award risk assessment tool was developed by CAPLAW, the U.S. Department of Health and Human Services, in consultation with the individual needs of your organization's particular agreements covered by this subaward. Working with this sample pre-award risk assessment tool in your state who is well-versed in applicable state law.*

*This sample pre-award risk assessment tool is intended to provide a questionnaire and how to use it in your state who is well-versed in applicable state law.*

*This publication is part of the Technical Assistance (T/TA) CAPLAW, Inc. (CAPLAW) in the Services, Administration for Children and Families. The recommendations expressed in this publication reflect the views of the U.S. Department of Health and Human Services.*

#### Subrecipient

Because different rules govern the process of determining whether the contractor and the level of oversight the contractor. CAAs must evaluate each agreement. Guidance provides a list of factors that determine the relationship, however, is determinative, an agreement as a subaward or procurement contract is present in every relationship.

A **subrecipient** is an entity that receives a part of a federal program (but does not incur the cost of the program). Factors suggesting that the entity is a subrecipient include:

- the entity determines who is eligible for the program
- the entity's performance in the program was measured
- the entity has responsibility for program management
- the entity is responsible for adhering to the terms and conditions specified in the federal award; and
- in accordance with its agreement, the entity provides program for a public purpose specific goods or services for the benefit of the program.

Examples of subrecipients include: (i) a Head Start child care program; (ii) a Title X family planning delegate agency providing a full range of Title X family planning services; and (iii) a CAA determines the entity to be a subrecipient.

<sup>1</sup> 2 C.F.R. § 200.330(a).

#### Exhibit A

#### Subrecipient Information and Pre-Award Risk Assessment Questionnaire

**How to Use:** This questionnaire is used to help determine a potential subrecipient's financial and management strength, which helps assess risk and dictates the monitoring plan for subrecipients. This questionnaire must be completed **prior to** entering into a subaward agreement. The CAA may follow up with the potential subrecipient regarding the responses to this questionnaire.

<b>1. CAA Contact Information</b>	
Name of CAA Representative:	<input type="text"/>
Project Name:	<input type="text"/>
Grant Number:	<input type="text"/>
<b>2. Subrecipient Contact Information</b>	
Full Legal Organization/Business Name:	<input type="text"/>
Address:	<input type="text"/>
Telephone number:	<input type="text"/>
Fax number:	<input type="text"/>
Name of person completing this form:	<input type="text"/>
E-mail address:	<input type="text"/>
Website:	<input type="text"/>
Incorporated in:	<input type="text"/> Incorporated Date: <input type="text"/>
Number of employees:	<input type="text"/>
DUNS number:	<input type="text"/>
EIN (Employee ID Number):	<input type="text"/>
Fiscal Year (Month/Year):	<input type="text"/>
<b>3. Subrecipient Type of Organization (select one):</b>	
<input type="checkbox"/> Government	<input type="checkbox"/> Nonprofit corporation <input type="checkbox"/> Other corporation <input type="checkbox"/> Individual
<b>4. Subrecipient Organization Classification (select all that apply):</b>	



# **CREATING AN AGREEMENT**



# Creating an Agreement

## Terms, Conditions, and the Basis for Monitoring

- Terms and conditions that govern the subaward relationship:
  - Term and scope
  - Compensation
  - Financial management and audits
  - Record retention and access
  - **Monitoring and evaluation**
  - And more...
- Terms and conditions will consider federal award requirements that flow down

# Creating an Agreement

## Monitoring Process

- Lay out the monitoring process in the agreement
  - Timing and scope (informed by what's required of pass-through)
  - Location/logistics (e.g., virtual or onsite)
  - Corrective action process
- If you are subject to a monitoring tool, use that when you monitor your subrecipients
  - Consider checklists

# MONITORING A SUBRECIPIENT

# Monitoring a Subrecipient

**True or false:** Once a CAA subawards federal funds to a subrecipient, it is no longer responsible to the federal awarding agency for the execution of the award.

True

False



# Monitoring a Subrecipient



*The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier; however, the Federal agency is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients.*

*2 C.F.R. § 200.331*



# Monitoring a Subrecipient

## **At minimum, a CAA subawarding federal funds must:**

- a. Review financial and performance reports required under the subaward agreement
- b. Verify that an audit or other on-site review is being performed pursuant to the Uniform Guidance and that the subrecipient receives a Single Audit if expects to expend \$1,000,000 or more in federal awards during its fiscal year
- c. Follow up to ensure that the subrecipient takes appropriate action on any audit findings and deficiencies
- d. Issue a management decision on audit findings relating to the federal funds awarded to the subrecipient

# Monitoring a Subrecipient

## **Review financial and performance reports required under the subaward agreement**

- Is the subaward being administered accurately and for the grant's intended purposes?
  - Understand financials
    - Uniform Guidance Cost Principles – allowable costs
  - Measure performance against programmatic goals

# Monitoring a Subrecipient

## Verify that an audit or other on-site review is being performed

- See the audit report and auditor's letter
- Understand the Uniform Guidance audit requirements under **2 CFR Part 200, Subpart F**, if applicable (single audit)

# Monitoring a Subrecipient

**Follow up to ensure that the subrecipient takes appropriate action on any audit findings and deficiencies**

- Audit or deficiencies identified?
  - Were they adequately addressed?
  - Any necessary follow up?

# Monitoring a Subrecipient

## **Issue a management decision on audit findings relating to the federal funds awarded to the subrecipient**

- What issues related to the subaward were present in the audit?
- Do they require action
  - Additional monitoring and scheduled follow up?
  - Improvement plan?
  - Subaward termination pursuant to the Subaward Agreement?

# Monitoring a Subrecipient

## **Remember and check in on the results of the initial pre-award risk assessment**

- May also need to provide subrecipients with on-site training and technical assistance on program-related matters
- Perform on-site reviews of the subrecipient's program operations
- Arrange for agreed-upon procedures (from pre-award risk assessment) to assess the subrecipient

# Monitoring a Subrecipient

## What else might a CAA monitor a subrecipient on?

- Award-specific monitoring requirements
  - Specific program standards
  - Assessments, reports, or deliverables
  - Reminder: check the terms and conditions of the subaward

*\* What your CAA will be monitored on with respect to the award will inform what you need from the subaward recipient.*

# **PARTICULAR ISSUES**

# Monitoring a Subrecipient

Additional issues that arise when CAAs subaward

## **Administrative cost limits apply to subawards**

- Consider any applicable statutory administrative cost limits
  - Understand the level(s) at which they apply
    - E.g., does the cap apply cumulatively to all recipients/subrecipients, or individually to each grantee?

# Monitoring a Subrecipient

## Additional issues that arise when CAAs subaward

### Limits on use of funds for certain government activities

- “General costs of government” unallowable
- Private CAA wants to subgrant to public agency
  - Cannot use federal funds for typical government activities
    - E.g., policing, fire, etc.

*2 CFR § 200.444*

# Monitoring a Subrecipient

## Additional issues that arise when CAAs subaward

### Access to records

- Under Uniform Guidance (2 CFR § 200.337), pass-through entity must have the right of access to any records of subrecipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use.
  - Not automatically applicable to block grants
  - Pay attention to terms of subaward agreement
  - Make sure that CAA can access records it needs for monitoring

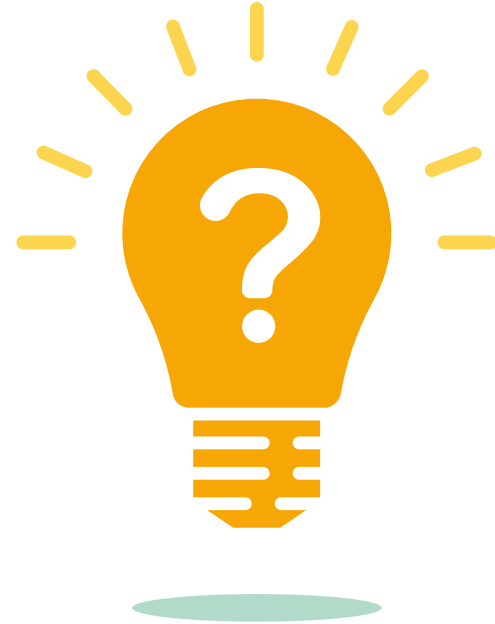
# Monitoring a Subrecipient

## Additional issues that arise when CAAs subaward

### **Joint employer situations**

- CAA subawards funds to another for assistance with elements of a program
- Situation where CAA and another entity codetermine one or more essential terms and conditions of employment
- Joint and several liability for each employer
- Collective bargaining implications

# QUESTIONS?



*This training is supported by Grant Number 90ET0505-02 from the ACF Office of Community Services, Community Services Block Grant within the Administration for Children and Families, a division of the U.S. Department of Health and Human Services. Neither the Administration for Children and Families nor any of its components operate, control, are responsible for, or necessarily endorse this material (including, without limitation, its content and any services or tools provided). The opinions, findings, conclusions, and recommendations expressed are those of the author(s) and do not necessarily reflect the views of the Administration for Children and Families and the ACF Office of Community Services, Community Services Block Grant.*

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