

Requirements that Apply to Subrecipients or Vendors under ONC Grants and Cooperative Agreements

NOTE: The following information complements the information provided in GMA 2010-02, Review of Proposed Subawards and Procurement Contracts under Grants and Cooperative Agreements, November 4, 2010; and GMA 2011-05, Subrecipient Monitoring, March 25, 2011. Those GMAs remain in effect.

ISSUES:

What types of requirements must you include in a formal agreement with a subrecipient or vendor under an Office of the National Coordinator for Health Information Technology (ONC) grant or cooperative agreement?

How do you determine what Federal requirements to apply to a third party receiving funds under your ONC grant or cooperative agreement?

KEY POINTS:

- ONC issues a Notice of Grant Award (NGA) that serves as the formal agreement between ONC and your organization. It specifies the terms and conditions that apply to your expenditure of the Federal funds awarded, and costs/contributions you use to meet a matching or cost-sharing requirement. All of the requirements cited or incorporated by reference in the NGA apply to you as the recipient. For some of those requirements, you must apply the same or a similar requirement to entities to which you award funds to (1) carry out part of the substantive programmatic activity (subrecipients), or (2) provide goods or services that you use in the project (vendor). Additional requirements apply to a vendor.
- To help you in distinguishing these relationships, Office of Management and Budget (OMB) Circular A-133 characterizes a subrecipient relationship as one under which you assess the entity's performance against the objectives of the Federal award, and the subrecipient organization
 - is responsible for programmatic decision-making (to the extent you specify in the subaward),
 - is responsible for adherence to applicable Federal program compliance requirements, and
 - uses the Federal funds you award for its own program rather than providing goods or services for your program.
- OMB characterizes a vendor relationship as one in which the receiving organization
 - provides goods and services to you as part of its normal business operations,
 - provides similar goods or services to many different purchasers,
 - operates in a competitive environment, and
 - provides goods or services that are ancillary to your operation of the Federal program.
- Requirements that you must apply to subrecipients or vendors that also apply to you sometimes are termed "flow-through" or "flow down" requirements. These include both ONC programmatic requirements and Department of Health and Human Services (HHS) grants administration requirements. These requirements do not automatically apply to subrecipients or vendors by virtue

of being in the ONC NGA. ONC has no direct legal relationship with those parties. In the event of non-compliance by a subrecipient or vendor with an applicable requirement, ONC, an auditor, or other reviewer will look to your agreement/contract for sufficiency. Your ability to enforce a requirement or take other necessary action is through your agreement/contract with that entity, not the NGA.

- In addition to distinguishing applicable requirements based on whether your relationship with another party is a subrecipient or a vendor relationship, you must consider the type of entity to which you are making the award. For example, because ONC uses Federal cost principles to determine allowable costs, you must flow down cost principles to subrecipients and to vendors with cost-reimbursement contracts. However, different sets of cost principles may apply depending on the type of entity receiving the subaward/contract, which may not be the same as those that apply to you. For example, if you are a nonprofit organization and you make a subaward to a university, although the cost principles in OMB Circular A-122 (2 CFR Part 230) apply to you, you must apply OMB Circular A-21 (2 CFR Part 220) to the university. Similarly, the grants administration requirements you apply to a subrecipient, may differ from those that apply to you. For example, if you are a State government and you make a subaward to a non-profit organization, 45 CFR Part 92 applies to you and you must apply 45 CFR Part 74 to the subrecipient. However, if you are a non-profit organization and you make a subaward to a university, 45 CFR Part 74 applies to both you and the university.
- We include two attachments to this GMA. Attachment 1 indicates the applicability of the HHS grant administration regulations at 45 CFR Parts 74 and 92, the government-wide cost principles, and audit requirements to *subrecipients* under ONC grants or cooperative agreements by type of organization. Attachment 2 indicates the applicability of those requirements to *vendors*. You also should note the following:
 - Because the HHS Grants Policy Statement (HHS GPS) is a term of your award, you must incorporate it by reference in your subawards.
 - You must include required “access to records” provisions in subawards and contracts in addition to audit requirements.

RECIPIENT RESPONSIBILITIES:

- Consistently characterize your relationships under the ONC award as provided in Federal guidance and your own policies.
- Determine which requirements apply to which subrecipients/vendors based on nature of the relationship and type of entity.
- Provide subrecipients and vendors with legally complete agreements that, among other things, cite or include requirements specified by the NGA.
- Ensure that applicable Federal requirements, as stated in the NGA, are flowed down to subrecipients and the subrecipient complies with these requirements.

March 20, 2012

REFERENCES:

45 CFR 74.1, 74.27, and 74.27

45 CFR 92.4, 92.22, 92.36, and 92.37

HHS Grants Policy Statement

CONTACT:

If you have any questions concerning this GMA, contact your GMO.

Requirements Applicable to Subrecipients by Organizational Type¹

| <i>If the type of entity to which you are making a subaward (whether in the form of a subgrant or contract) is a</i> | <i>then (1) the HHS grants administration requirements that you must apply are those in</i> | <i>and (2) the cost principles that you must apply are those in</i> | <i>and (3) the audit requirements that you must apply are those in</i> |
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| State or local government | 45 CFR Part 92 (the HHS implementation of the OMB Circular A-102 common rule) HHS GPS ² | OMB Circular A-87 (2 CFR Part 225), as specified in 45 CFR 74.27 and 92.22 and supplemented by the HHS GPS | 45 CFR 74.26 , which incorporates by reference OMB Circular A-133 |
| College, university, or other institution of higher education | A-110 (2 CFR Part 215), Implemented for HHS at 45 CFR Part 74 HHS GPS | OMB Circular A-21 (2 CFR Part 220), as specified in 45 CFR 74.27 and 92.22 and supplemented by the HHS GPS | 45 CFR 74.26 , which incorporates by reference OMB Circular A-133 |
| Non-profit organization (other than an institution of higher education or hospital) | A-110 (2 CFR Part 215), implemented for HHS at 45 CFR Part 74 HHS GPS | OMB Circular A-122 (2 CFR Part 230) (except for those entities specified in Attachment C to the circular), as specified in 45 CFR 74.27 and 92.22, and supplemented by the HHS GPS | 45 CFR 74.26 , which incorporates by reference OMB Circular A-133 |
| Non-profit hospital | A-110 (2 CFR Part 215), implemented for HHS at 45 CFR Part 74 HHS GPS | 45 CFR Part 74, Appendix E as specified in 45 CFR 74.27 and supplemented by the HHS GPS | 45 CFR 74.26 , which incorporates by reference OMB Circular A-133 |
| For-profit organization (including a for-profit hospital) | 45 CFR 74 (as provided in 45 CFR 74.1(a)(2)) HHS GPS | 48 CFR Subpart 31.2 (Federal Acquisition Regulation [FAR]) https://www.acquisition.gov/far/ | 45 CFR 74.26(c) and (d) |
| Foreign organization | HHS GPS | The cost principles applicable to the type of foreign entity, e.g., A-21 for a foreign university, as supplemented by the HHS GPS | HHS GPS |

¹ All regulations and guidance in Title 2 of the Code of Federal Regulations is available at <http://ecfr.gpoaccess.gov>. Select the "Title 2" and then the applicable Part.

² The HHS Grants Policy Statement can be found at http://dhhs.gov/asfr/ogapa/aboutog/ogpoe/grants_mgmt_policy_sources.html. Then scroll to "HHS Grants Policy."

Requirements Applicable to Vendors by Organizational Type

| <i>If the type of entity to which you are awarding a contract for the provision of goods or services is a</i> | <i>then (1) the procurement requirements that you must apply are those in</i> | <i>and (2) the cost principles that you must apply are those in</i> | <i>and (3) the audit requirements that you must apply are those in</i> |
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| State or local government | 45 CFR 92.36(i) | OMB Circular A-87 (2 CFR Part 225) | the terms and conditions of the contract (these expenditures are not considered “federal awards” for purposes of OMB Circular A-133) |
| College, university, or other institution of higher education | 45 CFR 74.48 and Appendix A to 45 CFR Part 74 | OMB Circular A-21 (2 CFR Part 220) | the terms and conditions of the contract (these expenditures are not considered “federal awards” for purposes of OMB Circular A-133) |
| Non-profit organization (other than an institution of higher education or hospital) | 45 CFR 74.48 and Appendix A to 45 CFR Part 74 | OMB Circular A-122 (2 CFR Part 230) (except for those entities specified in Attachment C to the circular) | the terms and conditions of the contract (these expenditures are not considered “federal awards” for purposes of OMB Circular A-133) |
| Non-profit hospital | 45 CFR 74.48 and Appendix A to 45 CFR Part 74 | 45 CFR Part 74, Appendix E | the terms and conditions of the contract (these expenditures are not considered “federal awards” for purposes of OMB Circular A-133) |
| For-profit organization (including a for-profit hospital) | 45 CFR 74.48 and Appendix A to 45 CFR Part 74 | 48 CFR Subpart 31.2 (Federal Acquisition Regulation [FAR]) | the terms and conditions of the contract |
| Foreign organization | Not specified (other documents, such as the HHS GPS, can be used as guidance) | The cost principles otherwise applicable to the type of foreign entity, e.g., A-21 for a foreign university or 48 CFR Subpart 31.2 for a foreign for-profit entity | the terms and conditions of the contract |