

¶3701 Introduction

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This chapter covers a topic of increasing concern to all research administrators—subawards to collaborating institutions — as interinstitutional research collaborations is one of the fastest-growing areas within the realm of sponsored programs at colleges and universities.

Robert Killoren, Jr. of Ohio State University provides a thorough yet highly accessible discussion of the world of subawards. Killoren begins with a description of the financial assistance model under which subawards are clearly separated from “subcontracts,” “vendor agreements,” and “consulting agreements.” Once again we are reminded that research administration has evolved its own highly specialized vocabulary. Understanding the terms is absolutely critical to being able to make sense of complex relationships such as those contemplated in a subaward.

Killoren provides a complete and useful description of the National Subaward Model Agreement Form. This is a standard form for subawards for research collaborations between colleges and universities that was developed and tested by the members of the Federal Demonstration Partnership (FDP). This model agreement has been approved by the Office of Management and Budget (OMB) and is now available for use throughout the higher education community. Killoren provides a painstaking clause-by-clause analysis and explanation that leaves the reader fully informed about the purpose and rationale of the agreement and ready to use it.

This chapter will continue to respond to the information needs of research administrators through the addition of new material. Future updates will contain revisions, additions, and enhancements to ¶3705, as appropriate. Content added to other sections of the chapter will provide readers additional discussions of related topics (at ¶3720), practical tools (at ¶3730), case studies (¶3740), and statistics and survey results (at ¶3760). A “knowledge check” containing Q&As and discussion topics is included at ¶3790.

13705 Subawards

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This chapter examines the policies and procedures that are necessary to manage effectively and efficiently subawards on federal grants. It also highlights the model subaward agreement form developed by the Federal Demonstration Partnership (FDP) that, in January 2005, the Office of Management and Budget (OMB) and the Office of Science and Technology Policy (OSTP) endorsed as a national standard for streamlining research collaborations with universities and not-for-profit organizations.¹ (The subagreement form is included as Figure 4, pages 3705:28-35.) Adopting this form nationally has the potential to save hundreds of thousands of dollars annually across the nation in person-hours devoted to processing subaward agreements.

This chapter also discusses the important tasks surrounding subrecipient monitoring, which also have been the recent beneficiary of streamlined federal requirements that now allow universities to rely on audit information found in the Federal Audit Clearinghouse (FAC) when conducting subrecipient monitoring. (See Figure 1, page 3705:2, for background on the FDP and the FAC.)

This chapter focuses on the relationship between a “lead” institution under a grant that makes “subawards” to “collaborators” and “collaborating” institutions. There are other ways to involve multiple institutions in working with the lead institution *that will not be covered in this discussion*, including

- ◆ a purchasing agreement may be used when an organization is simply providing a service to the lead institution, such as performing a routine sample analysis in which one of its labs excels, or when the lead institution is procuring the assistance of another organization’s survey center;
- ◆ a subcontract is often used in cases such as when a lead institution is *procuring* sophisticated levels of research expertise to accomplish a segment of a project’s scope of work under a contract award; and
- ◆ another method of obtaining services, albeit not from an organization, is by hiring consultants.

Sometimes the terms “subaward” and “subcontract” are used interchangeably, but in the strictest sense they are distinct. Simplistically, a “subaward” is used when the originating award is a grant, and a “subcontract” is used when the originating award is

¹ See the letter dated Jan. 4, 2005, by the Executive Office of the President and signed by officials of the OSTP and OMB. A copy of the letter can be seen via the FDP Web site or by going directly to: <http://www.rtto.psu.edu/spa/subawards/modelsubagreement.pdf> (accessed on Nov. 26, 2005) and clicking on the link entitled, “Memorandum from the Executive Office of the President.” Or go to the FDP Web site (www.thefdp.org) and follow the committee link to the subawards demonstration site.

Figure 1: What Are the FDP and FAC?

The Federal Demonstration Partnership

The Federal Demonstration Partnership (FDP) is a cooperative initiative among 10 federal agencies and 98 institutional recipients of federal funds; its purpose is to reduce the administrative burdens associated with research grants and contracts. The interaction between FDP's 300 or so university and federal members takes place at three annual meetings and through various collaborative working groups and task forces. The FDP is a forum for universities and nonprofits to work collaboratively with federal agency officials to improve the national research enterprise. More about the activities and member institutions of the FDP can be found at: www.thefdp.org.

Federal Audit Clearinghouse

The Office of Management and Budget established the Federal Audit Clearinghouse (FAC) to serve as the repository for the data collection form, Form SF-SAC, and the single audit reporting packages. The FAC then compiles the data contained in the package and provides that information, along with other appropriate information about the auditee, its audit report, and federal programs to awarding agencies. More about the FAC can be found at: <http://harvester.census.gov/sac/>.

a contract. This chapter uses this basic differentiation when referring to subawards. (For an in-depth discussion of administering research contracts, see Chapter 2700.)

Finally coverage in the chapter is limited to federal funding that is granted by a prime grantee to collaborating institutions when both institutions are subject to OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*.² (Even in situations where this is not the case, institutions will find that many of the procedures discussed below are appropriate to follow when an institution is dealing with other types of sponsors as well.)

¶3705.1 Research Collaborations

Research collaborations between researchers at different institutions are commonplace today. This relatively new development is the result of the increasing sophistication of science and the sheer magnitude of the research enterprise. While individual investigator-initiated research projects still make up the bulk of awards from most federal sponsors like the National Science Foundation (NSF) and the National Institutes of Health (NIH), big science increasingly demands big solutions to reveal the mysteries of nature and human interactions that can only be unraveled by engaging scientists from a wide variety of disciplines, each bringing individual specialties to bear on a single problem. Even the largest and best research institutions in America cannot fully staff the full breadth of expertise needed to work on some problems.

²The OMB circulars can be found at www.whitehouse.gov/omb/circulars.

Because there is a finite amount of money that can be spent on research, federal agencies are also looking for ways to get the “biggest bang for the buck.” Thus they frequently encourage collaborations between institutions. However not only do they employ this team approach to address financial limitations, but also to encourage diversity. It is thought that such diversity can spark synergies as well as have a positive long-term impact by increasing the overall scientific base upon which new knowledge is generated. The best scientists in the country may not be in the biggest schools, on the East Coast or West Coast, or in the large cities of the South and the Midwest. Nor is scientific expertise and dedication limited to gender, race, or ethnic background. Collaborations among large and small institutions, public and private schools, institutions from different parts of the country, and predominantly minority institutions and those that are not are necessary to meet the demands of science and society.

Collaborations between institutions are sometimes accomplished with collaborative research awards, where each institution submits its own proposal with a common project description but different budgets. NSF, for instance, accepts related proposals from different institutions and then combines them for review.³ Successful proposals yield separate awards to each institution. More often, however, one institution among the collaborators is selected as the lead institution, with the others serving as subrecipients. In this case there is a single proposal submitted by the lead institution on behalf of all the institutions. *If successful, a single grant award is made to the lead institution, and the lead institution makes subawards to the collaborators.* This latter arrangement is the focus of this chapter.

¶3705.2 **Key Terms**

OMB Circular A-110 contains the formal definitions of terms used for federal awards.⁴ Understanding these definitions is extremely important to understanding the policies and procedures affecting subawards. Definitions of key terms associated with subawards are included below followed by brief commentary on the terms’ relevancy for a college and university office of sponsored programs (OSP). Figure 2 contains a snapshot of some frequently used terms.

Circular A-110

Award means financial assistance that provides support or stimulation to accomplish a public purpose.⁵

³ *NSF Grant Proposal Guide*, NSF 04-23, Section II.D.3.b, visit: www.nsf.gov/pubs/gpg/nsf04_23/.

⁴ Title 2 of the *Code of Federal Regulations* (CFR), “Grants and Agreements,” Chapter II, Section 215, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations” (OMB Circular A-110).

⁵ See 2 CFR 215.2(e). Awards do not include “technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.”

Figure 2: Who's Who	
<p>Awardee receives financial assistance (an award) from a federal agency</p> <p>Also called:</p> <ul style="list-style-type: none"> • Recipient or prime recipient • Lead institution • University • Grantee or prime grantee • Pass-through entity 	<p>Subawardee receives financial assistance (a subaward) from an awardee</p> <p>Also called:</p> <ul style="list-style-type: none"> • Subrecipient • Collaborating institution • Collaborator • Subgrantee

The first thing to note is that an “award” means *financial assistance*; that is, the granting of an award is not considered a purchasing or procurement activity. The government is not buying something from a university when it gives the institution an award. Rather it is providing financial assistance necessary to help the institution fulfill its own mission. By using the word *assistance* the implication is that the funds are given to supplement the institution’s capacity to perform the project.

The concept of financial assistance also suggests that the institution assumes a binding obligation to perform in response to the federal government’s granting of support. However, an award is not exclusively meant to support an ongoing activity of an institution. Sometimes the grant is to stimulate new activities of national interest at the institution that still fall within its mission and purpose but currently are not being undertaken. An award is always made “to accomplish a public purpose.” The government is awarding money derived from public support, e.g., taxes. Therefore awards may not be used for the private benefit or enrichment of persons or entities.

Circular A-110

Recipient means an organization receiving financial assistance directly from federal awarding agencies to carry out a project or program.⁶

Under OMB Circular A-110, awards are given to “recipients.” Often the term “grantee” is used, but the formal, technical term is recipient. (Recipients are also sometimes referred to as “pass-through” entities.) Organizations can be recipients but, in general, individuals cannot. Some grant awards are made to individuals, such as those funded by the National Endowment for the Humanities. However, awards for individuals are administered under different administrative requirements than are awards to institutions. A-110 states specifically that recipients must be “public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations.”⁷

⁶See 2 CFR 215.2(cc).

⁷*Ibid.* Also, recipients may include “commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency,” but may not include “government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.”

Recipients are “prime” grantees; that is, they receive awards directly from the federal government, not from states or other organizations. In accepting financial assistance a recipient’s use of grant funds is restricted to carrying out the project or program that fulfills the public purpose supported by the award.

Circular A-110

Subaward means an award of financial assistance . . . made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.⁸

Similar to an award, a “subaward” is *financial assistance*, as defined above. The subaward “flows down” from the award through the recipient to an eligible subrecipient, carrying along with it the requirement that it must support or stimulate the subrecipient to accomplish a public purpose. The interesting thing about federal assistance is that it retains that identity as long as it flows down to eligible subrecipients, regardless of what the mechanism for moving the funds is called. Thus according to A-110, “The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services.”⁹

Circular A-110

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.¹⁰

A “subrecipient” is a legal entity. In using this terminology, and in considering the limitation the definition of recipient in A-110 imposes against individuals being recipients, one can infer that subrecipients cannot be individuals but must be organizations.¹¹

Once a recipient gives a subaward to another organization, the recipient takes on the role of the federal government and assumes the responsibility to monitor a subrecipient’s technical and financial progress and compliance. Thus subrecipients report not to a federal agency, but to the recipient or the next higher level of subrecipient. (In some cases, a subrecipient can in turn award a subaward to a lower-tier subrecipient.)

In addition to Circular A-110, OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, spells out the responsibilities of recipients to subrecipients, including subrecipient monitoring. It also provides some insights into

⁸ See 2 CFR 215.2(ff).

⁹ *Ibid.*

¹⁰ See 2 CFR 215.2(gg).

¹¹ This supposition is reinforced by OMB Circular A-133, which also concludes that a subrecipient “does not include an individual that is a beneficiary of such a program” (A-133, section __.105, Definitions).

the different mechanisms available to an awardee seeking to get outside help on a project and provides the following.

Characteristics indicative of a *federal award received by a subrecipient* include when the *subrecipient* does some of the following kinds of activities:

- (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 entity¹²

On the other hand, the *procurement of goods and services* from a vendor occurs when the *vendor* performs any of the following kinds of activities:

- (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
- (5) Is not subject to compliance requirements of the federal program¹³

Again this chapter focuses on the relationship between a lead institution under a grant that makes subawards to subrecipient institutions, and not on vendor relationships involving the procurement of goods and services.

¶3705.3 **Resources Required for Administering Subawards**

Subaward administration can be included as part of any number of research administration functions — including pre-award, post-award, financial, and departmental communications — either as a centralized function, a decentralized function, or a distributed or shared function. Whatever organizational model used, however, the range of operations associated with subawards should be considered in assigning oversight responsibilities.

Budget Preparation

The same individual or team that prepares the overall budget for the proposal also should be responsible for incorporating the budgets for any subawards. Subawards must be treated in a special way in proposal budgets. Salaries and wages of subrecipients do not show up in the personnel line of the recipient's budget, for

¹²OMB Circular A-133, at §__.210, "Subrecipient and vendor determinations."

¹³*Ibid.*

example. Rather, salaries, fringe benefits, equipment, and other direct costs of a subrecipient's component of the overall program are included in a single line item of the recipient's budget, with details provided in budget notes or backup documentation. Thus, organizationally, budget building should be given to the same pre-award unit that prepares budgets for proposals, whether the institution is the lead institution or a planned subrecipient.

The same logic applies for the other operations associated with subawards. The technical progress of a subrecipient needs to be monitored by the principal investigator (PI), and the same PI and his or her department should review all subrecipient invoices. This is only reasonable, since it is the PI and department staff who are most knowledgeable about the subrecipient's performance.

Written Policy

Subawards are a favorite target of auditors, so it pays to ensure that the institution's policy on subawards is in writing, addresses all aspects of subaward management, and is readily available to all project personnel. Specialized training for managing subawards is also a necessity for those involved in the process. Communicating to the PI the special responsibilities involved with subawards is extremely important. If things go amiss in collaborations it is often because of faculty who have a misunderstanding of their roles and responsibilities with regards to subawards, resulting in failure to keep a close eye on the progress and performance of subrecipients. Failures of communication can readily spoil good scientific relationships and can lead to unsuccessful projects.

Communications

Communications between the sponsored programs office, departmental and college research administration offices, and research accounting operations are essential in administering every subaward. Having a pre-subaward meeting with PIs and their assistants who will be handling the accounting and other processes is an effective way to begin the collaboration. Communications among PIs and research administrators from both lead and collaborating institutions need to take place initially and on an ongoing basis to head off problems and resolve differences.

Tracking System

In addition to a solid understanding of subaward requirements and an organizational structure that allows them to carry out their responsibilities effectively, research administrators across the institution optimally will have access to a subawards tracking database or some other kind of tracking system. Depending on the size of the institution and the number of subawards that need to be tracked, such a system could be created using relatively simple Excel™ spreadsheets, database programs like Access™, or a subaward information system that is integrated into an institution's financial and electronic research administration (ERA) systems. Whatever type of system selected, it should be capable of alerting staff about monitoring requirements, milestones, modifications, and deadlines. (For an in-depth discussion of information systems and ERA, see Chapters 700 and 900, respectively.)

Staffing

As discussed above usually the same staff member who prepares the award budget will simply handle the subaward budget as well. However there are certain functions — such as the issuance, negotiation, and administration of subawards — that an institution could choose to locate in a unit dedicated to subawards management, so that there is a consistent treatment and handling of all subawards.

Depending on the magnitude of the subawards issued by an institution, staffing requirements can vary greatly. Institutions that issue a large volume of subawards may benefit from having a team that does nothing but manage subawards. Many such institutions have made managing subawards a specialty of research administration, with its own policies and procedures.

In OSPs that are organized around a customer-based management system (where individuals or teams do cradle-to-grave handling of grants for specific academic units), it makes sense for a team to have oversight of any subawards made under their customers' awards. Likewise, institutions that emphasize one-stop-shopping concepts usually have subawards handled by the team that manages all related administration and financial management associated with a particular project, since the assigned staff is already familiar with that project. This approach provides continuity in administering the project, but can lead to workflow difficulties if the number of subawards is not distributed equally among all teams in the office, or if there are competing deadlines among proposals, awards, and subawards.

In smaller institutions or institutions that do not handle many subawards, it is important that staff working with subawards understand the unique requirements that apply to subawards.

Some institutions assign subawards management to the purchasing department because that office is already handling purchases of services and subcontracts. In most instances this is not the preferred location for managing subawards, because it presents, in a sense, a contradiction in terms. Since subawards by definition are not procurement, but federal assistance, they should not be managed in the same manner that purchases of goods and services are managed.

If the institution prefers to create a stand-alone team to administer subawards, this team should have at least some part of an experienced research administrator's effort and a staff assistant, who would be responsible for the entire subawards process from the award phase to closeout for all subawards.

Some institutions foster the creation of a staff subaward "guru," to provide help and advice to the entire OSP staff. The guru is a subaward expert who

- ◆ is available as a resource to anyone in the office,
- ◆ keeps tabs on new developments in national policies regarding subawards,
- ◆ oversees the institution's subawards database, and
- ◆ acts as interface on subawards with auditors.

¶3705.4 **Proposal Preparation and Submission**

PIs from the collaborating institutions are responsible for developing the award proposal. There are multiple ways to approach the writing of a collaborative proposal, depending on the scope of the collaboration and the relative contributions of the parties. The method used most often is to split the proposal into its constituent parts, assigning parts of the proposal writing to the proper investigators who eventually will be responsible for their respective parts of the project. Then the lead institution's PI combines the various contributions into a convincing, finished product.

However, in developing the proposal, clear lines demarking responsibilities are not always readily apparent. Sometimes it is necessary for investigators to meet in person and hammer out the proposal together, at least to the point where all investigators are comfortable enough with their assignments. On multimillion-dollar and multi-institutional projects, it sometimes pays to hire a specialist editor who can take input from the various investigators and create a coherent whole.

During development of the proposal narrative, a joint project can begin to fall apart if the expectations embodied in each investigator's contributions to the project are not clearly understood by the collaborators. It is probably not a good idea for a joint proposal to be written with the understanding that all parties are simply "doing everything together" or, for that matter, "doing their own thing." Instead one should make sure the proposal contains a statement of work clearly indicating for what the lead institution and each other party will be responsible.

Budget

The budget is the *fiscal expression of the project's scope of work*. It needs to reflect accurately the costs of the activities to be undertaken by each collaborator. The lead institution is responsible for submitting the overall project budget along with the proposal. Subaward estimated costs are not to be interwoven with the lead institution's costs throughout the budget but included as a separate line item in the proposal. If there are multiple subawards proposed, the total cost for each subaward should be provided in the budget along with the name of each collaborating institution, if space allows. The total of all subawards should be entered as the amount for that budget category.

Frequently federal agency guidelines and budget forms will use a term like "subcontracts" instead of "subawards," but as stated earlier, *financial assistance keeps its identity no matter what the proposal calls it*. If there is not enough space provided on the budget form to list each subaward separately, use the budget justification page to identify each collaborating institution and its total costs.

On NIH modular grants one must list separately the F&A (facilities and administrative) costs for the "consortium members" (NIH-speak for subrecipients) on the top of the budget justification form. Then in the justification narrative each consortium institution's estimated costs per year must be identified, showing how each sum is split between direct and F&A costs. It is important to note that when NIH establishes a

ceiling on the amount of funds that can be requested on a grant, F&A costs related to consortium subawards are not factored into this budget limit.¹⁴

The level of effort of the PI and project personnel must be shown, indicating the scope of work each will contribute to the overall project. Since many agencies require approval before including subrecipients in a project, it is important to list each subrecipient explicitly, as this will serve as agency approval. It is almost always a good idea to include a complete budget from the subrecipient as part of the documentation accompanying the proposal.

F&A Recovery

Because the lead institution is responsible for the management of all subrecipients, it is eligible for a certain amount of F&A costs to help cover the costs of that administrative burden. When calculating F&A based on modified total direct costs (MTDC) for instance, F&A is allowed to be charged only on the first \$25,000 of each subaward. That limit covers the “life” of the project — that is, the competitive period. Thus for a three-year grant, the lead institution only gets F&A on the first \$25,000 of the total amount given to each subrecipient for the entire three-year grant period. When receiving a competitive renewal for another three years, the grant is given a “new life” and the F&A cycle begins again. Each subrecipient, on the other hand, is entitled to its full F&A recovery, unless of course there are limitations imposed on the entire proposal by the sponsoring agency.

It is improper to ask the subrecipient to lower its F&A request in order to make more direct costs available for a project. PIs from time to time have been known to attempt to force a reduced F&A recovery “requirement” on subrecipients as a prerequisite for participating in the project. This practice is not allowed. One of the responsibilities of the OSP is to explain to PIs the appropriateness and importance of each subrecipient (and of course the prime) institution recovering its full F&A reimbursement. (For more on F&A costs and recovery, see Chapter 1700.)

Handling proposal budgets for subrecipients in NSF’s FastLane, the agency’s electronic proposal and awards system available on the Internet, requires special handling. Figure 3 includes the instructions from FastLane’s Frequently Asked Questions (FAQ) on proposal preparation.

Proposal Package

The following is the *minimum* information needed from a subrecipient for inclusion in the proposal:

- ◆ A statement of the work to be performed under the subaward
- ◆ A budget prepared using the budget format and level of detail as that required by the sponsoring agency
- ◆ Completed representations and certifications, if required at the time of proposal submission

¹⁴NIH *Guide to Grants and Contracts*, NOT-OD-05-004, Nov. 2, 2004.

Figure 3: NSF's FastLane Proposal Preparation Instructions for Subrecipient Budgets

To complete a subaward budget, you must both add the new organization and create a budget for the new organization.

To add an organization:

- (1) On the "Form Preparation" screen, click on the *GO* button next to "Budgets."
The Project Budget screen will be displayed.
- (2) Click on the "Add Another Organization" link at the lower left corner of the Project Budget screen.
The Current Budget Organizations screen will be displayed.
- (3) Using the form on the Current Budget Organizations screen, search for an organization either by name or DUNS number.
- (4) From the search list, select the organization and, if necessary, the PI for the new organization.
 - ◆ The Project Budget screen will display with the new organization now listed.
 - ◆ The new organization will have a new empty budget for Year 1.

To create a budget for the new organization, select the *Funds* or *Personnel* link for the new organization listed on the Project Budget screen and make the appropriate entries.

The subaward organization can access the proposal budget through any one of the following and complete their budget information:

- ◆ A proposal PIN.
- ◆ A Co-PI at the sub-award organization.
- ◆ Circulation of the FastLane budget as a spreadsheet.

Source: National Science Foundation, *FastLane: Frequently Asked Questions*, "How do I complete a sub-award budget?" located on the Web at: www.fastlane.nsf.gov/servlet/faq.Faq (accessed Nov. 26, 2005).

- ◆ The signature of an authorized official of the subrecipient, signifying the collaborator's commitment to carrying out the project if funded

The subaward material should be received well in advance of the proposal deadline to allow for a review for completeness and its incorporation into the proposal. It is important for the lead institution to carefully review the package to ensure that no material or necessary approvals from the collaborating university are missing.

Once the entire proposal package is assembled, the proposal is ready for submission. The submission process for a proposal containing subawards is the same as is required for submitting any other proposal to a particular sponsor. During the proposal review cycle it is important for all participating parties to stay in regular communication, especially if there are changes to the budget and scope of work to negotiate during the approval process.

Request for a Subaward

After an award is made, the subaward documents must be prepared. The first step in this process is for the PI to initiate a request for a subaward. The reason this is important is that an OSP might be unaware of changes that have occurred with the PIs during the time the proposal was submitted and the grant was awarded. For instance the PI on the subaward may have changed institutions. The subaward request, as submitted by the PI, should include any budget revisions or changes to scopes of work that may have been negotiated between the PI and the agency's program officer prior to the award. (Obviously it would have been preferable if the OSP had been notified of these negotiations, but this does not always happen.)

¶3705.5 Subaward Agreements

The following items constitute the major components of a subaward and should be part of all subawards:

- ◆ Names and addresses of the institutions or organizations and the subrecipient's Employer Identification Number (EIN) (Some institutions also require the Data Universal Number System (DUNS) number.)
- ◆ Contact names, telephone and fax numbers, and e-mail addresses for the authorized official and administrative, financial, and technical contacts
- ◆ Awarding agency, the award number, the *Catalog of Federal Domestic Assistance* (CFDA) number, and title of the project
- ◆ Subaward ID number assigned by the prime recipient, the amount of the subaward, the period of performance of the subaward (broken into appropriate parts if the subaward is to be incrementally funded)
- ◆ Subrecipient's scope of work
- ◆ Subrecipient's reporting requirements
- ◆ Required compliance representations and certifications

The *terms and conditions* section of the subaward need to address the following:

- ◆ Type of subaward (normally cost-reimbursable; because grants are given on a cost-reimbursable basis by the federal government, it is expected that subawards would be issued on the same basis)
- ◆ Statement of subrecipient's legal standing (e.g., independent entity and not an employee)
- ◆ Reimbursement process (e.g., submission of invoices and billing cycles)
- ◆ Submission of final invoices
- ◆ Subrecipient performance monitoring
- ◆ Subaward modification process
- ◆ Termination process
- ◆ No-cost extension process

- ◆ Liabilities of each party
- ◆ Flow-down requirements of the prime grant
- ◆ Any special intellectual property, data rights, and publication arrangements

The lead institution may have other, peculiar requirements to follow, such as special state requirements, that also need to be addressed in the subaward. Finally, and most importantly, *subawards must be signed by the institution's appropriate authorized official.*

¶3705.6 **National Subaward Model Agreement Form**

Obviously there are many different ways that institutions can present the above-listed elements in a subaward. This variability in presenting the award terms and conditions can cause misunderstandings between parties to arise, which can lead to extended negotiations, delays in commencing the research, deteriorating relationships, and even an end to the project. Recognizing the need for some kind of standards for and streamlining of the subaward process, the Federal Demonstration Partnership (FDP) assembled a task force to craft a common set of terms and conditions that most institutions could accept. Such troublesome issues as limitations that some states put on indemnification, arbitration, and sovereign immunity were addressed so that all parties to the agreement would be satisfied with the protections given.

The basic approach to standardizing and streamlining the subaward agreement was to defer most “contractual” issues to the general regulations that govern federal awards (OMB Circulars A-110, A-21, and A-133) and include the appropriate document by reference, rather than restating them in a litany of flow-down clauses within the subaward agreement.

Another key concept that the FDP explored in crafting the subaward document was the use of risk analysis to arrive at compromise provisions that could work for all parties and that would not sacrifice any institution's principles or practices. After all, in most subawards, one highly respected and conscientious institution is working with another. If NSF and NIH can issue an award with a few pages of e-mail text, institutions ought to be able to work with one another in a similar manner.

Acknowledging that institutions can have special terms and conditions — either self-imposed or necessitated by state or agency requirements — that must be part of a subaward agreement, the FDP task force built maximum flexibility into its model document by incorporating into it “Attachment 2.” In this addition to the subaward agreement, lead institutions can identify special agency requirements, institutional needs, or state-mandated provisions. By taking certain kinds of provisions out of the main document, there can be general agreement among institutions on the standard terms and conditions and then additional concerns can be negotiated separately under Attachment 2.

Pilot Project

The FDP piloted the model subaward agreement with a small number of FDP institutions and then expanded its use under a demonstration project that involved nearly all the FDP institutions. Because a variety of institutions and the major federal agencies participated in and contributed to the development of the standard terms and even most of the agency-specific terms used, the results of the pilot and demonstration projects were highly successful. Use of the forms dramatically reduced the time and effort associated with negotiations and got projects underway much quicker.

The following were the significant results of the FDP subawards demonstration project:

- ◆ 768 subawards using the model subaward agreement form were issued
- ◆ 746 of these were issued to FDP and non-FDP institutions without any changes
- ◆ 11 cases (1.4 percent) required major negotiations prior to signature
- ◆ On average, institutions saved 21 pages per subaward issued
- ◆ 73 percent of participating FDP institutions reported time savings
- ◆ 161 subawards were received by reporting institutions
- ◆ 156 (97 percent) were executed without any changes
- ◆ On average, 13 pages were saved per received subaward
- ◆ 73 percent of the participating FDP institutions experienced time savings in receiving FDP subawards

Having demonstrated the significant streamlining of the “interinstitutional” subaward process, the FDP recommended the model subaward agreement form to the Research Business Models (RBM) Subcommittee of the National Science and Technology Council (NSTC) for potential national use. In January 2005, the White House issued a joint communiqué from the Office of Management and Budget and the Office of Science and Technology Policy endorsing and encouraging “the broad use of the Federal Demonstration Partnership (FDP) model subagreement by all recipients of research grants and cooperative agreements as they deem appropriate for use in their collaborative arrangements with universities and non-profit organizations subject to OMB Circular A-110.”¹⁵

The FDP is working on a “national” version of the subaward agreement form, which does not distinguish between FDP or non-FDP institutions. Currently the FDP version incorporates the terms and conditions that are applicable to all institutions participating in the FDP. These terms and conditions provide more authorities than A-110 and agency grants policy manuals do. The non-FDP version simply refers to OMB Circular A-110 and the standard agency grant policies. The single “national” version will be implemented when or if the Office of Management and Budget ap-

¹⁵*Op cit.*, letter jointly approved by OMB and OSTP (see footnote 1).

proves expanding the FDP terms to all institutions under A-110, which has to wait for acceptance by all the federal granting agencies.

The FDP and non-FDP versions of the model subaward agreement can be used by any A-110-eligible institution or organization. As a point of clarification, FDP institutions can use the FDP subaward under any prime award that has FDP terms and conditions, when subawarding to another FDP institution. If either the agency or the subrecipient is not a member of the FDP, then the non-FDP version must be used. Non-FDP institutions always must use the non-FDP version, even if making a subaward to an FDP institution. Figure 4, pages 3705:28-35, includes page 1 and Attachments 1, 2, and 3 of both the FDP version and the non-FDP version of the model subaward agreement.

Elements of the Model Subaward Agreement

A copy of the FDP Model Subaward Agreement Form is shown in Figure 4. This discussion briefly outlines each major part of the model. (Note: The various attachments to the model document referred to are discussed after coverage of other sections of the form.)

Administrative Information. The top part of the form has boxes for all the standard required information including

- ◆ identification of the parties, with addresses and EIN/DUNS number(s);
- ◆ prime award, subaward, and *Catalog of Federal Domestic Assistance* (CFDA) numbers;
- ◆ awarding agency;
- ◆ subaward period, total funding, and funding increment for this award action;
- ◆ project title; and
- ◆ reporting requirements (provided on the first sheet or referencing Attachment 3).

Terms and Conditions. The standard terms and conditions of the subaward (which should not be modified from the original document) are provided as follows in the model agreement. After each term is defined, a brief explanation is provided.

FDP Model Subaward Agreement

(1) University hereby awards a cost reimbursable subaward, as described above, to Collaborator. The statement of work and budget for this subaward are (check one): ___ as specified in Collaborator's proposal dated _____; or ___ as shown in Attachment 5. In its performance of subaward work, Collaborator shall be an independent entity and not an employee or agent of University.

The subawardee is called the "collaborator" in the model agreement to emphasize that the subaward is not a procurement action. The term "university" may be replaced with the proper nomenclature defining the organization offering the subaward, for instance "institute." As grants are given on a cost-reimbursable basis by the federal government, it is expected that subawards normally would be issued on the same

basis, whereas subcontracts or purchase-of-service orders might more frequently be offered on a fixed-price basis.

NIH and NSF make awards by referencing the proposal upon which the award is made; it is therefore reasonable for the collaborating institutions to work together in the same way. However, if changes had to be made to either the scope of work or the budget, institutions might prefer to attach the revised statement of work and/or revised budget to the subaward. Some institutions simply feel more comfortable with these matters spelled out, so they use Attachment 5 all the time. It is legally important to identify the collaborator as an independent entity, which clarifies the relationship for tax and workers' compensation purposes and makes it clear that each party is acting on its own authority *only* — neither speaks for the other nor can make any commitments on behalf of the other party.

FDP Model Subaward Agreement

(2) University shall reimburse Collaborator not more often than monthly for allowable costs. All invoices shall be submitted using Collaborator's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. Invoices that do not reference University's subaward number shall be returned to Collaborator. Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachment 3.

This clause sets up the payment method. The monthly invoice is a standard payment mechanism. Even though a collaborator may wish to send invoices less frequently, it is in the interest of both parties to stick with a monthly cycle if at all possible. From the university's perspective, the invoices are important data to ensure that progress is being made financially that mirrors technical progress. From the collaborator's perspective the advantages are obvious — monthly invoicing helps the collaborator maintain good cash flow on the grant and monthly invoicing fits the cycle collaborators are used to because most federal grants have the same financial reporting cycle.

Monthly invoicing also provides the university's and collaborator's research administrators with information about the progress the collaborator's PI is making on the subaward. Neither party wants to get to the end of a project period and find any surprises.

This clause allows the collaborator flexibility in terms of the invoice's format, so long as it covers current costs being billed, provides subtotals for major budget categories, and presents a running total from the beginning of the subaward. However, the model subaward's terms are strict in requiring the collaborator to provide information including the subaward number on the invoice, which allows the university to track invoices back to the prime award. The university passes on to the collaborator the responsibility to certify the truth and accuracy of the invoice. Finally the model agreement form contains a page on which to list all important contacts, including where to go with invoicing questions (the financial contact that appears in Attachment 3).

FDP Model Subaward Agreement

(3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to University's Financial Contact NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Collaborator's final financial report.

The final invoicing process is treated specifically in the model agreement. The collaborator must identify the invoice as "final" and submit it within 60 days of the end date of the subaward. Circular A-110 requires that final invoices on prime awards must be submitted within 90 days of the end of the award, so the university must have the final subaward invoice in hand soon enough to give it time to prepare its final financial report to the agency. The 60-day limit is a compromise arrangement that allows the collaborator a reasonable time to get its records complete, while also giving the university enough time to prepare its final financial report that must include all subaward costs. For close-out purposes, the final invoice is considered the final financial report from the collaborator.

FDP Model Subaward Agreement

(4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Collaborator.

While the prime grantee has overall responsibility for the project, it would present an onerous financial liability to the university to assume financial risk for the entire project. The grantee requires the collaborator to be responsible for its proper stewardship of federal funds. Thus, just as the federal government reserves the right to be reimbursed for *illegitimate* expenses made on grants and discovered during audits, the university reserves such a right with respect to the collaborator's use of funds.

FDP Model Subaward Agreement

(5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Project Director, as shown in Attachment 3. Technical reports are required as shown above, [under] "Reporting Requirements."

The principal investigator/project director (PI/PD) must be the individual who takes responsibility for measuring the technical progress of the project. This "measurement" takes into account the amount of work done relative to the time frame of the project and the quality of contributions made to the project. Likewise the PI/PD of the subaward reports technical developments and coordinates experimental design and changes to the scope of the subaward's statement of work.

This section of the agreement provides a structure for effective communications. PI/PDs on both sides need to keep research administrators informed if a change in the scope of work is anticipated or if difficulties in working arrangements between investigators arise.

FDP Model Subaward Agreement

(6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachment 3. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official, as shown in Attachment 3.

The two parties to the agreement must work together in making changes in the relationship or in the project's scope. This clause prompts personnel at both institutions to alert their institutions' administrative contacts when the terms and conditions of the agreement change. Severe damage can be done to projects and relationships when investigators initiate "stop-work orders," changes to the scope of work and funding levels, or the like, without first involving their respective research administrators and following proper legal protocols.

FDP Model Subaward Agreement

(7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.

This clause involved extensive negotiations by the task force working on the model agreement in light of the wide variety of restrictions on and needs of different kinds of institutions. Many state institutions are prohibited by state law from indemnifying or agreeing to hold another party harmless in contracts. Yet institutions need some protection against wrongful acts by subrecipients.

This compromise clause provides a reasonable solution to the needs and concerns of the parties; troublesome language like "indemnify" and "hold harmless" are avoided. The clause requires that each institution take responsibility for events within its control, yet recognizes that there may be legal limits on the level of liability (such as sovereign immunity in the case of certain state institutions). This clause has proven to be well received by all types of institutions.

FDP Model Subaward Agreement

(8) Either party may terminate this agreement with thirty days written notice to the appropriate party's Administrative Contact, as shown in Attachment 3. University shall pay Collaborator for termination costs as allowable under OMB Circular A-21 or A-122, as applicable.

Sometimes projects unravel, investigator relationships sour, institutional capabilities change significantly, or key personnel become unavailable to work on the project. In the case of one of these or other similar event, there must be a provision for either party to "gracefully" back out of the collaboration. The reference to Circulars A-21 and A-122 in the provision is a good example of how the subaward agreement itself does not have to provide extensive coverage of every topic relating to a subaward. The model subaward agreement references other documents as appropriate, such as Circu-

lar A-21, which contains in-depth coverage of what costs are allowed in termination and what procedures must be followed.

FDP Model Subaward Agreement

(9) No-cost extensions require the approval of the University. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachment 3, not less than thirty days prior to the desired effective date of the requested change.

One expanded authority of the lead institution that does not flow down to the subrecipient is granting time extensions. Obviously problems could result if the subrecipient were to take it upon itself to change the subaward's end date, if the time period of the prime grant were not likewise extended. Requests for time extensions must be submitted by the subrecipient with enough lead time so that the request can be considered by the prime grantee, who in turn can submit notification or a request within the time frame as required by the granting agency's guidelines.

FDP Model Subaward Agreement

(10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.

This clause addresses any special terms of the prime award, refers to agency terms that need to be highlighted, and identifies specific institutional terms. The FDP offers samples of agency-specific Attachment 2s on its subawards Web site (www.thefdp.org). The samples also offer suggestions for other clauses that cover special topics, such as intellectual property terms. The samples provided are optional, and given that federal regulations change continually, institutions intending to use any sample are encouraged to first verify that references made in the samples are still accurate.

FDP Model Subaward Agreement

(11) By signing below Collaborator makes the certifications and assurances shown in Attachments 1 and 2. [Additional sentence for FDP version only: Collaborator also assures that it will comply with applicable statutory and regulatory requirements specified in Appendix B of the FDP Operating Procedures found at: http://www.nsf.gov/home/grants/grants_fdp.htm.]

This final clause of the model agreement covers certifications or assurances that require specific mention in federal subagreements, such as lobbying restrictions and debarment rules. The FDP version of the model subaward agreement then references the dozens of special federal requirements, such as the Health Insurance Portability and Accountability Act (HIPAA), environmental impact assessments, Title VI of the Civil Rights Act, and human subject protections. For the non-FDP version this is handled by appropriate references in Attachment 2.

Official Signatures. Signature boxes for the university and collaborator appear on the bottom of the first page of the model subaward. The signature should be that of the same person who is identified in Attachment 3 as the authorized official.

Attachments. The remainder of the model subaward agreement form consists of five attachments, which are to be included in the subaward document as appropriate. The attachments are as follows:

- ◆ Attachment 1 contains special certifications and assurances that are required to be specifically spelled out *verbatim* in all subawards.
- ◆ Attachment 2 lists agency-specific and institution-specific terms. A number of *samples* of agency-specific terms are available through the FDP for major federal agencies. *While the samples provide a good starting point, each institution is responsible for ensuring that all appropriate terms are included and flowed down, with proper references.*
- ◆ Attachment 3 gives contact information for both institutions.
- ◆ Attachment 4 contains technical reporting requirements, if necessary. Any special reports (e.g., invention reports) that may be required should be included.
- ◆ Attachment 5 contains the scope of work and budget, if the university chooses to include them rather than to refer to them by date on page 1 of the document.

Restricted Uses

The model agreement may not be used for contracts or other procurement mechanisms. For the time being the FDP terms in the agreement can only be used under an award that cites the FDP terms and even then only when making awards to other FDP institutions.¹⁶ Otherwise an institution needs to use the non-FDP terms.

¶3705.7 Subrecipient Monitoring

Once the subaward agreement is signed, the truly important and complex subaward work begins. As a recipient of federal funding, the prime recipient or lead institution takes on the responsibilities normally assigned to a federal agency. Universities need to have written policies and procedures to ensure that they are providing proper oversight of subrecipients to meet monitoring requirements.

The institution is required to determine

- ◆ the eligibility of subrecipients, ensuring that they are not debarred;
- ◆ that they have appropriate financial systems to manage grants; and

¹⁶The Office of Management and Budget issued proposed rules for comment in the *Federal Register*, "Proposed Policy on Research and Research-Related Grant Terms and Conditions," on Jan. 28, 2005. The change would basically extend FDP terms to non-FDP institutions on research and research-related grants. The question still to be answered is whether or not non-FDP federal agencies will accept the FDP terms.

- ◆ that they do not have any outstanding audit issues that could negatively impact the overall project.

The recipient also must receive, review for compliance, and pay invoices from the subrecipient; monitor the technical progress of the subrecipient's investigators; and perform site visits if circumstances call for a closer inspection of the subrecipient's operations.

OMB Circular A-133 defines the role a recipient plays in issuing and monitoring subawards as follows:¹⁷

OMB Circular A-133

- (1) Identify federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.
- (2) Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.
- (3) Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
- (4) Ensure that subrecipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.
- (5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.
- (6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.
- (7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

Requirements 1, 2, 3, and 7 are met by properly following the model subaward agreement. Item 6 requires the recipient or pass-through entity to make adjustments to its own billings to the government to take into account a subrecipient's audit. The middle three items deal with monitoring the programmatic and financial aspects of the subrecipient's performance.

¹⁷OMB Circular A-133, "Subpart D: Federal Agencies and Pass-Through Entities," Section __.400(d): Pass-through entity responsibilities.

During-the-Award Monitoring

To further understand what is meant by items 4 through 7 above, one needs to examine what is called the “Compliance Supplement” (OMB Circular A-133 Compliance Supplement, Part 3, Section M, “Subrecipient Monitoring”). This document first summarizes the seven points above, and then focuses on “during-the-award monitoring.” First the guidance identifies three factors that can affect the nature, timing, and extent of monitoring. These are:

Circular A-133 Compliance Supplement (Part 3, Section M)

Program complexity. Programs with complex compliance requirements have a higher risk of noncompliance.

Percentage passed through. The larger the percentage of program awards passed through, the greater the need for subrecipient monitoring.

Amount of awards. Large dollar awards are greater risks.

The above three factors can be used to determine the level of risk a particular subrecipient presents with regards to the threat of improper stewardship. Such risk is characterized as:

Circular A-133 Compliance Supplement (Part 3, Section M)

Subrecipient risk. Subrecipients may be evaluated as higher risk or lower risk to determine the need for closer monitoring. Generally, new subrecipients would require closer monitoring. For existing subrecipients, based on results of during-the-award monitoring and subrecipient audits, a subrecipient may warrant closer monitoring (for example, if the subrecipient has (1) a history of noncompliance as either a recipient or subrecipient, (2) new personnel, or (3) new or substantially changed systems).

The pass-through entity is responsible for developing its own procedures to be used and compliance areas to be tested, depending on the risk determined by using the above standards. Based on the institution’s procedures, auditors would expect to see specifics on the nature and extent of monitoring activities.

The following three monitoring activities are given as examples of what techniques recipients might employ when overseeing subrecipients, depending on the risk level:

Circular A-133 Compliance Supplement (Part 3, Section M)

Reporting. Reviewing financial and performance reports submitted by the subrecipient.

Site visits. Performing site visits at the subrecipient institution to review financial and programmatic records and observe operations.

Regular contact. Regular contacts with subrecipients and appropriate inquiries concerning program activities.

The extent to which a lead institution should use any of these techniques is determined by the level of risk each subrecipient presents. For instance when dealing with other research institutions that regularly receive awards and that have “clean” audit histories, site visits are probably not needed. But if one is dealing with a newly established not-for-profit organization that has been set up specifically to respond to a particular need that the sponsored project addresses, a much higher level of inspection and monitoring is called for.

Audit Procedures

The audit guidance makes clear what is expected of an institution’s policies and procedures with regards to subrecipient monitoring. An institution would be well-served to comply with this guidance. The following audit procedures are recommended for a review of a pass-through entity’s subrecipient monitoring activities, each followed by a brief assessment of what this means for an office of sponsored programs.

Circular A-133 Compliance Supplement (Part 3, Section M)

(1) Gain an understanding of the pass-through entity’s subrecipient procedures through a review of the pass-through entity’s subrecipient monitoring policies and procedures (e.g., annual monitoring plan) and discussions with staff. This should include an understanding of the scope, frequency, and timeliness of monitoring activities and the number, size, and complexity of awards to subrecipients.

An institution should have written policies and procedures dealing with subrecipient monitoring. If an institution does not have any such policies it should develop some immediately. A good place to start might be by consulting the institution’s internal auditing group. The next step would be to review the policies of other institutions. This can be done rather easily via Google® or other Internet search engines.

A number of institutions present excellent models for developing policies and procedures. Harvard, for example, has a very complete policy.¹⁸ It covers risk assessment of subrecipients, giving a number of factors to measure when assessing risk. It defines the different roles and responsibilities for each level of research administration that is involved in subawards. It describes what is necessary for reviewing invoices, and when and how to make site visits, determine A-133 compliance, and call for audits. In other words, the policy anticipates what the auditors will be looking for.

Even if you already have written polices, it would be wise to review them from time to time for currency and relevancy. But it is not enough to have policies and procedures in place. *One must ensure that PIs and research administrators know what they are and what duties each is responsible for.*

¹⁸ “Guidelines & Procedures for Monitoring Subrecipients,” Harvard University, Office of Sponsored Research, revised Aug. 2, 2004, found at: http://vpf-web.harvard.edu/osr/managing/man_sub_recipient2.shtml.

Circular A-133 Compliance Supplement (Part 3, Section M)

(2) Review the pass-through entity's documentation of during-the-award monitoring to ascertain if the pass-through entity's monitoring provided reasonable assurance that subrecipients used Federal awards for authorized purposes, complied with laws, regulations, and the provisions of contracts and grant agreements, and achieved performance goals.

An institution should find out what documentation is being collected regarding the subrecipient's current and past performance, both programmatically and financially. If such data is not being collected and maintained by the OSP, create a database to collect this information or at least know where such information can be found readily, whether it is decentralized and located with the PIs and departments or held in a central research financial or accounting office.

Circular A-133 Compliance Supplement (Part 3, Section M)

(3) Review the pass-through entity's follow-up to ensure corrective action on deficiencies noted in during-the-award monitoring.

Sometimes PIs will be the first to pick up on something that's not quite right about a subrecipient's conduct. For example a PI might determine that travel is being charged for data collection during at-home interviews of research participants, but no reports of these interviews are coming in. A brief investigation might reveal that students conducting the interviews are failing to transcribe and report on their interviews, yet continue to make trips and charge for travel. The PI might then work with the investigator at the subrecipient institution to arrange to pay for some extra help to document the interviews in a more timely fashion. In cases where a problem arises and is addressed, there should be measures written into the lead institution's policies and practices for monitoring that the "fix" is working.

Circular A-133 Compliance Supplement (Part 3, Section M)

(4) Verify that the pass-through entity:

(a) Ensured that the required subrecipient audits were completed. For subrecipients that are not required to submit a copy of the reporting package to a pass-through entity because there were "no audit findings" (i.e., because the schedule of findings and questioned costs did not disclose audit findings relating to the Federal awards that the pass-through entity provided and the summary schedule of prior audit findings did not report the status of audit findings relating to Federal awards that the pass-through entity provided, as prescribed in OMB Circular A-133 §__ 320(e)), the pass-through entity may use the information in the Federal Audit Clearinghouse (FAC) database (available on the Internet at <http://harvester.census.gov/sac>) as evidence to verify that the subrecipient had "no audit findings" and that the required audit was performed. This FAC verification would be in lieu of reviewing submissions by the subrecipient to the pass-through entity when there are no audit findings.

OSPs should make sure responsible staff are well trained in using and understanding information in the Federal Audit Clearinghouse. To document that there are no negative audit findings impacting the subrecipient's management of grants that might affect the subaward, make a copy of the FAC information and insert it either electronically or on paper into the subaward file and mark the subaward database accordingly. If there is a finding, be sure to follow up with the institution to ensure corrective action is being put into place and document the action.

Circular A-133 Compliance Supplement (Part 3, Section M)

(4)(b) Issued management decisions on audit findings within six months after receipt of the subrecipient's audit report.

(4)(c) Ensured that subrecipients took appropriate and timely corrective action on all audit findings.

An institution's policies and procedures need to address specifics on both of these topics to demonstrate the institution's timely response to negative findings concerning the subrecipient's management of grant funds. Using the excuse that "well, the federal government will take care of that (or already has) because the other institution is still getting grants from the NSF" does not obviate the institution's responsibilities in this area. Auditors will be looking for what the lead institution did to ensure that corrective steps were taken, not what NSF did or did not do.

Circular A-133 Compliance Supplement (Part 3, Section M)

(5) Verify that in cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity took appropriate action using sanctions.

Again it may seem a bit odd that the lead institution may have to impose sanctions when a subrecipient is unresponsive even in cases where the federal agencies themselves have not followed up. But the fact of the matter is that in order to be a good steward of taxpayer dollars, the institution has to take the initiative even if others do not. It is not easy to impose sanctions on a sister institution, and with luck this will happen extremely rarely. However, auditors will hold the institution accountable for what is within its realm of responsibility.

Termination

The subaward agreement provides steps to be followed in the event that the subaward must be terminated because of the termination of the prime award or for other reasons. As soon as termination is decided upon by the institution, an immediate notice to stop work must be submitted formally in writing (usually via fax or e-mail, followed up by hard copy) to the subrecipient's administrative contact as identified in the subaward agreement. Adjustments to payments and reimbursements are done in accordance with the proper cost principles, either Circular A-21 or A-122.

¶3705.8 Subaward Closeout

Upon the end of the subaward period, the institution must follow the same basic steps that federal agencies use when closing out grants. The subrecipient must submit the final financial statement, technical report, invention reports, and property reports according to the specifications in the terms and conditions of the subaward agreement. The institution will be responsible to the sponsoring agency for sending in all the subaward closeout information with its closeout.

All closeout matters should be addressed in Attachment 4 to the model subaward agreement, "Reporting Requirements." For example, if inventions are made on a U.S. Department of Defense (DoD) grant, the institution will need the subrecipient to report enough information to enable completion of a DD 882 form for invention disclosures. The same rule of thumb applies to National Aeronautics and Space Administration (NASA) Form 1679, "New Technology Disclosure."

Once the materials are received, the PI and department review the final technical report and invoice. If satisfactory the PI incorporates the subrecipient's report on findings or performance into the final grant report. The invoice is sent to the appropriate university office for making the final payment. Most institutions ask that some sort of certification of technical completion be provided by the PI to the proper institutional office prior to paying the subrecipient's final invoice. If the subrecipient's report is not satisfactory, then the PI needs to work with the subrecipient's PI to make it so. The PI should put a hold on payment of the final invoice until the report is satisfactorily completed. The institution should request a time extension for submission of the final report if necessary.

The office responsible for subaward closeouts ensures that

- ◆ all required reports have been received and acted upon,
- ◆ the subrecipient has been paid,
- ◆ any required invention reports have been submitted, and
- ◆ any required property management reviews are performed as appropriate.

In lieu of a closeout audit of a subaward, the institution can perform a desk review of all costs to determine allowability of expenditures and record this in a letter to the file called "An Administrative Closeout Memorandum." However, depending on the level of risk assigned to the subrecipient, the nature of the program, or the results of a subrecipient's A-133 audits, the institution may conduct a formal audit if it deems it appropriate.

Finally the closeout of an award does not affect any of the following responsibilities, and the institution needs to inform and follow up properly with any subrecipient under the following circumstances:

Circular A-110, Section __.72

- (1) The right of the federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.
- (2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.
- (3) Audit requirements in Section __.26 of A-110.
- (4) Property management requirements in Sections __.31 through __.37 of A-110.
- (5) Records retention as required in Section __.53 of A-110.

¶3705.9 Conclusion

Working with subrecipients is not as onerous as it once was, when most institutions were following a procurement — as opposed to a financial assistance — model. To make subrecipient monitoring a little easier, the audit supplement to OMB Circular A-110 recently incorporated use of the Federal Audit Clearinghouse to ascertain the A-133 status of subrecipients. Finally, and perhaps most importantly, the subaward process has been standardized nationally to a large extent by the model subaward agreement form developed by the FDP. This streamlines the process yet assures a high level of compliance for all concerned.

This chapter will be updated once the remainder of the recommendations from the Research Business Models subcommittee have been formally issued in OMB Circular A-110. Until then, however, what now exists in terms of guidance on the subaward process gives institutions a clear map to follow.

Figure 4

FDP Subaward Agreement		
Prime Awardee	Subawardee	
Institution/Organization ("University") Name: Address:	Institution/Organization ("Collaborator") Name: Address: EIN No.:	
Prime Award No.	Subaward No.	
Awarding Agency	CFDA No.	
Subaward Period of Performance	Amount Funded this Action:	Est. Total: (if incrementally funded)
Project Title		
Reporting Requirements: [Check here if applicable: ___ See Attachment 4]		
Terms and Conditions		
<p>1) University hereby awards a cost reimbursable subaward, as described above, to Collaborator. The statement of work and budget for this subaward are (check one): <input type="checkbox"/> as specified in Collaborator's proposal dated _____; or <input type="checkbox"/> as shown in Attachment 5. In its performance of subaward work, Collaborator shall be an independent entity and not an employee or agent of University.</p> <p>2) University shall reimburse Collaborator not more often than monthly for allowable costs. All invoices shall be submitted using Collaborator's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. <i>Invoices that do not reference University's subaward number shall be returned to Collaborator.</i> Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachment 3.</p> <p>3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to University's Financial Contact NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Collaborator's final financial report.</p> <p>4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Collaborator.</p> <p>5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Project Director, as shown in Attachment 3. Technical reports are required as shown above, "Reporting Requirements."</p> <p>6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachment 3. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official, as shown in Attachment 3.</p> <p>7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.</p> <p>8) Either party may terminate this agreement with thirty days written notice to the appropriate party's Administrative Contact, as shown in Attachment 3. University shall pay Collaborator for termination costs as allowable under OMB Circular A-21 or A-122, as applicable.</p> <p>9) No-cost extensions require the approval of the University. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachment 3, not less than thirty days prior to the desired effective date of the requested change.</p> <p>10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.</p> <p>11) By signing below Collaborator makes the certifications and assurances shown in Attachments 1 and 2. Collaborator also assures that it will comply with applicable statutory and regulatory requirements specified in Appendix B of the FDP Operating Procedures found at: http://www.nsf.gov/home/grants/grants_fdp.htm.</p>		
Agreed by Authorized Official of University	Agreed by Authorized Official of Collaborator	
Name _____ Date _____	Name _____ Date _____	
Title _____	Title _____	

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Figure 4 (continued)

Attachment 1 FDP Subaward Agreement

By signing the Subaward Agreement, the authorized official of Collaborator certifies, to the best of his/her knowledge and belief, that:

Certification Regarding Lobbying

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Collaborator, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Collaborator shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the University.
- 3) The Collaborator shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters

Collaborator certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

OMB Circular A-133 Assurance

Collaborator assures University that it complies with A-133 and that it will notify University of completion of required audits and of any adverse findings which impact this subaward.

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continued

Figure 4 (continued)

**Attachment 2
FDP Subaward Agreement
NIH**

Agency-Specific Certifications/Assurances

1. The following assurances/certifications are made and verified by Collaborator's Authorized Official on the face page of this Subaward. Descriptions of individual assurances/certifications are provided in Section III of the PHS 398. 1) Human Subjects; 2) Research Using Human Embryonic Stem Cells; 3) Research on Transplantation of Human Fetal Tissue; 4) Women and Minority Inclusion Policy; 5) Inclusion of Children Policy; 6) Vertebrate Animals; 7) Debarment and Suspension; 8) Drug-Free Workplace; 9) Lobbying; 10) Non-Delinquency on Federal Debt; 11) Research Misconduct; 12) Civil Rights (Form HHS 441 or HHS 690); 13) Handicapped Individuals (Form HHS 641 or HHS 690); 14) Sex Discrimination (Form HHS 639-A or HHS 690); 15) Age Discrimination (Form HHS 680 or HHS 690); 16) Recombinant DNA and Human Gene Transfer Research; 17) Financial Conflict of Interest.

General terms and conditions:

1. The restrictions on the expenditure of federal funds in appropriations acts are applicable to this subaward to the extent those restrictions are pertinent.
 2. 45 CFR Part 74 or 45 CFR Part 92 as applicable.
 3. The NIH Grants Policy Statement, including addenda in effect as of the beginning date of the period of performance.
4. Collaborator assures, by signing this Subaward Agreement, that all Collaborator's personnel who are responsible for the design and conduct of projects involving human research participants have successfully completed their institutional training in accordance with the NIH Guide, Notice OD-00-039.
5. Federal Demonstration Partnership Phase ____ and Agency Specific Requirements dated _____, and found at http://www.nsf.gov/home/grants/grants_fdp.htm, except for the following:
 - a. The right to initiate an automatic one-time extension of the end date provided by Article 25(2)(c) is replaced by the need to obtain prior written approval from the University;
 - b. The payment mechanism described in Article 22 and the financial reporting requirements in Article 52 of the General Terms and Conditions and Article 9 of the Agency-Specific Requirements are replaced with Terms and Conditions (1) through (4) of this agreement; and
 - c. Any prior approvals are to be sought from the University and not the Federal Awarding Agency.
6. Title to equipment costing \$5,000 or more that is purchased or fabricated with research funds or collaborator cost sharing funds, as direct costs of the project or program, shall unconditionally vest in the collaborator upon acquisition without further obligation to the Federal Awarding Agency subject to the conditions specified in Article 34(a) of the FDP General Terms and Conditions.
7. Treatment of Program Income:

Special terms and conditions: [Institutions may include the following optional clauses.]

1. Copyrights

Collaborator ___ grants / ___ shall grant (check one) to University an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Subaward Agreement solely for the purpose of and only to the extent required to meet University's obligations to the Federal Government under its Prime Award.

2. Data Rights

Collaborator grants to University the right to use data created in the performance of this Subaward Agreement solely for the purpose of and only to the extent required to meet University's obligations to the Federal Government under its Prime Award.

Figure 4 (continued)

Attachment 3 FDP Subaward Agreement	
University Contacts	Collaborator Contacts
Administrative Contact Name: Address: Telephone: Fax: Email:	Administrative Contact Name: Address: Telephone: Fax: Email:
Project Director Name: Address: Telephone: Fax: Email:	Project Director Name: Address: Telephone: Fax: Email:
Financial Contact Name: Address: Telephone: Fax: Email:	Financial Contact Name: Address: Telephone: Fax: Email:
Authorized Official Name: Address: Telephone: Fax: Email:	Authorized Official Name: Address: Telephone: Fax: Email:

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continued

Figure 4 (continued)

Subaward Agreement		
Prime Awardee	Subawardee	
Institution/Organization ("University") Name: Address:	Institution/Organization ("Collaborator") Name: Address: EIN No.:	
Prime Award No.	Subaward No.	
Awarding Agency	CFDA No.	
Subaward Period of Performance	Amount Funded this Action:	Est. Total: (if incrementally funded)
Project Title		
Reporting Requirements: [Check here if applicable <input type="checkbox"/> See Attachment 4]		
Terms and Conditions		
<p>1) University hereby awards a cost reimbursable subaward, as described above, to Collaborator. The statement of work and budget for this subaward are (check one): <input type="checkbox"/> as specified in Collaborator's proposal dated _____; or <input type="checkbox"/> as shown in Attachment 5. In its performance of subaward work, Collaborator shall be an independent entity and not an employee or agent of University.</p> <p>2) University shall reimburse Collaborator not more often than monthly for allowable costs. All invoices shall be submitted using Collaborator's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), subaward number, and certification as to truth and accuracy of invoice. <i>Invoices that do not reference University's subaward number shall be returned to Collaborator.</i> Invoices and questions concerning invoice receipt or payments should be directed to the appropriate party's Financial Contact, as shown in Attachment 3.</p> <p>3) A final statement of cumulative costs incurred, including cost sharing, marked "FINAL," must be submitted to University's Financial Contact NOT LATER THAN sixty (60) days after subaward end date. The final statement of costs shall constitute Collaborator's final financial report.</p> <p>4) All payments shall be considered provisional and subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Collaborator.</p> <p>5) Matters concerning the technical performance of this subaward should be directed to the appropriate party's Project Director, as shown in Attachment 3. Technical reports are required as shown above, "Reporting Requirements."</p> <p>6) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this subaward agreement, and any changes requiring prior approval, should be directed to the appropriate party's Administrative Contact, as shown in Attachment 3. Any such changes made to this subaward agreement require the written approval of each party's Authorized Official, as shown in Attachment 3.</p> <p>7) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.</p> <p>8) Either party may terminate this agreement with thirty days written notice to the appropriate party's Administrative Contact, as shown in Attachment 3. University shall pay Collaborator for termination costs as allowable under OMB Circular A-21 or A-122, as applicable.</p> <p>9) No-cost extensions require the approval of the University. Any requests for a no-cost extension should be addressed to and received by the Administrative Contact, as shown in Attachment 3, not less than thirty days prior to the desired effective date of the requested change.</p> <p>10) The Subaward is subject to the terms and conditions of the Prime Award and other special terms and conditions, as identified in Attachment 2.</p> <p>11) By signing below Collaborator makes the certifications and assurances shown in Attachments 1 and 2.</p>		
Agreed by Authorized Official of University	Agreed by Authorized Official of Collaborator	
Name _____ Date _____	Name _____ Date _____	
Title _____	Title _____	

Version: June 2004

Figure 4 (continued)

Attachment 1 Subaward Agreement

By signing the Subaward Agreement, the authorized official of Collaborator certifies, to the best of his/her knowledge and belief, that:

Certification Regarding Lobbying

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Collaborator, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Collaborator shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," to the University.
- 3) The Collaborator shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Debarment, Suspension, and Other Responsibility Matters

Collaborator certifies by signing this Subaward Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

OMB Circular A-133 Assurance

Collaborator assures University that it complies with A-133 and that it will notify University of completion of required audits and of any adverse findings which impact this subaward.

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continued

Figure 4 (continued)

**Attachment 2
Subaward Agreement
NIH**

Agency-Specific Certifications/Assurances

1. The following assurances/certifications are made and verified by Collaborator's Authorized Official on the face page of this Subaward. Descriptions of individual assurances/certifications are provided in Section III of the PHS 398. 1) Human Subjects; 2) Research Using Human Embryonic Stem Cells; 3) Research on Transplantation of Human Fetal Tissue; 4) Women and Minority Inclusion Policy; 5) Inclusion of Children Policy; 6) Vertebrate Animals; 7) Debarment and Suspension; 8) Drug-Free Workplace; 9) Lobbying; 10) Non-Delinquency on Federal Debt; 11) Research Misconduct; 12) Civil Rights (Form HHS 441 or HHS 690); 13) Handicapped Individuals (Form HHS 641 or HHS 690); 14) Sex Discrimination (Form HHS 639-A or HHS 690); 15) Age Discrimination (Form HHS 680 or HHS 690); 16) Recombinant DNA and Human Gene Transfer Research; 17) Financial Conflict of Interest.

General terms and conditions:

1. The restrictions on the expenditure of federal funds in appropriations acts are applicable to this subaward to the extent those restrictions are pertinent.
2. 45 CFR Part 74 or 45 CFR Part 92 as applicable. [This is the CFR governing NIH.]
3. The NIH Grants Policy Statement, including addenda, in effect as of the beginning date of the period of performance and found at <http://grants.nih.gov/grants/policy/policy.htm>, except for the payment mechanism and final reporting requirements are replaced with Reporting Requirements and Terms and Conditions on the front page of this agreement.
4. (Note to negotiator: This paragraph applies only if prime grant was awarded under expanded authorities.) Expanded Authorities apply, except for the right to initiate an automatic one-time extension of the end date, which is replaced by the need to obtain prior written approval from the University. Any prior approvals are to be sought from the University and not the Federal Awarding Agency.
5. Collaborator assures, by signing this Subaward Agreement, that all Collaborator's personnel who are responsible for the design and conduct of projects involving human research participants have successfully completed their institutional training in accordance with the NIH Guide, Notice OD-00-039.
6. Title to equipment costing \$5,000 or more that is purchased or fabricated with research funds or collaborator cost sharing funds, as direct costs of the project or program, shall unconditionally vest in the collaborator upon acquisition without further obligation to the Federal Awarding Agency subject to the conditions specified in the NIH Grants Policy Statement.

Special terms and conditions:

1. Copyrights

Collaborator grants to University an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) first developed and delivered under this Subaward Agreement solely for the purpose of and only to the extent required to meet University's obligations to the Federal Government under its Prime Award.

2. Data Rights

Collaborator grants to University the right to use data created in the performance of this Subaward Agreement solely for the purpose of and only to the extent required to meet University's obligations to the Federal Government under its Prime Award.

Figure 4 (continued)

Attachment 3 Subaward Agreement	
University Contacts	Collaborator Contacts
Administrative Contact Name: Address: Telephone: Fax: Email:	Administrative Contact Name: Address: Telephone: Fax: Email:
Project Director Name: Address: Telephone: Fax: Email:	Project Director Name: Address: Telephone: Fax: Email:
Financial Contact Name: Address: Telephone: Fax: Email:	Financial Contact Name: Address: Telephone: Fax: Email:
Authorized Official Name: Address: Telephone: Fax: Email:	Authorized Official Name: Address: Telephone: Fax: Email:

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