

Washington State

Workforce Innovation and Opportunity Act Title I-B Policy

Policy Number: 5250 Revision 1

Policy Title: Subrecipient/Contractor and Pass-Through Entity Determination Requirements

Effective Date: January 9, 2024

1. **Purpose:**

To communicate the requirements regarding Subrecipients/Contractors and Pass-Through Entities as outlined in the Workforce Innovation and Opportunity Act (WIOA) Title I-B. Revision 1 reflects amendments to 2 CFR 200.331 and 2 CFR 200.332.

2. **Background:**

As the Grant Recipient for WIOA funds in Washington, the Employment Security Department (ESD) is responsible for ensuring that all budget and accounting requirements for all WIOA funds, whether at the state or local level, meet the requirements of the Act, regulations, and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3. **Policy:**

Fiscal agents for Local Workforce Development Boards (LWDBs), and any other entities authorized to subaward/subcontract WIOA funds, shall include in these subawards/subcontracts assurances that acceptable standards for accountability are observed. Additionally, when applicable, such awards/contracts will ensure that subrecipients' systems provide the necessary information and controls needed to comply with the current regulations published by the Department of Labor. Such information will include Assistance Listings (formerly the Catalog of Federal Domestic Assistance (CFDA) numbers, mandatory audit requirements, debarments, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Subrecipient accounting systems must follow the current Generally Accepted Accounting Principles (GAAP).

LWDB agreements with other entities may be classified as either a Subrecipient or a Contractor. If the agreement meets the requirements of a subrecipient, the LWDB is a Pass-Through Entity. The information below is provided to assist with subrecipient and contractor determinations and the requirements of a pass-through entity.

2 CFR 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 2 CFR Part 200.1 - Definitions. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
 - i. Determines who is eligible to receive what Federal assistance;
 - ii. Has its performance measured in relation to whether objectives of a Federal program were met;
 - iii. Has responsibility for programmatic decision making;
 - iv. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - v. 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 2 CFR Part 200.1 - Definitions. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
 - i. Provides the goods and services within normal business operations;
 - ii. Provides similar goods or services to many different purchasers;
 - iii. Normally operates in a competitive environment;
 - iv. Provides goods and services that are ancillary to the operation of the Federal program; and
 - v. 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 judgement 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 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 judgement in classifying each agreement as a subaward or a procurement contract.

2 CFR 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 2 CFR 200.1 – Definitions) 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 (formerly Catalog of Federal Domestic Assistance (CFDA)) 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 Research and Development; and
 - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR 200.414 Indirect (F&A) costs).
 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 pass-through entity 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; or
 - (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 2 CFR 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 policy, which may include consideration of such factors as:
- i. The subrecipient's prior experience with the same or similar subawards;
 - ii. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F- Audit Requirements, and the extent to which the same or similar subaward has been audited as a major program;
 - iii. Whether the subrecipient has new personnel or new or substantially changed systems; and
 - iv. 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 2 CFR Part 200.208 - Specific conditions.
- 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:

- i. Reviewing financial and performance reports required by the pass-through entity.
- ii. 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..
- iii. 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 2 CFR Part 200.521 - Management decision.

NOTE: 2 CFR 2900.21 states that ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General and is extended an additional six months when the audit contains a finding involving a subrecipient of the pass-through entity being audited. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the Federal Audit Clearinghouse (FAC). The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See 2 CFR 200.521(d)).

- iv. 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 2 CFR 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 policy), 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:
 - i. Providing subrecipients with training and technical assistance on program-related matters; and
 - ii. Performing on-site reviews of the subrecipient's program operations;
 - iii. Arranging for agreed-upon-procedures engagements as described in 2 CFR Part 200.425 - Audit services.
- f. Verify that every subrecipient is audited as required by 2 CFR Part 200 Subpart F—Audit Requirements of the CFR when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR Part 200.501 Audit requirements.
- 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 2 CFR Part 200.339 – Remedies for noncompliance of this part and in program regulations.

4. Definitions:

Cross-cutting Audit Finding - audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

Pass-through entity - a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Subrecipient – an entity that receives federal assistance passed through from a prime recipient or another recipient to carry out or administer a WIOA program. Distinguishing characteristics of a subrecipient include:

- Determining eligibility for assistance;
- Performance measured against meeting the objectives of the program;
- Responsibility for programmatic decision making;
- Responsibility for applicable program compliance requirements;

- Use of the funds passed through to carry out a program of the sub-entity as compared to providing goods or services for a program of the prime recipient.

5. References:

All fiscal policies and guidance letters published for WIOA are governed, as appropriate, under:

- [Public Law 113-128](#)
- [2 CFR Part 200 Subpart D - Post Federal Award Requirements and 2 CFR 200.302 Financial Management](#)
- [Federal Register Vol. 65, No.124: Resource Sharing for Workforce Investment Act One-Stop Centers](#)
- [Generally Accepted Accounting Principles \(GAAP\)](#)

6. Supersedes:

NA

7. Website:

<https://wpc.wa.gov/policy/state/WIOA>

8. Action:

Local Workforce Development Boards and their contractors, as well as Employment Security Regional Directors, should distribute this policy broadly throughout the system to ensure that WorkSource System staff are familiar with its content and requirements.

9. Attachments:

None.

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