Subawards and Subrecipient Monitoring

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Topics for today

- Using risk in your organization to monitor subrecipients
- Developing subaward tools and training
- Resources
- Highlights of lesser known PTE requirements
- Uniform Guidance updates for Subawards
- Foreign Influence
- Q&A

Using risk in your organization

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Evaluating Risk

How does your organization use your subaward risk assessment (select one)

- We just keep it on file for audit
- We incorporate contractual terms based on overall risk
- We incorporate contractual terms based on specific areas of risk identified
- Other – We use the risk assessment to implement mitigation strategies, but not in the Agreement

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Managing Risk

- Before implementing subaward controls, determine how much risk your organization is willing to accept – risk appetite
  - What is the impact of non-compliance and what is the likelihood of the impact?
  - There is no point in implementing controls that will always be overridden or not enforced
- Identify your organization's primary risk concerns
  - Could be based on past experience, expanded Federal guidance, focus, or audits
- Consistently apply controls
  - Exceptions should be rare and well documented. If you're often overriding a control, then that control should be re-evaluated

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Scaling for Organizational Size

- ERI's and PUI's with small research portfolios can have:
  - Less formalized processes
  - More ad hoc solutions
  - More flexibility
  - Less automation
- Larger institutions with extensive research portfolios will often be:
  - Less flexible due to formalized processes and systems
  - Will often have a singular approach because case by case is too burdensome

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Developing Subaward
Tools and Training

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Question 2

Tools and Training

What tools does your Institution currently utilize? (Select all that apply)

- Internal in-person/zoom training of policies and procedures
- Internal systems trainings (online systems)
- Self Service reports for managing subawards
- We learn as we go
- FDP Templates
- Professional Organization trainings (FDP, NCURA, SRA,CRA)
- Other

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Developing Subaward
Tools and Training

- Who: Identify your training target audience and their needs
  - What are your pain points – utilize FAQ's to develop targeted training
  - Can they be solved by training
  - Consider quick update trainings to address pain points that more experienced personnel are more likely to attend than workshops for new hires
- Reporting: Create data and reporting resources that will empower your personnel
  - This is only helpful if available data is accurate and complete. Incomplete or inaccurate data leads to more questions
- Contact: Publish Roles and responsibilities throughout the organization so personnel can contact the correct resource

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Developing Subaward
Tools and Training

- Resources: Policies and procedures should be comprehensive and easily available so they're easier to reference
- Desktop procedures are a great way to make training and onboarding easy, and encourages consistency of process
  - Make sure anything that is a best practice and not required for audit is listed as such
- These are all things that can be done with limited resources and can be as formal or informal as needed for your institution

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Developing Subaward Tools and Training

- One of the best ways to ensure compliance is to have good information and tools available
  - Make tools available to your departments
    - Checklists for complicated processes
      - Subrecipient vs vendor determination
      - Scope of work
      - Invoice review
      - Subaward management best practices
  - Good tools allow enforcement
    - New and experienced research administrators benefit from clear, published, and consistent processes to enforce subaward requirements and compliance

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Resources

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Question 3

Do you….

Does your Institution? (Select all that apply)

- Flow down all terms in the NOA by attaching it to the subaward
- Require Additional back up for invoices as a default
- Restrict Carryover if you have automatic carryover as a default
- Verify the certification statement on invoices is from the UG
- Track payments to subrecipients being made within 30 days
- Ask Collaborators to complete subrecipient commitment forms (for proposal)
- Ask Collaborators to complete audit certification forms
- Issue Management Decision Letters for an audit finding not relating to funds you've awarded

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Resources to collect subrecipient data

- Federal Audit Clearinghouse – Single Audit report and data collection for SF-SAC
- SAM.gov – debarment, suspension, federal debt
- FDP Clearinghouse – Public repository of (currently) domestic institutions entity level data
- USASpending - Federal funding provided over a 12-month period (does not track expenditure)
- FAPIIS - Federal Awardee Performance and Integrity Information System
- Guidestar – non-profit data
- Individual entity websites
- Country specific tracking websites

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Don't Reinvent the Wheel
FDP Resources

The Federal Demonstration Partnership has numerous subaward resources you can use even if you aren't an FDP member

- Subaward Templates – domestic, foreign, subcontract, clinical trial, crosswalk for IT
- Risk Assessment Questionnaires
- Sample invoice
- Subrecipient vs contractor checklist
- Sample FCOI policy
- Expanded Clearinghouse
- Data Use Agreement
- Sample additional terms

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Highlights of lesser known PTE requirements

Please note, these are the current reference numbers in this section. When the new Uniform Guidance goes into effect, the references will change.

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Highlights of lesser known PTE requirements

- CFR 200.207 Specific Conditions – Circumstances where additional conditions can be imposed based on risk
  - See 200.331 for risk assessment requirements for PTE's
- CFR 200.305 (3) Payment; Applicable to cost reimbursable agreements, payment must be made within 30 days unless the PTE reasonably believes the request to be improper. – Asking for additional backup when invoice review requires it

So if I have a high risk subrecipient based on risk assessment, what conditions would you impose to mitigate risk? What if the risk raises when you're already into the project period?

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Highlights of lesser known PTE requirements

- CFR 200.415 (a) required certification for subaward invoices with flow through of federal funds – language all invoices should be checked for
- CFR 200.501 (a) audit requirement (foreign subrecipients are subject to a single audit if the expenditures are $750k or more)
  - when does this apply, what are the exceptions, how do you know?

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Single Audit Requirements for PTE's

- CFR 200.331 – "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."
  - This may apply to foreign subrecipients unless sponsor guidance specifically excludes them from Single Audit Requirements – may need to contact program officer
  - For-profit subs are excluded, unless sponsor guidance specifically includes them (I.E. NIH Grants Policy Statement 18.4.5)
  - Foreign subs do not upload to the Federal Audit Clearinghouse
  - If subrecipient receives funding only from a single Federal Agency, the audit can also be a program specific audit (with some limitations CFR 200.501)
  - Some sponsors may allow a different audit to substitute for a Single Audit such as a Yellowbook Audit in accordance with Government Auditing Standards (GAS)

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Annual Certifications

- CFR 200.512 – "All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC."
  - Do not send audit certification requests to Single Audit subrecipients whose information is in the Federal Audit Clearinghouse
  - Limit audit certification requests to non-single audit and foreign entities
  - May also obtain information from the FDP Clearinghouse for participating members
    - The FDP Clearinghouse will be expanding at some point to allow non-FDP members to have a profile. This will require organizations to delineate between requirements between member organizations (use of subawards templates) and profile participants (not asking for entity level information)

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Management Decision

- CFR 200.521 – "Pass-through entity. As provided in CFR 200.331 Requirements for pass-through entities, paragraph (d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients."
  - PTE's are only required to send an MDL for findings related to awards from their institution. Some PTE's issue MDL's for all R&D findings if determination of the affiliated award is not clear.
  - MDL's must be issued within six months of "acceptance of the audit report by the FAC", so PTE's should have a way of documenting when the subrecipient's audit is due to the FAC.
    - FY end date of 8/31/2019 will have an audit due date of 5/31/2020
  - COVID Extension – Due to COVID, some Single Audit due dates have been extended. See https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf

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Uniform Guidance Updates for Subawards

OMB will likely provide additional guidance on these requirements as organizations begin implementation and enforcement.

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In Effect as of 8/13/2020

- CFR 200.216 - telecommunications ban
  - COGR is seeking clarification from OMB since UG and FAR guidance conflicts. UG prevents any system from using banned telecommunications while FAR only restricts to project
  - Will have to be flowed down to subrecipients
    - FDP is looking into how this will be implemented
    - "Recipients must also flow down the provisions in award terms covered in appendix A to this part to all contracts and subawards under the award."
- CFR 200.340 - Strengthens authority of federal agency to terminate awards

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Proposed Uniform Guidance updates for subawards

- eCFR will reflect changes on November 12, 2020
- Changing of reference numbers (most are moving down by one number)
- 25.300 - Unique Entity Identifier - Cannot issue a sub until the entity has provided it's UEI
- 200.101 - Allowing Federal agencies to accept 2 CFR 200 when a PTE is flowing down a Federal award to another Federal agency – Federal Agencies may accept assistance awards

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Proposed Uniform Guidance updates for subawards

- 200.1 - Definition of Budget Period and POP
  - Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
  - Period of performance means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

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Proposed Uniform Guidance updates for subawards

- 200.332 - Organizations may accept a rate agreement negotiated by another PTE
  - You don't have to collect justifying information, but you may choose to
- 200.332 - PTE's only need to address findings directly related to awards from their institution
  - Will be asking for clarification if information can be added to SF-SAC to identify PTE's affected by findings
  - Excludes cross-cutting findings "an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity)."
  - "Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward."

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Proposed Uniform Guidance updates for subawards

- 200.344 - Closeout extended to 120 days, but allows Federal Agency to close out with what they have
- 200.414 (h) negotiated agreements for IDC rates collected and displayed on a public website (no word on how this will be implemented)
- 200.414 - De Minimus rate can apply to subs who previously had a negotiated rate, but it has expired
    - Checking to see if (for NIH) we can provide the de minimus to for-profit subrecipients upon request

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Proposed Uniform Guidance updates for subawards

- Part 183 - Never Contract with the Enemy
    - applies only to grants and cooperative agreements that exceed $50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing United States involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
    - May need to verify subrecipient parent entities in SAM as well as subrecipient
        - This will be difficult if subrecipients do not require SAM registration 2 CFR 25 – Subrecipients

- Appendix A Part 170 - Subaward reporting threshold for FFATA raised to $30k

- Subrecipients do NOT have to be registered in SAM (confirmed with OMB)
    - this may require additional clarification when determining parent companies for entities. Since UEI hasn't yet rolled out, we don't know how much information will be associated with it.

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Foreign Influence and Subrecipients

Foreign Influence

Why does it matter?
- You may be passing through funding to what looks like a domestic organization, but they may have a foreign parent organization that presents a larger risk
- May violate sponsor requirements that wouldn't come into play if the subrecipient were domestic
  - NSF justification/sponsor specific indirect costs/growing terms around foreign subrecipient involvement/access to DOE labs
- Bad actors may start using domestic hubs to cover for an undesirable foreign parent
  - Telecommunications ban will apply
  - E.G. Huawei & Futurewei

What do you do if you discover a subrecipient has a foreign parent entity? What if they are banned?

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Verifying subawards with foreign influence

- With the focus on foreign influence it may be important to more closely scrutinize who we are doing business with
- Subrecipient may be a domestic branch but the parent company is foreign
  - Annual report or SAM.gov can help identify parent entity locations
  - May be difficult with new UG removing SAM registration requirement for subrecipients
    - Consider requesting parent organization information directly from subrecipient then;
    - Consider verifying if parent companies are not debarred, suspended, or on any other watch list (OFAC, ORCA, etc.)
  - We recommend asking for annual reports/audited financials from all non-Single Audit subrecipients, because these will often give insight into subrecipient structure and ownership organizations

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Questions?

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