In Preparing Subrecipient Agreements, Be Sure to Treat Subs as Feds Treat You

The extent and nature of the responsibilities that colleges and universities have with respect to providing funds to another entity depends on whether a subaward creates a “subcontract” or “subrecipient” relationship. An article in last month’s Federal Grants News (p. 5) outlined the requirements a grantee should follow when issuing a subcontract (vendor contract) to be paid with federal funds.

However, if a subaward is issued to perform part of the programmatic work under a prime grant, both OMB Circulars A-110 and A-133 impose oversight responsibilities that tend to place the college or university in the same position as if it were a federal agency dealing with its own primary recipient. In essence, under a subaward, the prime recipient becomes the funding agency with the same roles and responsibilities that the agency has to the prime grantee.

It is important that colleges and universities understand that ultimate responsibility for any federal funds received rests solely with the recipient. Consequently, the federal government holds the recipient, not the subrecipient, responsible for compliance and may seek recovery from the pass-through entity, not the subrecipient, for any disallowed costs.

A-133 specifies not only subawardee monitoring requirements but also lists items that need to be included in any subaward.

Specifically, §___400(d) of A-133 requires recipients to identify federal awards by informing each subrecipient of the CFDA title and number, award name and number, award year, whether the award is R&D and name of the federal agency. When some of this information is unavailable, the pass-through entity should provide the best information available to describe the award.

The same section of A-133 also states that subrecipients must be advised of requirements imposed on them by federal laws, regulations and the provisions of contract or grant agreements, as well as any supplemental requirements imposed by the pass-through entity.

Sub Must Further Your Compliance

In addition to taking affirmative measures to monitor subrecipient compliance, the prime recipient institution should ensure that awards of federal funds to subrecipients contain provisions that require the subrecipient to take all of the steps necessary for the institution to comply with its own responsibilities as a pass-through entity under A-133.

This should include specific language that does the following:

- Requires the subrecipient to perform an A-133 audit or other audit, if applicable, and to submit reports or other communications promptly to the institution.
- Requires the subrecipient to take corrective action with respect to matters identified in the audit report involving noncompliance with federal laws and regulations within six months of receipt of the report. To avoid disputes as to what corrective action is necessary, the agreement should provide that the subrecipient will take corrective action “as deemed appropriate by the institution.”
- Guarantees access by the institution and the institution’s independent auditor to the subrecipient’s records and financial statements as necessary for the institution to comply with its obligations as a direct recipient. Access also should be provided for federal agencies, the Comptroller General and their representatives.
- Requires the subrecipient to maintain records, including audit workpapers, or ensure that such records are maintained by its own auditors, for three years from the date of the audit report, subject to extension at the institution’s request, and to make the records available to federal auditors and the institution upon request.
- Certifies that the subrecipient’s systems meet the standards set forth in relevant federal cost principles and administrative requirements.
Circular A-110 states that the provisions of the circular apply to subrecipients performing substantive work under grants that are passed through or awarded by the primary recipient. For example, the requirements relating to cash depositories (§215.22), record keeping and retention (§215.53), and program income (§215.24), among many others, are also applicable to a subagreement.

### Standard Terms, Templates for Subawards
Most organizations do not specifically spell out in their subawards all of the applicable provisions of the circulars. Instead, they incorporate the provisions of the prime award either by reference or by including the actual award.

The prime award document will specify the agency regulations applicable to the award — these regulations typically include the specific agency adoption of the circular requirements. For example, the Department of Defense Grant Administration Regulations are the DoD’s implementation of A-110 and A-133 requirements. Likewise, 45 CFR Part 74, as referenced in NIH awards, is where NIH does the same.

Following the 2008 adoption by the Office of Science and Technology Policy of standard terms and conditions for research grants (in the Jan. 25, 2008, Federal Register), federal research agencies, in turn, individually adopted the standard terms.

A listing by agency of implementation of the standard terms, public policy requirements that must be followed and agency-specific terms and conditions is available at www.nsf.gov/awards/managing/rtc.jsp.

The standardization of the research terms and conditions also have allowed for universal use of the Federal Demonstration Partnership’s subaward templates. For several years, the FDP membership has been using these templates for subawards to other members.

Now, the FDP, with the OSTP’s blessing, has developed universal templates that can be used by both FDP and non-FDP institutions. These templates incorporate the research terms and conditions, including the circular requirements, as well as various public policy requirements and certain agency-specific terms and conditions (http://sites.nationalacademies.org/PGA/fdp/PGA_056020).

With the development of the FDP templates, the task of flowing down the correct terms and conditions to subawardees and incorporating them in subawards has become much easier.

Regardless of ease, however, the prime institution’s responsibilities remain the same — to assure that funding expended by subrecipients is subject to the same requirements as those for the prime awardee.