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Reference: Final Subrecipient/Vendor Guidance

GUIDANCE - Subrecipient and Vendor Determinations – Federal Funds

OF INTEREST TO:

Workforce Florida Inc., Regional Workforce Boards (RWBs), Early Learning Coalitions (ELCs), and other subrecipients of federal funds from the Agency for Workforce Innovation (Agency). This guidance also applies to subrecipients of the above and any affiliated or related entities.

SUBJECT:

Process for determining whether a contracted entity is a subrecipient or a vendor.

PURPOSE:

To provide guidance for determining whether payments to third parties create subrecipient or vendor relationships for federal funds.

DEFINITIONS:

Fund Recipient: A recipient and/or subrecipient of federal funds.

EFFECTIVE DATE:

Issuance of this guidance represents approval by Agency management of the indicated procedures and related administrative forms. These procedures will be effective as of the date of this guidance paper.

If you have questions or concerns regarding the guidance provided here, please contact the Financial Management Systems Assurance Section (FMSAS) at (850) 245-7481 or by e-mail at FMSAS-OEL@flaawi.com or FMSAS-RWB@flaawi.com.

AUTHORITY:

- I. OMB Circular A-133
- II. 29 C.F.R. § 99.210
- III. 7 C.F.R. § 3052.210
- IV. 38 C.F.R. § 44.210
- V. 45 C.F.R. § 1627.2

Guidance on Subrecipient and Vendor Determinations

Analysis:

I. How does one determine if an agreement/contract creates a subrecipient or a vendor relationship?

A. Federal regulations outline five characteristics that are indicative of a subrecipient relationship and five characteristics indicative of a vendor relationship. (OMB Circ. A-133 § 210). A subrecipient often:

1. Determines who is eligible to receive federal financial assistance;
2. Has its performance measured against whether the objectives of the federal program are met;
3. Has responsibility for programmatic decision making;
4. Has responsibility for adherence to applicable federal program compliance requirements; and
5. Uses the federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

B. A vendor often:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. 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.

C. The following indicators of subrecipient and vendor relationships established by USDOL One-Stop Comprehensive Financial Management Technical Assistance Guide dated July 2002 provide further guidance:

Factor	Vendor	Subrecipient
Activity ¹	Sell deliverables (goods/services)	Provide services
Assistance Arrangement	Buyer-seller	Financial assistance to operate a program
Closeout Package	Final invoice	Comprehensive
Control	Control is outcome focused	Control is on process
Development Costs	Absorbed	Controlled
Extent of Flexibility	Bound to adhere to specific contract terms	Latitude to make decision within terms of agreement
Federal Rules	N/A	Compliance
On-the-Job Training	Subgrantee developed (direct employer award)	Award to broker
Payment Basis ²	Is paid for specific deliverables	Is paid for services whether expensed as a deliverable or not
Product	Specific outcomes	Operate a program
Performance Measured ³	Against the specific requirements of contract	Against the performance outcomes of the financial assistance award
Product Development	Develops product and delivers from inventory	Controls development
Public Policy	Contract specific clauses	Standard statement of assurances
Purpose of the Award	To provide specific goods or services	To carry out a program goal
Receipt of Funds	Number of items delivered	Costs incurred
Risk	Risk to vendor	Share risk with awarding agency
Type of Training Referral	Slotting on an individual referral basis	Filling a class-sized training program
Type of Market	For sale within normal business operation; existing product tailored to the program solicitation	Customized for specific program purposes
Type of Product	Provide specific product or service ancillary to the Federal program	Design a program to meet a broader goal such as performance outcomes

¹ There may be instances where it is possible to obtain the same type of services under either a vendor or a subrecipient award.

² Federal reform efforts are now shifting emphasis from paying for process to paying for results. Such performance-and-outcome-based payments are possible under both vendor and subrecipient awards.

³ Same as 2 above.

D. Fund Recipients should use the characteristics above as an aid in distinguishing between vendors and subrecipients. However, it is not expected that all characteristics will be present in all cases. The substance of the relationship is determinative, not the form of the agreement. (OMB Circ. A-133 § 210(d)).

E. For-profit subrecipients are not included in this analysis. Federal regulations state that the contract with for-profit subrecipients should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits. (OMB Circ. A-133 § 210(e)).

II. What are the consequences of subrecipient / vendor determinations?

A. Vendors. In most cases, the Fund Recipient's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the Fund Recipient is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements. (OMB Circ. A-133 § 210 (f)).

B. Subrecipients. Payments received for goods or services provided as a subrecipient are considered federal awards and are subject to audit. Treating a subrecipient as a vendor is not permissible and does not remove audit requirements for federal awards. Where federal awards are not audited properly, federal agencies and pass-through entities are required to take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending Federal awards until the audit is conducted; or
- (d) Terminating the Federal award.

Recommendations:

I. Subrecipient and vendor determination checklist.

A checklist is attached to this guidance paper to assist Fund Recipients in distinguishing between subrecipient and vendor relationships. The Fund Recipient is encouraged to use this checklist to document its determination process.

II. Substance of the relationship.

OMB Circular A-133 discusses the use of judgment in making subrecipient and vendor determinations. Those regulations state:

There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

Thus, the Fund Recipient should evaluate the substance of each relationship to determine whether the majority of features represent a vendor or subrecipient relationship.

FEDERAL SUBRECIPIENT AND VENDOR DETERMINATION CHECKLIST
Reference 29CFR99.210 and OMB Circular A-133.210

Contract Number: _____ CFDA Number: _____	Prepared by: _____ Date: _____
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Subrecipient and Vendor Determinations

- (a) General: An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

SUBRECIPIENT (check YES or NO for each statement)

- (b) Federal Award: Characteristics indicative of a Federal award received by a subrecipient are when the organization:

<u>YES</u>	<u>NO</u>	
_____	_____	1. Determines who is eligible to receive what Federal financial assistance.
_____	_____	2. Has its performance measured against whether the objectives of the Federal program are met.
_____	_____	3. Has responsibility for programmatic decision-making.
_____	_____	4. Has responsibility for adherence to applicable Federal program compliance requirements.
_____	_____	5. Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

VENDOR (check YES or NO for each statement)

- (c) Payment for goods and services:

<u>YES</u>	<u>NO</u>	
_____	_____	1. Provides the goods and services within a normal business operation.
_____	_____	2. Provides similar goods and services within normal business operation.
_____	_____	3. Operates in a competitive environment
_____	_____	4. Provides goods or services that are ancillary to the operation of the Federal program
_____	_____	5. Is not subject to compliance requirements of the Federal program.

FEDERAL SUBRECIPIENT AND VENDOR DETERMINATION CHECKLIST

- (d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.