

CHAPTER 3-120 SUBGRANTS AND TRANSFERRING WORK

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3-120-00 What does this chapter do?

This chapter explains to you, the applicant or recipient, our requirements about using a subgrant or contract to transfer financial assistance or the actual performance of work under our assistance agreements to a third party. This chapter explains our policy on approving a request to subgrant or transfer work or financial assistance to third parties. It also explains the basic principles of awarding and administering subgrants. This information applies to all assistance agreements awarded by us, the Office of Surface Mining Reclamation and Enforcement (OSM).

3-120-10 Where do these rules come from?

These rules come from the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) and the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, known as the *Grants Common Rule*, at 43 CFR 12, Subpart C.

3-120-20 Must you get prior OSM approval for subgrants or transfers?

- A. Yes, you must obtain our approval before you transfer the actual performance of substantive programmatic work to a third party by a contract or other means. You must also obtain our approval before you provide financial assistance to a third party by a subgrant or other means.
- B. If you did not include the transfer in your approved application, you must request our approval through a formal amendment to the current award.
- C. Subrecipients must obtain your approval before they award any subgrants or contracts transferring work.

3-120-30 What are our requirements for approving subgrants or transfers?

- A. You must perform a substantive role in carrying out project or program activities under an assistance agreement we award to you. We may authorize you to transfer substantive programmatic work, or to award financial assistance only if you will continue to perform at least one of the following roles.
 - 1. Principal performer of project activities.

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2. Primary beneficiary of Federal financial assistance.
 3. Overall administrator of a program in which third parties perform activities or receive financial assistance.
- B. Generally, we must review the specific circumstances of each application or request involving the transfer of work or the award of financial assistance to determine whether approval would violate the rule in the previous paragraph. However, if the proposed transfer falls into one of the following classes, we may assume that approval would not violate the rule.
1. You may contract for construction services under an assistance agreement for construction. Construction includes alteration, or renovation of real property.
 2. You may subgrant or contract for projects if we awarded your assistance agreement under a statute or regulation explicitly intending that your primary responsibility is to select projects, and to award, and administer grants, contracts or cooperative agreements.
 3. You may transfer activities and funds to a collaborating or cooperating organization if we awarded your assistance agreement under a statute or regulation explicitly intending such collaboration or cooperation.
 4. You may transfer activities and funds to a college, university, hospital, or government entity if you are a closely affiliated but separately incorporated organization whose primary purpose is to receive and administer gifts, grants, cooperative agreements and contracts. An example is the transfer of funds to a state university from its affiliated research foundation.
- C. We may limit the kinds of third parties eligible to perform the work, or receive financial assistance under your assistance agreement. However, we will not choose a specific entity and directly, or indirectly require you to transfer the work, or award the assistance to that entity. You must choose your subrecipient or contractor.
- D. We will not require you to submit the contract or subgrant documents for our prior approval.

3-120-40 What must you do when you award subgrants?

- A. If you are a state, then you must follow state law and procedures when you award and administer subgrants or financial assistance to local and Indian Tribal governments.
1. You must also ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations.

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2. You must also ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation.
 3. You must also ensure that a provision for compliance with the record retention and access requirements of the *Grants Common Rule* is included in every subgrant.
 4. You must also apply substantially the same standards of timing and amount for our cash advances to you to any advances of assistance funds you make to subgrantees.
- B. All recipients other than states will follow the applicable provisions of the *Grants Common Rule* for awarding and administering subgrants, whether on a cost reimbursement or fixed amount basis.
1. You must ensure that every subgrant includes a provision for compliance with applicable provisions of the *Grants Common Rule*.
 2. You must ensure that every subgrant includes any clauses required by Federal statute, and executive orders, and their implementing regulations
 3. You must ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.