

# OMB's "Super Circular"—How Federal Grants Management Reform Will Affect RDO's

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National Association of Development  
Organizations

Presented by Bob Lloyd

# Federal Grant Reform—The Process

- Presidential Direction (Executive Order; Memorandum to Agencies)
- OMB “Trial Balloons” (*Federal Register*, 2/28/12)—Comments Solicited
- OMB Draft Proposal (*Federal Register*, 2/1/13)—More Comments Solicited
- OMB Guidance Issued (12/26/13)

# The Players

- OMB, Office of Federal Financial Management
- Council on Federal Assistance Reform (COFAR)
- Federal Awardmaking Agencies
  
- Inspectors General (CIGIE)
- “The Community of Independent Auditors”
- Recipients and Subrecipients

# The Intent

- Consolidate
- Streamline
- Harmonize
  
- As a Result, Simplify

# But Also...

- Mandate Content and Timing of Federal Program Announcements
- Ensure Better Federal Agency and Pass-through Entity Review of Financial Risk and Merit of Applications
- Provide Clearer Instructions for “Robust” Oversight of Subrecipients
- Hold Federal Agencies More Accountable for Getting Results and Addressing Weaknesses Among Recipients

# Say a Long Goodbye to...

- Administrative Requirements in OMB Circular A-102, Common Rule; and OMB Circular A-110
- Cost Principles in OMB Circulars A-21, A-87, and A-122
- Audit Policies in OMB Circulars A-133 and A-50
- Federal Program Information Requirements in OMB Circular A-89 and OMB's Directive on Federal Agency Assistance Program Announcements (*Federal Register*, 6/23/03)

# Say Hello to...

- “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
- The “Super Circular”
- The “Omni-Circular”

# The Administrative Procedure Act and Why That's Important

- Federal “Regulations” (with the Force and Effect of Law)
- Legal Sources and Authority for Federal Grants
  - Statutes
  - Governmentwide Directives (such as Presidential Executive Orders)
  - Regulations
  - Terms and Conditions of Grant Agreements

# The Final Product—2 CFR 200

- The Commentary (78 FR 78590-78608, 12/26/13)
- Components
  - Subpart A—Acronyms and Definitions
  - Subpart B—General Provisions
  - Subpart C—Pre-award Federal Requirements and Contents of Federal Awards
  - Subpart D—Post Federal Award Requirements
  - Subpart E—Cost Principles
  - Subpart F—Audit Requirements

# The Final Product—2 CFR 200

- Appendices
  - (I) Full Text of Notice of Funding Opportunity
  - (II) Contract Provisions for Contracts Under Federal Awards
  - (III) Indirect (F&A) Cost Procedures for Educational Institutions (IHE)
  - (IV) Indirect Cost Procedures for Nonprofit Organizations
  - (V) Procedures for State, Local, and Tribal Wide Central Service Cost Allocation Plans
  - (VI) Public Assistance Cost Allocation Plans
  - (VII) State, Local and Tribal Government Indirect Cost Proposals
  - (VIII) Nonprofit Organizations Exempted from Subpart E of 2 CFR 200
  - (IX) Hospital Cost Principles (Currently 45 CFR 74, Subpart E)
  - (X) The Single Audit Data Collection Form (SF-SAC)
  - (XI) The Single Audit “Compliance Supplement”

# Implementation

- Policies Applicable to Federal Agencies (Effective 12/26/13)
- Federal Agencies Submitted Draft Implementing Regulations to OMB (6/26/14)
- Full Text of Agency Regulations to be Uniformly Effective (12/26/14)
- Audit Threshold Change (FY Beginning After 12/26/14)
- Must Be Referenced in Your Grant and Subgrant Agreements

# Applicability

- Mandatory for Awards to States, Local Governments, IHE's, Nonprofit Organizations
- Discretionary to Commercial Organizations and Foreign Entities
- Direct Federal Grants and Cooperative Agreements (with Exceptions in 2 CFR 200.101(d))
- Subgrants to Subrecipients (Flow Through)
- Procurement Contracts under Grants
- OMB Granted Exceptions (2 CFR 200.102)
- Federal Agency Case-by-Case Exceptions
- Innovative Program Designs (OMB M-13-17)
- Inconsistent Policies Superseded

# New or Revised Requirements for Federal Agencies

- Choice of Instruments (200.201)
- Public Notice and Funding Opportunities (200.202-4)—CFDA and Grants.gov
- Preaward Risk Assessment (200.205)
- Requirements for Adherence to Paperwork Reduction Act (200.206)
- Specific Conditions (“High Risk”) (200.207)
- Annual Certifications (200.208)
- Content of a Federal Award (200.210)
- Public Access to Award Information (FFATA and FOIA)

# Post-Award Administration

- New Sections on:
  - Mandatory Disclosure (200.112; 200.113)
  - Performance Management (200.301)
  - Internal Controls (200.303)
  - “Disputes” (200.341)
- (Essentially) Unchanged Sections on:
  - Financial Management (200.302)
  - Bonding (200.304)
  - Payment (200.305)
  - Cost Sharing or Matching (200.306)
  - Program Income (200.307)
  - Revision of Budget and Program Plans (200.308)
  - Property Standards (200.310-316, 200.329)
  - Remedies for Noncompliance (200.338-340, 342)
  - Close-out and Continuing Accountability (200.343-345)

# Post Award Administration

- Changes in Substance, Location, or Both
  - Procurement Standards (200.317-326)
    - Effect on Nonprofits and IHE's
  - Financial and Performance Reporting (200-327-328)
  - Subrecipient Monitoring and Management (200.330-332)
    - Subrecipient vs. **Contractor** Determinations
    - Risk Assessment of Potential Subrecipients
    - Subgrant Agreement Content
      - Required Recognition of Subrecipient Indirect Costs
  - Subrecipient Monitoring Procedures (Required v. Discretionary)
  - Retention Retention and Access (200.333-337)
    - Machine Readable Formats

# The New Cost Principles

- Consolidation (Except for Hospitals and Commercial Entities)
- Builds on Changes from OMB's Cost Consistency Project (Revisions to Circulars 5/10/04)
- Policy Guides (200.400-402)
  - Applicable to Grants, Cooperative Agreements, Cost Reimbursement Contracts, and Other Contracts Where Cost is Used in Pricing, Administration or Settlement
  - Applicable to Lower Tier Awards
- General Tests of Allowability (200.403)
- Key Change— “Prior Approval” and “Advance Understanding” (200.407)

# Direct and Indirect (F&A) Costs

- Distinctions Reiterated
- General Policies (200.411-419)
  - Special Rules for State, Local and Tribal Governments and for IHE's
- Required Federal Agency Recognition of IDC Rates
  - Exceptions Require Action by Agency Head
- New Policies for Indirect Costs of Subrecipients
- Migration of All Guidance on IDC (F&A) Plan Development and Negotiation Migrates to Appendices
- Future for Additional Guidance Materials (e.g. HHS' OASMB C-10 and DOL Indirect Cost Determination Guide)?

# Key Changes to Selected Items of Cost

- Compensation for Personal Services (200.430)
  - Documentation of Time and Effort
  - Key Principles Remain: After-the-fact ; Full disclosure; Credible Signatures; Timely Completion
- Conferences (200.432)
- Contingency Provisions (200.433)
- Depreciation (200.436)
- Equipment (200.439) and Materials and Supplies (200.453)
- Intellectual Property (200.448)

# Key Changes to Selected Items of Cost

- Pre-award (200.458) and Proposal (200.460) Costs
- Rearrangement and Reconversion (200.462)
- Termination Costs (200.471)
- Training (200.472)
- Travel (200.474)

# Revised Single Audit Requirements

- Revision Objectives: Concentrate Audit Resources, Oversight and Resolution on Higher Dollar Higher Risk Federal Awards
- The Means:
  - Increase the Dollar Threshold
  - Adjust the Number of Compliance Issues to Be Tested
  - Clarify and Streamline Determination of Programs and Awards to be Tested
  - Better Coordinate Resolution of Audit Findings

# Keeping Some; Moving Some

- Portions of Existing Circular A-133 Have Worked and Are Being Retained
  - Delineation of Roles and Responsibilities
  - Instructions to Auditors about Audit Scope, Risk Assessment, and Conduct of Field Work and Reporting
- Migration of Features Involving Grants Management and Pass-through Entity Responsibilities to 200.300 and 200.425
  - Say “Good-bye” to “Vendor”

# Changing Some

- Increase in the Audit Threshold to \$750,000 in Federal Awards Expended for Fiscal Years Starting On or After December 26, 2014.
- Auditor Selection (200.509)
- Audit Management and Resolution at the Federal Level (200.513)
- Determination of Major Programs (200.518)
- “Percentage of Coverage” Rule
- Compliance Issues to Be Tested (See Commentary, FR 12/26/13, p. 78608)
- Reporting of Questioned Costs (200.516)
- Timing of Management Decisions (200.521)

# A Few Suggestions

- Get fully caffeinated and read the whole thing
- Note and heed the clear influences on OMB's decisionmaking
- Note the implementation timetable
- No need to be a "Sooner"
- On the other hand, there are some things where it may be to your advantage to try to start now.\
- Fix language in your policies (e.g., references to Circulars)
- Review grant application budgeting procedures
- Review procurement procedures
- Review subgranting and subrecipient monitoring procedures
- Monitor OMB and federal agency actions
- OMB and COFAR websites (Q&A)
- Continue to provide input

# Contact Information

- Bob Lloyd  
Principal, Federal Fund Management Advisor  
TM
- E-Mail: [consultlloyd@aol.com](mailto:consultlloyd@aol.com)
- Telephones: (864) 235-8680  
(202) 775-0066