

Other Support, Foreign Influence, & RSS

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Agenda

1. A recent Change: Foreign Subrecipients
 - The regulation
 - How it impacts **you** and **SPA's K Team**
2. Foreign Influence
 - Background
 - The road ahead
3. Other Support
 - Who is asking for it?
 - What is it?
 - Why do we need it?
 - Who does which work and when?

NIH Updated Policy Guidance for Subaward/Consortium Written Agreements

Notice Number:
NOT-OD-23-133

Key Dates

Effective Date: _____ October 1, 2023

Release Date: _____ May 19, 2023

Related Announcements

None

Issued by
NATIONAL INSTITUTES OF HEALTH (NIH)

Purpose

This notice updates the NIH Grants Policy Statement (NIH-GPS), Section 15.2, which outlines the requirements for consortium/subaward agreements on NIH-funded grants. These updates will be incorporated into the GPS in the FY24 publication. This updated guidance is effective October 1, 2023. A Federal Register Notice announcing the updates will be posted in the coming weeks.

2 CFR 201.352(a)(3) states that subaward agreements must include: "a requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part." In response to this Office of Inspector General and Government Accountability Office audit, NIH has determined that to assure that this requirement is met, NIH finds it necessary to impose a requirement that foreign subrecipients turn over all records to the primary recipient at an agreed upon frequency (e.g., once a quarter, once a month). Therefore, section 15.2 is updated as follows (changes are **bold** and **italicized**).

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Administrative



SPA Office Hours are ending in August (last one is **tomorrow**)

Thank you to those of you who joined us!

We will be rolling out **new training sessions** and developing improved ways of communicating with campus colleagues this Fall.

Stay tuned!



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NIH Updated Policy Guidance for Subaward/Consortium Written Agreements



NOT-OD-23-133

- This notice updates ... the requirements for consortium/subaward agreements to foreign subrecipients on NIH-funded grants.
- These updates will be incorporated into the GPS in the FY24 publication.
- This updated guidance is effective **October 1, 2023**.
- A Federal Register Notice announcing the updates will be posted in the coming weeks (the comment period is now open.)

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NOT-OD-23-133



Current state: Subaward agreements must include, “a requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient’s **records** and **financial statements** as necessary for the pass-through entity to meet the requirements of this part.”

...NIH has determined that to assure that this requirement is met, NIH finds it necessary to impose a requirement that foreign subrecipients turn over **all records** to the primary recipient at an agreed upon frequency (e.g., once a quarter, once a month).



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NOT-OD-23-133: updates 1



NIH will not support any agreement that does not meet the minimum requirements outlined in the written agreement section below (15.2.1/next slides). NIH reserves the right to request copies of the **written agreement** and relevant **supporting documentation** as needed, as part of its oversight responsibilities. Failure to provide requested documentation may lead to remedies for noncompliance and potential enforcement actions.



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NOT-OD-23-133: updates 2

*NIH encourages recipients to ask potential subrecipients, **at the application stage**, to submit language in their letters of support indicating their awareness of these requirements and the subrecipient's willingness to abide by all requirements should an award be issued.*



Let's do our best to set expectations early, such as in our LOIs.

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NOT-OD-23-133: updates 3

Note that this requirement does not apply to **vendors**

Criteria	Subaward	Vendor	Consultant
Is it considered a federal award?	Yes	No- It is a payment for goods & services	No-It is a payment for a service
Performance measured against objectives of Federal Program?	Yes	No	No
Responsible for programmatic decision making?	Yes	No	No
Must adhere to applicable Federal program compliance requirements?	Yes	No	No
Subject to audit under A-133?	Yes	No	No
Mechanism	Subagreement	Purchase Order	Consulting Contract

Only for subrecipients (a collaboration between scientific co-equals with intellectual contributions coming from both parties and the expectation to publish jointly, IP rights shared, etc.

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NOT-OD-23-133: The Written Agreement



The recipient must enter into a formal written agreement, **signed, and agreed to by both parties**, with each consortium participant/**subrecipient** that addresses the negotiated arrangements for meeting the **scientific, administrative, financial, and reporting requirements of the grant**, including those necessary to ensure compliance with all applicable Federal regulations and policies and facilitate an efficient collaborative venture. **If a subrecipient is unwilling to accept the requirements outlined in this section, by signing a written agreement, then an agreement cannot be issued.**

Bold parts are new
Orange is me

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The written agreement (subaward) must include...



- Identification of the individual who will serve as the consortium lead investigator and other individuals responsible for the research activity at each consortium participant along with their roles and responsibilities.
- When multiple PD/PIs are involved at different organizations, only the Contact PD/PI is required to have the official relationship with the applicant organization. PD/PIs in the leadership team at other organizations must have a documented relationship with a consortium organization but need not be employees. Any **consortium agreement** must address the unique aspects to these individuals holding the PD/PI role including the requirement for the prime institution to secure and retain all PD/PI signatures for all applications, progress reports, and post-award **prior approval** requests. Further, such signatures must be made available to NIH or other authorized DHHS or Federal officials upon request. See [Multiple Program Director/Principal Investigator Applications and Awards](#) for additional information.
- Procedures for directing and monitoring the research effort.
- Procedures to be followed in reimbursing each consortium participant for its effort, including dollar ceiling, method and schedule of reimbursement, type of supporting documentation required, procedures for review and approval of expenditures of grant funds at each organization and timing of applicable reporting requirements. This includes provisions on access to core facilities and resources and whether access will be provided as a fee-for-service.
- If different from those of the recipient, a determination of policies to be followed in such areas as travel reimbursement and salaries and fringe benefits (the policies of the consortium participant may be used as long as they meet NIH requirements).
- Terms that establish whether the Financial Conflict of Interest policy of the prime Institution or that of the subrecipient will apply to the subrecipient's Investigators.
- If the subrecipient's Investigators must comply with the prime Institution's Financial Conflict of Interest policy, the subrecipient shall certify as part of the written agreement that its policy complies with the 2011 revised FCOI regulation (42 CFR Part 50 Subpart F). If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the Financial Conflict of Interest policy of the prime Institution for disclosing Significant Financial Interests that are directly related to the subrecipient's work for the prime Institution.
- If the subrecipient's Investigators must comply with the subrecipient's Financial Conflict of Interest policy, the written agreement shall specify time period(s) for the subrecipient to report all identified Financial Conflicts of Interest to the prime Institution. Such time period(s) shall be sufficient to enable the prime Institution to provide timely FCOI reports, as necessary, to the PHS as required by the regulation.
- Alternatively, if the subrecipient's Investigators must comply with the prime Institution's Financial Conflict of Interest policy, the written agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of Significant Financial Interests to the prime Institution. Such time period(s) shall be sufficient to enable the prime Institution to comply timely with its review, management, and reporting obligations under the 2011 revised FCOI regulation.
- A provision addressing ownership and disposition of data produced under the **consortium agreement**. This includes whether cell lines, samples or other resources will be freely available to other investigators in the scientific community or will be provided to particular investigators only.
- **For foreign subrecipients, a provision requiring the foreign subrecipient to provide copies of all lab notebooks, all data, and all documentation that supports the research outcomes as described in the progress report. These supporting materials must be provided to prime recipient with each scientific update (no less than once every three months) in line with the timelines outlined in the agreement.**
- A provision making NIH data sharing and inventions and patent policy, including a requirement to report inventions to the recipient (see [Administrative Requirements-Availability of Research Results: Publications, Intellectual Property Rights, and Sharing Research Resources](#) in IIA), applicable to each consortium participant and its employees in order to ensure that the rights of the parties to the **consortium agreement** are protected and that the recipient can fulfill its responsibilities to NIH.
- Expectations for authorship and co-authorship on publications.
- Provisions regarding property (other than intellectual property), program income, publications, reporting, and audit necessary for the recipient to fulfill its obligations to NIH.
- Provisions regarding compliance with requirements for a UEI and subrecipient reporting under FFATA (see [Recipient Reporting of Subrecipient Data and Executive Compensation Information for FFATA](#)). Note, the recipient must provide the **FAIN** to all subrecipients to aid in this requirement.
- Incorporation of applicable public policy requirements and provisions indicating the intent of each consortium participant to comply, including submission of applicable assurances and certifications (see [Public Policy Requirements, Objectives, and Other Appropriation Mandates](#) in IIA).

New part

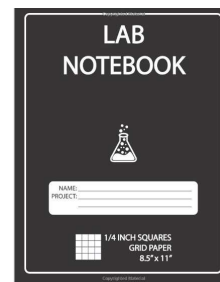
<https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-133.html>

Let's zoom in

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The written agreement (subaward) must include

*For foreign subrecipients, a provision requiring the foreign subrecipient to provide copies of all **lab notebooks**, all **data**, and all **documentation that supports the research outcomes as described in the progress report**. These supporting materials must be provided to prime recipient with each scientific update (no less than once every three months) in line with the timelines outlined in the agreement.*



<https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-133.html>

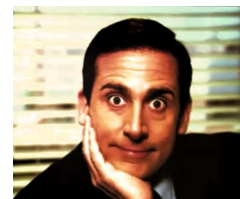
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NIH is listening and clarifying, with more to come

<https://www.niaid.nih.gov/grants-contracts/october-changes-subawards-foreign-subrecipients>

- NIH grant recipients may make subawards such that another organization performs certain grant-supported research activities as part of the federal award.
- Subawards are also called **consortium agreements**. Transactions such as normal grant purchases and fee-for-service arrangements **are not considered subawards**.
- Notably, NIAID [NIH] **does not** interact with subrecipients.
 - Grant recipients are accountable for arranging the subrecipient's research, spending, and reporting actions, which must conform to all terms and conditions of a grant award.
 - If a dispute arises between a grant recipient and a subrecipient, [NIH] is not responsible for resolving the matter.
- NIH published a corresponding notice in the **Federal Register**, which includes **a call for public feedback on the requirement** that foreign subrecipients turn over records to the grant recipient at routine intervals. You can submit a response ... the deadline is July 5, 2023, at 11:59 p.m. Eastern Time.
- We will publish additional, practical instructions in this newsletter as they become available.

They have
my attention!



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To summarize the October changes



1. Subawards must be **formalized by a written agreement** and the document must **signed by both parties**. The agreement should address negotiated arrangements for fulfilling the grant award's scientific, administrative, financial, and reporting requirements.
 - If the subrecipient is unwilling to sign such a written agreement, then the grant recipient **cannot** make the subaward.
2. For a **foreign subrecipient**, the written agreement must stipulate that the **subrecipient will provide** copies of all **lab notebooks, data, and documentation** that support the research outcomes as described in the progress report.
 - These supporting materials must be provided to the grant recipient with each scientific update (no less than once every 3 months).
3. If you arrange a subaward while preparing a grant application, **instruct the potential subrecipient to include language in the corresponding letter of support that demonstrates awareness** of all applicable grant requirements and **willingness to abide** by them should an award be made.
4. NIH reserves the right to request copies of the written agreement and relevant supporting documentation as needed, as part of its oversight responsibilities. Failure to provide requested documentation may lead to remedies for noncompliance and potential enforcement actions.

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How will this impact your applications with foreign subrecipients?



- We intend to comply.
- We will apprise our foreign collaborators of the new requirement (they know).
- We will **ask** our foreign subrecipients to include appropriate language in their LOIs.
- We will monitor www.thefdp.org for templates, suggestions, and guidance.
- We will examine institutional and SPA policy, and will communicate further, across campus.



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How did we arrive here?

There have been some interesting high-profile lapses with international subrecipients that likely contributed to the new requirements.



It's fun to guess and discuss, but what matters now is **studying** (the regs), **listening** to our colleagues (FDP and others), **watching** for further NIH guidance, and **focusing on implementation**.

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The comment period is open

FEDERAL REGISTER
The Daily Journal of the United States Government

Notice

Notice To Announce NIH Updated Policy Guidance for Subaward/Consortium Written Agreements

A Notice by the National Institutes of Health on 06/05/2023

PUBLISHED DOCUMENT

Start Printed Page 36603

AGENCY:
National Institutes of Health, HHS.

ACTION:
Request for comments.

SUMMARY:
The National Institutes of Health (NIH) is seeking public comment on updates to the NIH Grants Policy Statement (GPS), Section 15.2, which outlines the requirements for consortium/subaward agreements on NIH-funded grants.

DOCUMENT DETAILS

Printed version:
PDF

Publication Date:
06/05/2023

Agencies:
National Institutes of Health

Dates:
To ensure that your comments will be considered, please submit your response to this Request for Comments no later than July 5, 2023 to ensure consideration. The planned effective date of this guidance is October 1, 2023, and updated

Once the comment period is closed, we will be able to see other institutions' approaches and concerns related to this significant change.

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What we know we know

NIH updated Other Support Requirements Jan 25, 2022

- Formatting changes to highlight in-kind contributions
- Requirement to collect Sr/KP contracts/agreements re: foreign appointments and/or employment
- Immediate notification of undisclosed Other Support
- PI signatures on OS



Foreign Talent/Recruitment Programs: they have come, but have they gone?

Critical technology trackers paint a stark picture.

<https://www.aspi.org.au/report/critical-technology-tracker>

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Other Support Reminders

There is an NIH kiosk: <https://grants.nih.gov/grants/forms/othersupport.htm>

- It is excellent.
- Instructions
- Policy
- Templates
- Examples
- Guidance on what to report
- FAQs

NIH Form 1588 (01/2012) and NIH Form 1588-APP (12/2018) Approved Revision 02/20/2022

For New and Renewal Applications - DO NOT SUBMIT UNLESS REQUESTED
 (Also See 01/20/2022 Supplement)

Thank you for providing information for Other Support. Information on Other Support should be provided in the format shown below.

Name of Individual: Anderson, R.R.
 PI's ORCID iD: 0000-0001-9055-0000

Other Support - Project/Personnel

ACTIVITY

Title: Clinician and Scientist: Therapist in Areas of Child Care
 Major Goals: The major goals of this project are to define the biochemistry of intracellular and extracellular secreted proteins and their functions in various cellular and tissue environments.
 Status of Support: Active
 Project Number: 2 R01 HL 090002-13
 Name of PI: Anderson, R.R.
 Source of Support: NHLBI
 Primary Place of Performance: University of California, Los Angeles
 Project/Report Start and End Date: 08/01/2011 to 02/20/2022
 Total Award Amount (including indirect costs): \$4,482,232
 Award Months (Calendar Months): 12 months per year

Year (YYYY)	Award Months (MM/YY)
2011	8/01-12/31
2012	1/01-12/31
2013	1/01-12/31
2014	1/01-12/31
2015	1/01-12/31

Title: Ion Transport in Lung
 Major Goals: The major goal of this project is to study strontium and sodium transport in normal and diseased lung.
 Status of Support: Active
 Project Number: 8 R01 HL 090002-07
 Name of PI: Eskin, D.D.
 Source of Support: NHLBI
 Primary Place of Performance: University of California, Los Angeles
 Project/Report Start and End Date: 08/01/2011 to 02/20/2022

Page 1 of 1 Other Support - Project/Personnel

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Other Support Reminders: subrecipients

For New and Renewal Applications – DO NOT SUBMIT UNLESS REQUESTED
PHS 398 OTHER SUPPORT

There is no "form page" for reporting Other Support. Information on Other Support should be provided in the format shown below.

*Name of Individual:
Commons ID:

Other Support – Project/Proposal

*Title:

Major Goals: ← Entered in RSS

*Status of Support: ← Active or Pending?

Project Number: ← Code or identifier of project. NIH grant number is best. PID or N/A works. Blank is not preferred.

Name of PD/PI: ← Contact PD/PI

*Source of Support: ← Federal Agency (of FDN)

*Primary Place of Performance: ← Where the project is being conducted

Project/Proposal Start and End Date: (MM/YYYY) (if available):

* Total Award Amount (including Indirect Costs):

* Person Months (Calendar/Academic/Summer) per budget period.


Year (YYYY)	Person Months (##.##)
1. [enter year 1]	
2. [enter year 2]	
3. [enter year 3]	
4. [enter year 4]	
5. [enter year 5]	

PLEASE NOTE FOR CONSORTIUM/CONTRACTUAL ARRANGEMENTS OR MULTI-PROJECT AWARDS:
When providing Other Support under a consortium/contractual arrangement or that is part of a multi-project award: indicate the project number, Name of PD/PI, and source of Support for the overall project. Provide all other information (e.g. total award amount, person months) for the subproject only.

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We use ADIS to track proposed/committed effort on sponsored projects

ADIS



SPA's RADB

RSS

Major goals

- Other Support Pending effort/projects
- Other Support Current effort/projects

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A quick knowledge check, and discussion



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Q&A



I am the PI on a NIH grant to a domestic university. I have a visiting post-doctoral fellow in my lab, who works on my NIH grant and does all of his/her work in the United States. The fellow's salary is paid by a foreign government. Is this a foreign component?

In general, no. The first step in determining whether research constitutes a foreign component is to evaluate whether a portion of the research is being conducted outside of the United States. In this case, all of the work is being conducted in the US, so there is no foreign component.

<https://www.niaid.nih.gov/grants-contracts/fast-facts-about-foreign-components>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



I am a PI on an NIH award to a domestic university. I will have a visiting fellow joining my lab whose salary will be supported by a foreign university. Do I need NIH prior approval before the fellow can work on my NIH funded research?

Since specific circumstances may vary, it would be best to discuss with your Grants Management Officer. (They will say “yes.”)

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



If an institution identifies a resource that was not reported in Just-in-Time or at the time of the RPPR, how should the institution notify NIH?

And when?

If an organization discovers that a PI or other Senior/Key personnel on an active NIH grant failed to disclose Other Support information outside of Just-in-Time or the RPPR, as applicable, the institution must submit updated Other Support to the Grants Management Specialist named in the Notice of Award as soon as it becomes known.

<https://grants.nih.gov/grants/forms/othersupport.htm>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



Do researchers report gifts in Other Support?

No, gifts should not be reported in Other Support. Reminder, gifts are resources provided where there is no expectation of anything (e.g., time, services, specific research activities, money, etc.) in return.

<https://grants.nih.gov/grants/forms/othersupport.htm>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



Should the dollar amounts reflected on the Other Support document reflect annual total cost or annual direct cost only?

Other Support submissions should provide the total award amount, direct and indirect, for the entire project period (e.g. competitive segment for NIH grants), not just the annual budget period.

<http://grants.nih.gov/sites/default/files/nih-other-support-instructions-rev-06-28-2021.docx>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



When a researcher is including information on a subproject in Other Support, should the researcher provide the total award amount for the overall award, or only the subproject?

For subprojects, recipients should provide the project number and PD/PI name for the overall project. All other information, including total award amount and person months, for the subproject only.

<http://grants.nih.gov/sites/default/files/nih-other-support-instructions-rev-06-28-2021.docx>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



When a researcher works on a subaward to an NIH grant that is awarded to another institution, how should that information be included in Other Support?

The researcher should provide the project number, PD/PI name for the prime award. All other information, including the total award amount and person months, should be specific the subaward.

<http://grants.nih.gov/sites/default/files/nih-other-support-instructions-rev-06-28-2021.docx>

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



If a PD/PI or other senior/key personnel is mentoring post-doc or graduate students who are individually funded through an outside institution) e.g. foundation or home university), does that need to be disclosed as an in-kind resource in Other Support?

If the post-doc or graduate student is performing research activities in support of the PD/PI or other senior/key personnel's research endeavors, then their support **must be reported as an in-kind resource**. If the relationship is solely a mentor/mentee arrangement, with no research activities performed by the mentee and no associated time commitment by the mentor, then it is not a resource and does not need to be reported.

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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Q&A



What should I do if I'm not sure if something needs to be included as Other Support?

In the interest of full transparency, recipients should err on the side of disclosure. Researchers should consult with their institutional officials for guidance to ensure compliance with institutional and NIH policies. NIH requires complete and accurate reporting of all sources of research support, financial interests and affiliations, both foreign and domestic.

<https://grants.nih.gov/faqs#/search/635/subrecipient>

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External Funding Support
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 SPAdmin offers services to faculty and grant administrators to support their
 pursuit and management of external funding.
 SPAdmin is the official authorized signature authority of UNMC for
 sponsored program grants and contracts.

www.unmc.edu/spa

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