

## **Subrecipient and Contractor Determinations**

As a pass-through entity for Federal Education funds, the New Hampshire Department of Education (NHDOE) has prepared this **Subrecipient and Contractor Determinations Fact Sheet** to assist Federal program subrecipients in the development and implementation of their policies and/or procedures as they relate to making subrecipient and contractor determinations when using Federal funds.

This information is being provided by the NHDOE as general compliance guidance only. Subrecipients of Federal funds should refer to the full text of the regulations which can be found at <https://www.govinfo.gov/content/pkg/CFR-2017-title2-vol1/pdf/CFR-2017-title2-vol1-sec200-330.pdf> when developing and implementing policies and procedures concerning the case-by-case determinations a pass-through entity must make as to 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 also supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with 2 CFR 200.331.

### **Subrecipient**

A subaward to a subrecipient is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See 2 CFR 200.1, definition for “Subaward”. 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

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This document is not a substitute for the advice of your own attorney and/or law firm licensed to practice law in the state of New Hampshire. In reading and applying Federal law, we recommend that you seek and obtain the advice of counsel with questions of application, interpretation, and/or to ensure that use of this information is appropriate to your particular situation.

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(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.

## **Contractor**

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 2 CFR 200.1 definition for "Contract". 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 Determinations**

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.

## **Definitions (2 CFR 200.1)**

**Contract** means, for the purpose of Federal financial assistance, a legal instrument by which a recipient of subrecipient purchases property or services needed to carry out the project or program under a Federal award.

**Contractor** means an entity that receives a contract as defined in 2 CFR 200.1 (Contract).

**Non-Federal entity** 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 a **subrecipient**.

**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

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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 program; 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.

### **Federal Compliance Monitoring**

As part of the NHDOE's annual Federal Compliance Monitoring program, staff from the NHDOE's Bureau of Federal Compliance will review whether subrecipients are completing the appropriate determinations when using Federal Funds. The Bureau of Federal Compliance will use the requirements of 2 CFR 200 and other applicable Federal Codes and requirements when completing such reviews.

### **Technical Assistance**

Please feel free to contact the Bureau of Federal Compliance staff should you have any questions relative to the contents of this document.

Bureau of Federal Compliance  
NH Department of Education  
101 Pleasant Street  
Concord, NH 03301  
603-271-3837 or 603-271-3808  
[federalcompliance@doe.nh.gov](mailto:federalcompliance@doe.nh.gov)

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