



FEDERAL DEMONSTRATION PARTNERSHIP

Redefining the Government & University Research Partnership

Subawards Subcommittee

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Agenda

- Copyright Discussion
- Subaward Template Working Group Discussion
- Working Group Updates
 - Foreign
 - Clinical Trials
 - RAQ/CAT
 - Subaward Template Updates
- Carryover Survey, Preliminary Results & Next Steps



Copyright – Current Language in Templates

- *Subrecipient Grants/Subrecipient Shall Grant* to Pass-through Entity an irrevocable, royalty-free, non-transferable, non-exclusive right and license to use, reproduce, make derivative works, display, and perform publicly any copyrights or copyrighted material (including any computer software and its documentation and/or databases) **first developed** and delivered under this Subaward Agreement solely **for the purpose of and only to the extent required to meet Pass-through Entity's obligations to the Federal Government under its Prime Award.**



Copyright – Grants vs Shall Grant

- Grants - present assignment; Subrecipient grants copyrights to PTE now, upon execution of subaward
- Shall Grant - future assignment; Subrecipient grants copyrights later
 - PTE says, “No, I need it *now*, not later! How can I ensure I can meet the requirements of the sponsor? Are you really going to issue separate licenses to me?? How do we close this loop?”
 - Subrecipient says, “I can’t grant it now, or ever. I don’t have the authority to do so. Have you ever not gotten what you needed with *Shall Grant* in the past? Separate licenses are not necessary.....or we’ll issue one if we really need to!”



Copyright – the issues

- Not all subrecipients sponsored projects offices have the signature authority to grant copyright licenses. Another entity may be the only one authorized to sign IP provisions.
 - Could be a separate legal entity – ‘shall grant’ works better in these instances.
 - Possible solution: “Subrecipient grants or will cause its designee to grant, without execution of any further document, to PTE....”
- Current language has ‘first developed’
 - ‘Developed’ – IP bleeding into all areas, very broad
 - Tech Transfer offices may be the only ones authorized to grant licenses up front
 - Possible solution – change to ‘created’ - “fixed in a tangible medium of expression” – recorded in a physical medium. Narrows the scope.



Solutions

- Update and revise the language?
 - Difficult to find one size fits all.
- Issue guidance and FAQs, and leave the language the same?
 - Leave the language alone and educate. Can PTEs work with “Shall Grant”?



Template Updates: Check In

- Invoicing, timeliness and carry over are tied
 - **Current Language:**
 - Term 2: PTE shall reimburse Subrecipient not more often than monthly for allowable costs. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), Subaward number, and certification, as required in 2 CFR 200.415 (a).
 - Term 4: All payments shall be considered provisional and are subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient. PTE reserves the right to reject an invoice, in accordance with 2 CFR 200.305.



Template Updates: Check In

- Invoicing, timeliness and carry over are tied
 - **Proposed Language:**
 - Term 2: Subrecipient shall submit invoices not more often than monthly and not less frequently than quarterly for allowable costs. Upon the receipt of timely invoices, the PTE agrees process payments in accordance with this subaward and 2 CFR 200.305. All invoices shall be submitted using Subrecipient's standard invoice, but at a minimum shall include current and cumulative costs (including cost sharing), Subaward number, and certification, as required in 2 CFR 200.415 (a).
 - Term 4: All payments shall be considered provisional and are subject to adjustment within the total estimated cost in the event such adjustment is necessary as a result of an adverse audit finding against the Subrecipient. ~~PTE reserves the right to reject an invoice, in accordance with 2 CFR 200.305.~~



Template Updates: Check In

- Late Invoices, Term 3 of Face Page
 - Issue 1: how late is too late?
 - Suggestion to add: Late final invoices may not be paid, consistent with applicable Federal Awarding Agency regulations.
 - Issue 2: annual versus project period final invoice.
 - Suggestion to clarify: “end date” by changing to drop down with options *end of the annual budget period/end of project period*
 - A final statement of cumulative costs incurred, including cost sharing, marked "FINAL" must be submitted to PTE's Contact, as shown in Attachment 3A, NOT LATER THAN 60 days after Subaward [drop down]. Late final invoices may not be paid...



Template Updates: Check In

- Should we add any detail about termination?
 - ie – should we address the provision of work completed thru termination and return of materials?
 - Would this information go into Attachment 2 or 4?
 - How frequent is this? Would an FAQ suffice?
- Potential change to the current layout of the 3A/B



Working Group Update: Foreign

- Cost Reimbursement Template has gone under a complete overhaul!
- Will mirror the domestic templates
 - Except as laid out on next two slides
- Guidance Document is being reviewed and will be updated



Working Group Update: Foreign

- **Face Page**

- Additions to the following Terms:

- Term 1: “No Authority to Bind” language added
- Term 2: Addition of Drop Down box to select interim invoice periodicity (30, 45, and 60 days)
- Term 3: Addition of Drop Down Box to select final invoice due date (30, 45, 60 days after Subaward end date)
- Term 8: Addition of Drop Down box to select the due date (30, 45, 60 days) to request a NCE
- Term 13: “Force Majeure” language added

- **Attachment 1**

- Revised the Debarment, Suspension and Other Responsibility section
- Added the following sections:
 - Foreign Corrupt Practices
 - Export Controls
 - Mexico City Policy



Working Group Update: Foreign

- **Attachment 2**
 - Added terms: Governing Language, Governing Law, Patents, Second Tier Subawards, Disputes
 - Federal Agency selection with auto-population of applicable regulations for the following Federal Agencies: NIH
- **Attachment 3B, Page 1**
 - Replaced Country by the 'Zip Code + 4' section, and removed 'Zip Code look up'
- **Attachment 5**
 - Added a selector for NIH CAP F&A at 8.00%
- **Attachment 6**
 - Updated the Invoice, and the Contributions to Project (Cost Share) templates
- **Attachment 7**
 - Added a reference to the Guidance Document on how to use this attachment



Working Group Update: Subcontract Sample

- Co-chairs are:
 - Rae Schofield (schofield@uthscsa.edu)
 - Ken Packman (kpackman@gsu.edu)
- Eleven member committee
- Conforming language to the UG
 - §200.101 provides a matrix mapping the UG to contracts
- Completed: revisions to Face Page and Attachment 1
- In Progress: Reviewing Attachment 2



Working Group Update: RAQ / CAT

- Sara Clough, UT Austin sarac@austin.utexas.edu
- Working on Financial Questionnaire for entities not subject to Single Audit with the FDP Expanded Clearinghouse, Supporting Documents Working Group
- Ties into the RAQ/CAT - simplify
- All comes full circle – how do we use existing FDP tools to conduct subrecipient risk assessments? How do we make it as simple as possible?



Fixed Price Prior Approval Working Group

- Charged with developing template language to use in proposals when making requests to use fixed-price subawards
- Particular focus is on clinical trial sub-sites
- First call on 4/20/17; 11 current members
- Email any experiences making these prior approval requests to Jennifer McCallister-
jennifer.mccallister@duke.edu
- Opportunity to talk through some of the issues



Working Group Update: Subaward Template Updates

- Co-chairs are:
 - Amanda Humphrey (amanda_humphreys@hms.harvard.edu)
 - Laura Register (lauregist@stanford.edu)
- Update review taking longer because we got a lot of thoughtful feedback



Carryover Survey

- Received 97 responses
 - Not all responded to all questions
- We will reach out to the working group to follow up on next steps and hope to have more to report in September
- Raw data will be available upon request
- Will need to go through the data, but here are some things we have seen...



Carryover Survey

- How many restricting carryover by default:
 - 18/97 restrict by default
 - 79/97 do not generally restrict (unless sponsor requires)
- How many are restricting based on risk assessment:
 - 11/96 yes
 - 62/96 sometimes
 - 16/96 no
 - 7/96 other (explanations point to PI wanting control)
- How do you restrict:
 - 14/96 issue new subs
 - 74/96 issue mods
 - 8/96 other (not specified)



Carryover Survey

- Overall, how many restricted subs issued by PTE:
 - 71/96 restrict on less than 25% of their subs
 - 7/96 restrict on 26-50% of their subs
 - 1/96 restrict on 51-75% of their subs
 - 17/96 restrict on 75% or more of their subs
- Where institutions fall on FDP involvement:
 - 4/89 not sure which choice was best
 - 13/89 advocate FDP remains neutral
 - 39/89 advocate for the FDP to strongly encourage
 - 33/89 advocate for FDP to mandate



Contact Us

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