

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2022-260**


BE IT RESOLVED, upon recommendation of Judge/Executive Harry L. Berry, to approve the American Rescue Plan Act Internal Control and Subrecipient Selection Policy.

ADOPTED, by the Hardin County Fiscal Court in its regular meeting on 29 December 2022.



Harry L. Berry
Hardin County Judge/Executive

ATTEST:



Debbie Donnelly
Hardin County Clerk

American Rescue Plan Act

Internal Control and Subrecipient Selection Policy

I. Introduction

This policy is to act as a set of guidelines for the County's selection and monitoring of non-federal subrecipients of American Rescue Plan Act State and Local Fiscal Recovery Fund ("ARPA") funds. Parts 25, 170, 180, and 200 of Title 2 of the Code of Federal Regulations contain general requirements that all non-federal entities must adhere to when receiving and utilizing federal awards. A subrecipient is a non-federal entity that receives a "subaward," which is an award given by a recipient to a subrecipient in order to carry out part of a federal program.

NOTE: federal law in this context differentiates between subrecipients and contractors. A subrecipient is one who receives a subaward for the purpose of carrying out a portion of a federal award, while a contractor forms a procurement contract for the purpose of obtaining goods and services for the County's own uses. Characteristics which support classifying a non-federal entity as a subrecipient in this context include when the entity:

1. Determines who is eligible to receive Federal assistance;
2. Has its performance measured in relation to whether objectives of a Federal program were met;
3. Has responsibility for programmatic decision-making;
4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the benefit of the County.

The characteristics listed above may not be present in all cases. The County must use judgment in classifying each agreement as either a subaward or procurement contract.

The overall goals of this policy are as follows:

1. To guide the County when selecting a subrecipient to ensure the County itself is both in compliance with all relevant federal regulations, and exhibiting prudence when selecting subrecipients. The selection of a subrecipient should be the product of a thorough risk

assessment prior to the decision in granting these federal funds, so as to preserve and pursue the original intent of the funds themselves; and

2. To assist the County in overseeing its subrecipients once such subrecipients are deemed responsible and awarded part of the County's ARPA funds.

II. Treasury Guidance

The United States Treasury Department has issued guidance on how ARPA recipients should evaluate the responsibility of its potential subrecipients and manage its subrecipients' compliance with their subaward agreements. Some of their tips include:

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct/ethics for subrecipients
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Record maintenance and retention	Creation and storage of financial and non-financial records	Storage of all subrecipient payment information

Treasury's guidance on these matters has been considered in developing this policy, with procedures designed to meet the County's obligations under applicable law and the ARPA award terms and conditions on a scale in keeping with the County's resources and capacity.

III. Pre-Subaward Subrecipient Risk Assessment and Mitigation

Federal law requires the County to establish and maintain internal control over Federal awards sufficient to provide reasonable assurance that the management of such awards comply with any and all federal statutes, regulations, or terms and conditions. Regulations pertaining to management or control of federally awarded funds extends to the selection of subrecipients by the County. The County must manage and oversee subrecipients for the purpose of ensuring compliance with the terms attached to the County's ARPA funds.

Two steps are critical in evaluating subrecipient risk and responsibility prior to granting a subaward:

1. **The County must ensure all subrecipients have obtained and provided to the County a System for Award Management ("SAM") unique entity identifier, and the County must also notify all potential subrecipients of this restriction.**

Potential subrecipients are not required to complete full SAM registration in order to obtain a unique entity identifier. Subrecipient unique entity identifiers may be searched at SAM.gov.¹ The County must either independently confirm, or confirm through legal counsel, that its subrecipients possess unique entity identifiers before any subaward may be made.

2. **The County must evaluate a subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward.** In doing so, the County may consider: the subrecipient's prior experience with the same or similar subawards, the results of previous audits, whether the subrecipient has new personnel or has undergone substantial changes in systems, and the extent and results of federal awarding agency monitoring if the subrecipient also receives federal awards directly from the federal government.

Evaluating Subrecipient Responsibility

In the event a potential subrecipient meets any of the following criteria, the County shall either 1) not proceed with a subaward to that subrecipient, or 2) document the subrecipient's issues and the County's reasoning for believing the subrecipient to be nevertheless responsible and proceeding with the subaward. If the County elects to proceed with the subaward, it shall consider some of the additional conditions on the subaward suggested in Section IV(c) below.

1. Financial Stability

- (a) If a potential subrecipient has ever exhibited troubling patterns of financial instability, the County should scrutinize these patterns heavily or consider imposing additional conditions on the subaward. Financial instability red flags may manifest as:
 - (i) Records of bankruptcy proceedings;
 - (ii) Indications of high debt-to-equity ratios;
 - (iii) Years of revenue or profit-margins trending in a downward direction;
 - (iv) An inordinate balance of liabilities compared to assets; or
 - (v) Other troubling signs present on the potential subrecipient's balance sheet, income statement, or statement of cash flows or payrolls.

¹ https://sam.gov/search/?page=1&pageSize=25&sort=-modifiedDate&sfm%5BsimpleSearch%5D%5BkeywordRadio%5D=ALL&sfm%5Bstatus%5D%5Bis_active%5D=true

2. Management Systems and Standards
 - (a) The quality of the subrecipient's management systems and ability to meet management standards should be considered when selecting a subrecipient.
 - (b) This factor may also apply in evaluating members of the potential subrecipient itself. Board members, executives, officers, or other employees that have exhibited troubling patterns of conduct in either a business or financial context should be evaluated. Individuals who have had difficulty in managing funds or systems in the past may be more likely to mismanage a subaward.
3. History of Performance
 - (a) If the potential subrecipient's record in managing previously awarded federal funds or grants is suspicious, the County must document that information. Key factors to look for if a subrecipient has previously managed funds includes but is not limited to:
 - (i) Timeliness of compliance with applicable reporting requirements;
 - (ii) Adherence to any terms and conditions of previous awards or subawards; and if applicable
 - (iii) The remaining balance of previously awarded funds and the extent to which these amounts will likely be expended prior to receiving a new subaward.
4. Audit Reports and Findings
 - (a) Any audit of a potential subrecipient revealing noncompliance or mismanagement should be addressed in writing prior to awarding that subrecipient ARPA funds.
5. Making Adjustments Based on Findings
 - (a) During the course of risk assessment, factors or information may present itself that may naturally lend to additional scrutiny or assessment not mentioned here. Risk assessment of a potential subrecipient should be done consistently, but also flexibly, depending on the unique factors inherent to each subrecipient assessment.

The presence of any of these factors or warning signs does not always mean a potential subrecipient presents such a heightened degree of risk that it warrants preclusion of a subaward. These factors, along with the circumstances regarding the nature and purpose of the funds or subaward itself, should all culminate into an informed decision that is based off of all relevant facts and circumstances. There is no precise or rigid formula in selecting potential subrecipients

based off of their assessed risk. Keeping the mission or purpose of the federally awarded funds, and how this purpose relates back to assessed sources of risk, can be helpful in coming to a final determination. **However, identification of any of the foregoing concerns with a potential subrecipient shall be documented and records maintained before proceeding with a subaward.**

IV. After Choosing a Subrecipient

a. Granting the Subaward

Once a County has selected a subrecipient, the County must execute a subaward agreement with the subrecipient, setting forth the amount of the subaward, its intended ARPA-eligible use, and other terms and conditions. Subaward agreements shall be drafted and negotiated by the County's legal counsel. However, the following information shall be included in each ARPA subaward agreement by the County's legal counsel:

1. Federal award identification information:
 - (a) Subrecipient name (must match the name associated with its unique entity identifier);
 - (b) Subrecipient's unique entity identifier;
 - (c) The ARPA Federal Assistance Listing Number: ALN 21.027
 - (d) Federal Award Date of award to the County by Treasury;
 - (e) Subaward Period of Performance Start and End Date: March 3, 2021 – December 31, 2026;
 - (f) Subaward Budget Period Start Date and End Date;
 - (g) Amount of Federal Funds Obligated by this action by the County to the subrecipient;
 - (h) Total Amount of Federal Funds Obligated to the subrecipient by the County including the current financial obligation (i.e., reference to other ARPA subawards, if any);
 - (i) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (j) Name of Federal awarding agency (Treasury), the County, and contact information for the awarding official of the County; and
2. All requirements imposed by the County on the subrecipient so that the ARPA award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award;

3. Any additional requirements that the County imposes on the subrecipient in order for the County to meet its own responsibility to Treasury, including identification of any required financial and performance reports;
 4. An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the County may permit the subrecipient to use the de minimis indirect cost rate in effect at the time of the subaward.
 5. A requirement that the subrecipient permit the County and auditors to have access to the subrecipient's records and financial statements as necessary for the County to meet the requirements of this part; and
 6. Appropriate terms and conditions concerning closeout of the subaward.
- b. Subrecipient Monitoring:**

Following execution of a subaward agreement, the County must monitor each of its subrecipients to ensure they comply with the terms of their subaward agreement, which shall include an obligation for the subrecipient to comply with the ARPA terms and conditions and all laws and regulations applicable to the ARPA program, subrecipients, and federal funds generally. The County's monitoring shall include the following:

1. **Reviewing financial and performance reports required by the subaward agreement.**
 - (a) **Specifically, the County shall require its subrecipients to submit:**
 - (i) **Regular performance reports; and**
 - (ii) **Regular reports of expenditures incurred on the Project subject to the subrecipient's subaward, with appropriate supporting documentation, including but not limited to employee timesheets, payroll reports, invoices, receipts, documentation of payroll taxes and fringe benefits, contracts for goods and services, and copies of competitive quotations, bids, or proposals for all expenses charged to the subaward. Monthly expenditure reports or invoicing are preferred.**
2. Obligating non-federal subrecipients who spend more than \$750,000 in federal funds in a single year to secure individual single audits as required by 2 CFR 200.322.
3. Follow-ups ensuring that the subrecipient takes timely and appropriate action on any and all deficiencies related to the ARPA subaward detected via audits, on-site reviews, or written confirmation of deficiencies from the subrecipient. The subrecipient should highlight the status of actions planned or taken to address audit findings related to the particular subaward.

4. Issuing management decisions for audit findings that relate to Federal awards given from the County to the subrecipient.
5. Resolving audit findings specifically related to the subaward. The County may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up, but such reliance does not eliminate the responsibility of the County to manage risk through ongoing subaward monitoring.

Depending on the level of risk assessed of a subrecipient, the County may add further monitoring procedures such as providing training and technical assistance on program-related matters, on-site reviews of program operations, and arranging for agreed-upon-procedures engagements via the subaward agreement.

c. Actions for Subrecipient Noncompliance

In the event a subrecipient is found to be of significant risk of noncompliance with the U.S. Constitution, Federal statute or regulation, or the terms and conditions of a federal award, Treasury or the County may impose additional conditions on the subaward. Common situations that may elicit a need for additional conditions include history of noncompliance with previous subawards, the subrecipients ability or history of meeting the performance goals of federally awarded funds, or the presence of factors that indicate the overall responsibility expected of the subrecipient is unfeasible.

In the event additional conditions attached to a subaward are needed, the County may consider utilizing some or all of the following conditions if feasible:

1. Requiring payments as reimbursements rather than advance payments;
2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance with a given performance period;
3. Requiring additional, more detailed financial reports;
4. Requiring additional project monitoring;
5. Requiring the non-federal entity to obtain technical or management assistance; or
6. Establishing additional prior approvals.

In the event the County wishes to impose any of these additional requirements, it must notify the potential subrecipient as to:

1. The nature of the additional requirements;
2. The reason why the additional requirements are being imposed;
3. The nature of the action needed to remove the additional requirement, if applicable;

4. The time allowed for completing the actions if applicable; and
5. The method for requesting reconsideration of the additional requirements imposed.

In the event the noncomplying subrecipient has remedied any deficiencies that initially prompted the imposition of additional requirements, these additional requirements must be promptly removed.

If the imposition of additional requirements attached to a subaward does not render a subrecipient compliant, or is not likely to render compliance, the County may take necessary steps to remedy any defects causing the issue. The pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withholding cash payments pending the correction of the deficiency by the subrecipient or more severe enforcement action by the County.
2. Disallow all or part of the cost of the activity or action not in compliance, including the denial of both the use of funds and any applicable matching credit.
3. Wholly or partly suspend or terminate the subaward.
4. Recommendation to the Treasury to initiate suspension or debarment proceedings.
5. Withhold further federal awards for the project or program.
6. Pursue any other remedies that are legally available.

Properly assessing risk, and then dispensing with potential subrecipients that pose too high a risk of noncompliance at the outset is ideal, but in the event a subrecipient that appeared low-risk ends up being noncompliant, these strategies may be invoked.

c. Record Keeping

Lastly, federal regulation requires the County to maintain financial records, supporting documents, statistical records, and all other records pertinent to a federal award, which includes financial records, reports, and other documents provided to the County by its subrecipients. **These documents *must* be retained for a period of three years from the date of submission of the final ARPA expenditure report to Treasury.**