The Ins and Outs of the OMB Super Circular
Part I

Strategic Issues Facing CAAs Webinar Series
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Agenda

• Introduction to the Super Circular
• A Few Definitions
• General Provisions
• Pre-Award Requirements
• Post-Award Requirements
Introduction to the Super Circular

What Is the Super Circular?

- Office of Management and Budget uniform guidance that supersedes
  - Grant administrative circulars A-110 and A-102
  - Cost principle circulars A-122, A-87, A-21
  - Audit circulars A-133 and A-50
  - Circular A-89 (catalogue of federal financial assistance)
- Codified at 2 C.F.R. Part 200
- Each federal agency will adopt by regulation
What Was the Process?

- Feb. 28, 2012 Advance Notice of Proposed Guidance
- Feb. 1, 2013 Notice of Proposed Guidance
- Comment period
- Final guidance issued Dec. 26, 2013

When Will It Go into Effect?

- Federal agencies have 6 months from Dec. 26, 2013 to release regulations based on 2 C.F.R. Part 200
- Federal agencies must implement Super Circular by promulgating regs to be effective by **Dec. 26, 2014**
- Super Circular will apply to new awards and additional funding to existing awards made after Dec. 26, 2014
- Audit requirements will apply to audits of fiscal years that start on or after Dec. 26, 2014
- OMB plans to publish the 2014 Single Audit Compliance supplement in April 2014
Subpart A - Definitions

200.69 Non-Federal Entity

• A state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient
200.74 Pass-through Entity

- A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program

200.86 Recipient

- A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program
- The term recipient does not include subrecipients
200.93 Subrecipient

- A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program
- A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency
- Does not include an individual who is a beneficiary of a federal program

200.35 Fixed amount awards

- A grant award where funding source provides a specific level of support without regard to actual costs incurred. This is a performance and results-oriented grant.
- Rules concerning fixed amount awards are in § 200.201 and § 200.332
The Word “Should”

- Not in the definitions
- “Should” in the in regulations indicates a best practice suggestion
- The FAQ released by Council on Federal Assistance Reform (COFAR) on Feb. 12, 2014 explain that the word “should”, which is used throughout the regulations, does not signify “must.” Grantees are not necessarily required to comply with these recommendations.

Subpart B - General Provisions
200.100 Purpose

- Federal awarding agencies must not impose additional or inconsistent requirements
  - Except as provided in 200.102 (Exceptions) and 200.210 (Information contained in a federal award) or unless specifically required by a federal statute, regulation or Executive Order

200.101 Applicability

- Super Circular requirements apply to federal agencies that make federal awards to non-federal entities
- Terms and conditions of federal awards (including Super Circular) flow down to subawards to subrecipients unless a particular section of the Super Circular or the terms and conditions of the federal award specifically indicate otherwise
  - Nonfederal entities must comply with Super Circular regardless of whether they are recipients or subrecipients
200.101 Applicability (cont.)

• Pass-through entities must comply with:
  – § 200.330 – Subrecipient and contractor determinations
  – § 200.331 – Requirements for pass-through entities
  – § 200.332 – Fixed amount subawards

• But they are not required to comply with any requirements in Super Circular directed towards federal awarding agencies unless Super Circular or terms and conditions of federal award require otherwise

200.101 Applicability (cont.)

• These provisions
  – § 200.202 – Requirement to provide public notice of federal financial assistance programs
  – § 200.330 – Subrecipient and contractor determinations
  – § 200.331 – Requirements for pass-through entities
  – § 200.332 – Fixed amount subawards

are the only Super Circular provisions that apply to the following programs:
200.101 Applicability (cont.)

- Block grants authorized under Omnibus Reconciliation Act of 1981, including:
  - CSBG
  - LIHEAP
  - Social Services
  - Preventive Health and Health Services
  - Alcohol, Drug Abuse, and Mental Health Services
  - Maternal and Child Health Services
  - States’ program of CDBG awards for small cities
  - Elementary and Secondary Education
  - Alcohol and Drug Abuse Treatment and Rehabilitation
  - Mental Health Service for the Homeless

200.101 Applicability (cont.)

- Federal awards authorized under the Child Care and Development Block Grant Act of 1990
  - Child Care and Development Block Grant
  - Child Care Mandatory and Matching Funds of the Child Care and Development Fund
200.101 Applicability (cont.)

• Only § 200.202 (Requirement to provide public notice of federal financial assistance programs) applies to:
  – Entitlement programs, such as:
    • Medicaid
    • TANF
    • Child and Adult Care Food Program
    • Summer Food Service Program for Children
    • Commodity Assistance
  – Non-discretionary federal awards under the following programs:
    • Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
    • The Emergency Food Assistant Programs
    • Commodity Supplemental Food Program

200.102 Exceptions

• Except for Subpart F – Audit Requirements, OMB may grant exceptions for classes of federal awards or non-federal entities subject to the requirements of the Super Circular, when not prohibited by statute, but will do so only in unusual circumstances
• Federal awarding agency or cognizant agency for indirect costs may authorize exceptions on a case-by-case basis except where otherwise required by law or where OMB or other approval required
200.102 Exceptions (cont.)

- Federal awarding agency may apply more restrictive requirements to a class of federal awards or non-federal entities when approved by OMB, required by federal statutes or regulations except for requirements of Subpart F – Audit Requirements
- Federal awarding agency may apply less restrictive requirements when making fixed amount awards except for requirements imposed by statute or in Subpart F – Audit Requirements

200.102 Exceptions (cont.)

- OMB will approve new strategies for federal awards on a case-by-case basis when proposed by the federal awarding agency in accordance with OMB guidance to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across federal programs
200.105 Effect on Other Issuances

• All federal agency administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of the Super Circular will be superseded upon implementation of Super Circular by the federal agency
  – Except as required by statute or authorized as an exception by OMB

200.108 Inquiries

• Federal agencies are to direct inquiries to OMB
• Non-federal entities are to direct inquiries to their federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate
200.109 Review Date

- OMB will review the Super Circular at least every 5 years after Dec. 26, 2013

200.212 Conflicts of Interest

- The funding source must establish conflict of interest policies for federal awards
- Grantees must disclose any potential conflicts in writing to the federal awarding agency or pass-through entity (e.g., state) in accordance with federal awarding agency policy
200.113 Mandatory Disclosures

• Non-federal entity or applicant for 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

Subpart C - Pre-Award Requirements
200.203 Notice of Funding Opportunities

• Requires standard format for funding announcements
• Requires funding source specify criteria and process to be used in evaluating applications
• Funding opportunities must generally be open for at least 60 days, and never less than 30 days

200.204 & 200.205
Review of Merit and Risk

• For competitive awards, federal awarding agency must use review applications based on merit
• Federal awarding agency must also review risks associated with a potential award
  – Must review info available through OMB-designated repositories of governmentwide eligibility information (e.g., Federal Awardee Performance and Integrity Information System, Dun and Bradstreet, and “Do Not Pay”)
200.207 Specific Conditions

• Federal awarding agency or pass-through entity may impose specific conditions based on federal awarding agency review of risk posed by applicants, when an applicant or recipient has a history of failure to comply with terms and conditions of federal award, or failure to meet expected performance goals, or is not otherwise responsible

• Section provides non-exhaustive list of examples of specific conditions (e.g., requiring reimbursements rather than advances, more detailed financial reports, or T&TA)

200.207 Specific Conditions (cont.)

• Federal awarding agency or pass-through entity must notify applicant or non-federal entity:
  – Nature of additional requirements
  – Reason why they are being imposed
  – Action needed to remove them, if applicable
  – Time allowed for completing those actions
  – Method for requesting reconsideration of additional requirements

• Any special conditions must be promptly removed once the conditions that prompted them have been corrected
200.208 Certifications and Representations

- Generally certifications and representations are to be submitted on an annual basis, however submission may be required more frequently if the non-federal entity fails to meet an award requirement.

200.211 Public Access to Federal Award Info

- All applicable federal awards must be announced publicly and published on a publicly available designated government website.
- As of now this information will be on www.usaspending.gov.
Subpart D - Post-Award Requirements

200.301 Performance Measurement

• When applicable, recipients must provide cost information to demonstrate cost effective practices (e.g., through unit cost data)
• Recipients’ performance should be measured 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
200.302 Financial Management

- Emphasizes that state and other non-federal entities’ financial management systems, including records documenting compliance with federal statutes, regulations and award terms and conditions, must be sufficient to permit the preparation of required reports and tracing of funds to a level of expenditures adequate to establish that funds have been used according to federal statutes, regs and award terms and conditions.

200.302 Financial Management (cont.)

- Among other things, non-federal entity’s financial management system must provide for identification, in its accounts, of all federal awards received and expended and the federal programs under which they were received:
  - Federal program and federal award identification must include, as applicable, CFDA title and number, federal award ID number and year, name of the federal agency, and name of the pass-through entity, if any.
200.303 Internal Controls

- Non-federal entities must:
  - Establish and maintain effective internal control that provides reasonable assurance that they are managing federal award in compliance with federal statutes, regs and award terms and conditions
    - Internal controls should comply with "Standards for Internal Control in the Federal Government" (U.S. Comptroller General) and "Internal Control Integrated Framework" (Committee of Sponsoring Organizations of the Treadway Commission, or COSO)
  - Comply with and evaluate and monitor their compliance with federal statutes, regs and award terms and conditions

200.303 Internal Controls (cont.)

- Non-federal entities must:
  - Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings
  - Take reasonable measures to safeguard protected personally identifiable information and other designated sensitive information.
200.79 Personally Identifiable Information (PII)

- Information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual ....

200.305 Payment

- Similar to current rules, except non-federal entities now permitted to retain up to $500 per year in interest on advances
200.306 Cost Sharing or Matching

- Shared costs, matching funds and contributions must be accepted as part of non-federal entity’s cost sharing or matching when various criteria are met, including:
  - They are not paid by the federal government under another federal award, except where the federal statute authorizing a program specifically provides that federal funds made available for such program can be applied to matching or cost sharing requirements of other federal programs.

200.311 and 200.329 Real Property

- Except as otherwise provided by federal statutes or by the federal awarding agency, encumbering title of real property not permitted. See § 200.311.
- Grantee must submit a report at least annually on the status of real property in which the federal government has an interest. Where the interest extends 15 years or more the funding source may allow reporting at various multiyear frequencies. See § 200.329.
200.313 Equipment

- Equipment may be encumbered with prior approval
- Disposition instructions are needed only if required by the terms of the award. Otherwise items of equipment with a current per-unit FMV of $5000 or less may be retained, sold, or disposed of with no further obligation to the federal awarding agency
- Rules on disposition on higher valued equipment are similar to current rules

200.94 Supplies

- All tangible personal property other than that defined as “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
200.318 General Procurement Standards

• Grantees are required to maintain written standards of conduct that cover conflicts of interest. Conflict of interest policy must also cover parent, affiliate, and subsidiary.
• Grantees also encouraged to enter into state/local intergovernmental or inter-entity agreements to share goods and services.
• Records must also detail the history of procurement and the rationale for the method of procurement, selection of contract type, contractor selection/rejection, and basis for contract price.

200.319 Competition

• All procurement transactions must be conducted in a manner providing full and open competition
  – But cost or price analysis no longer required for every procurement transaction
• May not apply state or local geographic preferences, except where required or encouraged by federal statute
200.320 Methods of Procurement

- Rules now outline specific methods of procurement and requirements for each method:
  - Micro-purchases for $0 - $3000
  - Small purchases for Simplified Acquisition Threshold of $150,000 or less. Price and rate quotes must be obtained.
  - Sealed bids
  - Competitive proposals
  - Non-competitive proposals (sole source)

200.67 Micropurchase

- A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold
- Threshold set by 48 C.F.R. Subpart 2.1 (Definitions in Federal Acquisition Regulation (FAR))
- Currently $3,000, but adjusted periodically for inflation
200.88 Simplified Acquisition Threshold

- The dollar amount below which a non-federal entity may purchase property or services using small purchase methods
- Non-federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold
- Set by 48 C.F.R. Subpart 2.1 (Definitions for FAR)
- Currently $150,000, but adjusted periodically for inflation

Procurement Standards

- Cost or price analysis is required for any procurement in excess of the Simplified Acquisition Threshold ($150,000). See § 200.323(a)
- Non-federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor surplus firms are used when possible. See § 200.320
  - Current A-110 language requires “positive efforts”
Procurement Standards

- Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed (sealed bids, competitive proposals, and non-competitive procurement). See § 200.323(b)
- Non-federal entity must make certain information and records regarding its procurement procedures available to the federal awarding agency or pass-through entity upon request for pre-procurement review. See § 200.324.

200.331 Requirements for Pass-Through Entities

- Pass-through entities must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes certain specified information at time of the subaward and to notify subrecipient of any changes in a subaward modification
- Notably, required info includes (among other things):
  - An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government, or if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient or a de minimis indirect cost rate
200.414(f)
De Minimis Indirect Cost Rate

• Any non-federal entity that has never received a negotiated indirect cost rate may elect to charge a de minimis rate of 10% of modified total direct costs which may be used indefinitely

• If chosen, must be used consistently for all federal awards until the non-federal entity chooses to negotiate for a rate, which it may do at any time

200.68 Modified Total Direct Costs

• All direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first $25K of each subaward or subcontract (regardless of the period of subawards and subcontracts under the award)

• Does not include equipment, capital expenditures, ... rental costs, ... and the portion of each subaward and subcontract that exceeds $25K

• 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
200.331 Requirements for Pass-Through Entities (cont.)

• Pass-through entities also required to:
  – Evaluate subrecipient’s risk of noncompliance for purposes of determining appropriate subrecipient monitoring
  – Consider imposing specific subaward conditions if appropriate
  – Monitor subrecipient’s activities as necessary to ensure it is used for authorized purposes and in compliance with federal statutes, regs and terms and conditions of subaward, and that performance goals are achieved (suggests certain monitoring tools, such as T&TA, onsite reviews etc.)

200.331 Requirements for Pass-Through Entities (cont.)

• Pass-through entities also required to:
  – Verify that every subrecipient is audited as required by Subpart F – Audit Requirements where subrecipient’s federal awards expended during a fiscal year exceed audit threshold
  – Consider whether results of subrecipient’s audits, on-site reviews or other monitoring indicate conditions that necessitate adjustments to pass-through entity’s records
  – Consider taking enforcement action against noncompliant subrecipients
Record Retention and Access

- Electronic storage of records is now permitted and encouraged. When original records are electronic and cannot be altered there is no need to create and retain paper copies. See § 200.335.
- No federal awarding agency may place restrictions on the non-federal entity that limit public access to the records of the non-federal entity pertinent to a federal award, except for PII and certain other situations. See § 200.337.
- Period for which federal agencies may disallow costs after award closeout is now limited to the 3-year record retention period. See § 200.344.
  - But federal government may collect amounts due to it at any time. See § 200.345.

Enforcement and Appeals

- Federal awarding agency and pass-through entity remedies for noncompliance specified in § 200.33
- Circumstances in which award may be terminated (including by pass-through entity) specified in § 200.339
- Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-federal entity is entitled under any statute or regulation applicable to the action involved. See § 200.341
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