

Assessing Risk in Federal Grants-A Legal Perspective

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For the Virginia Government Finance Officer's Association

Today's Topics

- Subrecipient/Vendor Determinations
- Time and Effort Reporting
- Federal Funding Accountability and Transparency Act of 2006

Subrecipient/Vendor Determinations

Subrecipient/Vendor Distinctions

OMB Circular A-133 “Audits of States, Local Governments and Non-Profit Organizations”

- **Subrecipient:** “a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”
- **Vendor:** “a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program.”

Sources of Law – OMB Circular A-133, §__.210

(b) **Federal award.** Characteristics indicative of a Federal award received by a **subrecipient** are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

Sources of Law – OMB Circular A-133, §__.210

(c) **Payment for goods and services.** Characteristics indicative of a payment for goods and services received by a **vendor** are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

Sources of Law – OMB Circular A-133, §__.210

(d) Use of judgment in making determination.

There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

Why Does it Matter?

- All OMB Circulars apply to “Awards” and “Subawards”
- Vendor Contracts are governed by procurement rules of Grantee

Why Does it Matter?

- Different Terms and Conditions such as:
 - Pricing
 - Grants are Cost Reimbursement Instruments
 - Contracts are up to you
 - Budgeting
 - Termination
 - Limits on Ability to Terminate Subrecipient

Why Does it Matter?

- Different Procedural Requirements
 - Free and Open Competition versus
 - Prior Federal Approval
- Collateral Rights for Subrecipients under Authorizing Legislation
 - *e.g.* Head Start, Health Centers, CSBG

Why Does it Matter?

- Different Auditing/Monitoring Responsibilities:
 - (f) **Compliance responsibility for vendors.** In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.
 - A-133 Coverage for Subrecipients

Time and Effort Reporting



2 CFR 225 (OMB Circular A-87), Att. B, Item 8(h)

Support of Salaries and Wages

1. “Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.
2. No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.”

Support of Salaries and Wages, Cont.

3. “Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.”

Support of Salaries and Wages, Cont.

4. “Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation... unless a statistical sampling system or other substitute system has been approved by the cognizant Federal agency...”

Support of Salaries and Wages, Cont.

5. "Personnel activity reports or equivalent documentation must meet the following standards:
 - a) They must reflect an after-the-fact distribution of the actual activity of each employee,
 - b) They must account for the total activity for which each employee is compensated,
 - c) They must be prepared at least monthly and must coincide with one or more pay periods, and
 - d) They must be signed by the employee."

Sample Time Distribution Report

Employee Name:

Bi-Weekly Time Sheet: May ____ to ____, 2006

Activity	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Hours	% of Time	
Project 1																	
Project 2																	
Project 3																	
Project 4																	
Vacation																	
Sick																	
Holiday																	
Other Leave																	
															Total	Total	
Total Hours																	100%

Employee Signature:

Supervisor Signature:

Date:

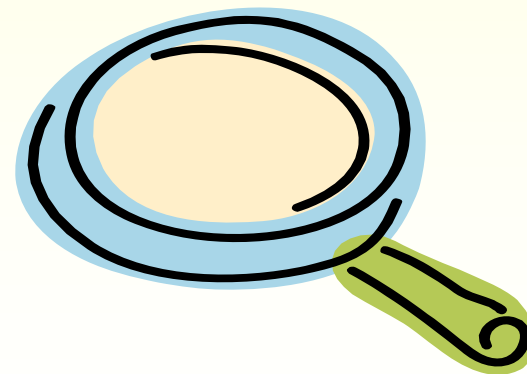
Date:

Common Timesheet Problems Leading to Disallowances

- ❑ Lack of timesheets or missing timesheets
- ❑ Mixing Percentages and hours
- ❑ Comp time/overtime
- ❑ Following the money

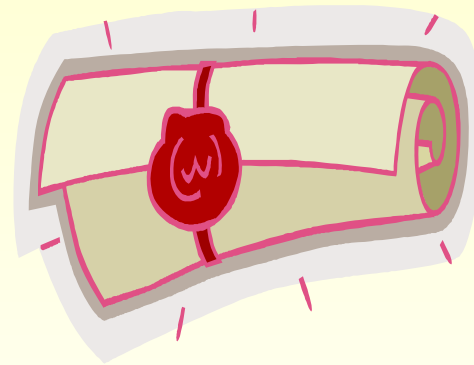


Federal Funding Accountability and Transparency Act of 2006



Federal Funding Accountability and Transparency Act of 2006

- Signed into law by President Bush on 9/26/06
 - P.L. 109-282



- To increase transparency and accountability
- Requires full disclosure of all entities and organizations receiving federal awards
 - Not required to include individual award transactions below \$25,000

P.L. 109-282

- Directs the OMB to ensure the existence and operation of a single updated searchable database website accessible by the public at no cost, that includes for each entity receiving federal funding:
 - The amount of federal funds received in each of the last 10 fiscal years;
 - An itemized breakdown of each transaction;
 - The entity's location and primary location of performance; and
 - A unique identifier for the entity and its parent entity

Deadlines

- By January 1, 2008
 - Must be operational
 - With data for FY 2007
- After October 1, 2008
 - Information about credit card transactions
- By January 1, 2009
 - Information on subgrants and subcontracts

Other Hot Topics Beyond Today's Scope

- Internal Controls
- Performance Measures
- Cost Allocation
- OIG Workplan

Questions and Answers