

Subrecipient VS Contractor Determination Guidance

2CFR 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.

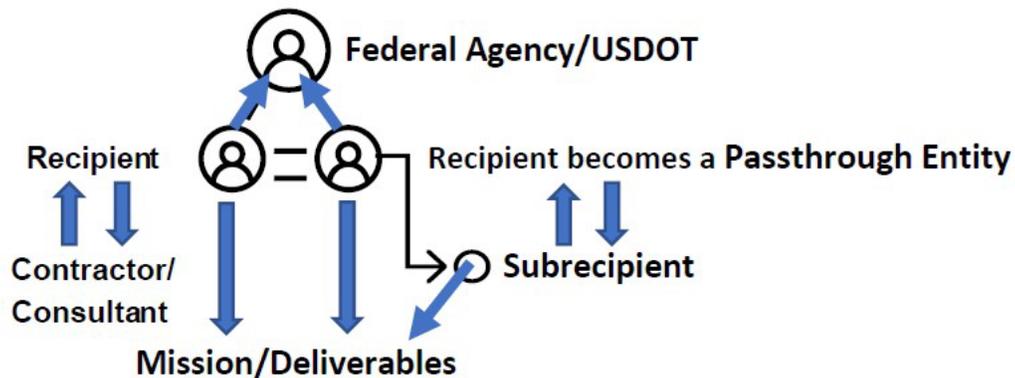
Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in [§ 200.1 of this part](#). Characteristics which support the classification of the non-Federal entity as a subrecipient 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.**

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.**

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.*



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.

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.

Fixed amount subawards: With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold (\$250,000), provided that the subawards meet the requirements for fixed amount awards in [§ 200.201](#).

The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost.

Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results.

Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

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

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

RECIPIENT CHECKLIST TO IDENTIFY CONTRACTOR OR SUBRECIPIENT RELATIONSHIP

This document is intended to help a recipient of federal funds make a judgment as to whether each agreement it makes, for the disbursement of federal program funds, casts the entity receiving the funds in the role of a subrecipient or a contractor. Based on 2 CFR Chapter Part 200 et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Important Terms:

Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients. (See 2 CFR 200.86 of the Uniform Guidance.)

Subrecipient: A non-federal entity that receives a subaward for the purpose of carrying out part of a federal award. The subaward creates a federal assistance relationship with the subrecipient. (See 2 CFR 200.93 & .331 (a) of the Uniform Guidance.)

Contractor: A non-federal entity that receives a contract for the purpose of providing goods and services for the awarding non-federal entity's own use. The contract creates a procurement relationship with the contractor. The Uniform Guidance replaced the term "Vendor" with "Contractor." (See 2 CFR 200.22 & .331 (b) of the Uniform Guidance.)

Instructions: The "Characteristics" column in this checklist is based on language in the Uniform Guidance. The column lists characteristics that support the classification of a non-federal entity as a subrecipient or contractor. Since all of the characteristics listed may not be present in all cases, the Uniform Guidance recognizes that the recipient "...must use judgment in classifying each agreement as a subaward or a procurement contract." (2 CFR 200.331) In the "Explanations" column, provides additional information to assist in answering the questions under "Characteristics." Answer each question by checking "yes" or "no" where indicated. Based on responses to the questions, a key provided at the end of each section will help in making a judgment as to whether a subrecipient or contractor relationship exists. White space is provided in between the "Characteristics" column and the "Explanation" column so that users can tailor this checklist to accommodate the unique aspects of various programs or jurisdictions.

Note: One check in a subrecipient box does not necessarily mean the entity is a subrecipient. **A judgment should be based on the totality of responses.**

Office _____

Entity receiving funds _____

Funding Source(s) _____

Notes:

CHARACTERISTICS

EXPLANATIONS

Decision Making Authority

200.331 a.1 Determines who is eligible to receive what Federal assistance;

a. Does the entity determine who is eligible to participate in the federal program?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

200.331 a.3 Has responsibility for programmatic decision making;

a. Does the entity have the ability to make decisions about how services will be delivered to participants, in accordance with federal programmatic requirements?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

OR

200.331 b.4 Provides goods or services that are ancillary to the operation of the Federal program;

b. Does the entity provide goods or services for the recipient's own use?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

b. Does the entity provide services designated by the recipient to serve the recipient's participants without regard to specific federal programmatic requirements?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you selected "yes" to **EITHER** item a, this is an indicator of a subrecipient relationship.
If you selected "yes" to **EITHER** item b, this is an indicator of a contractor relationship.

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

If the entity determines whether a participant meets a federal program's eligibility requirements for assistance, it is most likely a subrecipient.

A contractor may provide services to clients in a program after eligibility has been determined by the recipient.

If the entity has authority to make decisions regarding the delivery of service, operations, or types of assistance provided within the terms of the agreement, it is typically a subrecipient.

If the entity provides goods or services directly to the recipient or to program participants at the direction of the recipient and does not make programmatic decisions or adhere to program requirements, it is typically a contractor.

Nature of Award

EXPLANATIONS

200.331 a. 2 Has its performance measured in relation to whether objectives of a federal program were met;

a. Are the scope of work (or portion, if applicable) and terms and conditions of the agreement the same for the entity as they are for the recipient that received the federal funds?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

a. Is the entity carrying out completion of the goal of the grant (or part, if applicable) as stated in the federal award?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

OR

200.331 b.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.

b. Does the recipient develop the scope of work and terms and conditions of the agreement to meet the recipient's needs?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you selected "yes" to **EITHER** item a, this is an indicator of a subrecipient relationship.
If you selected "yes" to item b, this is an indicator of a contractor relationship.

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

If the entity is providing a service for the recipient to meet the goal of the grant, it is a contractor; if the entity is providing a service that carries out a goal within the scope of the grant, it is a subrecipient. When a grant program contains multiple goals, it is possible for the recipient to complete part of the goals and for the entity to perform another part.

If the scope of the agreement is per the federal program terms/guidance, the entity is a subrecipient. A subrecipient may also provide programmatic or progress reports to ensure compliance with federal program requirements.

Conversely, if the scope of the agreement is per the recipient's terms and not federal program guidance, and if the recipient's oversight is governed only by the contract terms and conditions, it is a contractor.

200.331 a.4 Is responsible for adherence to applicable Federal program requirements specified in the Federal award;

a. Funding to the entity depends on the entity's ability to best meet the objectives of the award. Although performance is measured against federal award objectives, the entity assumes little risk if the objectives are not met.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

OR

200.331 b.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.

b. The entity assumes financial risk if they fail to deliver the goods or services agreed upon.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you selected "yes" to item **a**, this is an indicator of a subrecipient relationship. If you selected "yes" to item **b**, this is an indicator of a contractor relationship.

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

If the funding is given to the entity with a purpose of completing the goal of the grant, the recipient will be required to ensure the entity adheres to federal grant program guidance. The recipient will also be required to monitor the activities of the entity per Uniform Guidance section 200.331. The entity assumes little risk should federal grant guidance not be met. The risk falls with the recipient.

If the recipient directs specific activities to be completed by the entity, by providing goods or services, the risk falls on the entity to deliver, per the agreement terms. In this case, the entity would not be required to adhere to the federal grant program requirements, just the terms and conditions in the agreement with the recipient.

Criteria for Selection

EXPLANATIONS

200.331 a.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.

a. Does the entity demonstrate a financial or public need for funding to carry out a project or provide a service?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

a. Will the entity be contributing match or other non-Federal funding in support of the award?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

a. Will the entity be reimbursed for only actual costs incurred?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

OR

200.331 b.3 Normally operates in a competitive environment;

b. Were procurement policies applied in the selection of the entity?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

b. Was the entity's proposed price a factor in the selection process?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

b. Will the entity derive a profit from the agreement?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you selected "yes" to **ANY** item **a**, this is an indicator of a subrecipient relationship. If you selected "yes" to **ANY** item **b**, this is an indicator of a contractor relationship.

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

If the entity was chosen because it has the best widgets or service for the price, it has a contractor relationship with the recipient. Typically, a procurement method is followed, such as a competitive bid or RFP process. In this type of agreement, the entity usually makes a profit by delivering this good or service to the recipient. Payments to contractors are typically made based on contract terms.

Conversely, if the entity was chosen because it was already providing a service within the guidelines of the grant program and wants to partner with the recipient to expand the delivery or assist in meeting the goal of the grant, it may be a subrecipient. Typically, the entity may not make a profit and may provide its own non-federal funding as match or cost sharing. The entity may have been chosen through an application process or an announcement of funding, as opposed to the procurement process described above. Payment to a subrecipient is generally based on actual expenses unless awarded on a fixed amount subaward (2 CFR 200.333). It is typical of subrecipients to submit budgets, financial reports, or copies of invoices to the recipient, to document activity.

200.331 b.1 Provides the goods and services within normal business operations;

b. Is the entity's normal business to provide the goods or services being purchased in the agreement?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

200.331 b.2 Provides similar goods or services to many different purchasers;

b. Does the entity provide the same goods or services to other organizations?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If a federal program provides funding to modify public buildings for handicapped accessibility and the recipient provides funds to an entity to update the entity's building, per the terms of the award, then a subrecipient relationship exists.

Conversely, if the recipient hires an entity to update their own building to be handicapped accessible, then a contractor relationship exists.

If you selected "no" to **EITHER** item, it is an indicator of a subrecipient relationship.
If you selected "yes" to **BOTH** items, it is an indicator of a contractor relationship.

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

Determination

EXPLANATIONS

Final Determination

Subrecipient	Contractor
<input type="checkbox"/>	<input type="checkbox"/>

Review all the entries and make an overall determination of the relationship. **Check the appropriate box in this section.**

Determined by _____ (enter name of person initially making decision) _____ (date)

Approved by _____ (enter name of person reviewing) _____ (date)

Based on the relationship determined above, see additional guidance on requirements governing agreements. Section 200.332 - "Requirements for pass-through entities," for subrecipient agreements, Section 200.317 through 200.326 - "Procurement Standards," for contractor agreements.
