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PURPOSE OF GUIDELINES

This document provides information to assist the universities of the University of Maine System (UMS), in understanding the federal requirements imposed on them as a pass-through entity of federal funds awarded by them to another organization, and in complying with such requirements.

POLICY

2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, ("OMB Uniform Guidance"), issued by the Office of Management and Budget (OMB), assigns certain responsibilities to primary recipients of federal awards that grant subawards to other organizations. In summary, each University within the UMS is responsible for the following regarding each of their subrecipients:

- Informing the subrecipient about the terms and conditions of the sponsor awards and applicable requirements;
- Developing subawards based upon a risk assessment of the subrecipient;
- Monitoring the subrecipient’s activity;
- Ensuring the subrecipient meets any applicable audit requirements; and
- Issuing internal management decisions about relevant subrecipient audit findings.

Failure to follow this policy may have serious consequences, including disallowed costs, which could require reimbursement to the sponsor from unrestricted departmental funds; increased federal oversight, monitoring, and audits; and loss of future federal funding.

WHO IS RESPONSIBLE

Responsibility for following these guidelines lies primarily with the University’s Principal Investigators (PI) or Project Directors, their Department Chairs or other direct supervisors, and unit-level fiscal personnel with the general guidance and oversight of the colleges, schools and divisions (Department). PI’s and their Departments are required to perform the following:

- Subrecipient Selection: The PI is required to maintain documentation of the criteria used, analysis performed and determination in the final selection of all subrecipients.
- Assist with the initial subrecipient risk assessment.
Assist in the development of a “Subrecipient Monitoring Plan” based on risk assessment; propose any risk-mitigation actions for possible problematic subrecipients.

Follow the Subrecipient Monitoring Plan and report any issues to the University’s Office of Sponsored Programs (OSP) as needed.

Review and approve payment of the subrecipient invoices to ensure allowability, applicability, appropriateness and accuracy.

Demonstrate monitoring efforts for each subaward made.

The University’s OSP or other designated personnel are responsible for providing general guidance and technical assistance. The University’s OSP is responsible for:

- Developing the subrecipient monitoring process and procedures necessary to comply with this policy and communicate the procedures to the PI, Department, and the University community.
- Verify award terms and conditions and Subrecipient period of performance.
- Determine the flow-through requirements and subaward terms and conditions.
- Provide guidance to the PI’s and Department’s regarding OMB Uniform Guidance compliance.
- Collaborate with the PI and Department to determine subrecipient risk and steps to mitigate or reduce risk.
- Provide guidance to the PI and Department in developing the subrecipient monitoring plan and problematic subrecipients.
- Communicating changes to the APL regarding Subrecipient Monitoring to the PI’s, Project Directors and Departments.

The UMS administration is responsible for:

- Providing guidance through administrative practice letters (APL) and coordinating compliance monitoring through periodic internal and external audits.
- Negotiating the indirect rate with the subrecipients, who do not have a federally recognized indirect rate, on behalf of the University (in compliance with Uniform Guidance §200.403 and §200.414)

RESPONSIBILITIES AND PROCEDURES

A. Subrecipient and Contractor Determination

When determining whether a subrecipient or contractor relationship exists, the substance of the relationship is more important than the form of the agreement. OMB Uniform Guidance – Subpart D, §200.330 states that a “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, the University must make a case-by-case determination 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 §200.330.

1. **Subrecipient**

   A subaward is issued for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of a subrecipient include when the pass-through entity:
   
   a. Determines who is eligible to receive what federal assistance;
   b. Has its performance measured in relation to whether objectives of a federal program were met;
   c. Has responsibility for programmatic decision making;
   d. Is responsible for adherence to applicable federal program requirements specified in the federal award; and
   
   e. 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.

2. **Contractor**

   A contract is issued for the purpose of obtaining goods and services for the University’s own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the University and a contractor are when the contractor:
   
   a. Provides the goods and services within normal business operations;
   b. Provides similar goods or services to many different purchasers;
   c. Normally operates in a competitive environment;
   d. Provides goods or services that are ancillary to the operation of the federal program; and
   
   e. Is not subject to the compliance requirements of a federal program as a result of an agreement, though similar requirements may apply for other reasons.

   The University’s responsibilities for compliance of procurement contractors are to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Federal award regulation requirements normally do not pass through to contractors.

3. **Use of Judgment**
All of the characteristics listed above may not be present in all cases, and the University must use judgment in classifying each agreement as a subaward or procurement contract.

B. Subrecipient Evaluation

The University, as a pass-through entity, is required by OMB Uniform Guidance Subpart D, §200.331 to perform the following related to a subrecipient:

1. Risk Assessment

   a. The University must 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 this policy and in OMB Uniform Guidance §200.331 paragraph (e), which may include consideration of, but not limited to, such factors as:

      1) The subrecipient's prior experience with the same or similar subawards;
      2) Review the subrecipients' audit or financial statements using the Federal Audit Clearinghouse; [http://harvester.census.gov/sac/](http://harvester.census.gov/sac/). If the Subrecipient does not have an audit or financial statement on file with the Clearinghouse, the Subrecipient will be required to provide a copy upon request. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with OMB Uniform Guidance Subpart F-Audit Requirements, 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).

   b. If any special subaward conditions are imposed by the University, the University will notify the subrecipient as applicable:

      1) The nature of the additional requirements;
      2) The reason why the additional requirements are being imposed;
      3) The nature of the action needed to remove the additional requirement, if applicable;
      4) The time allowed for completing the actions if applicable, and
      5) The method for requesting reconsideration of the additional requirements imposed.

   c. The University must promptly remove any special subaward conditions once the specific conditions as described above have been corrected.
2. **Fixed Amount Subawards**

The University may issue a subaward based on a fixed amount only if the following conditions are met:

a. The amount of the subaward does not exceed the Simplified Acquisition Threshold, currently set at $150,000; and

b. The subaward meets the requirement for a fixed amount award as described in *Uniform Guidance §200.201 Use of Grant Agreements* (including fixed amount awards), cooperative agreements, and contracts, paragraph (b) which requires that:

1) Payments are based on meeting specific requirements of the federal award. Except in the case of termination before completion of the subaward, there is no University review of the actual costs incurred by the subrecipient in performance of the subaward.

2) The University may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that the subrecipient will realize no increment above actual cost. Some of the ways in which the subaward may be paid include, but are not limited to:

   i. Several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the subaward;
   
   ii. On a unit price basis, for a defined unit or units, at a defined prices or prices, agreed to in advance of performance of the subaward and set forth in the subaward; or,
   
   iii. In one lump sum payment at the completion of the subaward


c. A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

d. The subrecipient must certify in writing to the University at the end of the subaward that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the subaward must be adjusted.

e. Periodic reports may be established for each subaward.

f. Changes by the subrecipient in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the University.
g. The University has received prior written approval from the federal awarding agency of the prime award.

3. Subaward Components

The University must ensure that each subaward is clearly identified to the Subrecipient and includes the following information upon execution of the subaward. If the information is not available, the University must provide the best information available to describe the federal award and the subaward.

a. Federal Award Identification

1) Subrecipient legal name
2) Subrecipient’s unique identification number
3) Federal Award Identification Number (FAIN)
4) Federal award date (effective date or date signed by federal official)
5) Subaward period of performance start and end date
6) Amount of federal funds obligated by the action
7) Total amount of federal funds obligated to the subrecipient
8) Total amount of the federal award
9) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA)
10) Name of federal awarding agency, pass-through entity, and contact information for awarding official.
11) CFDA number and project name
12) Identification of whether the award is R&D
13) Indirect cost rate for the federal award (including if the de minimis rate is charged.

b. All prime award requirements imposed on the University by the funding agency or organization to ensure that the award funds are used in accordance with federal statutes, regulations and the terms and conditions of the award.

c. Any additional requirements imposed by the University will be added to the subaward to ensure that the University will meet its own responsibility to the awarding agency including identification of any required financial and performance reports.

d. An approved federally recognized indirect (F&A) cost rate negotiated between the subrecipient and the federal government or, or the de minimis indirect cost rate of ten percent (10%) as defined in Uniform Guidance §200.414 Indirect (F&A) Costs, paragraph (f). If the Subrecipient does not have a federally recognized indirect rate, the UMS will negotiate a rate between the University and the subrecipient (in compliance with Uniform Guidance §200.403 and §200.414).

e. A requirement that the subrecipient permit the University and its auditors to have access to the subrecipient’s records and financial statements as necessary for
the University to meet the requirements of this policy and OMB Uniform Guidance §200.331.

f. Applicable terms and conditions concerning the closeout of the subaward.

g. If any of the Federal Award Identification data changes, the changes in should be reflected in the subsequent subaward modification.

C. Monitoring the Subrecipient

The University is responsible for organizing procedures to assure that subrecipients are being monitored as required by federal regulations. As such, OMB Uniform Guidance §200.331 paragraphs (d) through (h) provide guidance on what steps the OSP must take to adequately monitor a Subrecipient.

D. Subrecipient Audit Requirements

1. OMB Uniform Guidance – Subpart F requires that non-federal entities that expend $750,000 or more during the University’s fiscal year in federal awards in a year must have a single or program-specific audit conducted for that year in accordance with the provisions of Uniform Guidance – Subpart F. When federal awards expended during a University’s fiscal year are less than the audit threshold stated above, the entity is exempt from such audit requirements for that year but records must be available for review or audit by appropriate officials of the federal agency, pass-through entity, and Government Accountability Office (GAO).

For-profit subrecipients are not subject to OMB Uniform Guidance – Subpart F. As such, the University is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients with all applicable federal requirements as well as any additional audit requirements a federal agency may place on for-profit entities.

2. Audit Findings. As part of the monitoring activity performed by the University, when a subrecipient audit finding is identified, the University must document any management decision regarding the audit finding as it relates to the subaward issued under any federal award.

3. Audit Costs. For the purpose of subrecipient monitoring, the University may charge federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with OMB Uniform Guidance Subpart D-Post Federal Award Requirements, §200.330 Subrecipient and contractor determinations through §200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Uniform Guidance Subpart F- Audit Requirements. This cost is allowable only if the agreed-upon-procedures engagements are:
a. Conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS);

b. Paid for and arranged by the University; and

c. Limited in scope to one or more of the following types of compliance requirements:
   • Activities are to be determined as allowed or unallowed 
   • Allowable costs/cost principles 
   • Eligibility 
   • Reporting 

**Note:** The decision to engage other audit service providers must be approved by the Vice Chancellor for Finance and Administration and Treasurer or an authorized designee.

### E. Subrecipient Noncompliance

When a subrecipient fails to comply with Federal Statutes, regulations, the terms and conditions of the Federal Award and the subaward, the University as a pass-through entity, is required to take appropriate action as provided in OMB Uniform Guidance §200.338-Remedies for noncompliance.

### DEFINITIONS AND TERMS

The following definitions apply to the terms used in this document or as defined in OMB Uniform Guidance, 2 CFR Part 200 Subpart A – Acronyms and Definitions:

**Contract:** A legal instrument by which a University purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the University considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward.

**Contractor:** An entity that receives a contract as defined above in “Contract.”

**Federal Award:** Federal awards are economic aid issued by the United States government out of the general federal revenue. An award of financial assistance from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. Federal awards, such as grants, are federal assistance to individuals, benefits or entitlements. A grant is not used to acquire property or services for the federal government's direct benefit.

**Fixed Amount Awards:** A type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award.
ADMINISTRATIVE PRACTICE LETTER
SUBJECT: SUBRECIPIENT MONITORING

Management Decision: The evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Non-Federal Entity: A state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Pass-through Entity: Provides a subaward to a subrecipient to carry out a Federal program.

Program-Specific Audit: Is defined as an audit of one Federal program.

Reporting Package: The reporting package (OMB Uniform Guidance Subpart F §200.512 (c)) shall include:

- Financial statements and schedule of expenditures of Federal awards;
- Summary schedule of prior audit findings;
- Auditor’s report(s); and
- Corrective action plan.

Research and Development (R&D): All research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Subaward: An agreement provided by the University to a subrecipient for the subrecipient to carry out part of a Federal award received by the University. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the University considers a contract.

Subrecipient: 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.

HISTORY OF POLICY

Issue 1: Effective 01/09/2004
Issue 2: Effective 04/02/2007 (Adds “Policy” and “History of Policy” sections; eliminates reference to the $300,000 expenditure threshold for A-133 audits.)
Issue 3: Effective 07/02/2010 (Modifies language related to Subrecipient Monitoring)
Issue 4: Effective 12/26/2014 (Modifies policy terms and references and adds language to comply with requirements in OMB Uniform Guidance)
ADMINISTRATIVE PRACTICE LETTER

SUBJECT: SUBRECIPIENT MONITORING

APPROVED

Signature on file in the Office of Finance and Administration

Vice Chancellor for Finance and Administration