

**Untangling the Subrecipient, Contractor, and Beneficiary Issue
And the Coronavirus Relief Fund**

Minnesota Office of the State Auditor – Audit Practice

The recommendations included in this document based on review of available guidance. The final decision on which entities are subject to subrecipient monitoring is the funded entity's oversight agency.

The Issue

A significant issue that has arisen out of the requirements/guidelines for the Coronavirus Relief Fund, a piece of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), is the idea of treating non-federal entities as beneficiaries. Generally, for the purpose of receiving federal funds, the question was, is the entity a subrecipient or a contractor. Both are defined in the *Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards* (Uniform Guidance)¹. While subrecipient and contractor are defined, beneficiary is only referred to the definitions for subaward and subrecipient. The reference is that "...payments to an individual that is a beneficiary of a Federal Program", would not make them a subrecipient. The issue was further complicated by the US Department of the Treasury (Treasury) providing a different definition for subrecipient. This definition was clarified to indicate it only applied to which entities needed reporting to the GrantSolutions² portal.

Eligible Beneficiaries

Based on the Uniform Guidance information it would appear that beneficiaries only refers to individuals. However, guidance provided by the Treasury changed which entities could be considered beneficiaries. The new guidance³ included wording that would include organizations, identified as businesses, non-profits, or educational institutions as being potential beneficiaries. Non-profit organizations are defined in the Uniform Guidance as any corporation, trust, association, cooperative, or other organization, not organized primarily for profit and is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest. Educational Institutions do not include school districts as the Uniform Guidance and 2 CFR 220 defines educational institutions as institutions of higher education. The Treasury guidance therefore expanded those eligible to be considered beneficiaries.

Local Governments

Local governments are not mentioned as possible beneficiaries in the guidance. It is significant that the Treasury updated guidance did not include local governments. Counties, some cities, and some towns received the CRF directly from the State of Minnesota. Cities and towns under 200 in population would receive the funds through their home county. School Districts received their CRF from the Minnesota Department of Education or passed through a county or city. Both Treasury⁴ and the State of

¹ Effective December 26, 2014, U.S. Office of Management and Budget (OMB) consolidated eight of its circulars into this one document.

² GrantSolutions is a grants business that has partnered with the Treasury to provide for CARES Act data reporting.

³ US Department of the Treasury; *Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments. Questions Related to Administration of Fund Payments*, No. 13.

⁴ *Ibid*, *Frequently Asked Questions*, No. 33

Minnesota⁵ guidance allow for transfers of CRF to local governments in certain situations. Local governments differ from beneficiaries in that they are carrying out the purpose of the funding and have more of a reporting requirement, and could have received funds directly from the federal government if population requirements had differed. Also, they are more likely to be subject to the Single Audit Act. Likewise, the receiver of funds would treat it like any other similar nonexchange transactions⁶ they receive. Based on available information local governments are generally considered subrecipients, however contractor relationships may be present in a small number of cases.

Subrecipient vs. Contractor

This not a new issue. The determination of whether or not a nonfederal entity is a subrecipient or contractor has been an issue almost as long as the Single Audit Act has been in effect. Simply put, a subrecipient operates a program or piece of a program, while a contractor provides services or goods to the operator of the program in a procurement transaction. The Uniform Guidance in section 2 CFR 200.331 provides the guidance on determining whether it is subrecipient funding or payments for services. This determination information is included as Appendix B.

Subrecipient vs. Beneficiary

Generally, the responsibilities of a beneficiary of CRF assistance program are limited to being an eligible applicant and some limited reporting. Subrecipients will have additional responsibilities particularly if they pass-through the funds to another subrecipient. As a pass-through entity they would be responsible for informing their subrecipients of the program requirements (Appendix C) and monitoring whether the subrecipient is meeting those requirements. A subrecipient would be required to return unused funds to the pass-through entity. A beneficiary only would be required to return any improperly obtained or used funds. Minnesota local governments were required to return any unused coronavirus relief funds.

Businesses, non-profits, and educational institutions

Based on the information provided, businesses, non-profits, or educational institutions may fall under any of the three categories: subrecipient, beneficiary, or contractor. Authoritative guidance in full should be contemplated, however, it may be of use to determine whether a) CFR payments were used to provide economic relief for the end recipient as may be the case with a beneficiary; whether b) the business, non-profit or educational institution was hired to provide goods or services as would be the case with a contractor; or whether c) the use of payments or reimbursement is for goods, payroll, or services as originally initiated or decided by the business, non-profit, or educational institution as would be the case with a subrecipient.

Conclusion

The classification of entities receiving CRF as subrecipient, contractor, or beneficiary is important in determining what level of monitoring a pass-through entity would require. The Treasury's guidance has indicated that while those that could be considered beneficiaries has increased, they did not include

⁵ Minnesota COVID-19 Response Accountability Office, *FAQs for Local Governments receiving Coronavirus Relief Funds (CRF) from the State of Minnesota*. Question No. 31.

⁶ Governmental Accounting Standards Board Statement No. 33, as amended, *Accounting and Financial Reporting for Nonexchange Transaction*, provides the accounting requirements for these type of revenue.

local governments in that change. Therefore, a local government receiving the CRF should not be treated as a beneficiary. Appendix D includes examples of subrecipient, contractor, or beneficiary situations that provide further clarification.

Uniform Guidance Applicable Definitions⁷

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see §200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract as defined in this section.

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

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Non-Federal entity (NFE) means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Recipient means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

⁷ Part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards, Subpart A, Section 200.1

Uniform Guidance §200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in §200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
- (1) Determines who is eligible to receive what Federal assistance;
 - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision-making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- (b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in §200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
- (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

Uniform Guidance §200.332 Requirements for pass-through entities.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
 - (1) Federal award identification.
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see the definition of *Federal award date* in §200.1 of this part) of award to the recipient by the Federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Subaward Budget Period Start and End Date;
 - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
 - (xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
 - (xiii) Identification of whether the award is R&D; and
 - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per §200.414.
 - (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
 - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
 - (4)(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:
 - (A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

- (B) The de minimis indirect cost rate.
 - (ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with §200.405(d).
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.208.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and performance reports required by the pass-through entity.
 - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.
 - (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.
 - (4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section §200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to

agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
 - (1) Providing subrecipients with training and technical assistance on program-related matters; and
 - (2) Performing on-site reviews of the subrecipient's program operations;
 - (3) Arranging for agreed-upon-procedures engagements as described in §200.425.
- (f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in §200.339 of this part and in program regulations.

Examples of Subrecipient, Contractor, or Beneficiary Situations

Example 1

Facts: A county receives coronavirus relief funds from the state and passes the funds to a city to operate an economic assistance grant program for businesses effected by the pandemic. The city determines eligibility and makes the grant payments and reports the activity to the county.

Conclusion: Both the city and the county are considered subrecipients. The county is required to monitor its subrecipient the city. The businesses receiving grants are considered beneficiaries and not subrecipients of the city.

Example 2

Facts: Same facts as Example 1, except the funds are passed to a non-profit to operate the program.

Conclusion: Both the non-profit and the county are considered subrecipients. The county is required to monitor its subrecipient, the non-profit. The businesses receiving grants are considered beneficiaries and not subrecipients of the non-profit.

Example 3

Facts: Same facts as Example 1, except non-profits are eligible to receive the grant funds for its own economic support from business interruptions due to COVID-19.

Conclusion: Both the city and the county are considered subrecipients. The county is required to monitor its subrecipient, the city. The non-profits receiving grants are considered beneficiaries and not subrecipients of the city.

Example 4

Facts: A county receives coronavirus relief funds from the state. The county hires a non-profit to gather information from applicants to a grant program. The county makes the decision on the eligibility of the applicant.

Conclusion: The county is a subrecipient of the state. The non-profit is a contractor. The responsibilities of the two entities is to meet the requirements of the procurement agreement between the two parties.

Example 5

Facts: A county is maintaining a business interruption assistance loan program using CRF received from the state. A city contributes some of its CRF to the program. Businesses apply for the loan, which can be forgiven if the business maintains it operations.

Conclusion: The county is a subrecipient of the state and the city. The business is a beneficiary. The county does not have any subrecipients. The city would monitor its subrecipient, the county. The business remits loan repayments to the county. Any amounts

remitted before the deadline may be used for additional loans or other CRF eligible expenditures. Amounts received after the deadline should be returned to Treasury.

Example 6

Facts: The county transfers state-provided CRF to a school district to help a pandemic mental health crisis program in the school district.

Conclusion: Both the county and school district are subrecipients. The state would monitor the county and the county would monitor the school district's compliance.

Example 7

Facts: A county joint power purchasing entity makes purchases of personal protective equipment for its member counties. A county pays for its share of the purchases with CRF monies.

Conclusion: The joint power would be considered a contractor, but would be responsible for meeting procurement requirements. The county would determine if those procurement requirements are being followed.

Example 8

Facts: A county is a member of a joint power entity providing health programs to member counties, including CRF programs. The counties are billed monthly for their share of program costs. The county pay for their share of eligible program costs with CRF.

Conclusion: The joint power entity is a subrecipient of the member counties, who would be responsible for subrecipient monitoring.

Example 9

Facts: A small town receives its allocation of CRF from its home county.

Conclusion: The town is a subrecipient of the county, which is responsible for monitoring the town's use of CRF.