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Responsibilities under Uniform Guidance (UG) Act, 2 CFR §200

The Uniform Guidance (UG) — a "government-wide framework for grants and agreements management" — is an authoritative, codified [set of rules and requirements](#) published by the Office of Management and Budget (OMB) for Federal awards that synthesizes and supersedes guidance from earlier OMB circulars.

The purpose of this AOS guidance is to highlight portions of the UG that are important considerations for local governments receiving federal financial assistance, including, but not limited to, the Coronavirus Relief Fund (CRF) authorized by the CARES Act. This document contains general guidance only and is not a substitute for local governments reading the UG in its entirety and consulting with their legal counsel. Many of the provisions in the Code of Federal Regulations where the UG has been codified have been updated effective November 12, 2020. This document incorporates the regulations that are in effect through November 11, 2020. The AOS recommends that local governments consult their own legal counsel to ensure that they are aware of the most recently effective version of the UG.

While the AOS must maintain our audit independence and have restrictions on our ability to provide advisory opinions regarding the use of public funds, we are able to share this general guidance about UG federal assistance requirements to local governments. Local governments should consult their legal counsel to ensure compliance with applicable provisions of the UG, the terms and conditions of the federal award, Ohio law, the Ohio Constitution, and other applicable laws. The AOS is doing all we are permitted to do by providing general guidance on UG federal assistance requirements to local governments. We encourage you to frequently visit the [AOS website for COVID-19 Resources](#), including information on CRF funding and answers to frequently asked questions:

The roles and responsibilities associated with administering and managing federal assistance can vary greatly from one local government to another. For some local governments receiving federal assistance, the administration and management responsibilities may be split between a few people, while in other local governments, those responsibilities may be divided among various operational units with separate responsibilities assigned to specific people. In some local governments, there is a distinction from the administrative functions (e.g., general oversight, authorizations) versus the programmatic functions (e.g., providing services that may require program expertise or knowledge, submitting reports) or financial functions (e.g. grants accounting, reimbursements and audits) associated with an award. Further distinctions may arise when a local government engages its community partners or outside organizations for assistance administering federal assistance programs.

Local governments awarded federal funds must comply with state law, federal statutes and regulations, and the terms and conditions accompanying the award. Additionally, local governments must generally accept full legal responsibility for the administration of the program as well as meet any stated performance requirements. The Uniform Guidance (UG) stipulates that federal agencies must conduct a risk analysis of applicants (§200.205), and requires states, local governments, and other non-federal entities have in place “effective internal controls” to assure the federal award is managed in compliance with all federal statutes, regulations and terms and conditions of the award (§200.303). Therefore, it is essential that the local government make every effort to follow sound management practices and policies, throughout the entire awards lifecycle.

Pass-Through Entity and Subrecipient Relationship

2 CFR Part 200 (§§200.330 – .332) requires pass-through entities of federal funds to monitor subawards and ensure, along with other requirements, that subrecipients meet the audit requirements outlined in Subpart F (§§200.500-.521), and use awarded funds in accordance with applicable laws, regulations, and terms of the award. These subrecipient monitoring procedures apply to all subawards issued under federal programs awarded to local governments and other non-federal entities, without regard to the primary source of funding.

Likewise, audit requirements are generally applicable to non-federal entities other than for-profits and international recipients; however, for-profits and international recipients can receive federal subawards and/or contracts. As these distinctions become gray areas depending upon the type of award and type of non-federal entity, prime recipients remain accountable for the federal funds they pass down to all subrecipients (§200.501(h); *see also* §200.331).

The CRF program has created a potential opportunity for for-profit entities to be subrecipients. Local governments should carefully consider, in consultation with their legal counsel, the subrecipient (§§200.93, 200.330) vs. beneficiary relationship as they develop CRF programs, as the responsibilities for both the pass-through entity and recipient can differ vastly. UG Subpart F (§§200.500-.521) audit requirements do not apply to for-profit subrecipients (§200.501(h)). If these provisions are not applicable under the UG or the federal agency regulation, “the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients” such as through the terms and conditions of the award agreement. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility.

The UG passes oversight and monitoring responsibilities from the federal agency to the non-federal prime recipient or pass-through entity, which is accountable for many monitoring requirements including verifying every subrecipient is audited as required by Subpart F (§200.331). As a practical matter, pass-through entities (e.g., states, local governments) often review and rely on previously issued single audit reports of subrecipients as part of their monitoring and oversight responsibilities. However, because the UG single audit expenditure threshold is \$750,000, many smaller subrecipients are not subject to Single Audit (§200.501),

and therefore, pass-through entities cannot rely on the Single Audit process to obtain the subrecipient monitoring assurances they require. Instead, pass-through entities must engage in more direct oversight of smaller subrecipients' use of federal funds and compliance.

Additionally, under the UG, all subrecipient auditees are to submit their audit reports directly to the Federal Audit Clearinghouse (FAC) (§200.512(b)), bypassing pass-through entities that must retrieve the data from the FAC rather than receive the data from their subrecipients, unless explicitly required in the grant terms and conditions to submit to the pass-through entity.

Pass-Through Responsibilities

Pass-through entity oversight and monitoring activities could be characterized as covering four broad areas that:

- ensure the subrecipient receives all the pertinent federal award information needed to identify its subaward as part of a federal funding opportunity.
- ensure the subrecipient's activities are conducted in compliance with the federal award and all federal statutes and regulations.
- ensure that required audits are performed, and the subrecipient has taken prompt corrective action to resolve any audit findings.
- provide assurance that a subrecipient's noncompliance activities do not impact the pass-through entity's ability to meet its federal requirements (§200.331).

The UG lists what information needs to be provided to a subrecipient by a pass-through entity (§200.331(a)(1)). In addition to specific federal award information, the UG outlines how pass-through entities must monitor subrecipients and provide the necessary guidance in order to meet federal requirements (§200.331(a)(2)).

Among other responsibilities for subawards, pass-through entities must follow the requirements of §200.331, which include:

- Identify to the subrecipient that the funding is a subaward generated from a federal award and include Catalog of Federal Domestic Assistance (CFDA) title and number, award name, name of the federal awarding agency, Federal Award Identification Number, period of performance of subaward (start and end dates), project description that corresponds with the Federal Funding Accountability and Transparency Act's (FFATA) requirements (see more about FFATA below), subrecipient's name and unique entity identifier that could be equivalent to a DUNS number, total amount of funds obligated to the subrecipient, total amount of federal award (to the prime), amount of federal funds obligated by the action, name of the pass-through entity and contact information for awarding official, identify whether the action is a research and development award, and an indirect cost rate for the award.

- Inform the subrecipient of all requirements imposed by the pass-through entity to ensure the federal award is used in accordance with federal statutes, regulations and terms and conditions of the award.
- Inform the subrecipient of any additional requirements imposed by the pass-through entity in order for the pass-through entity to meet its responsibility to the federal awarding agency, which may include any required financial and performance reports;
- Inform the subrecipient of the requirement to permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary to meet all statutory and policy requirements set forth in the UG.
- Ensure the subrecipient understands the terms and conditions associated with the subaward for close-out.
- Evaluate each subrecipient's risk of noncompliance in order to determine the level of monitoring required by the pass-through entity, which may require special terms and conditions on the subaward by the pass-through entity to reduce noncompliance with the award's requirements.
- Monitor the subrecipient's activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements, which includes reviewing financial and program performance reports required by the pass-through entity, following up on actions the subrecipient is undertaking to remediate any deficiencies associated with the federal subaward that may have identified through audits, on-site reviews or through other oversight activities and valuations.
- Issue management decisions that pertain to audit findings associated with the subrecipient's federal award.
- Use and identify monitoring tools that can help subrecipients reduce noncompliance risks by providing training and technical assistance to subrecipients, conducting on-site program reviews of the subrecipient's operations, or arrange for "agreed upon procedures" engagements as described in §200.425(c).
- Verify every subrecipient that expended \$750,000 or more in federal funds (the single audit threshold) is audited according to Subpart F of the UG.
- Evaluate results of subrecipients' audits, on-site reviews or other monitoring actions and determine if the results indicate whether or not adjustments need to be made to the pass-through entity's records to adequately document the status of the federal award and the level of risk of the subrecipient; and determine whether or not enforcement action(s) are required for noncompliant subrecipients as described in §200.338.

Pass-through entities may consider implementing additional reporting requirements for subrecipients to help meet defined federal requirements, if such reporting requirements are "appropriate as described in § 200.207 Specific conditions" (§200.331(c)), particularly those relating a higher level of risk. Additional requirements should not just duplicate already collected data. Since non-federal entities are required to link their financial reports to performance accomplishments, additional requirements for subrecipients could focus on making sure

performance accomplishments are well-defined, accurately reported and linked to expenditures. In some cases, it may be only a matter of adjusting the timing of the subrecipient reports in order for the pass-through entity to review the reported information in time to meet its own reporting deadlines to the federal agency.

Subrecipient Monitoring Activities of the Pass-Through Entity

Monitoring and oversight of subrecipients may take different forms, as appropriate, depending upon the pass-through entity's assessment of the subrecipient's risk of noncompliance (§200.331(b)). Monitoring and oversight activities conducted by the pass-through entity can include:

- reviewing subrecipient reports (financial and performance reports) or audit results (including evaluation of audit findings and review of corrective action plans), as appropriate, and as defined when necessary by the award agreement
- conducting on-site visits of program operations
- arranging for a limited scope audit, such as an agreed-upon-procedures engagement as described under §200.425, as appropriate, and as defined when necessary by the award agreement
- providing training and technical assistance

The UG leaves it to the discretion of pass-through entities to determine how best to properly monitor their subrecipients. For example, on-site visits to subrecipients provide an ideal opportunity to review financial and performance records and observe operations. The UG does indicate that pass-through entities can provide training, technical assistance to subrecipients for managing “program-related matters” (§200.331(e)(1)). On-site reviews or scheduled informational sessions may be opportunities pass-through entities can use to emphasize good business practices and ensure operating internal controls are working or are in place to maintain compliance with federal requirements.

Other factors may influence the extent of monitoring procedures such as the size of federal awards, percentage of total program funds awarded to a subrecipient, the complexity of the applicable compliance requirements and the cost-effectiveness of various procedures. But pass-through entities should keep in mind that subrecipient monitoring and oversight activities will be closely examined for compliance when undergoing their own single audits.

Risk-Based Analysis

As part of their oversight responsibility, pass-through entities must conduct a risk-based analysis of their subrecipients (§200.331) in advance of making an award, and reassess throughout the award period. When the pass-through entity determines that a subrecipient may pose some level of risk of noncompliance in meeting performance requirements or meeting federal requirements, it is suggested that pass-through entities place special terms and conditions on the subaward. The UG offers some examples in §200.207, such as requiring payments as reimbursements rather

than advance payments or requiring additional project monitoring. But, in order to place such conditions, a pass-through should have written policies and procedures in place that outline how or what needs to be considered in a risk analysis of subrecipient such as a risk assessment matrix.

The oversight responsibility is tied very closely to internal controls that nonfederal entities, including pass-through entities, are required to have in place. Having well documented and thorough internal controls help pass-through entities better monitor and maintain oversight of their subrecipients (§200.303). Part of having a well-managed oversight and monitoring operation, includes having:

- internal controls that are well-established and cannot be overridden or sidestepped
- staff members that are well-trained and knowledgeable about federal and pass-through requirements to monitor subrecipients
- sufficient resources (financial and staffing) that are dedicated to subrecipient monitoring
- oversight managers that understand the subrecipient's environment, systems and controls enough to identify the most appropriate methods/tools and extent of monitoring to be used for subrecipient monitoring (§200.331(e)(1))
- indicators in place that can help identify risks from outside factors that may affect a subrecipient's performance (those related to economic conditions, political changes, regulatory changes or unreliable information) (§200.331(b))
- official written policies and procedures regarding aspects of subrecipient monitoring (e.g., methodology for resolving findings of noncompliance or internal control weaknesses) (§§200.303; 200.331(e))
- follow-up processes in place to ensure timely appropriate actions are taken or completed on a subrecipient's reported deficiencies (§200.331(d)(2))
- reviews of the subrecipient's financial and performance reports required by the pass-through entity (§200.331(d)(1))

A pass-through entity must demonstrate adequate internal controls over the management of its federal awards (§200.303), which in turn means oversight of subrecipients. Pass-through entities will be required to address how they manage audit corrective actions, identify levels of subrecipient risk, access subrecipient information and how well they assist and communicate with subrecipients on issues and performance (§200.331).

During an audit, a pass-through entity should be prepared to discuss with the auditor the scope of its subrecipient monitoring activities, including the number, size and complexity of subawards, as appropriate. Auditors may review documentation to ascertain whether the pass-through entity informed its subrecipients about federal program requirements imposed by laws, regulations and contract or grant agreement provisions (including verification that the pass-through entity required single audits of subrecipients that meet the annual threshold under Subpart F). Subrecipients that must comply with audit requirements either as defined by the UG or the award agreement and that meet the annual threshold would have a Single Audit report that can inform the pass-through entity. Though not explicitly stated, pass-through entities also should be

prepared to discuss their audit and oversight activities of subrecipients, such as additional specific award conditions and explicit terms and conditions in the award document when subrecipients do not meet the annual threshold for single audits or applicability guidelines of the UG. The pass-through entity must notify the subrecipient of any additional requirements as well as the reason why the additional requirements are being imposed, nature of the action needed to remove the additional requirement, deadline for completing the action, and method for requesting reconsideration of additional requirements (§200.207(c)).

An auditor's review will include procedures to verify that a pass-through entity, using appropriate techniques, monitored the activities of its subrecipients not subject to a single or program audit. Any subrecipient noncompliance must be reflected in the pass-through entity's records, along with audit reports, management decisions on findings and corrective action plans for any deficiencies.

Furthermore, pass-through entities are required to issue management decisions on any audit findings of its subrecipients within six months of receiving the audit report or as required by federal agency regulation, and ensure that a subrecipient takes necessary corrective action (§§200.521(c) and (d)). Pass-through entities must require their subrecipients allow access to records and financial statements needed to comply with Subpart F.

Subrecipients vs. Contractor Determination

As discussed, pass-through entities are directed under the UG to distinguish between a subrecipient (§200.92) and a contractor (§200.23) in order to prepare the appropriate award instrument for its subrecipients.

Subrecipients may receive any federal award type, such as assistance agreements, contracts or fixed amount awards (§§200.92, 200.93). A subrecipient would be associated with a federal assistance agreement like a grant or cooperative agreement that works toward the greater public good, and is responsible for "adherence to federal program requirements" (§200.330(a)(4)). When it expends federal funds under an assistance agreement, the subrecipient is generally subject to audit requirements under Subpart F of the UG (§200.501(f)) unless the subrecipient is a for-profit or international organization.¹ In those circumstances, a pass-through can accommodate the need for audits by including applicable compliance requirements in the terms and conditions in the award agreement (§200.501(h)).

When an entity is considered a vendor or contractor, on the other hand, it would not be working toward the greater public good, and instead would be supplying goods or services to a pass-through entity for the nonfederal entity's own use (§200.330(b)). When a subrecipient spends federal funds under a contract, it is not subject to federal award compliance requirements, however, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's

¹ The CRF program has created the opportunity for some nontraditional for-profit subrecipients.

records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards. (§200.501(g)).

Pass-through entities should determine whether the relationship with another nonfederal entity is that of a subaward or a contract before making an award so that the appropriate award instrument is used and the appropriate guidance is followed. The primary factor used to make such a determination is a fundamental difference of purpose, i.e., whether payments made by the pass-through entity are for the purpose of carrying out a portion of a Federal award which constitute a federal subaward or provide payment for goods and services that directly support the pass-through entity which constitutes a contract (§200.330). There are some key factors that make it sometimes difficult to determine the status of a subrecipient or contractor. They can share so many attributes that it often makes it difficult to distinguish between them, leading to some confusion about the selection of the appropriate award instrument to use for the pass-through and how best to monitor the obligations that each requires. Both subawards and contracts are:

- subject to the authorizing federal statute and appropriation
- structured by regulations
- dependent upon the prime recipient's receipt of a federal award
- offered to eligible applicants and can be targeted for under-represented or special classes of applicants
- awarded to responsible parties who are judged best able to perform;
- governed by terms and conditions
- need a written agreement between the prime and second-tier organization

Despite these extensive similarities, federal subawards and contracts, again, address different fundamental purposes and are based on the principal purpose or intended use of the funds.

Concerning for-profits, it is recommended that pass-through entities check federal agency regulations, and in absence of compliance provisions, establish their own requirements through the award agreement with any for-profit subrecipients to ensure the proper management and administration of federal funds and to protect the rights of the pass-through entity to audit the for-profit subrecipient. Federal awarding agencies may apply Subparts A through E of the UG guidance to for-profit subrecipients (§200.101(c)); however, Subpart F are not, unless applicable provisions are included in the award agreement (§200.501(h)).

Subrecipient Responsibilities

In turn, subrecipients under a subaward have their own responsibilities and should be able to:

- provide the pass-through entity (and its independent auditors) access to records and financial statements to determine compliance with federal requirements (§200.331(a)(5)).
- facilitate the pass-through entity's planned monitoring and oversight activities (e.g., on-site visits) (§200.331(e)(2)).
- provide information to the pass-through entity on previous audits as requested (§200.331(b)(2)).
- provide results from direct federal agency monitoring activities on direct federal awards received (§200.331(b)(4)).
- provide written notification to the pass-through entity when it is not required to undergo a single audit, or provide information that supports not being required to undergo a single audit.
- provide the pass-through entity with verification that a required audit was performed in accordance with Subpart F when the subrecipient expected to meet or exceed the audit threshold of §200.501 and Subpart F is made applicable to the subrecipient, if necessary, through the terms and conditions of the award agreement.
- inform the pass-through entity whether the relevant program would be audited as a major program using the risk-based approach (determined solely by the auditor) and, if not, the cost of having it audited as such (if desired by the primary recipient, the subrecipient must have the program audited as major).
- as appropriate, and as defined when necessary by the award agreement.
- send written notification to the pass-through entity that an audit was conducted in accordance with Subpart F of the UG, and that no audit findings and questioned costs (for the current or prior year) were related to the subaward, as appropriate, and as defined when necessary by the award agreement.
- take appropriate and timely corrective action to resolve audit findings (including the preparation of a corrective action plan), and comply with any management decision issued by the pass-through entity (due within six months of receiving the subrecipient's audit report), as appropriate, and as defined when necessary by the award agreement and/or by federal agency regulation which may vary.
- follow up on audit findings, as appropriate, and as defined when necessary by the award agreement, unless no longer valid because the findings occurred at least two years earlier, the pass-through entity did not follow up on the findings and a management decision was never issued; and keep copies of audit reports and related documentation on file for at least three years following the audit period for review by pass-through entities (§200.512(f)).

Related Audit Issues

The costs of auditing subrecipients may be charged to a federal award, depending on the circumstances as described in AOS Bulletin 2020-005. Single audit costs are chargeable if a subrecipient meets the Single Audit \$750,000 expenditure threshold (§200.425(a)). Otherwise, only monitoring costs may be charged, either as a direct cost or as an allocated indirect cost, in accordance with the UG. Pass-through entities may charge federal awards for the cost-of-agreed-upon procedures engagements to monitor subrecipients and meet the requirements in §200.425(c).

Because the UG disallows the cost of an audit not meeting the \$750,000 threshold (§200.425), the pass-through entities may impose Single Audit requirements on subrecipients that would otherwise be exempt, but may not allow federal funds expended on the audit. Pass-through entities should seek the advice of their legal and financial advisors regarding the cost of audits in these circumstances and appropriate language for the award terms and conditions.

Additional requirements for subrecipient monitoring can be found in the U.S. Department of Treasury's [CRF program regulations](#) (including frequently asked questions), the Ohio Office of Budget and Management's [website here](#), and the terms and conditions of an award.

DEFINITIONS

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – establishes important definitions for common terms used throughout the UG. The AOS has provided some additional definitions to assist readers using this document, however, those additional terms are not defined in the federal regulations in 2 CFR 200.*

*Beneficiary** – undefined in UG. Under the plain meaning, a beneficiary is an individual or organization receiving the direct benefit of a federal program but for which there is no ongoing compliance responsibility of the federal award as a subrecipient. *Non-Federal entity* – (§ 200.69) means 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.

*Prime Recipient** – undefined in UG. The direct recipient of a federal award to support a particular programmatic purpose.

Pass-Through Entity – (§200.74) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

*Reimbursement Grant** – undefined in UG. Under the plain meaning, a reimbursement grant provides funding to grant recipients after expenses have been incurred. The grantee must follow a certain procedure to obtain the reimbursement to qualify for Federal program reimbursement of expenses. Reimbursements are provided in a lump sum or on a set payment schedule after the organization has submitted sufficient documents to verify expenses.

Subrecipient – (§§200.93, 200.330) 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. Subrecipients are responsible for performing a substantive portion of the project and for programmatic decision making.

Subaward – (§§200.92, 200.93, 200.331) an enforceable agreement derived from a federal award, between the pass-through entity to a subrecipient for the subrecipient to carry out part of a performance of a substantive portion of the federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Subawarding funds is allowable with CRF if it is necessary due to the public health emergency and is compliant with all applicable legal requirements, including compliance with the three prongs of the CARES Act and applicable provisions of the Ohio Constitution. When a local government subawards CRF funds, it creates additional responsibilities to provide notice of the funding to the subrecipient and to monitor their activities as described in this advisory. Subawards do not include the procurement of goods or services from a contractor (*see* definition of “*contractor*” below).

Contractor – (§§200.22, 200.23, 200.330) means an entity that receives 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. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor: an organization or individual that provides goods and services within their normal business operations pursuant to a contract; provide similar goods or services to many different purchasers; operate in a competitive environment; and provide goods and services that are ancillary to the operation of the Federal program.

Subrecipient and contractor determinations – (§ 200.330) 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, 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. 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.