

The Super-Circular is coming... aka OMB Circular A-81



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What is the Super or Omni Circular?

- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) were released on December 26, 2013.
- The Uniform Guidance streamlines and supersedes guidance that was previously contained in eight different OMB Circulars.
- Federal funding agencies are required to implement the Uniform Guidance.
- Included in the new guidance are definitions, uniform administrative requirements (both pre- and post-award), cost principles, and audit requirements.

Uniform Guidance (2 CFR 200)

- The Uniform Guidance administrative requirements and cost principles will apply to new and incremental funding awarded after December 26, 2014.
- Existing Federal awards will continue to be governed by the terms and conditions under which they were awarded.
- Subpart F, Audit Requirements, will apply to audits of non-Federal entity fiscal years beginning on or after December 26, 2014 (or the first fiscal year that begins after December 26, 2014).
- From the university perspective, the Uniform Guidance will supersede OMB Circulars A-110, A-21, and A-133.

So what exactly is being replaced?

- OMB Circular A-133 (Audits)
- OMB Circular A-110 (Administrative Requirements for Higher Ed, Hospitals and Non-Profits)
- OMB Circular A-21 (University cost principles)
- OMB Circular A-87 (State, Local and Indian Tribal Gov. cost principles)
- OMB Circular A-122 (Not for profit cost principles)
- OMB Circular A-89 (Catalog of Federal Domestic Assistance CFDA)
- OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Government)
- OMB Circular A-50 (Audit follow up)

How is the new Circular organized?

- The new Circular can be accessed in its entirety in the Federal Register at 2 CFR 200 or <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>
 - Subpart A – Acronyms and Definitions
 - Subpart B – General Provisions
 - Subpart C – Pre-Award Requirements and Contents of Federal Awards
 - Subpart D – Post Federal Award Requirements
 - Subpart E – The Cost Principles
 - Subpart F – Audit Requirements
 - Appendix

What is the basis for the new provisions?

Subpart A – Acronyms and Definitions pulls from A-110, A-21 and A-133

Subpart B – General Provisions; A-110, A-21 and A-133

Subpart C – Pre-Award Requirements and Contents of Federal Awards;
A-110

Subpart D – Post Federal Award Requirements; A-110 and A-133

Subpart E – The Cost Principles; A-21

Subpart F – Audit Requirements, A-133

Appendix; A-110, A-21 and A-133

So it isn't all new and as was the case under the old Circulars.....

- The Uniform Guidance tells us the maximum requirements that the Federal funding agencies can impose
- And the minimum standards that Grantee organizations must adhere to

Who will be subject to the Uniform Guidance?

- The Uniform Guidance is applicable under awards made directly to an entity as well as pass through entities that are;
 - Institutions of Higher Education
 - Nonprofit Research Institutions
 - Other non-federal entities including States, Local and Tribal governments and nonprofit organizations

Note: Per the preamble to the Uniform Guidance, the hospital cost principles may eventually be incorporated in DHHS regulations.

Exceptions 200.102

- No exceptions can be granted from the Audit Requirements.
- Only OMB can allow exceptions for classes of awards or non-Federal entities
- In the interest of maximum uniformity, OMB will permit exceptions only in unusual circumstances
- Exceptions on a case-by-case basis may be authorized by the awarding Federal agencies only when approved by OMB
- Federal awarding agencies may apply more restrictive requirements when approved by OMB, required by statute, or when those requirements are codified in the Code of Federal Regulations

Definitions

- The definitions now encompass all requirements (administrative, cost principles and audit) and all types of Grantees
- Some definitions of note:
 - 200.12 Capital assets now includes software
 - 200.20 Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information

Definitions, continued

- 200.22 Contract means 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 unless the transaction meets the definition of a subaward.
 - Focus on the nature of the relationship not what the agreement is called.
- 200.23 Contractor means an entity that receives a contract as defined in 200.22 Contract *New terminology replacing “vendor”*
- 200.48 General Purpose Equipment now includes information technology equipment and systems
- 200.58 Information Technology Systems includes computing devices and software

Definitions, continued

- 200.67 Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The micro-purchase threshold is currently set at \$3,000
- 200.68 Modified Total Direct Cost means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract. MTDC excludes equipment, capital expenditures, charges for patient care, **rental costs**, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward and subcontract in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Definitions, continued

- 200.75 Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects. *May require new attributes in our accounting system* Exclusion
- 200.80 Program Income – the definition now includes license fees and royalties on patents and copyrights
- 200.94 Supplies means all tangible personal property other than those described in 200.33 Equipment. **A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.**

Conflict of Interest

- **200.112 Conflict of interest** - The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any ***potential*** conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.
- **200.113 Mandatory disclosures** - The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment.

Notices of Funding Opportunities

200.203 Notices of Funding Opportunities

- For competitive grants and cooperative agreements, Federal awarding agencies must announce specific funding opportunities by posting a public notice on the OMB-designated government-wide Web site
- Specifies a set of six data elements that must be included in the public notice
- Establishes minimum timeframes Federal awarding agencies must generally make all funding opportunities available for at least 60 calendar days.....no funding opportunity should be available for less than 30 days

Federal Agency Merit Review

200.204, Federal awarding agency review of merit of proposals

- New Requirement
- For competitive grants or cooperative agreements, Federal awarding agencies must design and execute a merit review process for applications
- Process must be described (or incorporated by reference) in funding opportunity

Federal Agency Review of Risk

200.205, Federal awarding agency review of risk posed by applicants:

- In addition to use of the OMB-designated repositories of government-wide eligibility information, Federal awarding agencies must have a framework for evaluating the risks posed by applicants prior to receipt of a federal award
- Items that **MIGHT BE** considered by Federal awarding agencies include:
 - Financial stability
 - Quality of management systems
 - History of performance
 - Reports and findings from audits performed under Subpart F
 - Applicant's ability to effectively implement statutory, regulatory or other requirements

Federal Agency Review of Risk (Cont'd)

- Special conditions that correspond to the degree of risk may be applied, if appropriate (See 200.207, Special Conditions)
- Federal awarding agencies must continue to comply with the guidelines on government-wide suspension and debarment and must require non-federal entities to comply with these provisions

Information Contained in a Federal Award

200.210, Information contained in a Federal award

- Provides a standard set of 15 data elements which must be provided in all Federal awards either in full text or by reference
- Provides guidance on Federal Awarding Agency, Program, or Award Specific Terms and Conditions
- Requires Federal awarding agencies to include an indication of the timing and scope of expected performance as related to the outcomes intended to be achieved
 - In some instances, (e.g., discretionary research awards) this may be limited to submission of technical performance reports

NOTE: It is not clear what this means in regard to the current Research Terms and Conditions. Will they be modified?

Performance Management

200.301, Performance Management

- Provides more robust guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices.
- Federal awarding agencies must require recipients to use OMB-approved standard government-wide information collections to provide financial and performance information.
- **Recipients must be required to relate financial data to performance accomplishments, and must also provide cost information to demonstrate cost effective practices.**

Fixed Price Subawards

200.201 Use of grant agreements (including fixed amount awards), Cooperative Agreements and Contracts:

- Incorporates new coverage on fixed amount awards which are allowed if not exceeding the Simplified Acquisition Threshold of \$150,000:
 - Payments are based on meeting specific requirements of the Federal Award
 - Accountability is based on performance and results
 - Award amount is negotiated using cost principles as a guide
 - No governmental review of the actual costs incurred
 - Significant changes (i.e., principal investigator, project partner or scope) must receive prior awarding agency written approval

Internal Controls

200.303, Internal Controls Non-Federal entities must -

- Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. **These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).**
- Comply with Federal statutes, regulations, & terms and conditions
- Evaluate and monitor compliance
- Take prompt action on audit findings
- Safeguard protected personally identifiable information

Cost Sharing

200.306 Cost sharing or matching - Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity.

- Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs.

(Reinforcing and clarifying)

Revision of Budget and Program Plans

200.308 Revision of budget and program plans –

- Prior approval is needed for transfers from participant support costs line item
- Restriction on re-budgeting of training costs has been removed
- New language added to better reflect that project directors can be away from campus and remain engaged in the project at the proposed and awarded levels. Prior approval is only required in the event that disengagement from the project occurs during the absence.
 - “The **disengagement** from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator”

Equipment

200.313 Equipment –

Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, **percentage of Federal participation in the project costs for the Federal award under which the property was acquired**, the location, **use** and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

Supplies

200.314 Supplies –

Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, **the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share.** The amount of compensation must be computed in the same manner as for equipment.

Procurement – Standards of Conduct

200.318 General procurement standards

- 200.318(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts
- 200.318(c)(2) new provision that covers organizational conflict of interest
 - If the non-Federal entity has a parent, affiliate, or subsidiary organization (that is not a state, local government, or Indian tribe), the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest

Procurement

200.320 Methods of procurement to be followed –

- Includes a prescriptive list of 5 procurement methods
- Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
 - New category of micro-purchase which appears to allow purchases of up to \$3000 without competition
 - Implication is that purchases over \$3000 would have to be competitive in some way – what about P Card and bid thresholds?

Methods of Procurement

200.320 Methods of Procurement

Noncompetitive proposals – revised to clarify that solicitation of a proposal from only one source may be used only when one or more of the following apply:

- The item is available only from a single source
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- The Federal awarding agency (or pass-through entity) expressly authorizes this method in response to a written request from the non-Federal entity
- After solicitation of a number of sources, competition is determined inadequate

Subrecipient Monitoring and Management

- Section 200.330 explains the roles of subrecipients and contractors so that the non-Federal entity can determine the relationship and the applicable requirements
- A non-Federal entity provides a subaward to a subrecipient for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship between the non-Federal entity and the subrecipient
- A non-Federal entity provides a contract to a contractor for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship between the non-Federal entity and the contractor
- What the document is called does not matter; the relationship is the basis for determining which requirements are applicable

Subrecipient Monitoring and Management, (Cont'd)

200.331, Requirements for pass-through entities, includes audit responsibilities that were in A-133

- The pass-through entity must:
 - Put specific information in the subaward, including indirect cost rate
 - Do a risk assessment to determine appropriate subrecipient monitoring AND must monitor subrecipients
 - Consider if specific subaward conditions are needed
 - Verify subrecipients have audits in accordance with Subpart F
 - Make any necessary adjustment to the pass-through entity's records based on reviews and audits of subrecipients
 - Consider actions to address subrecipient noncompliance

Subrecipient Monitoring and Management, (Cont'd)

- Following information must be identified to subrecipient at time of award and put in the subaward (and when changes are made to the subaward) (200.331(a)):
 - Federal award identification, e.g., DUNS number
 - Indirect cost rate for the Federal Award (including if the de minimus rate is charge per 200.414 Indirect (F&A) costs) Requirements imposed by the pass-through entity
 - Requirement to provide access to records for audit

Required Subrecipients Monitoring Procedures

- When monitoring of subrecipients, the pass-through entity must (200.331(d)):
 - Review reports required by the pass-through entity
 - Follow-up to ensure subrecipient takes appropriate action on all deficiencies pertaining to the subaward from the pass-through entity identified through audits, on-site reviews, and other means
 - Issue a management decision for audit findings pertaining to subawards made by the pass-through entity

Cost Principles

- Indirect Cost Rates
- Compensation – Personal Services (time & attendance)
- Family Friendly Policies
- Support for Shared Services
 - Important clarification noted in 200.400:
 - For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees contributing to the completion of Federal awards for research must be recognized in the application of these principles.

Cost Principles (Cont'd)

- 200.413 – Direct Costs -

Removal of the “major project” requirement and recognition of administrative workload

- 200.414 - Indirect (F&A) Costs

A 10% de minimis IDC rate available is now available under 200.414 (f) – It says, “ any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200 . . . may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. Importantly, if chosen, the non-Federal entity must use the 10% rate on all federal awards until the entity negotiates an approved rate with their cognizant agency.

Cost Principles (Cont'd)

- 200.440 – **Exchange Rates (new)**
Allows for cost increases from fluctuations in exchange rates with certain conditions being met and of course, the availability of funds.
- 200.453 – **Materials and Supplies Costs, Including Costs of Computing Devices**
 - Paragraph (c) May be charged direct
 - Definition of Computing Devices 200.20
 - Definition of Supplies 200.94
- 200.461 – **Publication and Printing Costs**
 - Paragraph (c) resolves a long-standing issue with charges necessary to publish research results, which typically occur after expiration, but are otherwise allowable costs of an award. “The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.”

Hooray!!

- Subpart E – Cost Principles 200.453 states that charging computing devices (laptop and desktop computers and associated supplies) as direct costs **is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a federal award.**
- Computing devices, defined as supplies when the cost is the lesser of the entity's capitalization level of \$5000, are subject to the less burdensome administrative requirements of supplies (as opposed to equipment) if the acquisition cost is less than the capitalization threshold.
- 200.470 Taxes (including Value Added Tax)

Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards.

Where can you find more information?

- OSR will be offering a four hour cross walk workshop later this fall.
- The Chief Financial Officers Council (COFAR) is an excellent resource for current information on the Uniform Guidance. Cfo.gov/cofar/

