

Introduction to American Rescue Plan Act of 2021:

Working with Other
Local Governments,
Nonprofits, and Other
Private Entities

aka Subawards



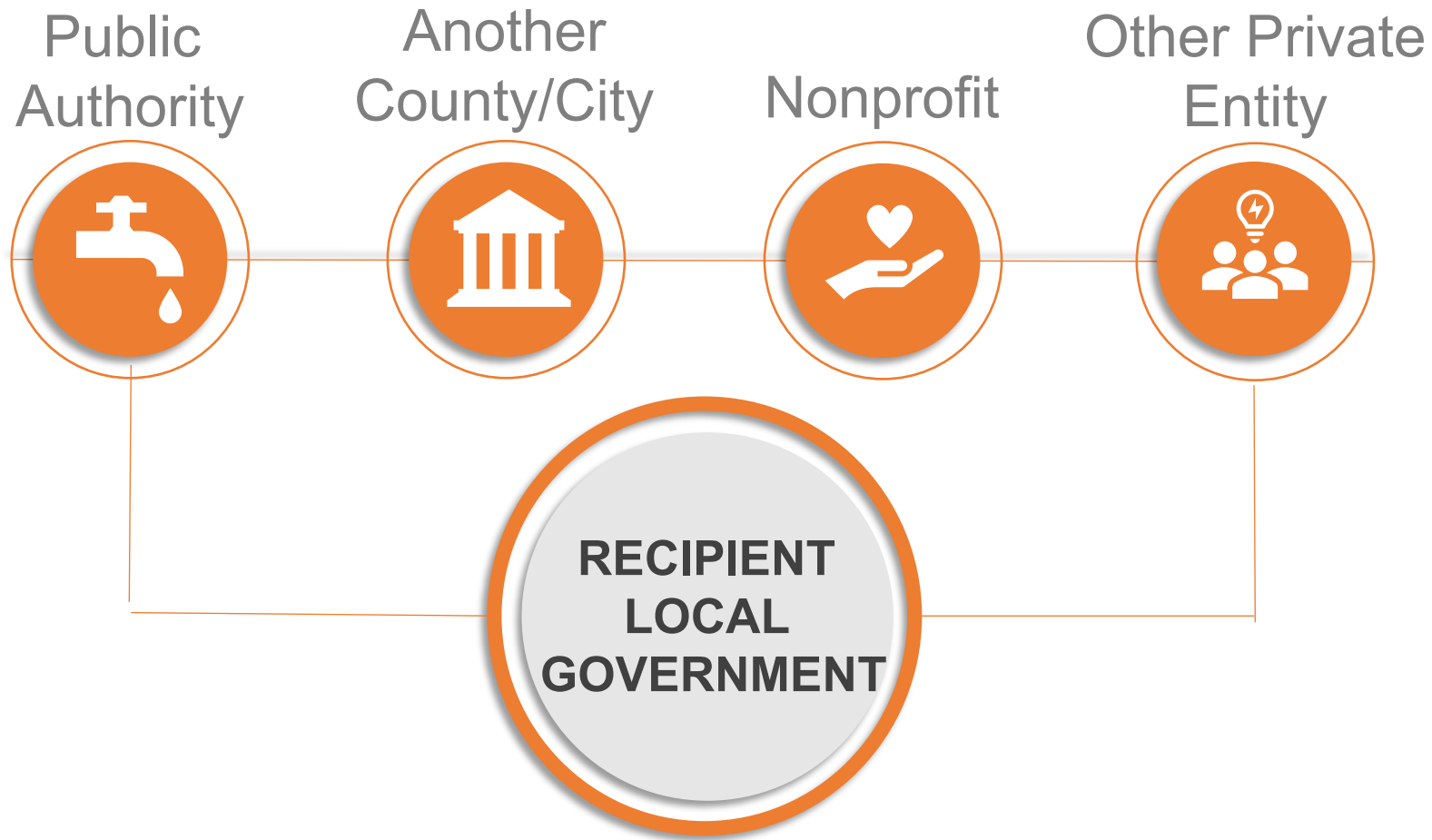
NORTH CAROLINA
DEPARTMENT OF STATE TREASURER



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA



Working with Partners



PARTNERSHIP



COLLABORATION



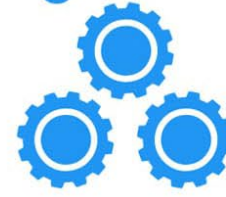
PERFORMANCE



PLAN



TEAMWORK



SYNERGY



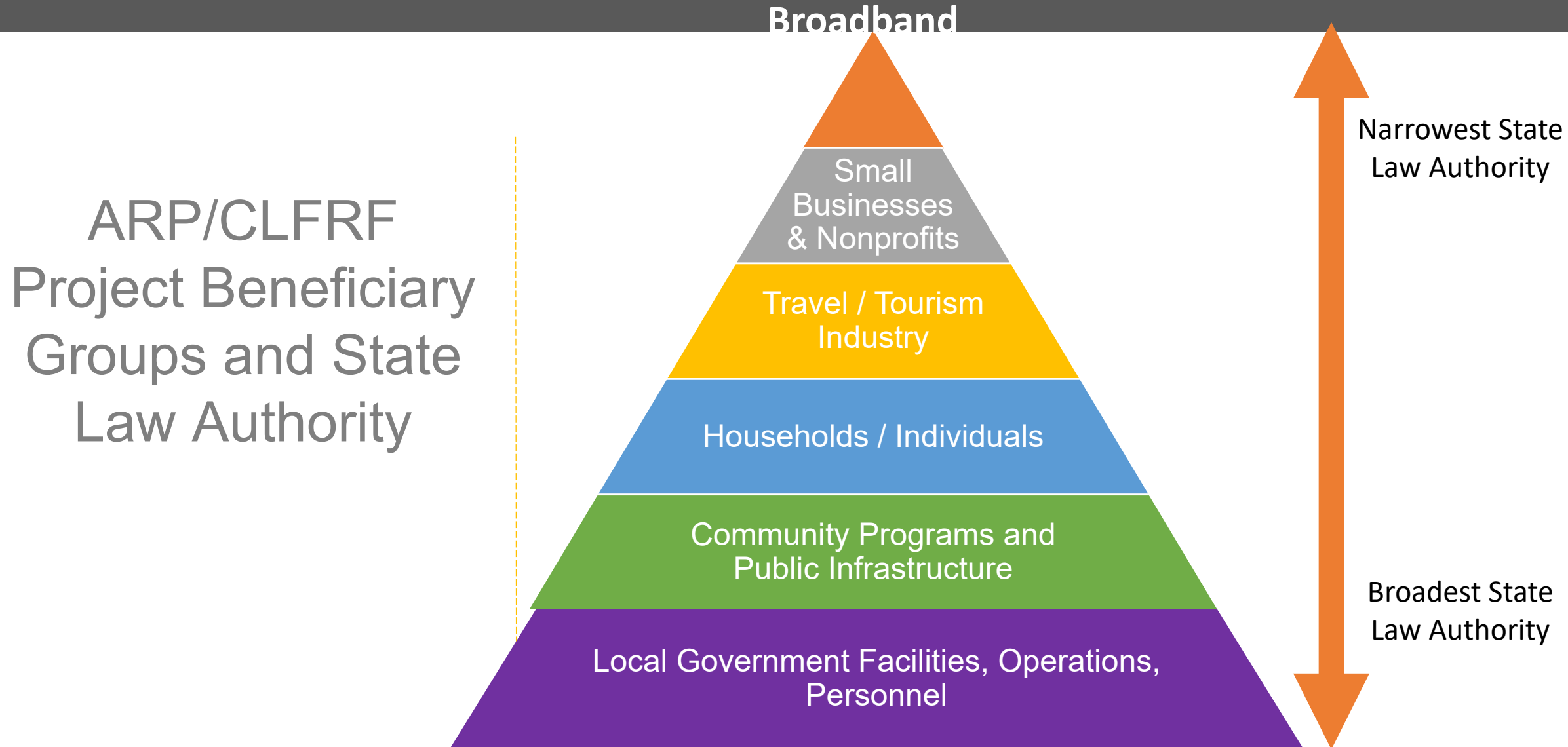
SUCCESS



WIN-WIN

State Law: Private Entities

Project Beneficiaries



Contract With, NOT Donate To

A local government generally MAY NOT GRANT/DONATE funds to a private entity (even nonprofit) to support the private entity's operations or capital needs.

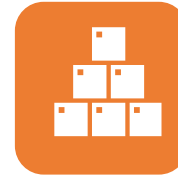
But a local government may CONTRACT with any private entity to undertake a program or activity that the local government has statutory authority to perform.

Except:

160A-488: museum and arts programs



Contract with contractor to construct a building



Contract with vendor to provide goods/supplies



Contract with a nonprofit to undertake a community assistance program



Contract with a private association to manage projects in business improvement district

§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.

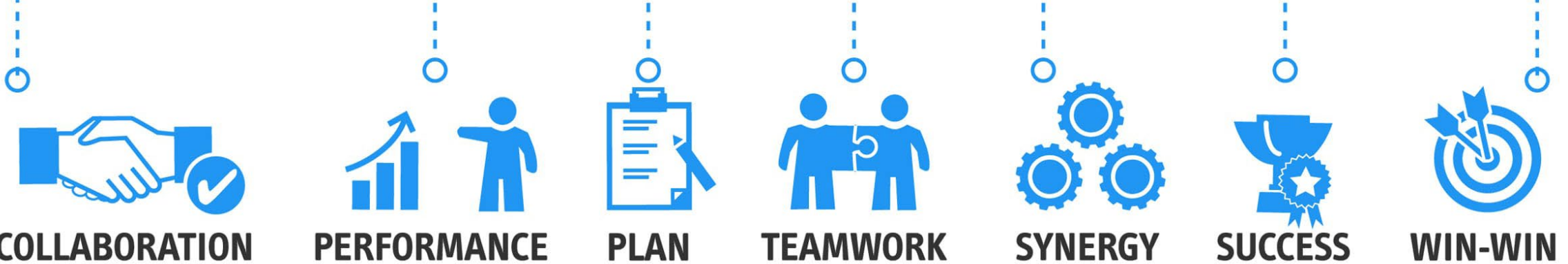
- (a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

§ 153A-449. Contracts with private entities; contractors must use E-Verify.

- (a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

See also Dennis v. Raleigh, 253 N.C. 400 (1960)

PARTNERSHIP



State Law: Public Entities

Interlocal Agreements

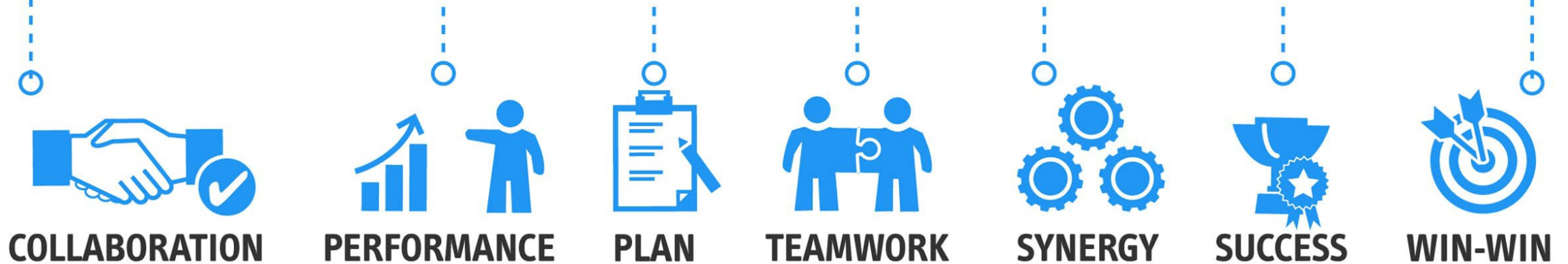
§ 160A-461. Interlocal cooperation authorized.

Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes.

"Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

"Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government.

PARTNERSHIP



ARP/CLFRF

A local government may partner with (and transfer funds to) another government entity or a private entity to carry out an ARP/CLFRF eligible project. The other entity will be a subrecipient for purposes of Uniform Guidance.

US Treasury FAQs

1.8. Can non-profit or private organizations receive funds? If so, how? [7/14]

Yes. Under section 602(c)(3) of the Social Security Act, a State, territory, or Tribal government may transfer funds to a “private nonprofit organization . . . , a Tribal organization . . . , a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.” Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations). **The Interim Final Rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive, and recipients may transfer funds to constituent units of government or private entities beyond those specified in the statute. A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be considered to be a subrecipient and will be expected to comply with all subrecipient reporting requirements.** The ARPA does not authorize Treasury to provide CSFRRF/CLFRRF funds directly to non-profit or private organizations. Thus, non-profit or private organizations should seek funds from CSFRRF/CLFRRF recipient(s) in their jurisdiction (e.g., a State, local, territorial, or Tribal government).

Subawards Are Not For Everyone



- NOT appropriate to aid struggling nonprofits or other community organizations
- NOT appropriate if local government does not have sufficient capacity to monitor, manage, and assist partner entity
- NOT a way for local government to get out of detailed compliance requirements

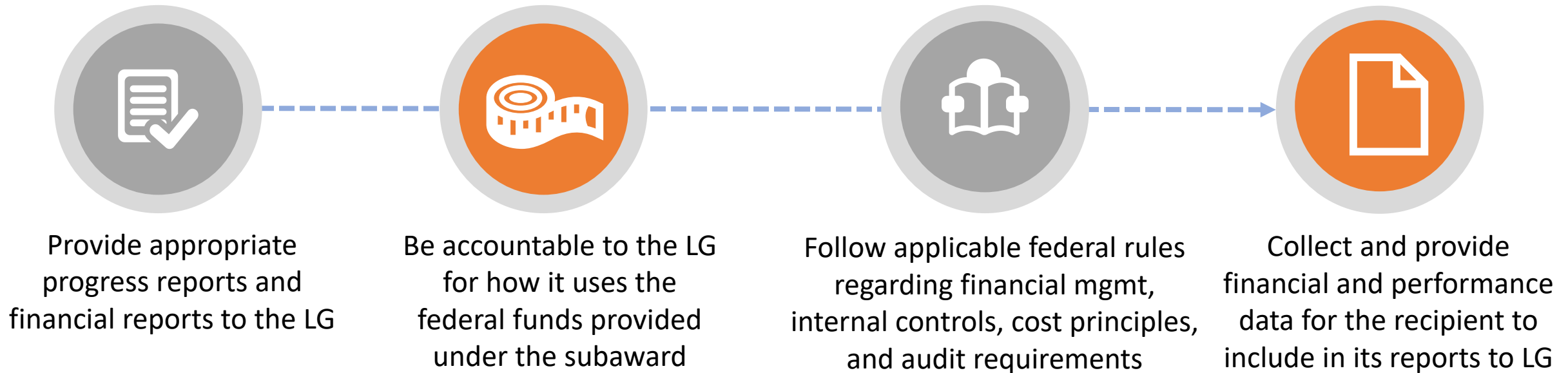


Subaward Vocabulary

- **Recipient:** Local government that received ARP/CLFRF award
- **Pass-through Entity:** Local government that provides a subaward to a subrecipient to carry out part of the ARP/CLFRF award program
- **Subaward:** Award provided by a pass-through entity to a subrecipient to carry out part of the ARP/CLFRF award received by the pass-through entity
- **Subrecipient:** Entity the receives a subaward from a pass-through entity to carry out part of the ARP/CLFRF award program.

Recipient (LG) / Subrecipient Relationship

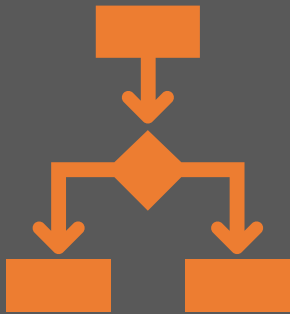
A Subrecipient must:



A LG must require a subrecipient to comply with – and must monitor a subrecipient for compliance with – all the conditions and restrictions that apply to the ARP/CLFRF award.

Subaward Process

Local Government “should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients’ compliance obligations.”



Determination of
relationship:
Subrecipient or
Contractor

2 CFR 200.331



Risk Assessment
2 CFR 200-332(b)-(c)

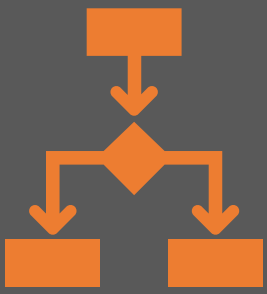


Formation and
issuance of
subaward
agreement

2 CFR 200.332(a)



Post-award
monitoring
2 CFR 200.332(d)-(h)



Subaward Policy



Subaward vs. Contract

Who determines whether subaward or contract?
What is process for making that determination?
How is that determination documented?

Risk Assessment

Who performs risk assessment?
What factors are included in risk assessment and how are they weighted?
What happens if entity is designated mid or high risk according to assessment?
Who checks for disbarment or suspension?
Who checks for conflict of interest?
How is risk assessment and other due diligence documented?

Subaward Agreement

Who drafts subaward?
What state law requirements must be met (preaudit, required clauses, prohibited clauses, etc.)?
Who works with other entity to collect required information (budget, scope of work description, due diligence reviews, etc.)?
Who determines what additional subaward terms must be included?
Who executes subaward?
Who maintains records of subaward and other documents?

Subaward Monitoring

Who monitors subrecipient for performance, financial, and other compliance?
Who makes decisions about how to respond to noncompliance?
Who provides technical assistance to subrecipient?
Who documents subrecipient monitoring?
Who closes out subaward?



Contract vs. Subaward

Contract Relationship

- A procurement relationship
- Provides goods and services within normal business operations
- Provides similar goods and services to many purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the federal program
- Not subject to compliance requirements of the federal program

Subrecipient Relationship

- An assistance relationship (LG assisting subrecipient)
- Subrecipient determines eligibility of beneficiaries
- Performance measured against federal program objectives
- Responsible for programmatic decision-making
- Adheres to applicable federal program requirements
- Uses federal funds to carry out a program for public purposes specified in statutes, as opposed to providing goods or services for the benefit of the pass-through entity

Note that a contract with a nonprofit or other local government is not automatically a subaward. It must meet the criteria for a subrecipient relationship.

Sample Contractor / Subrecipient Checklist

See
course
materials

NAME OF OUTSIDE ENTITY:

SECTION 1 - SUBRECIPIENT. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the contractor:

- ☐ Determines who is eligible to receive what Federal assistance;
- ☐ Has its performance measured in relation to whether objectives of a Federal program were met;
- ☐ Has responsibility for programmatic decision-making;
- ☐ 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.

Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award.

SECTION 2 - 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. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- ☐ Procurement relationship
- ☐ Provides the goods and services within normal business operations;
- ☐ Provides similar goods or services to many different purchasers;
- ☐ Normally operates in a competitive environment;
- ☐ Provides goods or services that are ancillary to the operation of the Federal program.

Entities that include these characteristics are not subject to compliance requirements of the Federal program because of the agreement, though similar requirements may apply for other reasons.

SECTION 3 - USE OF JUDGMENT. (Use only when the determination cannot clearly be made using the above criteria) 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 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.

Explanation of Use of Judgment Determination:

FINAL DETERMINATION:

- ☐ SUBRECIPIENT
- ☐ CONTRACTOR

[LOCAL GOVERNMENT OFFICIAL OR EMPLOYEE] Signature:

Date:

This determination shall be retained as part of the official record of the project for which the contract or subaward is made. Please forward a copy to [NAME OF APPROPRIATE LOCAL GOVERNMENT OFFICIAL HERE] for record retention purposes.

Subrecipient Risk Assessment



1. CHECK SAM.GOV AND DOCUMENT THAT ENTITY IS NOT DISBARRED OR SUSPENDED
2. CHECK AND ADDRESS ANY CONFLICT OF INTEREST (2 C.F.R. 200.318(c)(1))

Risk Assessment



PRIOR AWARD EXPERIENCE

How familiar is local government with entity?
How much experience does entity have implementing federal award programs?
How does entity's experience relate to current program size?



PRIOR AUDIT EXPERIENCE

Has entity had a single audit or other recent audits?
Have any valid audit findings been corrected or resolved?



STAFFING & SYSTEMS

Does entity have personnel who are familiar with federal req'ts?
Does entity have seasoned finance directors and accounting staff?
Are entity's systems for financial mgmt., purchasing, property mgmt., and records retention in place, well designed, and operational?



EXTENT OF ANY FEDERAL MONITORING

Can local government build on existing monitoring framework of other federal awards?

Risk Assessment



Low Risk

- No audit findings
- Minor audit findings & assessed as low risk by auditor
- Successful history with federal awards
- Seasoned staff and systems

Medium Risk

- Organization without prior experience with federal awards
- Newer staff or systems
- Limited prior audits

High Risk

- No prior audits
- Prior audit findings with major deficiencies / material weakness
- Organization without sufficient personnel, accounting systems & internal controls

Additional Requirements for Medium – High Risk Entities

More frequent monitoring

More frequent communication

Site visits

Stringent review of audits

Training and technical assistance

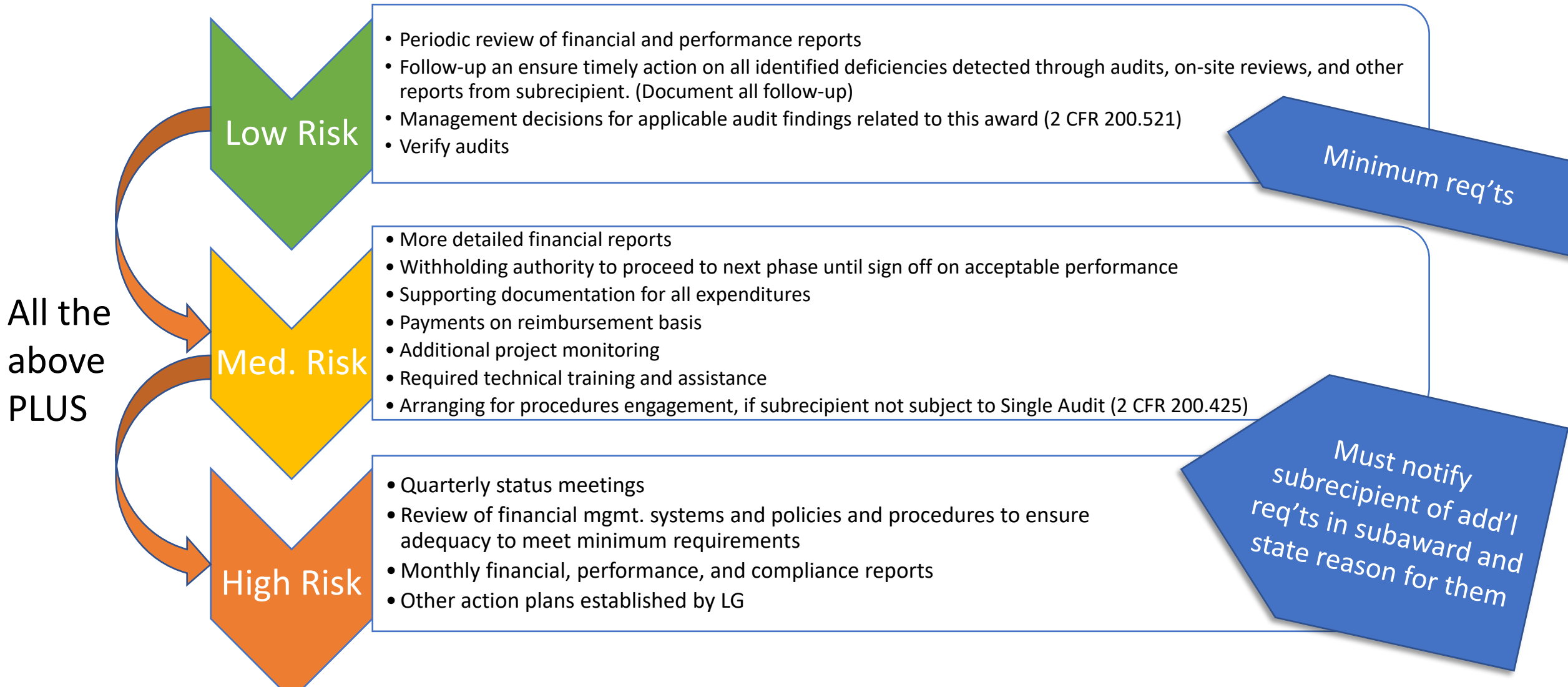
Prompt action when non-compliance occurs

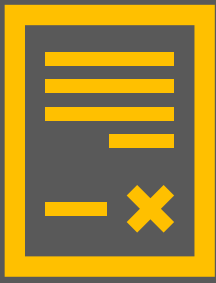
Requiring payments as reimbursements

Required sign-off on project stages



Sample Mapping of Risk Assessment to Additional Compliance





Subaward Agreement: Required Provisions

The subaward is the contract between the LG and other entity.

The LG must put all necessary clauses and req'ts that will permit the LG to meet its obligations to the federal gov't.

Both parties must sign agreement.

- ☐ Identify it as a SUBAWARD (2 CFR 200.332(a))
- ☐ Certain data elements (2 CFR 200.332(a)(1))
- ☐ Terms & conditions from ARP/CLFRF (2 CFR 200.332(a)(2))
- ☐ Additional LG-imposed requirements based on risk assessment (2 CFR 200.332(a)(3))
- ☐ Indirect cost rate (2 CFR 200.332(a)(4))
- ☐ Records access & retention (2 CFR 200.332(a)(5))
- ☐ Closeout provisions (2 CFR 200.332(a)(6))
- ☐ Substantive components (statement of work, budget, payment info, etc.)
- ☐ Other UG requirements



Subaward Agreement: Data Elements

Subrecipient name

Subrecipient's Unique Entity Identifier (UEI/DUNS)

Federal Award ID Number (FAIN)

Federal Award Date

Subaward Period of Performance Start & End Dates

Subaward Budget Period Start & End Dates

Amount of Federal Funds Obligated by this Subaward

Total Amount of Federal Funds Obligated to the Subrecipient by Recipient

Total Amount of Federal Award Committed to Subrecipient by Recipient

Federal Award Project Description

Name of Federal Awarding Agency, Pass-through Entity and Contact Information

Assistance Listing # and Name (including dollar amount)

Identification of whether the award is R&D

Indirect Cost Rate for Federal Award

Subaward Agreement: ARP/CLFRF Requirements



Clearly identify to subrecipient that the award is a subaward of ARP/CLFRF funds

Incorporate all expenditure limitations, compliance requirements, and reporting requirements from ARP/CLFRF

- Obtain UEI from SAM.gov (or have DUNS #)
- Maintain records and documents for 5 years after all funds have been expended or returned
- Records and documents must be made available upon request by LG, US Treasury, GAO, OIG, or PRAC
- Single Audit if expend more than \$750K in federal awards during fiscal year
- Civil Rights Compliance. Entities may not deny benefits or services or otherwise discrimination on the basis of race, color, national origin (including limited English Proficiency), disability, age, or sex (including sexual orientation and gender identity). May have to submit narrative documenting compliance to US Treasury.
- Compliance with Section 603 of the *Social Security Act* (42 U.S.C. 803), as added by section 9901(a) of the *American Rescue Plan Act of 2021* (Pub. L. No. 117-2))
- Compliance with 31 CFR Subtitle A, Part 35, Subpart A
- Compliance with applicable guidance documents issued by the Department of Treasury, including *Compliance and Reporting Guidance: State and Local Fiscal Recovery Funds*

Subaward Agreement: Substantive Components



1. Statement of Work
2. Key Personnel
3. Period of Performance
4. Budget & Payment
5. Cost Sharing
6. Program Income
7. Reporting Requirements (types, frequency, where to send)
8. Property Management
9. Indemnification
10. Procurement
11. Conflict of Interest
12. Insurance
13. Suspension & Termination
14. Assignment
15. Audits
16. Venue and Jurisdiction
17. State Law Provisions (preaudit, e-verify, required clauses, prohibited clauses)

Subaward Agreement: Other Uniform Guidance Provisions



1. Compliance with all Uniform Guidance Provisions in 2 CFR 200, Except as Exempted in Assistance Listing
2. Suspension and Disbarment Requirements (2 CFR 180)
3. Terrorism Financing Requirements (31 CFR 598, Subpart B)
4. Drug-free Workplace requirements (2 CFR 182)
5. Federal Restrictions on Lobbying (31 CFR 21)
6. Federal Funding Accountability & Transparency Act of 2006
7. Stevens Amendment (must identify use of federal funds in publicity or signage)

Sample Subawards



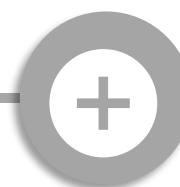
There are several subaward templates available, including from the [Federal Demonstration Partnership \(FDP\)](#), [HUD](#), and [CDBG-BR Toolkit](#) (as well as other sites.) These samples will need to be modified to fit the ARP/CLFRF and tailored to your local government and subrecipient.



Start with the sample subaward agreement



Local government attorney reviews for full compliance with ARP/CLFRF and Uniform Guidance



Local government adds special provisions based on subrecipient's risk assessment and state law requirements



Local government and subrecipient execute subaward agreement

Subrecipient Monitoring: Req'd Provisions





Subrecipient Monitoring: Additional Steps

- Training & Technical Assistance
 - Work together as partners
- On-site Reviews or Site Visits
 - Consider best allocation of LG resources
- Agreed-upon Procedures Engagements
 - More limited scope audit
 - To be an allowable cost, must be limited to review of allowable activities, allowable costs/cost principles, eligibility, and reporting
- Third-party Information
 - Coordinate with other entities providing federal awards to subrecipient
- Documentation of Routine Contact
 - Keep emails and letters; make notes of phone calls

LG must have sufficient internal controls to successfully monitor and support all subrecipients.



Sample Role Assignments for Subrecipient Monitoring.

Project Manager

- Perform risk assessment (with finance officer)
- Endorse the subaward – funding level, performance period and statement of work
- Certify the work performed by the subrecipient is thorough and acceptable (to the best of the Project Manager's knowledge)
- Maintain regular contact with the subrecipient project manager regarding all technical aspects of the project
- Provide technical assistance when warranted
- Review and approve subrecipient invoices in a timely manner
- Immediately notify the Finance Officer of any issues or concerns
- Documents all interactions and progress reports



Finance Officer

- Perform risk assessment (with project mngr)
- Assess subrecipient financial management practices, personnel, and systems
- Authorize the subaward
- Review invoices for the following:
 - Are invoiced amounts within the approved performance period?
 - Is there enough funding available?
 - Has the cost share been included (if applicable)?
 - Is the indirect cost being charged correctly?
 - Are the charges allowable?
- Provide financial technical assistance when warranted
- Review subrecipient financial reports and audits and immediately notify project manager of any issues or concerns
- Documents all financial transactions

Reporting on Subawards

Report on ALL subawards in aggregate at project level

- Subrecipient identifying and demographic information (e.g., DUNS/UEI number and location)
 - Award number (e.g., Award number, Contract number, Loan number)
 - Award date, type, amount, and description
 - Award payment method (reimbursable or lump sum payment(s))
 - For loans, expiration date (date when loan expected to be paid in full)
 - Primary place of performance
 - Related project name(s)
 - Related project identification number(s) (created by the recipient)
 - Period of performance start date
 - Period of performance end date
 - Quarterly obligation amount
 - Quarterly expenditure amount
 - Project(s)
 - Additional programmatic performance indicators for select Expenditure Categories
 - Executive compensation – names and total compensation of 5 most highly compensated executives under certain circumstances
- Special reporting requirements for subawards \geq \$50K

Do NOT also need to submit monthly reports to FSRs.gov, pursuant to 2 CFR Part 170

US Treasury FAQs

4.9. May recipients pool funds for regional projects? [7/14]

Yes, provided that the project is itself an eligible use of funds and that recipients can track the use of funds in line with the reporting and compliance requirements of the CSFRF/CLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another government, recipients would need to comply with the rules on transfers specified in the Interim Final Rule, Section V. **A recipient may transfer funds to a government outside its boundaries (e.g., county transfers to a neighboring county), provided that the recipient can document that its jurisdiction receives a benefit proportionate to the amount contributed.**