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**This document was originally intended to provide a general guidance for grants using Department of Commerce as an example.**

**Please note that for state grants, there are currently no statutory requirements or statewide policies that agencies are required to comply with when issuing or accepting grants. The granting agency of a state-funded award has the authority to determine the scope, statement of work, and other terms and conditions of the grant award, including whether indirect costs are allowable.**

# **General Grants**

## State Grants

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### **Authority to Issue Grants**

COMMERCE has the general authority to enter into contracts. See RCW 43.330.040(2)(a). However, the authority to issue grants for specific programs should be stated in law or by the funding source. For example, federal grants give COMMERCE the right under a federal grant to “sub-grant”. Also, specific state statutes and budget bills often give COMMERCE specific granting authority, e.g., Affordable Housing Rapid Response Loan Program [RCW 43.185.120]; and Microenterprise Development Program [RCW 43.330.290]. COMMERCE programs should read these specific authorities carefully to ensure they are in compliance.

The rules for personal service and client service contracting do not apply to grants. Nevertheless, these contracts and grants may be subject to the same types of requirements. For example, although COMMERCE is not required to do risk assessments required by client services rules under SAAM Chapter 16, risk assessments would be required by federal funding sources and by state rules of accountability for state funds. See Chapter 43.88, RCW and Internal Controls, SAAM 20.10.

### **Definitions**

***State Grant:*** Legally binding agreement between COMMERCE and at least one other party. The principal purpose is to transfer money, property, services or anything of value to accomplish a public purpose of support or stimulation. The costs of these services are paid with state funds (not funds from the federal government). Examples are:

- Entitlement grants or pass-through allocations – awarded to recipients that meet qualifying conditions, e.g., income, disability, etc.
- Discretionary grants – judgment is exercised in selecting the recipient through a competitive grant process.

***Contract:*** Legally binding agreement between COMMERCE and another party, to with an exchange of tangible value. The principal purpose is to purchase, lease, or barter property or services for the use and benefit of state government, or its clients, and to firmly define accountability for performance by each party. Includes personal service contracts, purchased service contracts, client service contracts, etc.

### **Characteristics to Consider**

The following characteristics are typically found in state grants or contracts, but may not all be present. They are offered as factors to consider when deciding whether an agreement will be a grant or contract.

## GRANTS

### **Characteristics of a State Grant**

- Principal purpose is to transfer money, property, services, or anything of value to the receiving organization in order to accomplish a public purpose.
- Funds are used to carry out a grantee’s program as compared to providing goods or services to a state agency by contract.
- Payment is generally limited to reimbursement of allowable and eligible costs incurred, in furtherance of defined grant objectives.

- Funding, including final payment, may be provided to the grantee prior to completion of performance in some situations, generally involving governmental entities.
- Payment can be made to all qualifying organizations with or without an application process according to a legislatively determined or approved formula based on data available or collected (entitlement grants).
- Payment amount is not based on the receiving organization's actual or estimated cost of accomplishing the intended public purpose (entitlement grants).

### **Characteristics of a Grantee**

- Responsible for determining who is eligible to receive what services.
- Performance is measured against the grant objectives.
- Responsible for programmatic decision making.
- Responsible for complying with specific grant compliance requirements.

## **CONTRACTS**

### **Characteristics of a Contract**

- Principal purpose is the acquisition of property or provision of services for the direct benefit or use of COMMERCE, or its clients.
- Payments may be withheld if deliverables or services are not satisfactory.
- Payments are made after delivery of goods or services.

### **Characteristics of a Contractor**

- Provides goods or services as part of normal business operations.
- Generally provides similar goods or services to many different purchasers.
- Operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of a state agency program.
- May take a loss or make a profit on the agreement/contract.
- Performance is generally measured against provision of specific deliverables.

### **Procedural Issues**

State grants should be written on a separately titled agreement clearly designated as a grant, which incorporates terms and conditions appropriate to the grant program. For example, a grant agreement should not be titled a personal service contract as that may subject it to the personal service contracts rules.

When awarding and monitoring state grants, state agencies may choose to follow:

- Federal rules regarding grants when grants are partially or totally federal-funded. Some agencies co-mingle federal and state grant money and it is easier for grantees to follow the same rules for both types of funds.

- Existing guidance on state contracting, as applicable. Some agencies are already following existing guidance and will continue to do so.
- Their own written policies and procedures for state grants. Some agencies choose to establish procedures regarding their state grants that may incorporate federal and/or state rules.

Agencies that choose to write their own policies and procedures for state grants should consider including the following topics:

- Grant Award - ensuring the state agency has a fair and objective process, which holds both grantees and the state agency accountable for spending public money in an effective and efficient manner.
- Grant Administration - ensuring the state agency defines and communicates the requirements and expectations of the grant to the recipient, including:
  - § What must be accomplished?
  - § What is the time frame for the project?
  - § When are funds available and when can they be obligated?
  - § How are funds claimed/received?
  - § Can the grantee earn income and how must the income be treated?
  - § Records required/retention?
- Grant Monitoring - ensuring the state agency has a written plan, which may include:
  - § How to approach and handle desk and field monitoring functions.
  - § What is inspected or reviewed in each type of monitoring?
  - § How findings are documented and handled.
- Grant Accounting - ensuring the state agency has methods for tracking state grant expenditures.

State agencies should also take into consideration whether state grants are entitlement or discretionary grants when writing policies and procedures, ensuring the policies and procedures are appropriate for the types of grants in their agency.

If state agency staffs have further questions related to the business side of grants (IRS requirements, workers compensation requirements through the Department of Labor & Industries, or registration requirements with either the Department of Revenue or the Secretary of State's Office), they should contact the appropriate federal or state agency directly.

The following information related to federal grants had been updated over the years. For the most current statewide policies regarding federal grants, please refer to: [SAAM Chapter 50 Federal Compliance](#) and [2 CFR part 200 Uniform Guidance](#) for uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities

## **Federal Grants**

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A federal Grant is an award of financial assistance from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States.

Grants are not Benefits or Entitlements. Grants are not federal assistance or loans to individuals. A grant is not used to acquire property or services for the federal government's direct benefit.

### **Federal Agencies That Provide Grants**

There are 26 federal agencies that offer over 1,000 grant programs annually in various categories.

The Department of Health and Human Services is the Grants.gov program's managing partner, and allows access to the 26 federal grant-making agencies available through this convenient E-Government initiative.

Below are the links to those agency websites:

#### [Agency for International Development](#)

The Agency for International Development is an independent federal government agency that provides economic and humanitarian assistance in more than 100 countries to ensure a better future for us all.

#### [Corporation for National and Community Service](#)

The Corporation for National and Community Service is the nation's largest grant-maker supporting service and volunteering. Through Senior Corps, AmeriCorps and Learn and Serve America programs, the Corporation is a catalyst for change and offers every American a chance to contribute through service and volunteering.

#### [Department of Agriculture](#)

Established in 1862, the Department of Agriculture serves all Americans through anti-hunger efforts, stewardship of nearly 200 million acres of national forest and rangelands, and through product safety and conservation efforts. The USDA opens markets for American farmers and ranchers and provides food for needy people around the world.

#### [Department of Commerce](#)

The Department of Commerce fosters and promotes the nation's economic development and technological advancement through vigilance in international trade policy, domestic business policy and growth, and promoting economic progress at all levels.

#### [Department of Defense](#)

The Department of Defense provides the military forces needed to deter war and protect the security of the United States through five major areas: peacekeeping and war-fighting efforts, Homeland Security, evacuation and humanitarian causes.

#### [Department of Education](#)

The Department of Education ensures equal access to education and promotes educational excellence through coordination, management and accountability in federal education programs. The Department works to supplement and complement educational efforts on all levels, encouraging increased involvement by the public, parents and students.

#### [Department of Energy](#)

The Department of Energy's goal is to advance national, economic and energy security in the U.S.; to promote scientific and technological innovation in support of that goal; and to ensure environmental cleanup of the national nuclear weapons complex.

### [Department of Health and Human Services](#)

The Department of Health and Human Services is the federal government's principal agency for protecting the health of all Americans and providing essential human services, especially to those who are least able to help themselves.

### [Department of Homeland Security](#)

The Department of Homeland Security has three primary missions: Prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism and minimize the damage from potential attacks and natural disasters.

### [Department of Housing and Urban Development](#)

The Department of Housing and Urban Development's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination. HUD fulfills this mission through high ethical standards, management and accountability, and by forming partnerships with community organizations.

### [Department of the Interior](#)

The Department of the Interior protects and provides access to the Nation's natural and cultural heritage, including responsibilities to Indian tribes and island communities. Departmental goals include resource protection and usage, overseeing recreational opportunities, serving communities and excellence in management.

### [Department of Justice](#)

The Department of Justice enforces the law and defends the interest of the United States, ensuring public safety against threats foreign and domestic; providing federal leadership in preventing and controlling crime; seeking just punishment for those guilty of unlawful pursuits; and ensuring fair and impartial administration of justice for all Americans.

### [Department of Labor](#)

The Department of Labor fosters and promotes the welfare of job seekers, wage earners and retirees by improving their working conditions, advancing their opportunities, protecting their retirement and health benefits and generally protecting worker rights and monitoring national economic measures.

### [Department of State](#)

The Department of State strives to create a more secure, democratic and prosperous world for the benefit of the American people and the international community.

### [Department of Transportation](#)

The Department of Transportation's mission is to ensure fast, safe, efficient, accessible and convenient transportation that meets vital national interests and enhances the quality of life of the American people, today and into the future.

### [Department of the Treasury](#)

The Department of Treasury is a steward of United States economic and financial systems, and promotes conditions for prosperity and stability in the U.S., and encourages prosperity and stability in the rest of the world.

### [Department of Veterans Affairs](#)

The Department of Veterans Affairs strives for excellence in patient care and veteran's benefits for its constituents through high quality, prompt and seamless service to United States veterans.

### [Environmental Protection Agency](#)

The mission of the Environmental Protection Agency is to protect human health and the environment. Since 1970, EPA has been working for a cleaner, healthier environment for the American people.

### [Institute of Museum and Library Services](#)

The Institute of Museum and Library Services is the primary source of federal support for the nation's 122,000 libraries and 17,500 museums. The Institute serves as a leader in providing services to enhance learning, sustain cultural heritage and increase civic participation.

### [National Aeronautics and Space Administration](#)

The National Aeronautics and Space Administration serves as the nation's forefront of such exploration and continues to pioneer in aeronautics, exploration systems, science and space operations.

### [National Archives and Records Administration](#)

The National Archives and Records Administration enables people to inspect the record of what the federal government has done, enables officials and agencies to review their actions and helps citizens hold them accountable.

### [National Endowment for the Arts](#)

The National Endowment for the Arts is a public agency dedicated to supporting excellence in the arts; bringing the arts to all Americans and providing leadership in arts education. The Endowment is the largest national source of funds for the arts.

### [National Endowment for the Humanities](#)

The National Endowment for the Humanities is an independent grant-making agency of the United States government dedicated to supporting research, education, preservation and public programs in the humanities.

### [National Science Foundation](#)

The National Science Foundation is an independent federal agency created to promote the progress of science, to advance the national health, prosperity, and welfare and to secure the national defense. The NSF annually funds approximately 20 percent of basic, federally-supported college and university research.

### [Small Business Administration](#)

The Small Business Administration maintains and strengthens the nation's economy by aiding, counseling, assisting and protecting the interests of small businesses and by helping families and businesses recover from national disasters.

### [Social Security Administration](#)

The Social Security Administration advances the economic security of the nation's people through compassionate and vigilant leadership in shaping and managing America's Social Security programs.

## **Who Is Eligible For A Grant?**

There are many groups of organizations that are eligible to apply for government grants. Typically, most grantee organizations fall into the following categories.

### **Government Organizations**

- State Governments
- Local Governments
- City or Township Governments
- Special District Governments
- Native American Tribal Governments (federally recognized)
- Native American Tribal Governments (other than federally recognized)

### **Education Organizations**

- Independent School Districts
- Public and State Controlled Institutions of Higher Education
- Private Institutions of Higher Education

### **Public Housing Organizations**

- Public Housing Authorities
- Indian Housing Authorities

### **Non-Profit Organizations**

- Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
- Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education

### **For-Profit Organizations** (other than small businesses)

#### **Small Businesses**

Small business loans and small business grants may be awarded to companies that meet the size standards that the U.S. Small Business Administration (SBA) has established for most industries in the economy. The most common size standards are as follow:

- 500 employees for most manufacturing and mining industries
- 100 employees for all wholesale trade industries
- \$6 million for most retail and service industries
- \$28.5 million for most general & heavy construction industries
- \$12 million for all special trade contractors
- \$0.75 million for most agricultural industries

Note that about one-fourth of industries have a size standard that is different from these levels. They vary from \$0.75 million to \$28.5 million for size standards based on average annual revenues and from 100 to 1500 employees for size standards based on number of employees.

With few exceptions, all federal agencies, and many state and local governments, use the size standards established by SBA. You can search for further information and for loan opportunities on the Small Business Administration's website .



## **Individuals**

An individual submits a grant on their behalf, and not on behalf of a company, organization, institution, or government. Individuals sign the grant application and its associated certifications and assurances that are necessary to fulfill the requirements of the application process. So, if you register as an Individual, you will only be able to apply to grant opportunities that are open to individuals. An individual cannot submit a grant application to a grant opportunity that is just open to organizations.

## **About Grants.gov**

Grants.gov was established as a governmental resource named the E-Grants Initiative, part of the President's 2002 Fiscal Year Management Agenda to improve government services to the public.

The concept has its origins in the Federal Financial Assistance Management Improvement Act of 1999, also known as [Public Law 106-107](#).

Today, Grants.gov is a central storehouse for information on over 1,000 grant programs and provides access to approximately \$400 billion in annual awards.

## **Agencies must comply with the cost allocation and allowable cost principles in OMB circulars**

The United States Office of Management and Budget (OMB) has published several circulars establishing uniform principles for determining the allowability of costs incurred by nonfederal entities expending federal awards. In addition, these circulars provide requirements for the development and submission of cost allocation plans and indirect rate cost proposals. State agencies and institutions perform functions and activities that are either federally assisted or provide central service support to federally assisted programs or activities. As such, they are subject to provisions of the cost principle circular applicable to their activities.

## **Which OMB circular applies to federal grants?**

Circular A-87 – Applies to all state agencies and institutions, except for:

- Public institutions of higher education,
- Publicly owned hospitals, and
- Other providers of medical care described in 50.20.50.d. below.

This circular establishes:

1. Principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts and other agreements with state and local governments and federally recognized Indian tribal governments;
2. Requirements for the development and submission of cost allocation plans and indirect rate cost proposals for these nonfederal entities;
3. Specific requirements on the distribution of state/local government central service costs, including provisions on the development and submission of state/local government central service cost allocation plans; and
4. Requirements for the development and submittal of state public assistance cost allocation plans.

Circular A-21 - Establishes principles for determining costs applicable to grants, contracts and agreements with institutions of higher education. This Circular also provides requirements for the development and submission of facilities and administration cost proposals (indirect).

Circular A-122 - Establishes principles for determining costs of grants, contracts and other agreements with nonprofit organizations. Colleges and universities, covered by Circular A-21, are specifically excluded from coverage by this circular. The Circular also provides requirements for the development and submission of indirect cost rate proposals.

Federal Awards administered by publicly-owned hospitals or other providers of medical care are subject to requirements promulgated by the sponsoring federal agencies.

Entities receiving sub-grants of federal awards are subject to those federal cost principles applicable to the subrecipient organization.

All central service and department/agency costs that are allocated or billed to educational institutions, hospitals or other providers of medical care or services by other state or local departments or agencies are subject to Circular A-87.

### **Responsibilities of agencies and institutions administering or expending federal awards**

State of Washington operating agencies and institutions, administering or expending federal awards have the following responsibilities:

1. Unless prohibited by federal /state laws or regulations or formal funding limitations (refer to examples in Subsections 50.20.90.b & c), operating agencies are to include the fixed cost allocation from the approved, state central service cost allocation plan in their agency indirect cost/cost allocation pool.
2. Any indirect costs or cost allocation amounts recovered, as a result of a SWCAP cost allocation amount being included in an agency's indirect rate or cost allocation plan, are to be deposited as a recovery in the state General Fund 001 utilizing revenue source 0448.

### **Compliance with Federal Single Audit Act**

Under provisions of the Single Audit Act, as amended, the state of Washington has opted to obtain a statewide Single Audit to meet the basic federal audit requirements for all federal assistance awards administered or expended by agencies or institutions of the State. The Single Audit Act and OMB Circular A-133 establish various requirements for state agencies and institutions administering federal assistance that are included in this section.

### **About the revised Single Audit Act requirements**

In 1984, Congress passed the Single Audit Act, which required most governmental recipients of federal assistance (e.g., state and local governments) to have organization-wide financial and compliance audits on an annual basis. Subsequently, the federal Office of Management and Budget (OMB) issued several circulars to clarify audit requirements on various types of federal assistance recipients. The original Single Audit Act, however, did not include within its coverage all agencies and institutions defined as a state agency in the state of Washington (excluding higher education).

In 1996, responding to suggestions of numerous groups, Congress amended the Single Audit Act significantly. Major changes included language to:

- Increase and standardize the expenditure threshold for triggering a single audit to \$500,000 in expenditures of federal awards per year,
- Extend coverage to entities not covered in the original act like colleges and universities and other non-profit organizations,
- Authorize the Director of OMB to establish a risk-based approach to determining major programs for audit coverage purposes,

- Establish a minimum coverage requirement at 50% of expenditures of federal awards in a year,
- Shorten and standardize the deadline for submission of single audit report information,
- Revise the definition of internal control to recognize acceptance of Committee of Sponsoring Organizations (COSO) definition,
- Allow biennial audits in very limited situations,
- Exempt each nonfederal entity, with annual expenditures of federal awards less than \$300,000 in any fiscal year, from compliance, in that fiscal year, with:
- Audit requirements of the Single Audit Act, and
- Any applicable requirements concerning financial audits contained in federal statutes and regulations governing programs under which such federal awards are provided to that nonfederal entity.

In addition, the Amendments required federal departments and agencies:

- To adopt by "common rule" the new single audit regulations issued by the Director of OMB (Circular A-133), and
- To the maximum extent practical rely upon, and use, audit work performed pursuant to the Single Audit Act.

In 2003, the federal Office of Management and Budget (OMB) published amendments to Circular A-133 that:

- Raised the dollar threshold for requirement of a single audit to \$500,000 or more in expenditures in an entity's fiscal year.
- Raised the dollar threshold for OMB designation of a federal cognizant agency from \$25 million to \$50 million in expenditures per entity fiscal year.
- Allowed federal agencies flexibility to exchange federal oversight agency responsibilities.

### **Definitions relating to the Single Audit process**

Following are common definitions utilized in state and federal policies relating to the Single Audit process:

**CFDA Number** - The five-digit number assigned to a federal assistance program in the federal Catalog of Federal Domestic Assistance or, in the absence of a catalog defined number, the number defined by instructions from the federal audit clearinghouse (refer to Subsection 95.10.40.d).

**Cluster of Programs** - A grouping of closely related programs that share common compliance requirements. Refer to Subsection 95.20.20.a.(3) for a definition and description of program clusters presently used by the state of Washington and its agencies and institutions.

**Cognizant Federal Agency for Audit** - The federal agency designated to carry out coordinating audit responsibilities identified in Circular A-133. Normally would be the primary awarding agency unless otherwise designated by OMB. Health & Human Services is the cognizant federal agency for the state of Washington Single Audit.

**Cognizant State Agency** - A state agency that has assumed the responsibility of implementing single audit requirements and coordinating audit follow-up for a particular grantee by virtue of providing the majority of federal assistance. In the event a state agency does not assume cognizant state agency responsibility, it is then the responsibility of each individual state grantor agency to implement and coordinate audit follow-up of single audit requirements.

Compliance Supplement - Refers to the Circular A-133 Compliance Supplement included as Appendix B to Circular A-133 or such documents as OMB or its designee may issue to replace it.

Corrective Action Plan - A plan of actions taken by an auditee that:

- Corrects identified deficiencies developed during a single or program audit;
- Produces recommended improvements; or
- Demonstrates that audit findings are either invalid or do not warrant auditee action
- A corrective action plan includes the timetable for action and the identification of individuals responsible for seeing corrective action takes place.

Federal Award - Federal financial assistance and federal cost-reimbursement contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants, or contracts, used to buy goods or services from vendors.

Federal Financial Assistance - Assistance that nonfederal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations or other assistance. It does not include amounts received for provision of vendor services to federal agencies or reimbursement for services rendered directly to individuals.

Federal Program - All federal awards to a nonfederal entity assigned a single number in the CFDA. When no CFDA number is assigned, state of Washington agencies and institutions are to report federal assistance activity per Subsection 95.10.40.d.

Internal Control - A process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- Effectiveness and efficiency of operation;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

Local Government - Any unit of local government within a state including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major Program - A federal program determined by the auditor to be a major program in accordance with provisions in Circular A-133 or a federal program identified as major by a federal agency or pass-through entity in accordance with provisions in Circular A-133.

Management Decision - The evaluation by a federal awarding agency or pass-through entity of the audit findings and related corrective action plans and the issuance of a written decision as to what corrective action is necessary.

Nonfederal Entity - A state (as defined in Circular A-133), local government or nonprofit organization.

Nonprofit Organization - Any corporation, trust, association, cooperative or other organization that:

- Is operated primarily for scientific, educational, service, charitable or similar purposes in the public interest;
- Is not organized primarily for profit; and
- Uses its net proceeds to maintain, improve, or expand its operations.

The term nonprofit organization includes nonprofit institutions of higher education and hospitals.

Pass-Through Entity - A nonfederal entity that provides a federal award to a subrecipient to carry out a federal program.

Reporting Package - As defined in OMB Circular A-133 includes:

- Entity's financial statements and schedule of expenditures of federal awards,
- Summary schedule of prior audit findings as discussed in the Circular,
- Auditor's reports as outlined in the Circular, and
- Corrective action plan as discussed in the Circular.

Research and Development - All research activities, both basic and applied, and all development activities that are performed by a nonfederal entity.

- Research is a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. It also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.
- Development is the systematic use of knowledge and understanding gained from research directed to the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single Audit - A financial, internal control, and compliance audit of a nonfederal entity administering federal assistance awards including the financial statements of the entity.

Subrecipient - A nonfederal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program.

Vendor - A dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program.

### **Responsibilities of state agencies/institutions administering or expending federal awards**

1. Develop internal policies in accordance with this policy and the requirements of the Act and Circular.
2. Identify, account for, and report all expenditures of federal awards in accordance with laws, regulations, contract and grant agreements, and requirements included in this and other sections of the OFM, State Administrative and Accounting manual.
3. Provide year-end, certified, federal financial data per requirements included in Chapter 95.
4. Prepare a corrective plan, in the format specified in Subsection 55.10.30, to address each agency audit finding and forward such plan(s) to OFM within 30 days after issue date of the agency audit.
5. If acting as a pass-through entity, refer to Subsection 50.30.50 for list of responsibilities.

6. **Suspension and Debarment**-Commerce staff must ensure that they do not issue federal funded contracts, loans and grants to entities that have been “suspended” or “debarred” by the federal government. See Federal Acquisition Regulation (FAR) 48 CFR Subpart 9.4. there are three ways to comply with this:
  - a. Go to the electronic Excluded Parties List System (EPLS) at <http://www.epls.gov> and check to make sure they are not suspended or debarred. If this is checked, it must be documented by taking a “screen shot” or printing the page that is checked;;
  - b. Contracts, loans, or grants have separate certifications signed by the contractor attesting to the fact that they are neither suspended nor debarred; or
  - c. Clauses or conditions in the agreement itself.

All Commerce templates used for federal funded contracts, loans and grants have suspension and debarment language that complies with 48 CFR 9.4. This is important to have not only to ensure that the contractor states that they are not suspended or debarred by signing the agreement but also put contractors and their subcontractors on notice that this is a “flow down” requirement that each tier must follow as long as these federal monies are being spent.

#### **Pass-through entity responsibilities**

1. Properly identify federal awards by informing each subrecipient of the CFDA title and number, award name and number, award year, if the award is R & D, and name of the federal agency;
2. Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contract and grants agreements as well as any supplemental requirements imposed by the pass-through entity;
3. Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grants agreements and that performance goals are met;
4. Require subrecipients to provide an annual inventory of federal awards sufficient to allow the pass-through entity to determine whether a single audit is required. The inventory can also be used for determining cognizant state agency, if applicable;
5. Ensure that subrecipients expending \$500,000 or more in federal awards during the subrecipient’s fiscal year have met the audit requirements of Circular A-133;
6. Issue a management decision on audit findings within six months after receipt of the subrecipient’s audit report and ensure that the subrecipient takes appropriate and timely corrective action;
7. Consider whether subrecipient audits necessitate adjustment of the pass-through entity’s own records;
8. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary to comply with Circular A-133; and
9. In limited instances, pass-through entities can inherit the responsibility for receiving, reviewing, approving and monitoring indirect rate cost proposals/plans. Circular A-87 states that, "where a local government only receives funds as a subrecipient, the primary recipient will be responsible for negotiating and/or monitoring the subrecipient’s plan.

#### **Pass-through entities must monitor subrecipients**

Subrecipient monitoring is the processes and procedures undertaken by a pass-through entity as necessary to ensure that subrecipients are complying with applicable laws, regulations, contract or grant agreement provisions, and that performance goals are being achieved. As part of ensuring legal requirements are met, it also includes processes and procedures to verify that applicable audit requirements are satisfied and audit findings are reviewed for timely corrective action.

Factors such as the size of awards, the percentage of total program funds awarded to subrecipients and the complexity of compliance requirements influence the nature and extent of appropriate monitoring procedures. Forms of monitoring activities that might be employed include:

1. Pre-award assessments of subrecipient financial and program capabilities;
2. Require and collect written certification from subrecipients that required information on federal awards has been provided and that the subrecipient understands and agrees to comply with applicable laws, regulations, contract and grant agreement provisions and other requirements imposed by the pass-through entity;
3. Document reviews of subrecipient financial and programmatic reports;
4. Perform site visits to subrecipients to review financial and programmatic records as well as observe operations;
5. Perform limited scope audits. Limited scope audits are defined as an agreed-upon procedures engagements conducted in accordance with the American Institute of Certified Public Accountants' (AICPA's) generally accepted auditing standards (GAAS) and attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements:
  - Activities allowed or unallowed;
  - Allowable costs/cost principles;
  - Eligibility;
  - Matching, level of effort, earmarking; and/or
  - Reporting.
6. Arrange for documented reviews of specific subrecipient activity based on risk assessment or significant compliance requirements. An example might be client eligibility determination;
7. Review and follow-up on subrecipient single audits; and
8. Use various checklists to document activities such as the review and follow-up on subrecipient audits or the receipt of required reports and documents prior to closure of contracts or grant agreements.

### **Pass-through entities must determine subrecipient (subgrantee) vs. Vendor (contractor) determinations**

One of the more challenging tasks facing state agencies/institutions, acting as grantees and/or pass-through entities for federal assistance, is determining when federal program awards retain their identity of federal financial assistance. The distinction is important because federal financial assistance is subject to federal compliance requirements including federal audit requirements. If federal funds "lose" their federal financial assistance identity, the federal restrictions or requirements are generally no longer in effect. Federal funds typically lose their identity through expenditure (i.e., the funds are spent procuring goods or services from a vendor). Merely passing along federal funds to a subrecipient through a subgrant does not alter the federal assistance or award identity.

OMB Circular A-133, §\_\_\_\_.210, states, "Federal awards expended as a recipient or subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered federal awards." §\_\_\_\_.210 also provides a list of characteristics indicative of federal awards received as a subrecipient and a separate list of characteristics indicative of payments received by a vendor for providing goods or services. Listed below are some other factors that can be used to distinguish between subrecipient and vendor relationships:

- Solicitation and Competition - Generally government rules and regulations mandate maximum free and open competition for award of procurement contracts. There are no similar government-wide requirements for competitive awards of subgrants.
- Number of Awards - A purchaser usually picks only one vendor to provide needed goods or an identifiable scope of services. On the other hand, organizations awarding assistance (subgrants) generally make multiple awards until funds are exhausted.
- Criteria for Selection - Agencies awarding assistance generally place the ability to demonstrate need for funds above most other factors. Agencies awarding vendor contracts usually identify factors showing capability to deliver as most important.
- Statement of Work/Scope of Services/Project Objectives - In a vendor procurement, the specification or scope of work is defined by the awarding agency, i.e., the awarding agency identifies what it is buying. In an assistance or subgrant situation, the potential subrecipient generally identifies the program details of the activity for which it is seeking support.
- Timing of Payment - Federal assistance payments are usually made before or at the time work is performed. Vendor payments are generally made after performance or at intervals of progress toward identified deliverables.
- Pricing of the Agreement - Grantees and subgrantees generally operate on the premise that the ultimate settlement of the agreement will be on the basis of incurred allowable costs. No increment above cost is either intended or allowed. Vendors, regardless of type, are paid increments above costs (profit) usually in exchange for the risk they assume in competing with others to offer the needed goods or services.
- Special Conditions - Grantees are permitted to impose "high risk" conditions on subgrantees. These are normally imposed on a case-by-case basis. In such cases, the subgrantee must be told about special conditions being imposed, the corrective actions needed to have them removed and the method of appealing the decision to impose, if such exists. Procurement contractors/vendors have no such protections. Because the grantee is buying the goods or services, it has the right to impose whatever terms deemed appropriate as long as they are mutually accepted at the time of the award.
- Award Cost Participation - Often, matching or cost sharing requirements are passed through to subrecipients, who are responsible for helping the grantee meet matching requirements. While technically possible, cost sharing would be unlikely in vendor agreements.
- Award Risk - Generally, assistance awards are treated as so-called "best effort" awards. That is the grantee or subgrantee assumes little risk if performance does not meet goals. This is recognition that assistance is often rendered to try to solve intractable problems that may not respond. Procurement contracts, particularly fixed-price contracts place much of the risk of achieving the objective or guaranteeing performance on the contractor or vendor.
- Treatment of Property Purchased with Award Monies - In assistance awards, if a grantee permits the subrecipient to purchase real property, equipment and significant inventories of supplies with federal funds, the grantee typically retains a residual interest in the property, enabling it to



recover the property or money associated with its sale price at fair market value. Although technically possible, such arrangements are not normally found in vendor contracts.

- **Applicable Rules** - The type of award can be determined by noting the federal administrative rules being followed. Subgrants are governed by federal grantor implementing applicable sections of the Uniform Administrative Requirements Common Rule (§37) and OMB Circular A-110. The two federal guides contain separate rules for procurement of vendor services (§36 of the Common Rule and Attachment O to Circular A-110).
- **Public Policy Requirements** - Frequently, Congress has imposed various civil rights, environmental and work-place requirements on the expenditure of federal funds. The so-called "boiler-plate" language of an agreement may provide further evidence of whether an award is being treated as assistance (subgrant) or procurement (vendor). Policies dealing with assistance are usually drawn from the standard Statement of Assurances that accompany federal grant applications (Standard Form 424B for non-construction programs, Standard Form 424D for construction programs). For procurements under grants, the public policy provisions are identified in §36(i) of the Uniform Administrative Requirements Common Rule and paragraph 4 of Attachment O to Circular A-110.
- **Termination** - Typically, an awarding agency hires help in a procurement contract, but provides help in an award of federal financial assistance. As such, procurement contracts can generally be terminated at the convenience of the awarding agency as well as for the vendor's non-performance or violation of terms and conditions. Subgrants can only be terminated by the awarding agency for cause - which is for a material violation of the terms and conditions of the award. The subgrantee normally can terminate an award agreement unilaterally or the awarding agency and the subgrantee can mutually agree to do so.

### **Use the CFDA number to record federal activity**

Record federal assistance program revenues and expenditures/expenses by the unique code assigned each federal financial assistance program in the Federal Catalog of Domestic Assistance (CFDA) or, in the absence of a catalog defined number, the number defined by instructions from the federal audit clearinghouse.

Preferably, this is to be done as an integral part of the agency's grant accounting system to enable the system to produce reports by catalog number. However, this may be accomplished by maintaining a crosswalk of federal programs to catalog numbers.

When catalog numbers have not been provided in the federal grant contract and can not reasonably be determined by other means, agencies should identify federal programs with a number consisting of the two-digit federal agency number and a three-digit federal program of 999 "Other Federal Assistance."