



## FDP Subaward Templates & Samples Frequently Asked Questions

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### **INTRODUCTION**

These FAQs, created by a working group under the direction of the FDP Subawards Subcommittee, pertain to the FDP Cost Reimbursement and Fixed Amount Subaward templates, Foreign Subaward samples, and the Bilateral and Unilateral Modifications. FAQs and guidance documents for the FDP Fixed Rate Clinical Research Subaward sample is available on our website at <http://thefdp.org/default/subaward-forms/>. Guidance for the Subcontract sample is not available at this time.

Questions regarding this document can be directed to the FDP Subawards Subcommittee Co-Chairs at [subawards@thefdp.org](mailto:subawards@thefdp.org).

For more guidance on how to choose the appropriate template/sample, see the FDP Template Guidance Chart at <http://thefdp.org/default/subaward-forms/>.

### **DISCLAIMER**

Nothing in this document constitutes legal advice. Any interpretation is that of this working group and are deemed appropriate for compliance with Uniform Guidance and other federal policies mentioned in this document. Please conduct your own due diligence and/or contact your institution's legal team(s) as appropriate.

### **What FDP subaward templates are available to use?**

The FDP subaward templates are available to FDP and non-FDP members on the FDP website at <http://thefdp.org/default/subaward-forms/>

Available for use are:

- Cost Reimbursement Subaward template
- Fixed Amount Subaward template



- Bilateral Amendment (Free Text, and Pre-set options and text)
- Unilateral Amendment
- Foreign Cost Reimbursement Subaward sample
- Foreign Fixed Amount Subaward sample
- Fixed-Rate Clinical Research Subaward sample
- Research Subcontract (**SAMPLE**)
- Amendment to a Subcontract/Subaward Under a Federal Contract sample

Templates are not to be edited. The FAQs below will highlight areas where the pass-through entity (PTE) has discretion to include additional terms. All templates labeled as “SAMPLE” have sections within them that are editable.

### **What is the general structure of each template, and what do they include?**

All the templates have common elements:

**Face page** - contains general terms and conditions, and some Uniform Guidance references common to all federal awarding agencies. These terms were agreed upon among FDP members, and therefore, cannot be edited. Having these already agreed upon terms reduces administrative burden by eliminating the need for PTEs and subrecipients to negotiate.

**Attachment 1** - Certifications and Assurances - this attachment contains assurances required by federal awarding agencies, and overarching terms PTEs agree to when they accept federal funds that must also be flowed down to subrecipients.

**Attachment 2** - Federal Award Terms and Conditions - includes general terms and conditions per Uniform Guidance applicable to all federal agencies awarding grants and cooperative agreements. It also includes the terms and conditions for specific federal awarding agencies per their own policy guides. This attachment allows the PTE to include project-specific terms, data use terms, state-specific laws, and any terms deemed necessary as a result of a subrecipient risk assessment.

**Attachment 3A** - PTE Contacts

**Attachment 3B pages 1 & 2** - Subrecipient Contacts, and important information for FFATA reporting.

**Attachment 4** - Reporting and Prior Approval Terms - addresses the non-financial reporting requirements, with frequency and types of reports. The PTE also uses this attachment to indicate whether prior approval is required to carry over unobligated funds from one budget period to the next budget period.

**Attachment 5** - Statement of Work, Cost Sharing (cost reimbursable only), Indirects, & Budget (cost reimbursable only) or Budget & Milestone Information (fixed amount only) - includes cost share requirements, when applicable. Note the fixed amount templates do not include a budget, but a payment schedule.

**Attachment 6** - Notice of Award (NoA) and any additional documents - a placeholder for the PTE to include a copy of the original notice of award, the Multiple PI Plan, and the data sharing plan.

**Attachment 7** - Data Transfer and Use Agreement (DTUA, Pilot): Optional attachment that is currently being piloted. Designed to replace the need for separate DTUA outside the subaward agreement; however, this is not the only option for addressing data transfer and use.



**Foreign Subaward samples:** In general, the guidance provided in this document is applicable to the FDP Foreign Subaward samples. Where additional or divergent guidance is necessary for the Foreign Subaward samples, the guidance is labeled as such.

The structure of each element described above is applicable to the **Foreign Subaward samples** as well, except as noted below:

- **Attachment 6** - Notice of Award (NoA) and any additional documents - a placeholder for the PTE to include a copy of the original NoA, or any additional documentation (including the pilot Data Transfer and Use Agreement attachment, per NOTE below), EXCEPT for export control concerns.
- **Attachment 7 (Cost Reimbursement sample only)** - This attachment provides a sample invoice template that includes the required elements from the Uniform Guidance for the subrecipient to use when submitting invoices to the PTE. The second page includes a cost share reporting template, to be included if applicable.
- **Attachment 8 (Cost Reimbursement sample)/Attachment 7 (Fixed Amount sample)** - Attachment 1 of the Foreign Subaward samples contains a checkbox to indicate whether the agreement is subject to export control terms. If that box is checked, Attachment 8 (for Cost Reimbursement) or Attachment 7 (for Fixed Amount) is included in the subaward package and details the applicable terms related to export controls.

**NOTE:** When using the **pilot Data Transfer and Use Agreement attachment** (Attachment 7 for the domestic templates) in the Foreign Subaward, include it with the documents attached to **Attachment 6**, which serves as the attachment for the NoA and other documents. It is suggested that PTEs inform foreign subrecipients that although it is also called Attachment 7, it belongs in the space indicated. This issue will be resolved with the next template update.

## General Template Questions

### 1. I'm an FDP member institution. Am I required to use the FDP Subaward templates?

The FDP Subaward templates offer institutions many benefits. They have been developed and vetted over many years by member institutions and federal awarding agencies for federal awards. The result is a streamlined, standard set of terms and conditions that have been widely accepted, that comply with federal regulations and policies, and that enable expedited review and negotiation of routine subawards between member institutions. Because of these widely recognized benefits, the FDP Subaward templates are used by both member and non-member institutions.

FDP members must meet certain common organizational standards. For example, FDP Phase VI members have affirmed, via their execution of a Memorandum of Understanding (MOU), that they adhere to federally-compliant management and administrative procedures and systems. They also affirm that they are not suspended, debarred or otherwise excluded from federal programs. These shared characteristics among member institutions allow for the use of the simplified FDP Subaward templates. Via the MOU, members have agreed to “participate actively in...new or ongoing FDP demonstrations and pilots” and to “continue efforts to reengineer and streamline internal processes...” toward the overarching goal of reducing administrative burden.



The FDP Subaward templates represent a tremendously successful and ongoing demonstration project of the FDP.

For these reasons, use of the FDP Subaward templates is an expectation of FDP membership. Specifically, the templates must be used between FDP member institutions when the federal award is from a federal awarding agency member of FDP. Use of the templates is also highly encouraged between FDP member institutions when the federal award is from a non-FDP member federal awarding agency.

While FDP members should use the FDP Subaward templates when collaborating with other FDP member institutions on routine subawards, it is recognized that there may be limited circumstances where the PTE may need to add specific provisions when subrecipients are deemed high risk or when the award contains special provisions that need to be flowed down. Attachment 2 allows for this flexibility.

## **2. May I use the FDP Subaward templates (and samples) with non-FDP members?**

Yes. As outlined on the FDP website, any FDP or non-FDP member may use the FDP Subaward templates, subject to their institutional practices and FDP guidance.

For non-member institutions, you may use the templates appropriately by using them as-is. If you choose to modify the templates, then we ask that you respect the template language, and remove the FDP moniker so that it is clear the standard FDP Subaward template language was altered. Adding pages of additional terms and conditions in Attachment 2 that may conflict with other terms or sections of the FDP Subaward templates language is not an appropriate use of the templates.

The **FDP Foreign Subaward samples** may be used with non-FDP members. At this time, no foreign entities are members of the FDP.

## **3. Are the FDP Subaward templates (and samples) permissible to use for non-federal awards? - REVISED**

The FDP Subaward templates were designed to expedite review among FDP member institutions under *federal assistance awards*. Therefore, referenced terms and conditions would likely not be appropriate or applicable to non-federal awards. As noted on the FDP Subaward Forms page on the FDP website, “the FDP makes no representation or warranties regarding the suitability of these templates for use on any federal or non-federal sponsored projects. The pass-through entity (PTE) is responsible for ensuring all required terms and conditions flow down to a subrecipient. All users utilize these templates at their own risk.”

However, the November 2020 updates to the unilateral and bilateral modification templates have removed references to “federal awarding agency” to allow the modification templates to be more broadly used to amend *any* existing subaward agreement.

As an option, PTEs can review the **FDP Subcontract sample** as a guide in the development of customized templates. This sample contains a full listing of clauses, such as intellectual property (IP) and indemnification, which may be helpful. As noted in question 5 below, if the PTE chooses to modify any of these templates for non-federal awards, the templates should not be presented as FDP templates. Federal terms should be removed, and the PTE may choose to include a copy of the Notice of Award as an attachment.

## **4. Our legal counsel would like to make a change to the FDP templates terms and conditions. May we do this?**



The FDP Subaward templates should not be changed by member institutions, beyond the editable parameters of the forms (i.e., Attachment 2), when issuing subawards to other member institutions. There are two primary reasons for this.

First, the FDP Subaward templates are collaborative documents, which member institutions and federal awarding agencies have developed, revised, and vetted over many years. This collaboration has resulted in a federally-compliant, and widely accepted, set of standard terms and conditions. Member institutions have come to expect this streamlined standard form of agreement when negotiating routine subawards with other member institutions. This is consistent with the FDP's mission to minimize administrative burden.

Second, the FDP Subaward templates represent a successful, ongoing demonstration project in which FDP members are expected to take part. As such, use of the templates, as published, by FDP members represents a condition of their membership, and changes should be limited only to those sections of the templates specifically designed for this purpose (i.e., Additional Terms section of Attachment 2). This provides sufficient flexibility to member institutions to allow for incorporation of essential state-specific laws, special terms and conditions of the federal award that need to be flowed down, or special instructions for high-risk subrecipients.

The **Foreign Subaward samples** have been developed specifically for foreign subrecipients receiving federal funds through a PTE. Consistent with the mission of FDP, these samples are designed to reduce the need for additional terms and conditions in Attachment 2. Note also that export controls are addressed in these templates in Attachment 1 (applicability) and Attachment 8 (details).

**5. Are there any circumstances where the FDP Subaward templates (and samples) may be edited?**

Institutions can choose at their own risk to make edits to the FDP Subaward templates for their own purposes and issue their own form of agreement. However, they **MUST** remove references to FDP anywhere it appears within the templates and the agreement should look distinct. This is necessary to facilitate review and make clear to the subrecipient that commonly accepted FDP subaward standards/language have been changed, and that the version is not that which has been agreed upon by the FDP membership.

The **Foreign Subaward samples** allow more latitude for modification to, or addition of, terms and conditions such as frequency of invoicing and due dates for final financial reports. Because foreign subrecipients are not FDP members, there is more flexibility for the PTE to amend the samples (beyond the flexibility built into the standard FDP Subaward templates). As with the standard templates, if any changes to the terms and conditions are made, references to FDP, including the moniker on the face page of the sample, must be removed.

**6. Prior to becoming an FDP member institution, we used our own subaward templates. Our standard templates requested that final invoices be submitted no later than 45 days after the subaward end date, but now it looks like we're stuck to 60 days! Am I allowed to change this? If not, how do I explain this to our financial office and legal counsel? - REVISED**

As covered in the invoicing section of these FAQs, the 60 days should not be changed except under rare and extenuating circumstances.

The FDP's position, after significant discussion in previous FDP meetings and on the listserv, is that 60 days is adequate time for the subrecipient to prepare its final statement of costs, while also providing sufficient time for the PTE to meet the federal awarding agency's financial closeout requirements. The participating federal awarding agencies of the Research Terms and Conditions, which were finalized in March 2017, have published as



part of the Uniform Guidance, 2 CFR §200.344 Closeout provision that unless otherwise specified in the Agency Specific requirements “The non-federal entity must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports required by the terms and conditions of the Federal award.”

Many FDP member institutions are unable to submit a final invoice in less than 60 days. It takes time to review final expenditure reports, which may not be received until 10 to 15 days after the end date. If corrections are needed, it will take an additional month to receive the next expenditure report and verify that corrections were properly made. The purpose of the 60-day deadline for the final invoice is to allow time for review, correction, re-review/verification, and invoice preparation/submission. The 60 days also allows for time to liquidate any remaining open encumbrances at the end of the project. Shortening the 60-day time frame would increase the risk that invoice corrections (and potentially revised financial reports) would be needed, which in turn results in more administrative burden and tension between the PTE and subrecipient.

An appropriate exception to the 60-day rule would be for the issuance of 2<sup>nd</sup>-tier subawards. The 2<sup>nd</sup> tier PTE may edit the template to a lower number of days for the final invoice, if agreed to by both entities, in order to meet the sponsor’s financial closeout requirements.

For foreign subrecipients, the **Foreign Subaward samples** use a drop-down menu containing various options, including “other” which can be filled in, for the due date for final financial reports. The PTE can select the due dates based on their analysis of the NoA and the subrecipient risk assessment.

## 7. How are the templates built and maintained?

FDP Subaward templates are available through the FDP website at <http://thefdp.org/default/subaward-forms/>, and can be easily accessed using Adobe Reader. The PDF form-fillable documents are built in Adobe Document Cloud (DC) and are the preferred format utilized by the FDP because they allow members to input information, but are also pre-populated with the standard set of terms and conditions, as noted in “General template Question #1.” The end user cannot modify the pre-populated information or add new data to the form, except in the fields that are designed to be fillable; therefore, the fillable PDF’s comply with the FDP’s decision to offer templates that are not meant to be recycled or edited.

Fillable PDF’s make the subaward issuance process less burdensome because they incorporate the standard set of terms and conditions and provide consistency.

Information regarding how to complete, save, and print fillable PDF forms can be found at the following link: <https://helpx.adobe.com/acrobat/using/filling-pdf-forms.html#>.

All templates are updated annually through the efforts of the templates Working Group with feedback from membership, and as needed to accommodate changes in federal regulations. Revised versions are posted to the FDP Subaward Forms webpage every other September, or as needed, to address changes in federal requirements.

## 8. How can I request a content change to the templates?

During the May 2018 FDP meeting, the FDP members decided to incorporate a new process to handle content change requests. In order to reduce the number of changes made to the FDP Subaward templates, the Guidance Document Working Group created a FDP Subaward Change Request Form, with an accompanying guidance document that provides a series of questions colleagues should consider before making the request.



The FDP Subaward Change Request Form can be found at [http://thefdp.org/default/assets/File/Documents/FDP%20Template%20Change%20Request%20Form\\_7\\_25\\_18.pdf](http://thefdp.org/default/assets/File/Documents/FDP%20Template%20Change%20Request%20Form_7_25_18.pdf) and the Guidance for Change Requests can be found at [http://thefdp.org/default/assets/File/Documents/Change%20Request%20Guidance%207\\_31\\_18.pdf](http://thefdp.org/default/assets/File/Documents/Change%20Request%20Guidance%207_31_18.pdf). While non-FDP members can initiate suggestions (using the form), only FDP members will be consulted for input about changes before they are implemented.

Completed forms should be submitted to the Subaward Subcommittee Co-Chairs at [subawards@thefdp.org](mailto:subawards@thefdp.org). Formatting change requests do not require completion of a form and can be brought to the attention of the co-chairs.

9. **My institution is looking for electronic solutions to streamline the FDP Subaward templates. Our FDP template is programmed into our system but does not look exactly like an FDP template when generated. Is it okay that the format of the template is slightly different if all of the content that was agreed upon by FDP members is the same? - REVISED**

The goal of the subaward templates is to provide consistency across FDP institutions to reduce negotiation, but FDP also encourages technical solutions to reduce administrative burden. Any technical solutions should not impact the substance or terms of the subaward template (i.e. removing “Federal” from the agency name field is okay if modifying the Subaward Agreement templates for non-federal sponsors, but altering the language in a publication term is not) and visually should be aligned closely with the existing FDP fields.

It is the responsibility of the PTE to notify the subrecipient that while the formatting may vary slightly, the content is aligned with the approved templates. It is strongly suggested to add this notification to the template or boilerplate email language to the subrecipient.

10. **What flexibility do I have to make non-substantive changes to the FDP Amendment templates? - REVISED**

There are several options available of FDP Amendment templates:

- Bilateral Subaward Amendment - Free Text Only;
- Bilateral Subaward Amendment - Template with pre-set options and text; and
- Unilateral Subaward Amendment - Template with pre-set options and text

Unlike the main FDP Subaward templates, the FDP Amendment templates do not contain terms and conditions. Any changes to these templates should not have a material impact on the substance of the amendment. Institutions that obtain General Counsel approval of the FDP templates should consider confirming that it is the content of the FDP Subaward Amendment template being approved, rather than the format.

It is the responsibility of the PTE to notify the subrecipient that while the formatting may vary slightly, the content is aligned with the approved templates. It is strongly suggested to add this notification to the template or boilerplate email language to the subrecipient.

11. **Can I use these templates with different entity types (ex. non-profit hospitals, for-profit, foreign, etc)? - REVISED**

Yes, you may use these templates with various entity types. One of the reasons the FDP Subaward templates are so flexible is because of the Research Terms and Conditions (RTCs) codified by many of our federal agency partners. The RTCs are applicable to many federal awarding agencies and provide consistent guidance across



agencies as to applicable regulations and administrative requirements for grants and cooperative agreements subject to the Uniform Guidance. The RTCs also include a matrix outlining applicable cost principles and the applicability of various other regulatory and administrative provisions by entity type. This can be found in Appendix B-Subaward Requirements of the RTCs at [https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix\\_b.pdf](https://www.nsf.gov/bfa/dias/policy/fedrtc/appendix_b.pdf). NSF chose to host the RTCs on behalf of all the participating federal agencies on their website at <https://www.nsf.gov/awards/managing/rtc.jsp>.

The RTCs are incorporated within the context of the FDP Subaward templates. By using the template and selecting the appropriate federal awarding agency, you will incorporate the appropriate RTCs. It is important to keep in mind that not all the participating federal agencies implemented the RTCs on the same effective date nor to all their award types. See the Agency Implementation Statements at <https://www.nsf.gov/awards/managing/rtc.jsp>.

While Appendix B outlines the applicable cost principles and administrative requirements to various entity types, which can be flowed down appropriately, many of these entity types may not be FDP members, for example, for-profit organizations. When contemplating the use of the FDP Subaward templates with non-member institutions, your institution should also consider their comfort level in using the templates with that entity type, as well as the project at hand. For instance, some institutions choose to not use the templates with non-member institutions in order to include additional terms required by their organizations, such as insurance requirements. For clarity, the FDP Subaward templates were designed to best fit subawards under federal awards to other academic and research institutions subject to single audit requirements; modification templates have removed references to “federal awarding agency” to allow the modification templates to be more broadly used to amend *any* existing subaward agreement. [See also FAQ #2]

Also see the Introduction of these FAQs regarding the general structure of the templates, types of templates available, purpose of each attachment, and what is allowed to be edited.

**12. Are there any recommendations for communicating important information and explaining major requirements in a subaward to a foreign subrecipient?**

A welcome packet is an example of a helpful tool to provide to any entity that does not routinely receive U.S. federal funds. The packet could contain information about invoicing procedures, major U.S. federal regulations and requirements, and any other requirements specific to the project or agreement. As an alternative, the PTE may provide this information in a webpage, in which case it is recommended that the link be noted in Attachment 3B or 4.

**13. What is the governing language when issuing subawards to foreign entities? Are there elements of the agreement that need to be translated?**

Attachment 2 of the Foreign Subaward samples include a term regarding the governing language. In the event that a translation of the subaward is prepared, and signed by the parties, and a conflict arises between the English version and the other language version, the English language version is the official version that governs and controls the collaborative effort.

Additionally, and in compliance with Uniform Guidance, 2 CFR §[200.111](#), where a significant portion of the subrecipient’s employees who are working on the federal award are not fluent in English, a collaborative effort between the PTE and the subrecipient is needed in order to ensure that the complete subaward (face page through the last attachment) is translated into the working language.

**14. Why was the word “Research” removed from the title of all of the FDP Subaward templates and samples? - REVISED**



In some circumstances, other types of work, such as training, conference grants, etc., might necessitate a subaward. Per Uniform Guidance, 2 CFR §200.332(a)(1)(xii), the subaward must indicate if the award is R&D. The FDP Subaward template working group felt it was duplicative to include 'research' in the title since R&D is already an included data element in Attachment 2. This broadens the use of the templates to be used for federal funded subawards other than research. In addition, the word 'agreement' was duplicative with the word 'subaward.' The title now matches what is in the body of the agreement.

**15. What roles should be considered when determining whom to list for the “Administrative Contact” and “Financial Contact” on Attachments 3A (for the PTE) and 3B (for the Subrecipient)? For example, my institution has a pre-award administrative contact for receiving new subawards and modifications, but also a post-award administrative contact responsible for post-award requests. How do we clarify those roles?**

The Administrative Contact is *generally* intended to be the point person at each institution for subaward processing, while the Financial Contact is *generally* intended to be the individual at each institution who is the point person for issuing (on behalf of the subrecipient) or paying (on behalf of the PTE) invoices.

Regardless of who is named, *the most important aspect for both the PTE and the subrecipient is to ensure that the Administrative and Financial Contacts listed in Attachments 3A and 3B correspond appropriately to the contact types identified on the Face Page of the subaward.* The PTE should internally verify their information for Attachment 3A and the Face Page is correct for their institution prior to issuance. Conversely, the subrecipient should internally verify the information in Attachment 3B and the Face Page is correct for their institution prior to execution of the subaward.

Ensuring the accuracy of all contact information – both within and across institutions - is essential to efficient processing and management of the subaward through its lifecycle.

### **Modifications - Bilateral & Unilateral**

**16. Under what conditions is it appropriate to use the Unilateral Modification instead of the Bilateral Modification template? - REVISED**

Unilateral Modification template may only be used when the option is selected on the face page of the original subaward that unilateral modifications may be used to issue non-substantive changes to the budget period and associated additional authorized funding. The specific situations which constitute a non-substantive change in the agreement are described in the Unilateral Modification template, which can be reviewed here:

[http://thefdp.org/default/assets/File/Documents/subaward\\_forms/2020%20Templates/FDP\\_Unilateral\\_Amendment\\_Template\\_Final\(1\).pdf](http://thefdp.org/default/assets/File/Documents/subaward_forms/2020%20Templates/FDP_Unilateral_Amendment_Template_Final(1).pdf)

There are no separate **foreign subaward amendment templates**; you can use the domestic modification templates for changes to foreign subawards. As with the domestic templates, refer to Term & Condition # 7 of the templates' face pages prior to issuing a Unilateral Modification over a Bilateral Modification under the conditions listed immediately above. It is up to the PTE's discretion (and the subrecipient's concurrence) whether to use unilateral or bilateral for these instances. It is recommended to use only Bilateral Modifications when working with foreign subrecipients. A fully-executed Bilateral Modification will ensure the foreign subrecipient understands the change(s) and documents their acceptance.

**17. I need to change the Assistance Listing # (ALN, formerly CFDA #) or other data element required per Uniform Guidance, 2 CFR §200.332(a) on a current subaward. May I do this through a unilateral modification? -REVISED**



No, you must use a bilateral modification to change a key required data element such as the ALN #. Because the ALN and FAIN are used in reporting for the Single Audit, it is crucial that the PTE obtains the concurrence from the subrecipient that they understand and have recorded the change in these key data elements.

**18. A new national policy requirement has become effective since I issued an impacted foreign subaward. When and how should I amend the original subaward to incorporate the new terms and conditions?**

When issuing an amendment to a foreign subaward, it is important to check for any new Terms & Conditions or national policy requirements which need to be incorporated into the foreign subaward that have come into effect since the original agreement was issued. These should be included in a Bilateral Modification to ensure the foreign subrecipient is aware of the change.

**19. Since the FDP amendment templates no longer include an effective date, under what circumstances would I still want to include an effective date in the body of the amendment? - REVISED**

In general, it is not necessary to include an effective date for standard transactions such as budget increments and no cost extensions. The PTE should include an *effective date in the "Other" section of the bilateral amendment (or the free-text version of the bilateral amendment) for other circumstances requiring either federal awarding agency or PTE prior approval in order to clarify when the change takes effect or was approved.* Examples of circumstances for which an effective date would be stated include, but are not limited to, a change in the subrecipient's PI, a prior approval to purchase equipment or other cost-related approvals, or approval of significant rebudgeting.

Additional circumstances where stating an effective date may be warranted include:

- **Supplemental funding received by PTE to be passed to the subrecipient:** In this case, the determination of effective date may depend on the circumstances under which the supplement was received, as described below.
  - If additional funds are to be added to the current active subaward period, the PTE may use the annual budget period start date as the effective date.
  - If supplemental funds have a start date that is different from the annual budget period start date, then the effective date for the modification is the new start date.
    - NOTE: The PTE should refer back to the award notice for any applicable restrictions that may impact the effective date determination.
- **Modifications encompassing multiple actions and effective dates:** We recommend the PTE list/explain each action and effective date separately within the "Other" section of the "Amendments to Original Terms and Conditions." of the bilateral amendment pre-set template or bilateral amendment free-text template.
- **Early termination date**
- **Lifting of restrictions**
- **Approving a change in PI**



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## **Invoicing and Final Statement of Cumulative Costs**

### **20. What constitutes a proper invoice?**

A proper invoice is one that meets the requirements of Uniform Guidance, 2 CFR §200.305, includes the required invoice elements from Terms and Condition #2 of the face page of the subaward, is submitted in a timely manner in accordance with the subaward, contains a breakdown of costs by major expense category deemed allowable, allocable, reasonable, and in line with scope of work progress to date, and includes a certification, as required in the Uniform Guidance, 2 CFR §200.415 (a) and described in FAQ 26.

The [Foreign Cost Reimbursement Subaward](#) sample includes an invoice sample in Attachment 7 that satisfies these requirements. Subrecipients are encouraged to use the provided template. A fillable Excel file is also available on the FDP website: [Sample Invoice](#).

In some cases, the federal awarding agency may require additional items to be included in the invoice; in such a case, the PTE can swap the sample invoice in Attachment 7 of the Foreign Subaward Cost Reimbursement sample for an appropriate alternative. The PTE is encouraged to provide a fillable version of the invoice to the subrecipient.

### **21. What is the risk to the subrecipient if not submitting timely invoices to the PTE?**

The risk of submitting late/untimely invoices is that the PTE may elect to not pay invoices if they are submitted after the contractually required invoicing timeframes. The PTE needs to pay invoices before the federal awarding agency's required reporting/payment timeframe and within the PTE's accounting closeout timeframe to ensure recoupment of funds. Untimely invoicing may also result in the increase of the subrecipient's risk level.

When working with **foreign subrecipients**, it is prudent to consider the cash flow of the subrecipient. Is this subaward a major source of revenue for them that will be supporting multiple salaries? If the subrecipient submits late and/or improper invoices, resulting in delayed payment by the PTE, will the subrecipient suffer adverse consequences, such as missing payroll? It is worth considering this prior to issuing the subaward and pausing to discuss the best options for the subrecipient with the subrecipient to ensure the subaward meets their needs and that they understand what they need to do in order to receive a timely payment (and comply with the subaward). PTEs may use the negotiation/award stage as an opportunity to educate the subrecipient and build a strong relationship. See also FAQs 12 and 13 for more information.

### **22. Why was “no less frequently than quarterly” added to the templates?**

This language was added to the FDP Subaward templates to ensure that PTEs are receiving invoices for costs incurred at a minimum quarterly to ensure the PTE can adequately monitor the subrecipient's financial progress. Based on PTE experiences, awards that are not being regularly spent down may be reduced by the sponsor in the next year and large drawdowns at the end of the period may raise red flags for audit. If delays in invoicing are anticipated or no expenses have been incurred, then the subrecipient should communicate with the appropriate PTE contacts to ensure the PTE can monitor in accordance with federal award requirements.

The invoicing frequency for **foreign subrecipients** may be determined by the PTE by using the drop down in Term 2 of the face page of the [Foreign Cost Reimbursement Subaward sample](#). Frequency of invoicing may be set at monthly, quarterly or other. PTEs should consider several factors when determining the invoicing frequency with a foreign subrecipient, including but not limited to: minimizing the chance for loss with exchange rate fluctuations, cash flow for the subrecipient, PTE institutional and/or PI preferences based on prior



experience with the subrecipient. When in doubt, it is prudent to engage the PTE PI and if needed, the subrecipient's central office to discuss options.

**23. Do I need to issue an invoice quarterly even if no expenses have been incurred (a zero-dollar invoice)?**

The language specifically states that invoices should be submitted "not less frequently than quarterly for allowable costs incurred", which means that if no costs have been incurred, no invoice needs to be submitted. However, communication with the appropriate PTE contact is recommended if expenses are not being incurred.

Consistent with FAQ 18 above, the invoicing frequency for **foreign subrecipients** may be determined by the PTE by using the drop down in Term 2 of the face page of the [Foreign Cost Reimbursement Subaward sample](#). Depending on what the PTE selects, the PTE may stipulate that zero dollar invoices are required. For instance, if a foreign subrecipient is only submitting quarterly invoices, the PTE may really want to receive that zero dollar invoice to ensure there was no work on the project and/or expenses. Alternatively, if the foreign subrecipient is invoicing monthly, but misses a month, it may be less problematic. The PTE should consider their past experience with the subrecipient organization and/or their risk assessment to determine if it would be appropriate to require zero dollar invoices for a subaward. Any requirements for zero-dollar invoices should be clearly stated in Attachment 4.

**24. Should invoices be submitted through email or U.S. Mail?**

Since invoice payment requirements start 30 days from receipt of invoice (see 2 CFR §200.305(b)(3)), email is the preferred method of submission for efficiency of time and resources. The FDP Subaward templates are also designed to encourage email submission in Attachment 3A; however, the option for U.S. Mail is still available for those institutions who require it.

The PTE should consider including both an email address and a physical mailing address in Attachment 3A of the **Foreign Subaward samples**. Consistent with FAQ 22, PTEs should feel free to indicate how they would prefer to receive invoices. While in most cases, an electronic invoice submission is often preferred or required, PTEs should also consider building in flexible and adaptable options for foreign subrecipients to submit paper invoices. There are instances where the infrastructure could be unexpectedly and severely impacted, such as an adverse natural event (i.e. hurricane or a severe flood), leading the foreign subrecipient to have limited internet connectivity. Such an event could make it difficult or impossible for a subrecipient to submit invoices via email.

**25. Why is the final statement of cumulative costs submitted to the PTE no later than 60 days? Can I edit this number on the subaward templates to accommodate my institution's policies? - REVISED**

*Except under rare, extenuating circumstances, the 60 days should not be edited.* The FDP's position, after significant discussion in previous FDP meetings and on the listserv, is that 60 days is adequate time for the subrecipient to prepare its final statement of costs, while also providing sufficient time for the PTE to meet the federal awarding agency's financial closeout requirements. The participating federal agencies of the [Research Terms and Conditions](#), which were finalized in March 2017, have published as part of 2 CFR §200.344 that unless otherwise specified in the agency specific requirements, "The non-federal entity must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports required by the terms and conditions of the Federal award."

Many FDP member institutions are unable to submit a final invoice in less than 60 days. Some of the reasons include:



- Subrecipient institutions that receive expenditure reports from their general ledger 10-15 days after the end of month will not be able to see their final subaward charges until the end date + 15 days and then may need to make some corrections. That institution would not be able to verify that their corrections were correctly processed until they receive the subsequent monthly expenditure report 40-45 days after the subaward end date. The purpose of the 60-day due date for the final invoice is to allow this review, correction, re-review/verification, and then invoice preparation and submission process to properly occur. If sufficient time does not exist, the Subrecipient is at greater risk of needing to revise invoices which could then cause the PTE to have to revise financial reports. The revision process results in undue administrative burden to both PTE and subrecipient and unnecessary tension between the two.
- When a subrecipient receives their first monthly financial expenditure report from their general ledger after the subaward end date, they may recognize that certain costs remain encumbered but a final charge has not yet been posted to their financial system. A 60-day final invoice due date allows the subrecipient to promptly and aggressively follow-up on open encumbrances to make sure that, by the next month, costs are properly charged and submitted to the PTE on the final invoice.

An exception to the 60-day rule would be for the issuance of 2<sup>nd</sup>-tier subawards. The 2<sup>nd</sup> tier PTE may edit the template to a lower number of days for the final invoice, if agreed to by both entities, in order to meet the sponsor's financial closeout requirements.

The **Foreign Subaward sample** offers the PTE the options of 30, 45, or 60 days for receipt of the final financial report.

- 60 days would be the maximum recommended time frame to allow a subrecipient to prepare their final statement of costs, and would only be recommended for well-established organizations with a healthy track record of working on U.S. federal awards.
- A 45-day window would be appropriate for subrecipients with experience working with U.S. institutions on federal awards but who perhaps have not worked on a subaward of this size or complexity in the past.
- A 30-day window would be appropriate for subrecipients with little or no track record of working on U.S. federal awards and/or who do not have accepted accounting practices.

## 26. What are the elements that are required in an invoice for cost reimbursement subawards? - **REVISED**

All invoices must be submitted using the subrecipient's standard invoice, but at a minimum must include the following:

- Current and cumulative costs (including cost sharing) are broken down by major expenditure categories (although the names of the expenditure categories may vary depending on your financial system). Examples of major expenditure categories include salaries, fringe, supplies, domestic and foreign travel, F&A, etc. The category "Other" should be substantiated;
- Subaward number (invoices that do not reference the PTE subaward number could be returned to subrecipient by the PTE); and
- A certification, as required by 2 CFR §200.415 (a). The certification states: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise." (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).



The FDP understands that institutions have varying systems that may automate invoicing. The following data elements are recommended in addition to the above:

- Date of Invoice;
- Invoice Number – Identify each payment request by a unique invoice number, which can only be used one time;
- Cumulative Budget Period(s) – as it appears on the subaward;
- Invoice/Billing Period – the beginning and end dates (month, day and year) of the period in which costs were incurred and for which reimbursement is claimed;
- Subrecipient name, address, and point of contact for questions;
- Remittance address – if different from the business address; and
- Program Income (if any).

The [Foreign Cost Reimbursement Subaward sample](#) includes an invoice sample in Attachment 6 that satisfies these requirements. Subrecipients are encouraged to use the provided template. A fillable Excel file is also available: [Sample Invoice](#).

In some cases, the federal awarding agency may require additional items to be included in the invoice; in such a case, the PTE can swap the sample invoice in Attachment 7 of the [Foreign Cost Reimbursement Subaward sample](#) for an appropriate alternative. The PTE is encouraged to provide a fillable version of the invoice to the subrecipient.

## **27. How should the PTE include specific instructions for invoicing in the subaward templates?**

PTEs can include invoicing instructions by doing the following:

- Include the invoicing email and invoicing address in Attachment 3A under ‘Invoice Address.’
- Include any special invoicing process instructions in Attachment 4 under ‘Other Special Reporting Requirements’, such as format (electronic PDF or mailed hard copy), number of copies, etc.
- In special and limited circumstances, the PTE may indicate other invoicing instructions to meet federal awarding agency requirements or to address high-risk concerns, if necessary. PTEs should be sure to provide an explanation for additional requirements to subrecipients.
- Additionally, the PTE can swap the invoice sample in the current Attachment 7 of the [Foreign Cost Reimbursement Subaward Sample](#) with a different invoice sample that incorporates any additional terms/requirements imposed by the federal awarding agency.

## **28. When is it appropriate to request backup of an invoice?**

The goal of the FDP is to reduce administrative burden as much as possible. Therefore, FDP member institutions should not, as a matter of routine, request backup for all invoices, especially when the subrecipient is another FDP member institution, unless:

- The entity is deemed high-risk as a result of an entity risk-assessment, or increased risk is identified during subsequent monitoring;
- The sponsor requires backup that is above and beyond what is customary.

Either of these scenarios should necessitate the PTE to include additional terms in Attachment 2 of the subaward.

As a reminder, additional terms are generally not needed because the PTE has the authority to request back-up of documentation as it may occasionally be needed to question specific expenses, per Attachment 1, Audit and



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Access to Records. In these cases, the PTE should be specific in their request for documentation relative to the cost being questioned.

**29. How long is it appropriate to leave the condition for backup to invoices in place?**

Adding additional requirements for invoice documentation is appropriate when one of the above conditions is met. The requirement must be addressed in accordance with Uniform Guidance, 2 CFR 200.207 Specific Conditions, including *“(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.”*

If the requirement is flowed-down from the federal award, then the condition can remain for the entirety of the award, or until the federal awarding agency removes the requirement from the federal award conditions.

**30. What is considered backup documentation of an invoice?**

Backup documentation can be in any form needed for the PTE to substantiate and understand the subrecipients' expenses in question. The documentation for questioned expenses may include the explanation of the cost, a justification of the cost and the benefit to the award/sponsored project. Some examples of backup documentation include, but are not limited to personnel records, time sheets/effort reports, invoices and/or receipts for travel or supplies, purchase orders and receiving reports.

**31. How do I ensure that my foreign subrecipient is aware that their invoices cannot be paid until they register in SAM.gov? Should these requirements be met and verified prior to executing the subaward? -- REVISED**

Per 2 CFR 25.300, “Requirement for recipients to ensure subrecipients have a unique entity identifier,” subrecipients are required to obtain a unique entity identifier, which requires a limited SAM.gov registration. Including the invoicing procedures and requirements in a welcome packet or initial memo to the foreign subrecipient would be helpful in sharing the information about the SAM.gov registration. Requiring these items to be verified prior to execution of the subaward may be advisable in some situations, provided that the PTE and PI are aware that this requirement may delay the project work. As a best practice, it would be helpful to reach out to the foreign entity at the time of proposal submission to encourage that these registrations are completed prior to an award being issued. It is recommended to hold full execution of the subaward if controls are not in place to prevent payment of invoices pending the subrecipient's completion of SAM.gov registration.

**32. If the remittance/payment address differs from the business address, where should that be reflected in the subaward templates?**

Subrecipients should:

- Reflect the remittance address on page one of Attachment 3B under “Payment Address.”
- Always include its “remit to” address as part of its standard invoice.

**33. If the subrecipient has a cost sharing commitment, how should cost sharing budget information be addressed in the subaward?**

Cost sharing budget information should be addressed in Attachment 5. In the “Cost Sharing” field drop down menu, the PTE should select “Yes” and include sufficient budget detail for the cost share. The PTE has the option to include this detail in the “Budget Details” box, or as a separate attachment to Attachment 5, if



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additional space is needed. Please note that if the subrecipient has a cost sharing commitment, only the FDP Cost Reimbursement Subaward template should be used.

**34. How should the PTE address invoicing for cost sharing in the subaward when the subrecipient has a cost sharing commitment?**

When the PTE chooses “Yes” from the Cost Sharing field drop down menu in Attachment 5 (where budget information is addressed), then Attachment 4 will automatically be updated to include a space for the PTE to specify reporting instructions for the cost share. This reporting is necessary to demonstrate that the subrecipient’s cost share obligations have been met under the federal award. Please note that if the subrecipient has a cost share commitment, only the FDP Cost Reimbursement Subaward template should be used. Use Attachment 4 for additional reporting requirements related to the subrecipient’s cost share.

The **Foreign Subaward Cost Reimbursement sample** includes a “Contributions to the Project” (cost share) report in Attachment 6. The foreign subrecipient is encouraged to report cost sharing using the provided template.

**Uniform Guidance (UG) Data Elements Contained in the FDP Subaward Templates**

**35. How can I ensure that the required Uniform Guidance data elements per Uniform Guidance, 2 CFR §200.332 (a) are included in the FDP Subaward templates? - REVISED**

An FDP working group was formed in the fall of 2014 to interpret the data elements and update the FDP Subaward templates to incorporate the required UG data elements. That working group created a document table titled **APPENDIX 1: TABLE OF REQUIRED SUBAWARD DATA ELEMENTS & LOCATION IN UPDATED SUBAWARD TEMPLATES**, which is appended to this FAQ document.

The FDP closely monitors revisions to the required data elements and updates as appropriate to ensure the latest information is included in the templates and UG data elements table.

**36. How do the periods in the subaward templates align with the requirements of *Subaward Period of Performance Start and End Date*, per Uniform Guidance, 2 CFR §200.332(a)(1)(v)? - REVISED**

The Estimated ***Period of Performance*** field on the face page of the FDP Cost Reimbursement, Fixed Amount, and Amendment Subaward templates meets the Uniform Guidance requirement of **§200.332(a)(1)(v) *Subaward Period of Performance Start and End Date***. This is the estimated period for which the subaward is being made, based both on the PTE’s prime federal award and PTE’s discretion. For instance, if the prime federal award for a multi-year project is authorized in annual increments, then the PTE could authorize incremental periods in the subaward. On the other hand, if funding for the entire project period is authorized in the prime federal award, then the PTE may also authorize the entire period in the subaward. However, the PTE may always elect to award shorter increments than those authorized by the federal award. This would be communicated to the subrecipient on the face page of the template (and amendments as applicable) via the ***Subaward Budget Period End Date***.

The ***Subaward Budget Period*** corresponds to the Uniform Guidance requirement of **§200.332(a)(1)(vi) *Subaward Budget Period Start and End Date***. In contrast to the ***Subaward Budget Period***, the ***Estimated Period of Performance*** on the face page is the total project period for which work is *planned* to be performed by the subrecipient. The end dates of these periods may not be the same. For example, if the subaward on a multi-year project is to be incrementally funded by the PTE, the end date of the ***Subaward Budget Period*** on the face



page of the FDP Subaward template will be prior to the **Estimated Period of Performance** end date. On the other hand, the end dates would match if the PTE elects to authorize the full project period to the subrecipient (consistent with the PTE's prime federal award). However, in no event should the end date of the **Subaward Budget Period** exceed the end date of the **Estimated Period of Performance**.

It is important to note that the **Estimated Period of Performance** is not final, since many factors - such as changes in the PTE's prime award or the subrecipient's performance - can affect the subaward's future year award amounts and end dates. PTEs will need to monitor these factors throughout the award lifecycle, and issue modifications accordingly.

The Amendment template was updated in November 2020 to reflect changes to 2 CFR 200. The field previously called "Subaward Period of Performance" on the Amendment template has been changed to "Cumulative Budget Period(s) Start Date and End Date" for consistency with revised definitions in 2 CFR 200.1.

When issuing an amendment to a subrecipient to extend the Subaward Period of Performance, see FAQ #37 below.

**37. When issuing an amendment, what should be the *Start Date* under Cumulative Budget Period? Is it the start date of this action? Or, the original start date of the agreement? - REVISED**

In general, the start date of the **Cumulative Budget Period** on the amendment template should **match** the start date of the **Estimated Period of Performance** date included on the original subaward, to reflect the start date of the overall subaward. *If there is a need to indicate a "budget period" or "effective date", this can be reflected in the text of the subaward amendment. For institutions that issue amendments for projects that do not have automatic carryforward, the subaward start date does not need to change to reflect the current budget period.* For more information on best practices on the management of carryover for subrecipients, see **Appendix 2 - Carryover Guidance**. Also see FAQ #19 on **Effective Date**.

**38. Are the *Estimated Period of Performance* and *Incrementally Estimated Total* required fields? - REVISED**

According to OMB, via Uniform Guidance, these are both required fields (see 2 CFR §200.332(a)(1)(v) and §200.332(a)(1)(viii)). **Incrementally Estimated Total** indicates the amount *planned* to be issued to a subrecipient in the future. The FDP's position is that these elements should always be completed on the face page in order for subrecipients to track anticipated funds. PTEs and subrecipients should be aware that the information provided in this field is an estimated commitment, since the final obligated amount will be contingent upon actual funding under the prime award (which may be reduced in out years), continued subrecipient performance, and/or budget or program changes that cannot reasonably be anticipated at the time of issuance of the subaward. Reference FAQ #36 for questions about **Estimated Period of Performance**.

**39. Can you define the *Incrementally Estimated Total*? - REVISED**

**Incrementally Estimated Total** was incorporated into the FDP Subaward templates to address the Uniform Guidance data requirement 2 CFR §200.332(a)(1)(viii) *Total Amount of the Federal Award committed to the subrecipient by the pass-through entity*, which was clarified by OMB on 9/10/2015. This is a required data element according to Uniform Guidance and should be completed by the PTE. According to OMB, "committed" is the planned, dedicated, or promised amount from the PTE to the subrecipient.



For example, if a PTE plans to issue a three-year research project of \$400,000 to a subrecipient, \$100,000 for the first two years and \$200,000 for the third year, the *Incrementally Estimated Total* should be \$400,000. FDP sees *Incrementally Estimated Total* as meeting the requirement for Uniform Guidance as many factors can affect the future year award amounts. For example, the PTE's issuance of a subaward is contingent upon the issuance of the federal award to the PTE. A subrecipient's performance can also impact future year amounts. PTEs will need to monitor such contingencies throughout the lifecycle of an award.

**40. Can you verify how the FDP Subaward templates incorporate Uniform Guidance, 2 CFR §200.332(a)(1)(vii) - Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient? - REVISED**

This is captured on the face pages of both the Cost Reimbursement (CR) and Fixed Amount (FP) Subaward templates under the field **Amount Funded This Action**. This is also captured on the **Amendment** templates. For example, if a PTE plans to issue a three-year research project of \$400,000 to a subrecipient, \$100,000 per year for the first two years and \$200,000 for the third year, the amount entered in the "Amount Funded This Action" field for the first (original) subaward agreement would be for \$100,000, the amount for year 2 would be \$100,000, and the amount for year 3 would be \$200,000.

**41. Can you clarify how Uniform Guidance, 2 CFR §200.332(a)(1)(viii) - Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including current obligation is captured on the FDP Subaward templates? - REVISED**

This is captured in the Amendment templates under **Total Amount of Federal Funds Obligated to Date**, and it is captured on the Cost Reimbursable Template and Fixed Amount Template in the "Amount Funded This Action" field. For example, a PTE plans to issue a three-year project of \$400,000 to a subrecipient at \$100,000 per year for the first two years and \$200,000 for the third year. In year 2, if an Amendment is issued, \$200,000 would be indicated in this field (for years 1 and 2).

**42. What is the difference between *obligated* and *authorized*? This is often referenced in Notices of Award (NoAs) and subawards. - REVISED**

For the purposes of this FAQ document, these definitions will be summarized and simplified. Upon the issuance of an NoA or the execution of a contract or subaward, an *obligation* is incurred to set aside funds for the payment of work as outlined in the award. An amount is *authorized* when the federal awarding agency or PTE gives permission to spend a specific dollar amount during a specific timeframe of the amount that was *obligated*. Sometimes the amount *authorized* and the amount *obligated* are the same. However, that is not always the case, especially when PTEs are unable to authorize the full or partial amount of carryover requests from one budget period to the next. See **Appendix 2, Carryover Guidance Document, Part III: [Options for Issuing Subawards](#)** for more information and examples.

**43. What is the Total Amount of Federal Funds Obligated to Date if the carryover amount of the full unobligated balance is not authorized by the PTE? - REVISED**

If carryover of the full unobligated balance is not authorized by the PTE, the **Total Amount of Federal Funds Obligated to Date** may remain the same (the full amount obligated) under the agreement. See definitions of *obligated* and *authorized* in FAQ #42. What is most important is for the PTE to communicate clearly how much the subrecipient is *authorized* to spend for any given budget period. The language in the subaward should be sufficiently detailed with the dollar amount and the timeframe the carryover is authorized for spending. This is recommended regardless of whether the full or partial carryover is approved. *For Example:* "Carryover from



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Year 1 is authorized for spending in the amount of \$45,000 for the Year 2 budget period 1/1/2018 to 12/31/2018.”

See **Appendix 2: Carryover Guidance**, [Part III: Options for Issuing Subawards](#) for more information and examples.

#### **44. Does the subrecipient need the FAIN? - REVISED**

Yes! The subrecipient needs the FAIN. It is a requirement per Uniform Guidance, 2 CFR §200.332(a)(1)(iii). The federal awarding agencies are required to include the FAIN in the NoA per Uniform Guidance, 2 CFR §200.211(b)(3). PTEs should pay close attention to when the NoA was issued, the terms and conditions included, and if that NoA obligates new or incremental funding subject to Uniform Guidance. If yes, the NoA has to have a FAIN. If a federal awarding agency did not include the FAIN or any other required data elements, and they should have (because it is subject to Uniform Guidance), then it is the responsibility of the PTE to contact the federal awarding agency to obtain a corrected NoA.

#### **45. Some of our subrecipients request that we, as the PTE, include a copy of the federal award with our subaward agreement. What should we do?**

The FDP strongly recommends including the full NoA with redacted information as necessary. If your NoA contains information that you do not wish your subrecipient to view (examples include restrictions specific to the primary PI), then you can redact information by blacking out information on the NoA. As a PTE, you have privity with your subrecipients and the federal awarding agency. The subrecipient does not have privity with the federal awarding agency. The subrecipient may request the PTE to flow down certain clauses or request that the PTE attach the NoA, but they cannot require it.

When issuing subawards to **foreign entities**, it is recommended that the PTE verify that the subrecipient has the ability to translate the documents into their working language. Additional language has been added to the **Foreign Subaward samples** regarding the governing language of the agreement. (See FAQ #13 for additional information on governing language).

#### **46. How are you incorporating the Uniform Guidance data elements into your lower tier subaward agreements? This would be the situation when your institution receives federal flow through funds from a PTE and will pass a portion onto a third, lower tier institution. I'm not sure how to reflect the required data elements to a third tier entity. - REVISED**

Each PTE, regardless of tier, is responsible for flowing down all required data elements under the Uniform Guidance, plus any other additional elements. See **Attachment 1**, which is appended to this FAQ document.

Some fields, such as the FAIN, Assistance Listing Program Number and Title, Federal Award Number, Federal Awarding Agency, Federal Award Issue Date, and identification of whether the award is R&D should all come from the federal Notice of Award. Other fields - such as the Subaward No., Subaward Period of Performance, Estimated Project Period, Incrementally Estimated Total and dollar amounts obligated and committed to the subaward - are specific to the PTE's award to the subrecipient.

When issuing a third-tier or more subaward, the PTE should list all previous PTEs as well as the federal agency in the "PTE" box of the face page, for clarity and risk management purposes. Example: Columbia University issues a subaward to the College of Charleston from the National Science Foundation. College of Charleston selects NSF as the federal awarding agency at the top of the face page, and "College of Charleston (under a subaward from Columbia University)" is entered in the PTE name box.



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**47. Can you clarify the checkbox “This Subaward Is: Research & Development” located in Attachment 2? Is it meant to identify the primary award as R&D? Or, the subrecipient’s subaward as R&D? - REVISED**

PTEs should indicate whether the federal Notice of Award (NoA) made to the PTE is a Research & Development (R&D) award. The definition of R&D is in Uniform Guidance, 2 CFR §200.1 is “R&D means all research activities, both basic and applied, and all development activities that are performed by non-federal entities. The term research 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.” The federal awarding agencies are required to include whether the award is R&D in the prime NoA. The FDP Subaward template has this checkbox pre-selected by default in order to ensure the PTE flows this data element down to the subrecipient, as required by the Uniform Guidance.

## **Compliance Related Questions and Attachment 2**

**48. Please explain how the Research Terms and Conditions (RTCs) and National Policy Requirements are included in the subaward templates to flow-down to subrecipients. How can I ensure I am including all policy requirements? - REVISED**

Uniform Guidance, 2 CFR §200.300 directs federal awarding agencies to communicate all public policy requirements with which recipients must comply. The Research Terms & Conditions (RTCs) were released on March 14, 2017, and updated on November 12, 2020, and its Appendices continue to be updated as each participating federal awarding agency implements the RTCs at various effective dates. The National Policy Requirements are included as Appendix C with the RTCs.

NSF is hosting the RTCs, Appendices, and individual agency-specific requirements on behalf of all the participating federal awarding agencies on their website at <https://www.nsf.gov/awards/managing/rtc.jsp>. You will see this link in General Term and Condition #4 in Attachment 2 in the FDP Subaward templates.

Because the RTCs are incorporated into the FDP Subaward templates, all necessary statutory and regulatory requirements are flowed down to subrecipients when a federal awarding agency is a participant in the RTCs. However, there are two things to note:

- The participating federal awarding agencies implemented the RTCs on November 12, 2020, per their Agency Implementation Statements (see <https://www.nsf.gov/awards/managing/rtc.jsp>), for awards and other actions effective on or after that date, with the exception of the Department of Homeland Security (DHS). DHS will incorporate the November 2020 version of its RTCs for awards and other actions issued on or after January 2021. It is recommended that PTEs attach the federal NoA for those agencies that have not implemented the RTCs.
- Not all federal awarding agencies participated in the RTCs. If issuing a subaward under a federal awarding agency that did not participate in the RTCs, it is recommended that PTEs attach a copy of the NoA with the subaward to ensure all applicable terms, conditions and statutes are properly flowed down.
- See FAQ #11 for more information.

When issuing a **subaward to a foreign entity**, PTEs should pay particular attention to any RTCs specific to foreign subrecipients. As an example, Part II, Subpart B, Section 16 of the NIH Grants Policy Statement (see <https://grants.nih.gov/grants/policy/nihgps/nihgps.pdf>) outlines the terms and conditions that are and are not applicable to foreign subrecipients.



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**49. I noticed that the FDP Subaward templates now include IRB / IACUC language and requirements. Could you please clarify: what is the intended scope of this language? Why has this been added? Does this replace anything?**

This section of the FDP Subaward templates, called ‘Work Involving Human or Vertebrate Animals’, contains two parts:

- a. **Language/Certification** - The FDP Subawards Subcommittee seeks to reduce the amount of negotiation time between member institutions by including minimal terms and conditions. Member institutions suggested including language highlighting IRB / IACUC information, when applicable, to ensure compliance for both the subrecipient and the PTE. This language is intended to clearly articulate if human subjects or vertebrate animals will be used in the course of the Subrecipient’s work under the subaward. It includes a certification from the subrecipient to ensure the subrecipient is responsible for obtaining the appropriate, valid approvals consistent with the project, and will not invoice the PTE for any human or vertebrate animal related expenses unless approvals are in place. This section is not to replace reliance agreements or other MOUs as may be required by your IRB / IACUC.
- b. **Verification of IRB and/or IACUC approval** - Options are provided for PTEs to instruct subrecipients on how to provide verification of IRB and/or IACUC approvals. PTEs may choose to request verification ‘upon request’ or prior to subaward execution (either initially or annually thereafter). They may even forgo requesting it at all by providing a justification. Options became available to alleviate the burden of requesting additional (or providing) paperwork since the subrecipient certifies it will obtain the appropriate approvals in the preceding section.
  - i. **Single IRB** - If the subrecipient is conducting Human Subjects research under a cede review protocol reviewed by a single IRB (sIRB), PTEs should select that a copy of such IRB approval is “Not required for the following reason”:
    1. “PTE is acting as the sIRB”; or
    2. “There is an sIRB designated”

In some cases, institutional policies or federal awarding agency requirements, may dictate which option a PTE must select in this section. For example, the Department of Defense (DoD) will issue the PTE an award with a restriction that expenses cannot be incurred for human / animal related work until their IRB / IACUC oversight body has approved the approval letters of both the PTE and subrecipient. In situations such as this, we recommend that you use the special terms box to alert the subrecipient to the restriction and copy and paste the language directly from the DoD NoA (or attach a copy of the NoA).

Some helpful options when issuing **foreign subawards** with projects that entail human subjects and/or vertebrate animal research include requiring that the foreign subrecipient obtain a Federalwide Assurance (FWA) number, or requesting an ethics approval letter from an appropriate authority at the foreign organization.

**50. As a PTE, we want to ensure we meet the subrecipient monitoring requirements under the Uniform Guidance, 2 CFR §200.332 Requirements for Pass-Through Entities. Can I include a subrecipient monitoring plan in my subaward as an additional attachment? - REVISED**

Subrecipient monitoring plans should not be included when working with low risk institutions, as determined by the PTE’s internal guidelines for assessing risk and in accordance with the UG. When entering into a contractual relationship with a high risk institution, the PTE may, at its discretion, append or include a subrecipient



monitoring plan to set forth additional reporting and compliance requirements for the high risk subrecipient. This should be included in Attachment 2 where additional special terms can be included, and appended as an additional attachment.

PTEs must communicate with the subrecipient institution to let them know of the additional special terms and reasons for the inclusions per the Uniform Guidance, 2 CFR §200.208(d). At times, PTEs may need to include special terms to low-risk institutions due to project-specific complexities. PTEs have an obligation to communicate these special terms to subrecipients ahead of the issuance of the subawards, and provide justifications.

When a PTE is planning to issue a subaward to a foreign entity, consider using the **FDP Foreign Subaward sample**, which contain additional terms such as choice of law, and provide additional reporting instruction options for PTEs to include.

#### **51. How should additional terms and conditions for high risk subrecipients be incorporated into the FDP Subaward templates?**

Attachment 2 has space for “Additional Special Terms” which a PTE may use to include special terms and instructions for high-risk subrecipients. Examples include references to an appended subrecipient monitoring plan, special invoicing instructions (such as format, back-up documentation, etc.) and special progress reporting instructions. For additional reporting instructions, the PTE should also use Attachment 4.

As stated earlier, whether including special terms for high-risk subrecipients, or project-specific terms to low-risk subrecipients, the PTE must communicate these terms to the subrecipient ahead of the issuance of the subaward, with justifications.

If planning to issue a subaward to a foreign entity, consider using the **FDP Foreign Subaward samples**, which contains additional terms such as choice of law, and provides additional options for PTEs for reporting instructions.

#### **52. In Attachment 2, what is the intent of the “Additional Terms” box?**

The intended use of the “Additional Terms” box is to include reasonable terms and conditions that the PTE may need to incorporate into the FDP Subaward template, such as state-specific laws that are **mandated by state law and applicable to the subrecipient**, flow-down terms from the NoA, project-specific terms that are not addressed elsewhere in the attachments, and additional restrictions for subrecipients identified as high risk. FDP strongly discourages the use of this space for generic imposition of additional terms like choice of law, insurance requirements, and indemnification. Additionally, PTEs should not include terms that may conflict with any term in the FDP Subaward template language.

State-specific laws should only be incorporated when the state law requires the incorporation into the subaward, such as some states may have requirements around conflicts of interest that must be incorporated into all state contracts. State institutions should be mindful that the addition of such terms must be supported by state law AND that the additional requirement does not conflict with applicable federal laws.

The FDP Subaward template should not be changed by member institutions when issuing subawards to other member institutions. Use of the templates, as published by FDP members, represents a condition of their



membership and changes should be limited. Using Attachment 2 to modify sections of the FDP Subaward template is a misuse of the templates and is in direct conflict with the FDP mission (See FAQ 4).

Non-FDP member institutions may use the templates appropriately by using them as-is. If such institutions choose to modify the templates, then the FDP moniker should be removed throughout the documents so that it is clear the FDP Subaward template language was altered. Adding pages of additional terms and conditions in Attachment 2 that may conflict with other terms or sections of the FDP Subaward template language is not an appropriate use of the templates. (See FAQ 5).

Attachment 2 in the **FDP Foreign Subaward samples** provides the same functionality as described above. The Foreign Subaward samples already include some suggested additional terms which are located throughout the template and not just in Attachment 2. Before adding terms to Attachment 2, the FDP recommends that PTEs review the terms and conditions in their totality to determine if the PTE institution needs to add anything else.

**53. How should termination for non-compliance be included in an FDP subaward? -- Revised**

Termination for any reason, including cases where the federal awarding agency terminates the prime award under 2 CFR §200.340, is addressed in Term and Condition #9 of the FDP Cost Reimbursement Research Subaward Agreement face page, the FDP Fixed Amount Research Subaward Agreement face page and both the FDP Foreign Cost Reimbursement Subaward and FDP Fixed Amount Foreign Subaward face pages. Since the termination is for any reason, an additional, specific termination for non-compliance is not needed.

**54. I note that neither Attachment 1 nor 2 specifically refers to compliance with regulations governing human stem cell research. How can I ensure a subrecipient is compliant with these regulations?**

In the Uniform Guidance, 2 CFR §200.300 *Statutory and National Policy Requirements*, federal awarding agencies are directed to communicate all public policy requirements with which recipients must comply and incorporate them either directly or by reference in the terms and conditions of the federal award. *Appendix C - National Policy Requirements* of the Research Terms and Conditions (RTCs) contains the Human Stem Cell Research regulation in accordance with the President's Executive Order 13505 of March 9, 2009, and July 30, 2009 Memorandum for the Heads of Executive Departments and Agencies. See NIH Guidelines for Human Stem Cell Research, July 7, 2009 at <https://stemcells.nih.gov/policy/2009-guidelines.htm>. Because the RTCs are incorporated into the FDP Subaward templates, it was not necessary to state this regulation in either Attachment 1 or 2.

In the rare case where a project requires use of human stem cells of a type or in a manner that requires approval as per NIH policy, the PTE may choose to insert language in Attachment 2 "Additional Special Terms" to mirror the following language: "This project involves human stem cell research. Subrecipient agrees to comply with the NIH Guidelines on Human Stem Cell Research, effective July 7, 2009. Requests for approval to utilize stem cell lines under this Subaward must be submitted to PTE to be forwarded, as appropriate, to the federal awarding agency for approval."

**55. I noticed the FDP Subaward templates have a section called 'Data Sharing and Access'. When should I use the dropdown? - REVISED**

The intent of this section is to provide the PTE with the option of drawing attention to a separate Data Management or Data Sharing Plan that was included in the original proposal by the PTE to the federal awarding



agency. If the subrecipient is subject to complying with the PTE's Data Management or Sharing Plan, the subrecipient should be made aware of the contents of the plan. Therefore, the PTE has the option of including a copy of the plan in the subaward, or stating that the subrecipient may see the plan per their request. Either option can be selected via the dropdown menu in the applicable clause. The PTE is not required to complete this section.

However, if the PTE knows a plan was included in the proposal but it is not referenced in the NoA, it is preferable to include a reference to it in the Additional Terms to make the subrecipient aware such a plan exists and/or the plan may be incorporated via Attachment 6 (Attachment 7 for the Foreign Subaward Sample). As a best practice, if a Data Management Plan or Data Sharing Plan is specifically noted in the NoA, it is best to review the plan contained in the original proposal to see if the plan needs to be followed by the subrecipient and flowed down in the subaward. The subrecipient may have been involved in the development of the plan. Note, if the subaward will cover the exchange of human subjects data, please see FAQ #60.

**56. The requirement to comply with and inform all employees of the "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections" is retroactively effective for all assistance awards and subawards (including subcontracts) issued beginning July 1, 2013. When is Whistleblower protection certification to be included in the subaward?**

In 2013 the pilot program was enacted, effective until January 1, 2017, to protect employees against reprisal for certain whistleblowing activities in connection with federal grants and contracts.

The pilot phase has been completed. The certification language has been moved from Attachment 2 to Attachment 1.

**57. When must Financial Conflict of Interest (FCOI) certification be included in a subaward? -- REVISED**

Public Health Service (PHS) funded research includes regulations on the Responsibility of Applicants for Promoting Objectivity in Research (42 CFR Part 50 Subpart F), and part of that is the disclosure and management of Financial Conflict of Interests (FCOIs) requirement. This requirement pertains to all PHS awarding components, including the National Institutes of Health (NIH), for grants, cooperative agreements, and research contracts. Attachment 2 includes the FCOI certification.

42 CFR Part 50 Subpart F is pre-populated for all PHS agencies, eliminating the need to include additional language in Attachment 2 for PHS agencies other than NIH.

The subrecipient must select which entity's FCOI policy it will follow (either the PTE's or its own) in the drop down menu in the following term in Attachment 2:

"Subrecipient must designate herein which entity's Financial Conflicts of Interest policy (COI) will apply".

For other non-PHS funded research, FCOI certification does not need to be included unless it is a term and condition referenced in the federal awarding agency's Notice of Award (NoA). All federal agencies are required to have an FCOI policy; however, the federal agencies vary in their implementation. PTEs are reminded to read the federal awarding agency's NoA carefully.

**58. Why is there no export control clause in the FDP subaward? -- REVISED**

Different situations may arise related to the inclusion of export control regulations in a subaward. Below is a description of when it may be necessary, and where they should be included in the FDP Subaward templates.



The Council on Governmental Relations (COGR) explains that, “vigilance is required to ensure that the availability of the fundamental research and other exemptions are not lost due to inadvertent acceptance of contractually imposed restrictions on access to, dissemination of, or participation in research. To the extent the activities of universities involve shipping equipment abroad or teaching or training foreign students on campus or foreign colleagues abroad how to use equipment, export control issues do arise.” ([COGR Brochure - Export Controls and Universities - Information and Case Studies, 1/2/2004](#)). In addition, to the extent that the activities of universities involve the receipt (or purchase of) of materials, software, technology or technical information, export control issues may arise to the extent that such items and information do not fall within the fundamental research or other exemption. PTEs should note that the fundamental research exemption does not apply to activity in or with countries subject to OFAC trade sanctions.

If a project is classified as fundamental research, publication and dissemination of information will be allowed without restriction. Broadly speaking, grants and cooperative agreements will either confirm that the program is considered fundamental research in the program announcement or include standard R&D terms consistent with a fundamental research designation. Sponsors may also include this designation on the NoA.

Collaboration between U.S. based entities under a grant or cooperative agreement: Generally, when a PTE receives a grant or cooperative agreement designed as Research & Development on the NoA, then the research is fundamental. In issuing any subaward to domestic entities, the PTE should consider the following to determine whether the research meets the definition of “fundamental research”: whether the research results are intended for publication; whether there is a pre-publication approval process which may restrict publication of research results; and/or whether participation on the project by foreign national students and employees is restricted. If the research is fundamental research, this reduces the risk of noncompliance with export control regulations. However, the PTE should also consider whether any materials under the project will be exported by the subrecipient outside of the U.S, whether any export-controlled items or information will be sent to/received by the subrecipient, and if there is the potential for PTE funds to be used in or in association with a country subject to comprehensive OFAC trade sanctions. If so, this may increase the export control risk and should be reviewed carefully. Ultimately, if the subaward is to a domestic entity, fewer export control issues are likely to arise. However, in instances when they do arise, the export control risks may be addressed in Attachment 2 of the FDP Subaward template in the Additional Terms box.

When the subrecipient is a foreign entity under a grant or cooperative agreement: the PTE should first conduct a Restricted Party Screen to ensure that the subrecipient and their principals are not identified on U.S. trade sanctions lists. The PTE should also consider reviewing the foreign subrecipient’s scope of work to determine what, if any physical materials, such as virus samples or equipment, are anticipated to be exported to the foreign entity. The PTE should conduct an export license assessment for physical materials to be shipped internationally to ensure that they do not require a license. While the work under the grant or cooperative agreement would still be deemed fundamental research, if the physical materials are controlled under U.S. export control regulations, a license may still be required for export. If any export controlled materials are to be exchanged with a foreign entity, the FDP recommends using the FDP Foreign Subaward template and detailing the exchange in the export control attachment. If a foreign organization will receive federal funds via a subaward, the FDP recommends using the FDP Foreign Subaward template and detailing such an exchange in the export control attachment (Attachment 8).

When the award is a federal contract: Please see our federal contract FAQs.

- 59. My institution has very specific requirements concerning IRB protocol submissions to determine a project as exempt or non-exempt from IRB review. Can you clarify the expectations of the PTE to confirm the subrecipient’s work with human subjects and vertebrate animals?**



Attachment 2, which includes compliance terms and conditions, is meant to provide flexibility for PTEs and subrecipients to meet the needs of their respective institutional policies, while ensuring subrecipients agree to comply with all applicable state and federal laws concerning research involving human subjects and/or vertebrate animals.

Many institutions require a submission to the IRB in order to determine if a project is exempt or non-exempt. However, this may differ in formality and extent from institution to institution. As it relates to the performance of a subaward, the PTE must permit the subrecipient to follow its own process and make its own determination as to exempt / non-exempt research projects. However, the PTE must require the subrecipient to maintain current IRB and IACUC approvals as applicable, and certify that the non-exempt, approved protocol is consistent with the subaward (see Attachment 2 of the FDP Subaward template). Attachment 2 gives the PTE/Subrecipient the option to select that the exempt determination is either attached or will be provided upon request to provide flexibility. Subrecipients should continue to follow and comply with all institutional policies and procedures regarding the submission of protocols for review and approval from IRB and/or IACUC, whether the research is exempt or non-exempt.

#### **60. What is the intent of the ‘Human Subjects Data’ Section in Attachment 2?**

The purpose of this section is to give the parties the opportunity to incorporate terms and conditions that may otherwise be included in a separate Data Transfer and Use Agreement (DTUA) within the subaward to alleviate the need for the parties to execute a separate agreement, with the understanding that many institutions may still require a separate DTUA due to their institutional policies, procedures and/or structure. The new Pilot Attachment 7 (Data Transfer and Use) has been developed to assist with streamlining this process. The FDP Data Stewardship Subcommittee has issued several guidance documents to assist organizations in determining whether human subjects data will be exchanged, and whether a DTUA (or additional terms in the subaward) may be necessary. See the FDP website at <http://thefdp.org/default/committees/research-compliance/data-stewardship/> for more information. If you plan to issue a separate DTUA, there is no need to include additional terms here.

Three options are provided in the drop-down menu for ‘Human Subjects Data’:

- Not Applicable - to be selected when it has been determined that a DTUA or additional terms are not necessary.
- Applicable - to be selected when it has been determined that data terms will be necessary to address the transfer of human subjects data. This can be done via a separate Data Use Agreement or In Attachment 7 (to be used with the pilot Attachment 7 found on the FDP website). If you decide to incorporate data terms via Attachment 7, it must utilize the language within the attachment unedited.
- Human subjects data will not be addressed in this agreement: This option may be selected when data terms are not applicable at time of issuance but may be applicable at a later time, or when another group within the institution will address this.

#### **61. Do I need a DTUA for non-human subjects data? - REVISED**

Your institution may elect to have a separate DTUA or add additional terms in Attachment 2 for transferring non-human subjects data. The subaward templates (including Attachment 7, which addresses human subjects data transfer and use terms only, do not specifically call out this option. For more information, refer to the DTUA Guidance Chart and other guidance materials from the FDP Data Stewardship Subcommittee at <http://thefdp.org/default/committees/research-compliance/data-stewardship/>.



If you're including special terms because the **subrecipient is a foreign entity**, you may need to discuss that with the federal awarding agency and/or provider first and those terms may be included in this section. Some federal funding agencies and providers have special DTUA requirements that must be flowed down, especially for foreign subrecipients. If you are anticipating a foreign subaward on a project that includes special Data Transfer and Use terms, the FDP recommends that you speak to the federal awarding agency or provider as appropriate, for guidance on those specific flowdown requirements.

## **62. How does the 'Human Subjects Data' section relate to the 'Data Rights' Section of Attachment 2?**

The 'Data Rights' language included in the Special Terms and Conditions section of Attachment 2 provides the PTE with the right to use the data created during the performance of the subaward. This is different from the 'Human Subjects Data' section of Attachment 2, which provides both parties with options to address in the agreement how the data is to be exchanged. For example, the subrecipient may be required by law or regulation (for example, HIPAA) to include additional terms in an agreement (either in the subaward or a separate DTUA) with the PTE prior to transferring the data to the PTE. The 'Human Subjects Data' section provides these options.

## **63. What types of data are included in 'Human Subjects Data'?**

Refer to the FDP Tool for Classifying Human Subjects Data at <http://thefdp.org/default/committees/research-compliance/data-stewardship/>.

For the purposes of this section in Attachments 2 and 7, human subjects data can include a pre-existing data set or data created in the performance of the subaward.

## **64. Do the FDP Subaward templates address research integrity and misconduct?**

Appendix C (f)(8) and (f)(11) of the [Federal-wide Research Terms and Conditions](#) (RTCs) address research integrity and misconduct. All versions of the FDP subaward templates, including those designed for foreign subrecipients, include reference to the Federal-wide RTCs. The regulations laid out in the RTCs address the standards and procedures for research integrity and misconduct proceedings, as well as reporting. Domestic and foreign entities that wish to receive HHS funding must file an assurance with the HHS Office of Research Integrity (ORI) that they have relevant policies and procedures that meet the standards of the regulation. No additional language is required in the FDP Subaward templates. For more information about this topic specific to NIH funding, see [NOT-OD-19-020 - Responsibilities of Recipient Institutions in Communicating Research Misconduct to the NIH](#).

## **65. How are Single IRB Policies addressed in the templates?**

The FDP subaward templates address the possibility of a single IRB (sIRB) by providing an option for it in Attachment 2 - Federal Terms and Conditions, under "Work Involving Human or Vertebrate Animals." After checking, "Human Subjects," a drop down menu will appear that includes a list of IRB PTE notification options. In the circumstance of a sIRB, the option of "Not Required for the Following Reasons:" should be chosen, which will prompt and display another dropdown, that includes, "PTE is acting as the sIRB" or "There is an sIRB designated." Choose the applicable sIRB option.

## **66. What is NIH's Certificates of Confidentiality (CoC) Policy?**

NIH's Certificates of Confidentiality (CoC) Policy can be found in section 4.1.4.1. of the [Grants Policy Statement](#).

## **67. Should PTEs include a term on the NIH CoC Policy in subawards funded in whole (or partially) by NIH? -**



Yes, the PTE is “responsible for ensuring that any subrecipient that receives funds to carry out part of the NIH award involving a copy of identifiable, sensitive information protected by a Certificate issued by the Policy understand they are also subject to subsection 301(d) of the Public Health Service Act” as stated in the Grants Policy Statement, section 4.1.4.1. In order for subrecipients to understand the provisions of the policy, a term on CoC has been incorporated into the FDP Subaward templates and samples to assist with this requirement per the NIH Grants Policy Statement section 15.2.1.

**68. Does the NIH CoC Policy apply to foreign subrecipients?**

Yes. A CoC term has been added to the Foreign Subaward samples.

**69. Does the CoC Policy apply to other federal agencies?**

Yes. The template automatically includes a CoC term if NIH is selected as the sponsor. It is up to the PTE to flow down the CoC requirements appropriately for non-NIH sponsors. Refer to the specific sponsor’s CoC requirements. The sponsor may have incorporated CoC language in the prime Notice of Award, serving as the CoC, or may require that the PTE request a CoC directly with that sponsor or the NIH. See <https://grants.nih.gov/policy/humansubjects/coc.htm> for more information.

## **Special Terms & Conditions**

### ***Copyright FAQs***

**70. What is the difference between *Grants vs Shall Grant* in the copyright language in Attachment 2 of the subaward templates?**

*Grants* means present assignment. The subrecipient is granting a copyright license to the PTE upon execution of the subaward. *Shall grant* means future assignment. The subrecipient plans to grant a copyright license to the PTE at some point in the future.

**71. Why is there an option to select *Grants vs Shall Grant* in the subaward templates?**

The main reason for having the option to select *Grants vs Shall Grant* has to do with institutional policies and office structure. Sometimes the office that accepts and executes subawards does not have the authority to grant a copyright license. Sometimes that authority is designated to a technology transfer office or the General Counsel. In addition, offices that don’t have the authorized signature to assign the copyright upon the execution of the subaward agreement cannot easily make internal adjustments to obtain that signature. *Shall grant*, therefore, informs the PTE that the subrecipient intends to provide the copyright to the PTE ‘solely for the purpose of and only to the extent required to meet PTE’s obligations to the Federal Government under its PTE Federal Award.’

**72. What are some other reasons for having the *Grants/Shall Grant* options?**

Some of the other institutional policies driving the need for the two options are:

- Policies wherein the institution owns everything created by their faculty.



- Policies that allow faculty to own what they create, if that creation falls within certain categories, typically:
  - No University resources were used (i.e. made something at home); and/or
  - Publications, written reports, abstracts and other presentation materials summarizing or presenting research results.
- The *Shall Grant* option may be important under an institution's policies if copyrightable works are created or developed *outside* what is given to a PTE for a progress report or deliverable. Examples include modifications to software, database code, or other copyrightable works with a potential commercial value.
  - Complicating this area is that sometimes the subrecipient has relied on an existing version of a copyrightable work that involves a third party, this may mean they need to work with that third party to ensure an appropriate license for the PTE.

### **73. When are copyright licenses necessary, separate from the subaward agreement?**

The FDP's assessment is that the need for a separate license is rare. A vast majority of the copyrightable works in question are reports. A separate copyright license is not required when a subrecipient PI provides information to the PTE PI to include in a progress report, such as written data analysis and charts, or provides a deliverable to the PTE to provide to the federal agency. The copyright is transferred to the PTE when the subrecipient PI provides that information or deliverable for the purposes of meeting the PTE's obligation to the federal agency. In addition, when PIs write papers resulting from sponsored projects to be published in journal articles, the journal will have its own copyright agreement and copyright policies that may be negotiated.

Thus, separate licenses may be required for a small number of cases, most likely software or database code. The need for a subrecipient to issue a separate copyright license to a PTE, regardless of whether the subrecipient selects *Grants* or *Shall Grant*, should be rare, but can happen.

### **74. A subrecipient wants to select *Shall Grant* in the copyright section of Attachment 2 of the subaward templates. However, I'm concerned that as the PTE, we won't be able to meet our obligations to the federal government unless we have the subrecipient select *Grants* and provide the assignment of copyright upon execution of the subaward. How can I ensure we will obtain what we need to meet our obligations?**

After extensive discussion with FDP membership, the following language was added to the copyright section of the templates:

*"Subrecipient grants to PTE the right to use any written progress reports and deliverables created under this Subaward solely for the purpose of and only to the extent required to meet PTE's obligations to the Federal Government under its Federal Award."*

This added sentence grants up front for a PTE to use any written reports and deliverables created under the award for the PTE to meet the sponsor's requirements. Use is not the same as granting a copyright license. The language was added to help PTEs feel more comfortable executing a subaward with subrecipients that cannot grant the copyright up front due to their institutional policies and structure.

## **Cost Reimbursement vs. Fixed Amount**

### **75. I remember there was an FDP Fixed Price Subaward template, but now Fixed Price has been replaced with Fixed Amount. Why was this changed? - REVISED**



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“Fixed price” is a FAR term (see FAR Part 16.2), applicable to contracts and subcontracts. Uniform Guidance, 2 CFR §200.333, which governs grants, cooperative agreements, and subawards refers to a fixed amount subaward, thus we updated the nomenclature for consistency and accuracy. If you need to issue a federal fixed price subcontract, you can utilize the subcontract sample on the FDP website.

## **76. What is the difference between cost reimbursable and fixed amount subaward agreements?**

A *cost reimbursable* subaward agreement is used to pay for actual expenses incurred in the performance of the statement of work. The risk associated with this type of agreement is typically borne by the pass-through entity (PTE), as there is no guarantee of an outcome or deliverable. Cost reimbursable agreements include a detailed line-item budget with a not-to-exceed amount, which the subrecipient must follow closely depending on the terms of the agreement. In a cost reimbursable agreement, any funds remaining at the end of the project cannot be collected by the subrecipient and any advanced funds must be returned to the PTE if there are no corresponding actual expenses. Generally, a final invoice is required detailing all cumulative costs incurred.

A fixed amount subaward is one where a price or rate is determined up front for a specific deliverable and is only paid if the deliverable is met. The risk associated with this type of agreement is borne by the subrecipient, since a deliverable is required to obtain payment even if the cost to meet the deliverable exceeds the agreed-upon rate. Fixed price agreements will have a payment schedule instead of a detailed budget and should include specifics on the deliverable and corresponding payment amount. Fixed price payments are generally inclusive of all costs, including F&A. The payments are not tied to actual expenses or costs incurred, do not require financial reports, and any residual balance should remain with the subrecipient institution. However, the subrecipient must certify in writing (Certificate of Completion) to the PTE at the end of the award that the project, activity, or service was completed. For most fixed amount agreements, this would include a statement that personnel service was delivered as specified in the scope of work, or a product was completed. If the required deliverables were not carried out, the amount of the subaward must be adjusted, as per Uniform Guidance, [2 CFR §200.201\(b\)\(3\)](#).

## **77. When should I use a fixed amount subaward?**

Fixed amount subawards are appropriate when the work to be performed is specific and can be priced with a reasonable degree of certainty. Samples of appropriate mechanisms to establish an appropriate price include the subrecipient’s past experience with similar types of work for which outcomes and their costs can be reliably predicted or for which the subrecipient can easily obtain price estimates for significant cost elements. Under the Uniform Guidance, fixed amount subawards must be approved by the federal awarding agency prior to issuance up to the Simplified Acquisition Threshold (SAT). Prior approval requirements vary by federal agency and may be subject to change, so it is important to verify the current policy directly with the federal awarding agency. Payments are generally based on meeting specific requirements or deliverables of the subaward scope of work. Accountability and payment are based on performance and results. It is important that the PTE Principal Investigator monitor and approve progress on deliverables for payments.

Most of the subaward agreements between FDP institutions utilize the cost reimbursable methodology. However, there may be some occasions where a fixed amount subaward is appropriate, even though the prime award is cost reimbursable to the PTE. Some institutions prefer to issue fixed amount subawards to foreign entities, or entities identified as high-risk. Fixed amount subawards cannot be used in programs that require a mandatory cost-share or match.

It is not appropriate to issue a cost reimbursable agreement to circumvent the Uniform Guidance prior approval requirement for fixed amount subawards. Refer to additional guidance on the use of fixed amount subawards for the **FDP Foreign Subaward\***.



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\*Items that the PTE should review prior to issuing a fixed amount **subaward to a foreign entity** can be found in the Uniform Guidance, 2 CFR §200.201 (b). In particular, “(1)...Payments are based on meeting specific requirements of the federal award. Accountability is based on performance and results....” Here, a risk assessment may help determine whether a fixed amount agreement is appropriate for a particular foreign entity/project, assuming other eligibility criteria are met. Furthermore: “(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.”

#### **78. What is the difference between fixed amount and fixed-rate subawards?**

Using the NIH Grants Policy Statement, section 8.1.2.11, “In a fixed amount subaward, the total value of the award is negotiated upfront. This requires the pass-through entity to know both the unit price and the total number of units that will be provided. In a fixed-rate agreement, while there is a negotiated cost per unit, e.g. per patient cost in a clinical trial (or participant in a non-Clinical Trial Human Subjects Study), the total amount of the award may be unknown when the agreement is created.”

An NIH project involving a ‘per subject/enrollee’ budget model would be considered “fixed rate.” The FDP Fixed-Rate Clinical Research Subaward sample would be appropriate to use in those circumstances. Separate guidance is available for the use of that sample on the FDP website at <http://thefdp.org/default/subaward-forms/>.

### **Consortium Agreements and NIH Awards Containing Multiple PIs**

NIH awards that include Multiple PIs from multiple entities require close collaboration and communication. The PTE (employs the contact MPI) should include the subrecipient PI in the development of the proposal MPI Leadership Plan, and any revisions to the Plan prior to finalization of the award. The following FAQs address how MPIs should be addressed in the subaward agreements.

#### **79. If the NIH Notice of Award includes Multiple PIs (MPIs) and names the subrecipient PI as one of the MPIs, should this be reflected in the subaward agreement?**

Yes. The PTE should select the appropriate dropdown in Attachment 2 to make this designation. If the subrecipient PI is one of the MPIs stated on the NoA, then the subrecipient is subject to the MPI Plan, therefore select “This subaward is subject to an MPI Leadership Plan. Both parties will follow the finalized MPI Leadership Plan.”

#### **80. Should the MPI Leadership Plan, as accepted by NIH, be included as part of the subaward agreement between the two parties? - REVISED**

PTEs have the option of attaching the finalized MPI Leadership Plan to the subaward agreement, if both parties agree. However, this is not required.

The PTE has two options in the drop down menu in the subaward, by selecting either: a) The PTE will make the MPI plan available upon request; or b) The MPI plan is attached as part of Attachment 6.

Whether MPI Leadership Plan is included in the subaward agreement or not, close collaborations and discussions should take place between the PIs and two institutions if revisions to the Plan are necessary. Amendments may be necessary if there is a change in the Leadership Plan that impacts the scope of work and/or there is a change in roles and responsibilities of the MPIs.

#### **81. What if the PTE has an NIH Multiple PI (MPI) award, but the MPIs are only at the PTE institution? Which box should I check? The MPIs are not at the subrecipient institutions.**



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The default option in the drop-down menu is “This subaward is not subject to an MPI Leadership Plan.” Therefore, the PTE can leave this section alone if one of the MPIs is not at the subrecipient institution.

**82. Can the PTE include dispute resolution language as additional special terms in the subaward agreement?**

It is not necessary to add additional dispute resolution terms in the subaward agreement. Including ‘conflict resolution’ in the MPI Leadership Plan is a requirement from NIH.

### **Other Subaward Questions**

**83. Have you had a situation where 30-45 days has passed for an award subject to FFATA, and the award is not available on the FSRS site? What are suggestions for getting the information posted in FSRS so that a report can be filed? Do we call the agency and remind them to report?**

Always check USASpending.gov first to verify if the award is issued to the current correct institution. If it is correct in USASpending.gov, then we recommend contacting the Federal Service Desk (FSD) to report it. Demonstrate to FSD that the award is correct in USASpending.gov but is not available in FSRS in order for you to submit a FFATA report.

If the award is not issued correctly in USASpending.gov, then contact the Grants Management Specialist or Contracting Officer at the sponsoring agency. The sponsor will need to update their systems to have the award accurately reflected in USASpending.gov first. Then contact FSD if the problem still exists. Make sure to document everything to demonstrate the steps you have taken to correct the issue.

**84. Could you clarify what address needs to be included in the *Place of Performance Address* for FFATA reporting on the top of Attachment 3B?**

The ***Place of Performance Address*** should indicate where the actual work is being performed. It is not intended for the subrecipient’s main administrative offices or institutional address. This address must be provided by the subrecipient in the subaward because every project is distinct. It cannot be determined by reviewing information included in the FDP Expanded Clearinghouse. Some subrecipient entities choose to use the PI’s lab as the ***Place of Performance Address***, and that may be appropriate depending on the nature of the work being done. This address will be used by the PTE to complete required data fields for FFATA reporting.

Subrecipients may use the Legal Address on the bottom of Attachment 3B to distinguish the legal institutional address.

If the PTE completes any of the other information on Attachment 3B on behalf of the subrecipient, the subrecipient should make sure to review this Attachment for accuracy.

Foreign subrecipients should complete as much of Attachment 3B in the **Foreign Subaward templates** as applicable, choosing the entity type “Non-Domestic (non-U.S.) Entity” from the drop-down box. For example, the ZIP code and Congressional district boxes may be disregarded (as indicated by the note in that field, “*This section for U.S. entities*”). When a PTE enters a foreign subrecipient’s information into FSRS, the following guidance from the FSRS FAQs may be helpful: “FSRS is able to accept foreign recipient locations and/or project place of performance. When completing an editable location field, the prime awardee selects ‘Non-U.S.’ from the State drop down menu. When Non-U.S. is selected for State, then a non-United States country must be selected and the zip code field and the Congressional District become optional.” Source:

<https://www.fsr.gov/faqs>



**85. When a federal agency is an FDP subrecipient of federal funds, are they required to provide the certification statement from §200.415 (a) and detailed itemization of expenditures produced from subrecipient’s accounting system (e.g., names/amounts of persons paid from the award, vendor payee name, date of payment, item description and amount) on their invoices/bills? - REVISED**

A subrecipient, as defined in Uniform Guidance, 2 CFR §200.1, “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 awards; 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.” In the 2020 revisions to the Uniform Guidance, section 2 CFR §200.101(a)(2) was added, which states that “Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.”

Therefore, if a situation arises when a federal agency (often a federal laboratory) is collaborating with a non-federal entity on work funded by a federal sponsored project, it is best to first communicate with that federal agency regarding options. If intellectual property is involved a Cooperative Research and Development Agreement (CRADA) may be necessary. A CRADA provides a way for the federal government to enter into research and development agreements when collaborating with non-federal entities. The PTE should discuss this option with the federal entity, and they may provide the PTE with the appropriate template.

It may be determined that the federal entity is providing a good or service as a contractor to the non-federal entity’s sponsored program. Again, discuss the options with the federal entity.



**APPENDIX 1: TABLE OF REQUIRED SUBAWARD DATA ELEMENTS & LOCATION IN SUBAWARD TEMPLATES**

Required Information per 200.332(a)	FACE PAGE OF ORIGINAL AGREEMENT		ATTACHMENTS							AMENDMENTS	
	Cost Reimbursement	Fixed Amount	1	2	3A	3B, page 1	3B, page 2	4	5	Bilateral	Unilateral
200.332(a)(1)(i) Subrecipient Name	x	x				x	x			x	x
200.332(a)(1)(ii) Subrecipient's unique entity identifier						x					
200.332(a)(1)(iii) Federal Award Identification Number (FAIN)				x							
200.332(a)(1)(iv) Federal Award Date (see definition of Federal award date in §200.1) of this part of award to the recipient by the Federal agency				x							
200.332(a)(1)(v) Subaward Period of Performance Start and End Date	x	x								x	x
200.332 (1) (vi) Subaward Budget Period and End Date	x	x									
200.332(a)(1)(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	x	x								x	x
200.332(a)(1)(viii) Total Amount of Federal Funds Obligated to Subrecipient by the pass-through entity including the current financial obligation										x	x



200.332(a)(1)(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	x	x									
200.332(a)(1)(x) Federal award project description	x	x							x	x	x
200.332(a)(1)(xi) Name of federal awarding agency	x	x								x	x
200.332(a)(1)(xi) Name of pass-through entity	x	x			X					x	x
200.332(a)(1)(xi) Contact information for awarding official of the pass-through agency					x						
200.332(a)(1)(xii) Assistance Listings number and title				x							
200.332(a)(1)(xiii) Identification of whether the award is R&D				X							
200.332(a)(1)(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414)									x		

**APPENDIX 1: TABLE OF REQUIRED SUBAWARD DATA ELEMENTS & LOCATION IN SUBAWARD TEMPLATES (CONTINUED)**

Required Information per 200.332(a)	FACE PAGE OF ORIGINAL AGREEMENT		ATTACHMENTS							AMENDMENTS	
	Cost Reimbursement	Fixed Amount	1	2	3A	3B, page 1	3B, page 2	4	5	Bilateral	Unilateral
200.332(a)(2) Requirements imposed by pass-through entity on subrecipient	x	x	x	x				x			
200.332(a)(3) Any additional requirements imposed by pass-through entity on subrecipient	x	x		x				x			



200.332(a)(4) (i) Approved federally recognized indirect cost rate, negotiated indirect cost rate, or de minimis indirect cost rate										x		
200.332(a)(5) Requirement that subrecipient permit pass-through entity and auditors access to records and financial statements			x									
200.332(a)(6) Appropriate terms and conditions concerning closeout of the subaward	x	x		x								



## APPENDIX 2: CARRYOVER GUIDANCE

This document was created by two working groups working under the FDP Subawards Subcommittee: The Guidance Document Working Group and a special working group dedicated to this topic. This document will evolve over time as this complex topic continues to be evaluated and discussed among FDP member institutions.

[Part I: Glossary with Examples](#)

[Part II: Carryover Guidance](#)

[Part III: Options for Issuing Subawards](#)

### Part I: Glossary with Examples

**Carryover / Carry Forward**<sup>1</sup>- Unobligated federal funds remaining at the end of any budget period that, with the approval of the Grants Management Officer (GMO) or under an automatic authority, may be carried forward to another budget period to cover allowable costs of that budget period (whether as an offset or additional authorization). Unliquidated obligations are not considered carryover (see below for further detail).

*Example:*

- Federal awarding agency grants Pass-through Entity (PTE) an award with the following budget, Year 1 = \$500,000 (carryover is restricted).
- End of Year 1, PTE spent \$200,000, fully obligated and expended.
- PTE also has invoices from a vendor (\$50,000) and from the subrecipient (\$50,000) in hand, but not paid out (unliquidated obligation).
- The unliquidated obligation for the PTE would be \$100,000 (\$50k+\$50k), total obligated amount would be 300k (\$200,000 the PTE fully obligated and spent + \$100,000 pending invoices), leaving \$200,000 (40% of the Year 1 budget) to request as carryover.

Carryover is called “**automatic**” when the prior approval requirement is waived in accordance with Uniform Guidance, 2 CFR §200.308(d)(4). Many federal awarding agencies allow automatic carryover. However, some agencies do require that prior approval be obtained either for all awards issued by that agency or for specific award types. The terms and conditions regarding carryover are outlined in the award document and/or the federal awarding agency’s regulations.

**Unliquidated obligations**<sup>2</sup> -for financial reports prepared on a cash basis, obligations incurred by the non-federal entity that have not been paid (liquidated). For reports prepared on an accrued expenditure basis, these are obligations incurred by the non-federal entity for which an expenditure has not been recorded. For example, an invoice is received but not fully paid.

*Example (using the same details from the above example):*

- The PTE has received, but not paid out invoices from a vendor (\$50,000) and from the subrecipient (\$50,000).

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<sup>1</sup> NIH Glossary: <https://grants.nih.gov/grants/glossary.htm#Carryover>

<sup>2</sup> NIH Glossary: <https://grants.nih.gov/grants/glossary.htm#UnliquidatedObligation>



- The PTE has invoices in hand verifying the expenses and validating that the funds were expended during the period of performance.
- While the PTE may not yet have cut the check (liquidated), those invoices may be reported as unliquidated obligations.

**Unobligated balance** - means the amount of funds under a federal award that the non-federal entity has not obligated, nor encumbered. Per the NIH definition<sup>3</sup>, it is the amount of funds authorized under a federal award that the non-federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-federal entity's unliquidated obligations and expenditures of funds under the federal award from the cumulative amount of the funds that the federal awarding agency or pass-through entity authorized the non-federal entity to obligate.

*Example (using the same details from the above example):*

- Amount of award (\$500,000) – unliquidated obligations (\$100,000) – actual expenditures (\$200,000) = **Unobligated balance (\$200,000)**

**Offset** - refers to a reduction to the amount of new federal funds to be authorized in a subsequent budget period by the unobligated balance from the prior budget period.

*Example:*

- Federal awarding agency grants PTE an award with the following budget, Year 1 = \$500,000 (carryover is automatic).
- End of Year 1, PTE obligated \$300,000 (60% of the budget). The PTE has a \$200,000 unobligated balance (40% of the budget).
- The committed award amount for Year 2 is \$550,000. The federal awarding agency elects to offset Year 2 due to lack of spending in Year 1 and a lack of sufficient justification in the progress report.
- The federal awarding agency instead elects to award \$350,000 as the Year 2 budget. The PTE still has \$550,000 to spend in Year 2, but they lost \$200,000 in *new*, obligated funding.

As it relates specifically to NIH and other HHS awards: when a PTE reports a balance of unobligated funds in excess of 25% of the total amount awarded for the budget period, plus any approved carryover of funds from prior year(s), the federal awarding agency will review the circumstances resulting in the balance to ensure that these funds are necessary to complete the project, and may request additional information from the PTE, including a revised budget, as part of the review.

If the federal awarding agency determines that some or all of the unobligated funds are not necessary to complete the project, the federal awarding agency may restrict the PTE's automatic carryover authority, use the balance to offset funding for a subsequent budget period, reduce future year's funding, or use a combination of these actions.

**Note:** In rare circumstances, the federal awarding agency may elect to do an NCE midway through a non-competing project period (i.e. year 2 becomes an NCE instead of adding additional funding). This may impact the issuance of any subawards. If the PTE receives a mid-project NCE, the PTE may issue NCEs to subrecipients. The FDP suggests reaching out to subrecipients in advance to discuss in further detail.

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<sup>3</sup> NIH Glossary: <https://grants.nih.gov/grants/glossary.htm#UnobligatedBalance>



**Deobligation** – a downward adjustment of federal funds committed on an award. There are various reasons why deobligations may be necessary in managing subawards, such as early termination of a subaward, the subrecipient PI transfers to another institution, or there is a change in scope.

*Example:* The federal awarding agency decided to deobligate funds as a result of monitoring the award and determining the award recipient did not need all of the originally committed funds.

**Restriction<sup>4</sup>** – Special term and condition in a Notice of Award or article in a contract that limits activities and expenditures. It may be lifted or adjusted if the requirements are met.

This is different to a deobligation in that a deobligation indicates the funding is no longer available. A restriction indicates that the money may not be spent until prior approval is received.

*Example:* The federal award restricts carryover. The PTE restricts the unobligated balance of its subrecipients until they receive prior approval to expend those funds from the federal awarding agency.

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<sup>4</sup> NIH Glossary: <https://grants.nih.gov/grants/glossary.htm#Restriction>



## Part II: Carryover Guidance

### *General Carryover Guidance for FDP Member Institutions Issuing Subawards*

According to Uniform Guidance, [2 CFR §200.308\(d\)\(4\)](#), a recipient of a federal award that supports research may carry forward an unobligated balance to a subsequent period of performance without prior approval from the federal awarding agency, unless the federal awarding agency provides otherwise as a term and condition of the federal award.

In the interest of FDP's goal to reduce administrative burden wherever possible, the FDP strongly recommends that PTEs flow-down automatic carryover if provided in the federal award. However, the PTE, as the award recipient, has the authority to require a subrecipient to obtain prior approval to use carryover, even if carryover is automatic under the terms and conditions of the federal award.

This may be considered an 'additional prior approval' per Uniform Guidance, [2 CFR §200.207 \(b\)\(6\)](#). A PTE might choose to use this authority if, for example, the subrecipient is deemed to warrant additional oversight (high risk) or if the project is complex, in accordance with the requirements to monitor subrecipients, as stated in Uniform Guidance, 2 CFR §200.332.

The PTE should be prepared to discuss with the subrecipient the rationale for not flowing down automatic carryover if provided in the federal award. In accordance with Uniform Guidance, [2 CFR §200.207\(c\)](#), the PTE must notify the subrecipient the reason why the additional requirements are being imposed. In having these discussions, PTEs should be mindful of the fact that a requirement to obtain prior approval to use carryover can represent a significant burden for many subrecipients as many institutions have financial systems that require a full financial close-out to be performed in order to obtain the unexpended balance for a carryover request (or other similar process/system limitations). PTEs should be prepared for subrecipients to request a strong rationale for their decision.

### **What has to happen when carryover requires prior approval?**

If the Federal Award Requires Carryover Approval: The subrecipient's expenses must be incurred within each budget period, as defined by the subaward. The subrecipient must submit to the PTE a final statement of cumulative costs at the end of each annual budget period as indicated in Terms and Condition #3 on the face page and Attachment 4.

When submitting the final statement of cumulative costs, the subrecipient should indicate whether or not it intends to request carryover of any unobligated balance. The formal carryover request should be submitted to the PTE in a timely manner after submission of the final statement of cumulative costs, and prior to the deadline established by the federal award, as applicable. The PTE should be prepared to provide guidance to the subrecipient on the requirements for the request, especially if a particular format is required by the federal awarding agency.

Once the approval has been received from the federal awarding agency by the PTE, the PTE may issue an amendment to the subrecipient to provide formal approval of the carryover. The PTE has various options for approving the carryover request to the subrecipient (see below for additional guidance).



If the PTE (as opposed to the federal awarding agency) Requires Carryover Prior Approval: the PTE should be prepared to provide guidance to the subrecipient on the PTE's requirements for the carryover request. The FDP encourages PTEs to request a minimal amount of information from subrecipients to validate progress on the project and plans to spend the carryover funds. The FDP strongly encourages all PTEs to require no more information than is required by a federal awarding agency for a carryover request, particularly when such request is related to a federal award.

### **Why is it so important to submit a timely carryover request to the PTE when the federal awarding agency requires annual Federal Financial Reports (FFRs)?**

When carryover is not automatic in the federal award, the PTE must first obtain prior approval from the federal awarding agency before the PTE is authorized to allow a subrecipient to carryover an unobligated balance from one budget period to the next. The PTE must report expenditures, unliquidated obligations and unobligated balances to the federal awarding agency by the agency's deadline in the FSR.

This report must include any unobligated balance of funds allocated to subrecipients, which information is obtained from the final statement of cumulative costs referenced above. Typically, the subrecipient's final, annual invoice is due 60 days after the end of the budget period and the PTE must submit their interim FSR within 120 days of the end of the budget period. After the FFR is submitted, the PTE may move forward with the carryover request.

If the PTE determines that it is appropriate to request carryover of the unobligated balance, the PTE is responsible for the submission of such request to the federal awarding agency. The information provided by subrecipients is vital to making a case to the federal awarding agency that those funds are necessary for the project.

While the carryover request may not be approved by the federal awarding agency until after the FFR has been accepted, submitting the carryover request close to the time of FFR submission may expedite the process. The longer subrecipients wait to submit their carryover requests to the PTE, the longer the PTE must wait to submit that information to the federal awarding agency, thereby delaying carryover approval.

If the subrecipient's carryover request is approved by both the federal awarding agency and the PTE, the PTE should issue an amendment to provide formal approval (further guidance below).

*Note:* During a subrecipient's approved no-cost extension, the period of performance has been extended. Therefore, additional approval is not needed in order to expend funds remaining unobligated as of the original end date.

### **What is included in a typical carryover request?**

Exact requirements may vary by federal awarding agency, but typically, PTEs and subrecipients should expect to provide:

- Budget for the carryover amount.
- Justification of how the funds will be used.
- Explanation as to why the funds were unexpended.



If the carryover prior approval requirement comes from the PTE (as opposed to the federal awarding agency), the PTE should request additional back-up materials only as necessary (based on a monitoring issue) in assessing whether to approve a carryover request from a subrecipient.



## Part III: Options for Issuing Subawards

### How should the PTE issue a subaward that does not allow automatic carryover?

Initial Budget Period: Attachment 4 of the FDP Cost Reimbursement Subaward Agreement template allows the PTE to indicate the terms and conditions of carryover. The PTE should select “**each Budget Period end date**” in Term and Condition #3 of the face page of the template to ensure the submission of annual, final invoices.

Subsequent Non-Competing Budget Periods: The FDP recommends issuing amendments, as opposed to new agreements, for each budget period. This reduces administrative burden for those entities that must create new accounts in their financial systems for every new agreement, despite the fact that the agreement falls under the same federal award. PTEs can utilize one of the following approaches:

**Option 1: Issue a unilateral amendment.** PTE may choose to issue an amendment using the *FDP Subaward Amendment* unilateral template. This template contains options for the PTE to issue the amendment for additional funding amount that does not include the prior year’s carryover, to authorize carryover funds, or to authorize both.

#### **Option 2: Issue a bilateral amendment.**

There are two ways the PTE can issue amendments using a bilateral amendment template (either the bilateral amendment free-text template or template containing pre-set options can be used).

- 1) The PTE may consider using similar language as in the unilateral template:

The "Total Amount of Federal Funds Obligated to Date" stated above may not reflect the actual balance available. The Subrecipient is responsible for tracking unobligated balances and subsequent carryover approvals from prior budget periods. In the event that funding was not fully expended by the Subrecipient during the prior period, the subrecipient is not authorized to use funds from any prior periods, unless approval is granted by the PTE.

By using this suggested language, the “Total Amount of Federal Funds Obligated to Date” is:

- *Amount Funded This Action, PLUS+*
- *Amount Funded This Action* from prior budget period (if prior budget period was the original agreement) **or** *Total Amount of Funds Obligated to Date* (if prior budget period was an amendment).

#### **Example for using this bilateral option:**

Original agreement: Amount Funded This Action - Budget period 1: \$100,000  
Unobligated from budget period 1: \$25,000  
Amendment #1: Amount Funded This Action – Budget period 2: \$100,000  
Total Amount of Funds Obligated to Date: **\$200,000**

When subrecipient submits carryover request and PTE approves the \$25,000 through a subsequent amendment for budget period 2:



Amendment #2: Amount funded this action = \$0

Total Amount of Funds Obligated to Date: **\$200,000**

**Additional Terms: Carryover from Year 1 is authorized for spending in the amount of \$25,000 for the Year 2 budget period of \_\_\_\_\_ to \_\_\_\_\_.**

2) As another bilateral amendment option, PTEs may choose to state the *exact* unobligated balance and amount of carryover funds restricted until the subrecipient submits a request for carryover to the PTE. Some PTEs choose to state the exact balance under special circumstances, such as working with foreign subrecipients where currency fluctuations or other financial matters necessitate additional detail, or other high-risk entities. Consider the following language for stating the amounts and completing the Total Amount of Federal Funds Obligated to Date field:

“The remaining unobligated balance from the previous budget period in the amount of [amount awarded from previous budget period (b) - final invoice cumulative total = unobligated balance (c)] is hereby restricted. The subrecipient may submit a carryover request to the Administrative contact.”

The “Total Amount of Federal Funds Obligated to Date” should be:

- Amount Funded This Action, **PLUS+**
- Amount Funded This Action from prior budget period (if prior budget period was the original agreement) **or** Total Amount of Funds Obligated to Date (if prior budget period was an amendment).

**Example for using this bilateral option:**

Original Agreement: Amount Funded This Action - Budget period 1: \$100,000

Unobligated from budget period 1: \$25,000

Amendment #1: Amount Funded This Action – Budget period 2: \$100,000

Total Amount of Funds Obligated to Date: **\$200,000**

*The FDP suggests that when PTEs are working with foreign or higher risk subrecipients and exercise the option of stating the exact unobligated balance and amount of carryover funds restricted, PTE should provide the definition of a restriction versus deobligation as stated in Section I of this Appendix. This will ensure the subrecipients understand the restriction being imposed. The FDP recommends communicating this to subrecipients during the issuance of the amendment restricting carryover to avoid confusion.*

When subrecipient submits carryover request and PTE approves the \$25,000 through a subsequent amendment for budget period 2:

Amendment #2: Amount funded this action = \$0

Total Amount of Funds Obligated to Date: **\$200,000**

**In both situations outlined above, the Total Amount of Funds Obligated to Date comes to \$200,000 after the PTE authorizes the carryover funds.**

If applicable, the PTE should also highlight any changes to the subaward number, or other important data elements:

“The Subaward Number has changed to [PTE-issued subaward no.]. This Subaward Number must be included on all invoices submitted for the current budget period.”



**Option 3: Issue a new subaward agreement.** This methodology allows for a clean break from one budget period to the next, making it clear that each budget period of the federal award must be treated as a separate award. The PTE should select “**final Budget Period end date**” in Terms and Condition #3 of the FDP Cost Reimbursement Research Subaward Agreement template, to indicate that the subrecipient must submit a final invoice at the end of each new agreement period. The PTE should consider further clarifying in Attachment 4 the frequency and type of scientific and other required reports.

PTEs should consider communicating with subrecipients the need to issue new agreements every year.

**FAQ: I already issued new agreement authorizing the current budget period. How do I authorize carryover to the current budget period?**

If the PTE chose Option 3 outlined above, then an amendment can be issued to add carryover to the current budget period with the following suggested language:

“This Amendment authorizes carryover in the amount of \$[**approved carryover amount**] from a previous budget period. The revised amount available for the budget period [**start date of current budget period**] to [**the end date of current budget period**] is \$[**total funding amount authorized for the budget period from prior agreement + approved carryover amount**].

Expenses incurred outside of the budget period dates or in excess of the amount available for this period are not allowable.”

The “Total Amount of Federal Funds Obligated” should be the same as the “Amount Funded This Action” from the prior agreement issued, and the “Amount Funded this Action” should be \$0. The action of the amendment does not award new funds. It authorizes prior approval to expend previously awarded funds.

**FAQ: Automatic carryover is allowed by the federal award. I want to do something to encourage active subrecipient monitoring by my PIs and invoicing from my subrecipients. I am not sure I want to restrict automatic carryover. Do I have any other options?**

Yes, there are other options. First, it may be worth examining how many carryover requests you receive and the justifications behind them. Are they routine carryover requests from a particular subrecipient due to non-performance? Or is the progress on the project moving along, but the invoices are not being sent in a timely fashion?

For institutions that are doing the work, but slow to invoice: it may be worth talking about potential barriers.

For institutions that are not performing their work in a timely fashion: federal awarding agencies reserve the right to offset future budget periods (offsetting is defined in the Glossary) by the amount of the unobligated balance. If you have a subrecipient with slow progress, it may be worth considering the option of offsetting future budget periods by the amount of unobligated balances. The PTE should discuss this with the subrecipient.

**FAQ: Why does Attachment 4 of the FDP Subaward template show the term “Carryover instructions and requirements are as stated by the Federal Awarding Agency guidance or as shown below:” when I select “Carryover is restricted for this subaward by the:”?**



This addition to Attachment 4 is to make it clear that the carryover restriction follows the requirements of the federal awarding agency (E.G. restricted over 25%, or restricted entirely). If the federal awarding agency restricts carryover to a percentage, but the PTE is only able to either allow or restrict carryover, then the PTE should specify in the “Additional Technical and Reporting Requirements” box that carryover is restricted 100%. Additional terms should not be added when the PTE is restricting carryover themselves.

The options for the PTE to include carryover restrictions include:

FEDERAL ACTION	PTE OPTIONS
Federal Sponsor Restricts Carryover Entirely	1. PTE Restricts Carryover Entirely in the Subaward
Federal Sponsor Restricts Carryover over a Specific Percentage	1. PTE Restricts Carryover by the Same Percentage in the Subaward 2. PTE Restricts Carryover Entirely in the Subaward
Federal Sponsor Does Not Restrict Carryover	1. PTE Does Not Restrict Carryover in the Subaward 2. PTE Restricts Carryover Entirely in the Subaward *

As already noted earlier in this Appendix, “PTE must notify the subrecipient the reason why the additional requirements are being imposed” when the PTE adds prior approval requirements that are absent from the federal prime award.