

**DEPARTMENT OF SOCIAL SERVICES
SUBRECIPIENT DETERMINATION INSTRUCTIONS/CHECKLIST**

PURPOSE: Evaluate the applicability of 2 CFR Part 200 when funding of the contract include federal funding

OBJECTIVE: The determination of the agreement relationship with an entity is verified through the institutional review of the proposal narrative, budget justification, and other related proposal documents, as well as through discussions with key personnel prior to proposal submission. When the relationship remains unclear, this form may provide assistance in making an accurate determination. This checklist also provides documentation of the determination being performed.

All contracts/agreements need to go through a review process to determine if the relationship of the agreement is that of a vendor or grantee. The determination will help establish coding and agreement type (consultant, service, or grant).

DEFINITIONS FROM UNIFORM GUIDANCE (2 CFR, PART 200):

Subrecipient §200.93: means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Contractor: means an entity that receives a contract as defined in §200.22 Contract. §200.22

Contract: means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.

Consultant – (Use Consultant Template)

- Is an expert advisor
- Individual(s) specifically identified to carry out the work
- An individual or business whose specific expertise is required to perform a particular function or project
- Typically uses their own equipment and materials
- Are not employees of the organization
- Typically – although not always hired for shorter term work or project support
- Paid on a fixed hourly/daily basis (with/without travel or other expenses)
- Has flexibility in determining how the work is carried out

Vendor – (Use Purchase of Service Template)

- Provides similar goods or services to multiple customers/payers
- Goods and services billed according to established vendor rates
- Does not make decisions regarding program objectives
- Competes with comparable entities to provide similar goods/services.
- No one individual is identified as providing the goods or services.

INSTRUCTIONS: During the Pre-Award proposal process the programmatic employee writing the contract will conduct an initial review of all provider/vendor agreements they generate to determine if the relationship between the Department and provider/vendor is a sub-recipient vs. contractor. To better document the determination, DSS has developed two checklists to aid in the determination. The first is for individual determination of an agreement and the second form is used for the same type of providers with identical agreement characteristics.

Complete sections one through four of the checklist by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the State. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the State and the outside entity. Please select your determination at the bottom of the form. After selecting determination, print your name at the bottom of the form, then sign and date before forwarding to DSS AFR office. The contract accountant will review the assessment worksheet.

If determined to be a sub-recipient, the division will be requested to use the sub-recipient template when writing the agreement. A Sub-recipient FFATA Form and Pre-Award Risk Questionnaire will also need to be sent to the vendor received back before the contract can be routed for signature.

DSS - Checklist to Determine Subrecipient or Contractor Classification

INSTRUCTIONS: Complete sections one through four of the checklist by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the State. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the State and the outside entity. Please check your determination at the bottom of the form and print employee's name, sign and date before forwarding to DSS AFR office.

Contract/Grant Number: _____ Entity Name : _____ (18-0800-XXXX)
--

SECTION 1 - INTERAGENCY AGREEMENTS - (Use Interagency Agreement Template)

- Description:** An agreement between two or more state entities. This type of agreement is not a sub-recipient agreement.

SECTION 2 - SUBRECIPIENT - (Use Subrecipient Template unless no Federal Funds, see section 4 below)

Description: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award. Characteristics which support the classification of the non-Federal entity as a subrecipient include:

- An entity who is bestowed an award with limited or no performance expectations
- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether objectives of a Federal program were met;
- Has responsibility for programmatic decision making;
- Accordance with its agreement uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- Is the Non-Federal entity required to provide matching funds/resources related to the federal program.
- Is responsible for adherence to applicable federal program requirements specified in the federal award.

SECTION 3 - CONTRACTOR - (Use Consultant/Purchase of Service Template)

Description: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Entities that include the characteristics below are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor include:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the Federal program.
- Provider agreements for administering entitlement benefits.
- Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

Consultant – (Use Consultant Template)

- Is an expert advisor • Individual(s) specifically identified to carry out the work • An individual or business whose specific expertise is required to perform a particular function or project • Typically uses their own equipment and materials • Are not employees of the organization • Typically – although not always hired for shorter term work or project support • Paid on a fixed hourly/daily basis (with/without travel other expenses) • Has flexibility in determining how the work is carried out

Vendor – (Use Purchase of Service Template)

- Provides similar goods or services to multiple customers/payers • Goods and services billed according to established vendor rates
- Does not make decisions regarding program objectives • Competes with comparable entities to provide similar goods/services.
- No one individual is identified as providing the goods or services.

SECTION 4 - INDIVIDUAL BENEFICIARY/RECIPIENT (STATE FUNDED GRANT) - (Use Individual Beneficiary/Recipient Template)

Description: A beneficiary is an individual that stands to benefit from the performance of the grant activities. Beneficiaries are the interest for whom the grant project is undertaken. For example, a beneficiary may be an entitlement recipient, an attendee at a grant-funded conference, or an individual daycare provider receiving a child care quality grants. Typically, there is little to no expectation for performance from beneficiaries.

- Individual Beneficiary Recipient (100% State Funded Grants)

USE OF JUDGMENT (use only when the determination cannot clearly be made using the above criteria)

Description: In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

DETERMINATION: Interagency Subrecipient Contractor Individual Beneficiary/Recipient (100% state funded)

Reviewed By: _____ Signature: _____ Date _____
Print Name

Accountant Signature: _____ Date: _____

DSS - Group Type Checklist to Determine Subrecipient or Contractor Classification

INSTRUCTIONS: Complete sections one through four of the checklist by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the State. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the State and the outside entity. Please check your determination at the bottom of the form and print employee's name, sign and date before forwarding to DSS AFR office. **If any characteristics of the entity differ from the group an Individual checklist must be sent for that agreement.**

Multiple Vendor Type Checklist

SECTION 1 - INTERAGENCY AGREEMENTS - (Use Interagency Agreement Template)

- Description:** An agreement between two or more state entities. This type of agreement is not a sub-recipient agreement.

SECTION 2 - SUBRECIPIENT - (Use Subrecipient Template unless no Federal Funds, see section 4 below)

Description: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award. Characteristics which support the classification of the non-Federal entity as a subrecipient include:

- An entity who is bestowed an award with limited or no performance expectations
- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether objectives of a Federal program were met;
- Has responsibility for programmatic decision making;
- Accordance with its agreement uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- Is the Non-Federal entity required to provide matching funds/resources related to the federal program.
- Is responsible for adherence to applicable federal program requirements specified in the federal award.

SECTION 3 - CONTRACTOR - (Use Consultant/Purchase of Service Template)

Description: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Entities that include the characteristics below are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor include:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the Federal program.
- Provider agreements for administering entitlement benefits.
- Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

Consultant – (Use Consultant Template)

- Is an expert advisor • Individual(s) specifically identified to carry out the work • An individual or business whose specific expertise is required to perform a particular function or project • Typically uses their own equipment and materials • Are not employees of the organization • Typically – although not always hired for shorter term work or project support • Paid on a fixed hourly/daily basis (with/without travel other expenses) • Has flexibility in determining how the work is carried out

Vendor – (Use Purchase of Service Template)

- Provides similar goods or services to multiple customers/payers • Goods and services billed according to established vendor rates
- Does not make decisions regarding program objectives • Competes with comparable entities to provide similar goods/services.
- No one individual is identified as providing the goods or services.

SECTION 4 - INDIVIDUAL BENEFICIARY/RECIPIENT (STATE FUNDED GRANT) - (Use Individual Beneficiary/Recipient Template)

Description: A beneficiary is an individual that stands to benefit from the performance of the grant activities. Beneficiaries are the interest for whom the grant project is undertaken. For example, a beneficiary may be an entitlement recipient, an attendee at a grant-funded conference, or an individual daycare provider receiving a child care quality grants. Typically, there is little to no expectation for performance from beneficiaries.

- Individual Beneficiary Recipient (100% State Funded Grants)

USE OF JUDGMENT (use only when the determination cannot clearly be made using the above criteria)

Description: In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

SUBRECIPIENT MONITORING AND MANAGEMENT INFORMATION
§200.330 Subrecipient and contractor determinations

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§200.331 Requirements for pass-through entities.

All pass-through entities must:

(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 §200.39 Federal award date) of award to the recipient by the Federal agency;
- (v) Subaward Period of Performance Start and End Date;
- (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
- (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
- (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
- (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
- (xi) 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;
- (xii) Identification of whether the award is R&D; and
- (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

- (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;
- (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the 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:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- (1) Reviewing financial and performance reports required by the pass-through entity.
- (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
- (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), 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) Providing subrecipients with training and technical assistance on program-related matters; and
- (2) Performing on-site reviews of the subrecipient's program operations;
- (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.332 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.