**Setting Up Partnerships Office Hour**

Moderator: Welcome to this Early Head Start-Child Care Partnership Office Hour. Be sure to download all handouts, videos, and slides prior to viewing the Office Hour. During the presentation, you may be asked to pause the Office Hour and complete an activity, such as viewing a video, reviewing a handout, or reading a resource. Once you complete the action, return to the Office Hour and continue viewing. Now, let's get started with this Office Hour.

Eileen Caruso: Hello and welcome to the "Early Head Start-Child Care Partnership Post-Orientation Office Hour on Contractor or Subrecipient Relationships and Partnership Agreements." My name is Eileen Caruso, and I'm the Fiscal Coordinator with the National Center on Program Management and Fiscal Operations, known to many of you as PMFO.

During this session, we'll review some key concepts introduced during the Early Head Start- Child Care Partnership orientation session on fiscal planning for effective partnerships; we'll be exploring the differences between a contractor and a subrecipient; reviewing how to use the tool, Subrecipient or Contractor Determination; we'll highlight the basic legal requirements to include in an agreement; and we'll identify some planning pointers for developing your partnership agreement. So, let's go ahead and get started.

You may be wondering, how do I determine what relationship I want with my partner, or more importantly, what are the different types of relationships available to consider? The relationship you have with your partner will be identified as either a contractor or a subrecipient. We'll review those definitions in a moment.

As a first step, you will need to assess two very important things: the partner's ability to provide comprehensive services, and their fiscal management capacity. In order for a partner to be considered a subrecipient, they must have a high capacity in both of these areas. Be aware that the more program and fiscal responsibilities that move to the partner, the more they begin to look like a subrecipient. Oversight of your partners depends on how the relationship is defined, whether they're considered a contractor or a subrecipient.

A subrecipient provides a large portion of program and fiscal responsibilities delegated by the grantee. A subrecipient is required to comply with all fiscal regulations as if they were a grantee. A contractor provides discrete service to the grantee, and those terms are outlined in the agreement. The responsibility lies on you as the grantee to ensure that you get what you pay for, whether that's hours of care, staff development, classroom ratios.

A contractor is not subject to all federal regulations. These two types of relationships are defined by the Uniform Guidance Part 200 and the Health and Human Services Implementing Regulations Part 75. A subrecipient is defined within these regulations as a non-federal entity that receives a sub-award from a pass-through entity to carry out part of a federal program.

The Head Start and Early Head Start community most commonly associates this relationship to delegate agencies because delegates are subrecipients. Subrecipients in the case of the Early Head Start-Child Care Partnership do not necessarily mean that the partner is a delegate agency. But as we just stated, the agency does assume many of the responsibilities the grantee has in adhering to federal laws and guidelines.

The definition of a contractor is an entity that receives a contract. And the definition of a contract is a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. In most cases, the contractor is responsible for a specific service — for instance, comprehensive services, child care services, or space and facilities. The agreement would map out specifically what the partner is responsible for and determine a fee for those services.

It's important to remember that while you may identify one of these types of relationships within the partnership agreement, the agreement will be assessed based upon the actual terms of the agreement and how it functions in practice. Health and Human Services Implementing Regulation 75.351(c) clearly states that the substance of the relationship is more important than the form of the agreement. So, what does this mean exactly? Basically, it's not enough to say that your partner is a contractor; the processes and expectations that define the day-to-day relationship between you and your partner will be what will ultimately define the relationship.

Misclassifying the relationship can impact your program in many ways. For example, expenses may be determined to be unallowable and therefore potentially lead to a disallowance. In order to help you to determine the classification of the relationship you envision with your partner, the Office of Head Start, along with PMFO, have developed a tool to help make this determination. This analysis tool is designed to ask a series of questions that, depending on your answer, will provide insight on what your partner is more likely to be defined as. The total number of answers you have in each section will help you to determine whether a partner should appropriately be classified as a contractor or subrecipient.

As with any agreement or partnership, it's important for you to seek legal advice or guidance Even after reviewing the regulations, using the determination tool, and using your best judgment to classify your partner, your attorney's advice is critical. They can help to clarify areas in the agreement that may be unclear or avoid stipulations in the contract that imply a relationship that's different than the one you may have intended. You can find the determination tool in the document tab to the right.

Once you've classified the relationship, it's important to understand the various regulations that will guide your relationship. Here you'll see that each classification, contractor and subrecipient, have regulations that should be understood and reflected in the processes considered for your agreement. For example, if you establish a contractor relationship, you will need to ensure that the cost or price you are paying for the services is reasonable. In the event that the agreement is in excess of $150,000, you'll need to be sure that you have performed a price analysis. If you've established a subrecipient relationship, then you'll need to be sure that you are following the monitoring and management requirements that's outlined in Regulation 75.351 to 353. All of these regulations are found in the Health and Human Services Implementing Regulations Part 75.

Let's quickly touch on the agreement itself. Here are basic legal requirements that all agreements should be comprised of: an offer of something, be it a service, an item; an acceptance: the other party agreeing to accept the service, item, whatever it is that you're offering; and then there's an exchange of consideration; this is the benefit that each party gets or expects to get from the agreement.

So, for example, your partner provides Early Head Start services in exchange for compensation. The basic elements of your agreement should include: the identification of each party, so the legal name that they are performing business under; a statement of the length of the agreement: Is this agreement for one year, five years; the performance required of each party: what do you expect from each other in order to achieve the program goals; and finally, remedies in the event of a default: It's essential that you articulate how the agreement will be dissolved should the relationship not work out. Again, we cannot stress enough how important it is to have legal counsel in either reviewing and/or developing the agreement.

Now that we've talked more generally about agreements, let's review key components of your Early Head Start-Child Care Partnership agreement. Who is the partner in this agreement? Be sure to use the full legal name of both parties involved. Also be sure to identify the legal status of both parties. The legal status is the entity type. So, for example, a 501(c)(3), or a sole proprietor, or a limited liability corporation, LLC: Why are we forming this agreement? Be sure to include a statement of purpose at the beginning of the agreement. This should be written in plain language, not legalese. This statement should provide context for the agreement and assist the reader in interpreting the purpose of the agreement. How long will this agreement continue?

You can consider an initial term for the agreement. You may want to align it with the program year or the fiscal year, and then add renewal options. Think through the implications of establishing a multiyear agreement with your partner. You should consider the benefits of shorter time periods with options for renewal. What are the performance expectations and limitations of each partner? What are the rights and responsibilities of both you as an awardee, as well as the partner? And be explicit. Don't leave room for interpretation.

It's better to work through the tough conversations now at the beginning of the relationship, rather than down the road in the event that a conflict should arise. And what information must be maintained by each party? What should be communicated between the parties? And what rights of access to property, records, and information do you each have, and for how long? And again, be explicit. How often are reports due, in what format? What information is to be included? You and your partner can make adjustments to these details if you find that your original thoughts are not accurate. But you should take the time to think through the day-to-day relationship and the grant needs, and articulate them to the best degree possible in the agreement. These pieces can be written as your operating plan and included as an attachment to the more legal elements of the agreement.

Again, talk with your attorney to ensure that you cite attachments appropriately. And as we mentioned earlier, you'll want to ensure that you include language for termination for cause or convenience in the agreement. You'll want to be specific about the conditions that could lead to termination, as well as the expectations of each party should the agreement need to be terminated: Records, information sharing, services being provided; what are alternative plans for services; what are the timelines? There are other standard miscellaneous clauses that your legal counsel can help to ensure that are included in the agreement.

And finally, it seems like an obvious step, however, be sure that each party has signed the agreement and has copies for their records. This small step can oftentimes be overlooked and only assumed to be complete. As you can see from our discussion today, advanced planning of your partnership is a critical component to success. By taking the time at the beginning to properly identify the relationship you have with your partner, you can help to avoid complications or the possible need for corrective actions in the future. Don't forget to articulate your relationship and operating plan clearly in your partnership agreement. Again, being explicit about the expectations that both you and your partner have will help to set you up for success in the future. Thanks for listening.

Moderator: Thank you for participating in this Office Hour. Be sure to post your questions and comments in the chat room to the right to connect with your colleagues, as well as the content area experts.