PART 3 – COMPLIANCE REQUIREMENTS

INTRODUCTION

Overview

The objectives of most compliance requirements for Federal programs administered by States, local governments, Indian tribes, institutions of higher education, and nonprofit organizations (non-Federal entities) are generic in nature. For example, many programs have eligibility requirements for individuals or organizations to participate in the program. While the criteria for determining eligibility vary by program, the objective of the compliance requirement that only eligible individuals or organizations participate is consistent across programs.

Rather than repeat the compliance requirements, audit objectives, and suggested audit procedures for each of the programs contained in Part 4, “Agency Program Requirements,” and Part 5, “Clusters of Programs,” they are provided once in this part. For each program in this Supplement, Part 4 or Part 5 contains additional information about the program and the statutes and regulations governing its administration, and specifies the compliance requirements to be tested using the guidance in this part.

Transition Supplement

During the period covered by this Supplement, most non-Federal entities will have Federal awards expended that are subject to requirements from both the OMB Circulars (see below: Part 3.1 - Federal awards made prior to December 26, 2014) and the Uniform Guidance (see below: Part 3.2 - Federal awards made on or after December 26, 2014). The Uniform Guidance is effective for Federal awards made on or after December 26, 2014 and, as explained in FAQ .110-7, incremental funding where Federal agencies change the award terms and conditions. As explained in FAQ .110-11, the effective date of the Uniform Guidance for subawards is the same as the effective date of the Federal award from which the subaward is made. However, as specified in 2 CFR section 200.101(b)(3), with the exception of the audit requirements in 2 CFR part 200, subpart F, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of 2 CFR part 200, the provision of the Federal statutes or regulations govern. The applicability table in 2 CFR section 200.101, which is provided below, shows which requirements are applicable to the different types of Federal awards.

The Council on Financial Assistance Reform’s (COFAR) Frequently Asked Questions, updated September 2015, provide additional information on applicability to awards, subawards, and system changes.

.110-7 Effective Dates and Incremental Funding

How does the effective date apply to incremental funding? I have an award with three more years of expected funding. Normally I would keep the same account number for all five years, with the incremental funding for each year added as it comes in. Do I have to keep my funding subject to the old OMB Circulars in a separate account from the funding awarded after the Uniform Guidance goes into effect? Or can I just assume that the new
rules apply as soon as I get my first post-Uniform Guidance increment of funds? Can I apply those rules to any residual balance of old funds as well as the new monies?

The new rules apply as of the Federal award date (see 2 CFR 200.39) to new awards and, for agencies that consider incremental funding actions on previously made awards to be opportunities to change award terms and conditions, the first funding increment issued on or after 12/26/14. For agency incremental funding actions that are subject to the Uniform Guidance, non-Federal entities are not obligated to segregate or otherwise track old funds and new funds but may do so at their discretion. For example, a non-Federal entity may track the old funds and continue to apply the Federal award flexibilities to the funding awarded under the old rules (e.g., local ability to issue fixed price subawards, non-Federal entity determination of the need to incur administrative and clerical salaries based on major project classification). For Federal awards made with modified award terms and conditions at the time of incremental funding actions, Federal awarding agencies may apply the Uniform Guidance to the entire Federal award that is uncommitted or unobligated as of the Federal award date of the first increment received on or after 12/26/14.

.110-11 Effective Dates and Subawards

How does the Uniform Guidance apply to Federal awards made prior to December 26 when some subawards are made prior to December 26 and others are made after December 26?

The effective date of the Uniform Guidance for subawards is the same as the effective date of the Federal award from which the subaward is made. The requirements for a subaward, no matter when made, flow from the requirements of the original Federal award from the Federal awarding agency.

.110-13 Effective Dates and Federal Awards Made Previously

Will this apply only to awards made after the effective date, or does it apply to awards made earlier?

Once the Uniform Guidance goes into effect for non-Federal entities, it will apply to Federal awards or funding increments after that date, in cases where the Federal agency considers funding increments to be an opportunity to modify the terms and conditions of the Federal award. It will not retroactively change the terms and conditions for funds a non-Federal entity has already received.

We would anticipate that for many of the changes, non-Federal entities with both old and new awards may make changes to their entity-wide policies (for example payroll or procurement systems). Practically speaking, these changes would impact their existing/older awards. Non-Federal entities wishing to implement entity-wide system changes to comply with the Uniform Guidance after the effective date of December 26, 2014 will not be penalized for doing so.
Relationship between Frequently Asked Questions and the 2 CFR Part 200, Subpart F, Audit

In addition to the FAQs quoted above and elsewhere in this part, there are FAQs on a variety of issues related to implementation and interpretation of 2 CFR part 200. These FAQs are meant to provide additional context, background, and clarification of the policies described in 2 CFR part 200 and should be considered in the single audit work plan and reviews. The complete list of FAQs (updated as of September 2015 and COFAR responses is found at https://cfo.gov/wp-content/uploads/2015/09/9.9.15-Frequently-Asked-Questions.pdf. Any FAQs that may be issued or updated after September 2015 will be available upon issuance at the COFAR website indicated above and also should be considered in the single audit work plan and reviews, as appropriate for the subject matter and the audit period.

Use of Terminology in this Part

Part 3 presents statements of compliance requirements, related audit objectives, and suggested audit procedures. When restating compliance requirements Part 3.2 uses the conventions employed in 2 CFR part 200, i.e., when the word “must” is used, it indicates a requirement, whereas use of the word “should” indicates a best practice or recommended approach rather than a requirement (see FAQ 303-2). Given that different terminology, e.g., “shall,” was used before the issuance of 2 CFR part 200, the language of Part 3.1 continues to reflect the way in which the compliance requirements previously were stated. The limited use of the term “should not,” e.g., with respect to improper payments, refers to an action or activity that is non-compliant.

Similarly, when Part 3 speaks to auditors, the word “must,” which is used in limited instances, means that the auditor is required to do what the statement indicates. However, the suggested audit procedures associated with each compliance requirement, which are specifically directed to auditors, uses the term “should,” which indicates a recommended approach. As stated elsewhere (see Part 1 of the Supplement), auditors must judge whether the suggested audit procedures are sufficient to achieve the stated audit objectives or whether alternative audit procedures are needed.

ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES: FEDERAL AWARDS MADE PRIOR TO DECEMBER 26, 2014

The administrative and cost principles requirements arise from two sources: the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (also known as the “A-102 Common Rule”) and 2 CFR part 215 (hereafter, OMB Circular A-110 and, as appropriate, specific citation to 2 CFR part 215), “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.” Cost-reimbursement contracts under the FAR are subject to the FAR. The applicable requirements depend on the type of organization undergoing audit. Other administrative compliance requirements that are not of the type covered in the A-102 Common Rule, OMB Circular A-110, or the FAR and are unique to a single program or a cluster of programs are provided in the Special Tests and Provisions sections of Parts 4 and 5.
State, Local, and Indian Tribal Governments

Governmentwide requirements for administering grants and cooperative agreements to States, local governments, and Indian tribal governments are contained in the A-102 Common Rule, which was codified by each Federal funding agency in its title of the Code of Federal Regulations. The A-102 Common Rule section numbers are referred to without the Federal agency’s part number (e.g., §____.37 would refer to sections in all agency regulations). This allows auditors to refer to the same section numbers when discussing administrative issues with different Federal funding agencies.

These requirements, which incorporate the cost principles by reference, apply to all grants and subgrants to governments, except grants and subgrants to State or local (public) institutions of higher education and hospitals, and except where they are inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of the A-102 Common Rule. Block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and several other specifically identified programs are exempted from the A-102 Common Rule. Appendix I to the Supplement specifies legislation and programs where exclusions exist.

In some cases the A-102 Common Rule permits States to follow their own laws and procedures, e.g., when addressing equipment management. These are noted in the sections that follow. The auditor will have to refer to an individual State’s rules in those situations.

Nonprofit Organizations

The major source of requirements applicable to grants and cooperative agreements to institutions of higher education, hospitals and other nonprofit organizations is OMB Circular A-110, which incorporates the cost principles by reference. The provisions of OMB Circular A-110 are codified in agency regulations (or other form of implementation), generally using the same section numbers as in the circular. The OMB Circular A-110 section numbers in this part of the Supplement are shown as 2 CFR part 215 references. However, unlike the A-102 Common Rule, with OMB approval, agencies could modify certain provisions of A-110 to meet their special needs. OMB Circular A-110 states “Federal agencies responsible for awarding and administering grants…shall adopt the language in the circular unless different provisions are required by Federal statute or are approved by OMB.” OMB Circular A-110 states in 2 CFR section 215.4 that “Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB.” Federal awarding agencies may apply less restrictive requirements when making small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

Appendix II to the Supplement contains a list of agencies that have codified OMB Circular A-110 and the CFR citations for these codifications. These remain unchanged by the reissuance of A-110 in Title 2 of the CFR. Auditors must reference A-110 provisions using 2 CFR part 215 and/or agency implementing citations, as appropriate.
**Subrecipients**

Governmental subrecipients are subject to the provisions of the A-102 Common Rule. However, the A-102 Common Rule permits States to impose their own requirements, e.g., equipment management or procurement, on their governmental subrecipients. Thus, in some circumstances, the auditor may need to refer to State requirements rather than Federal requirements.

All subrecipients who are institutions of higher education, hospitals, or other nonprofits, regardless of the type of organization making the subaward, are subject to the provisions of OMB Circular A-110, as implemented by the agency, when awarding or administering subgrants except under block grants authorized by the Omnibus Budget Reconciliation Act of 1981 and the Job Training Partnership Act, where State rules apply instead.
REQUIREMENTS FOR NEW FEDERAL AWARDS AND INCREMENTAL FUNDING ACTIONS WITH CHANGED TERMS AND CONDITIONS MADE ON OR AFTER DECEMBER 26, 2014

2 CFR section 200.101 describes the applicability of 2 CFR part 200. The following table, from 2 CFR section 200.101(b)(1), summarizes the applicability of the subparts of 2 CFR part 200 to different types of Federal awards, which includes subawards. Federal contracts and subcontracts under them also are subject to the FAR.

<table>
<thead>
<tr>
<th>The following portions of 2 CFR part 200:</th>
<th>Are applicable to the following types of Federal awards and Fixed-Price Contracts and Subcontracts (except as noted in 2 CFR sections 200.101(d) and (e)):</th>
<th>Are NOT applicable to the following types of Federal awards and Fixed-Price Contracts and Subcontracts:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subpart A - Acronyms and Definitions</td>
<td>---All</td>
<td></td>
</tr>
<tr>
<td>Subpart B - General Provisions except for §200.111 English language, §200.112 Conflict of interest, §200.113 Mandatory disclosures</td>
<td>---All</td>
<td></td>
</tr>
<tr>
<td>§200.111 English language, §200.112 Conflict of interest, and §200.113 Mandatory disclosures</td>
<td>--- Grant agreements and cooperative agreements</td>
<td>--- Agreements for loans, loan guarantees, interest subsidies and insurance</td>
</tr>
<tr>
<td>Subparts C-D, except for §200.202 Requirements to provide public notice of financial assistance programs, §200.303, Internal controls, §§200.330-332 Subrecipient Monitoring and Management</td>
<td>--- Grant agreements and cooperative agreements</td>
<td>--- Procurement contracts awarded by Federal Agencies under the FAR subcontracts under those contracts</td>
</tr>
<tr>
<td>§200.202 Requirements to provide public notice of financial assistance programs</td>
<td>--- Grant agreements and cooperative agreements</td>
<td>--- Agreements for loans, loan guarantees, interest subsidies and insurance</td>
</tr>
<tr>
<td>§200.303, Internal controls, §§200.330-332 Subrecipient Monitoring and Management</td>
<td>--- All</td>
<td>Procurement contracts awarded by Federal Agencies under the FAR and cost-reimbursement subcontracts under those contracts</td>
</tr>
</tbody>
</table>
The following portions of 2 CFR part 200:

<table>
<thead>
<tr>
<th>Are applicable to the following types of Federal awards and Fixed-Price Contracts and Subcontracts (except as noted in 2 CFR sections 200.101(d) and (e)):</th>
<th>Are NOT applicable to the following types of Federal awards and Fixed-Price Contracts and Subcontracts:</th>
</tr>
</thead>
</table>
| Subpart E - Cost Principles | --- Grant agreements and cooperative agreements, except those providing food commodities  
--- All procurement contracts awarded under the FAR except those that are not negotiated |
| Subpart F - Audit Requirements | --- Grant agreements and cooperative agreements  
--- Contracts and subcontracts, except for fixed price contracts and subcontracts, awarded under the FAR  
--- Agreements for loans, loan guarantees, interest subsidies and insurance and other forms of Federal financial assistance as defined by the Single Audit Act Amendments of 1996 |

Appendix I to the Supplement provides the names and CFDA numbers for programs listed in 2 CFR section 200.101(d) that are excluded from subparts D and E of 2 CFR part 200. In addition, as described in 2 CFR section 200.102 and with the exception of subpart F, Audit Requirements, of 2 CFR part 200: (1) OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements to 2 CFR part 200 when exceptions are not prohibited by statute, which will be published on the OMB Web site at [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb); and (2) Federal awarding agencies or the cognizant agency for indirect costs may authorize exceptions on a case-by-case basis for individual non-Federal entities, except where otherwise required by statute or where OMB or other approval is expressly required.

Federal awarding agencies adopted or implemented the Uniform Guidance in 2 CFR part 200 by interim final rule in a joint Federal Register notice issued December 19, 2014 (79 FR 75867). OMB also made correcting technical amendments to 2 CFR part 200 on December 19, 2014, July 22, 2015, and several additional amendments. The version of 2 CFR part 200 at ecfr.gov incorporates all of those changes. The OMB guidance is directed to Federal agencies and, by itself, does not establish regulatory requirements binding on non-Federal entities. The Federal awarding agency implementation gives regulatory effect to 2 CFR part 200 for that agency’s Federal awards and, thereby, establishes requirements with which the non-Federal entity must comply when incorporated in the terms and conditions of a Federal award.
As explained in the December 19, 2014 Federal Register notice, if the agency adopting or implementing regulations made changes to the guidance in 2 CFR part 200, those changes are applicable only to the individual agency’s programs. The exceptions approved by OMB as part of that rulemaking are available at https://cfo.gov/wp-content/uploads/2014/12/Agency-Exceptions.pdf. A full listing of those exceptions also is included in Appendix VII of the Supplement.

Appendix II to the Supplement provides a list showing the location in the CFR of agencies’ adoption or implementation of 2 CFR part 200 in agency regulations and whether those regulations have been issued as final rules, and, if so, the date of Federal Register publication.

COMPLIANCE REQUIREMENTS, AUDIT OBJECTIVES, AND SUGGESTED AUDIT PROCEDURES

Auditors must consider the compliance requirements and related audit objectives in Part 3 and Part 4 or 5 (for programs included in this Supplement) in every audit conducted under 2 CFR part 200, subpart F, with the exception of program-specific audits performed in accordance with a Federal agency’s program-specific audit guide (see Appendix VI to the Supplement). In making a determination not to test a compliance requirement, the auditor must conclude that the requirement either does not apply to the particular non-Federal entity or that noncompliance with the requirement could not have a direct and material effect on a major program (e.g., the auditor would not be expected to test Procurement if the non-Federal entity charges only small amounts of purchases to a major program). The descriptions of the compliance requirements in Parts 3, 4, and 5 generally are a summary of the actual compliance requirements. The auditor must refer to the referenced citations to laws and regulations for the complete statement of the compliance requirements.

The suggested audit procedures are provided to assist auditors in planning and performing tests of non-Federal entity compliance with the requirements of Federal programs. Auditor judgment will be necessary to determine whether the suggested audit procedures are sufficient to achieve the stated audit objective and whether alternative audit procedures are needed.

The suggested procedures are in lieu of specifying audit procedures for each of the programs included in this Supplement. This approach has several advantages. First, it provides guidelines to assist auditors in designing audit procedures that are appropriate in the circumstance. Second, it helps auditors develop audit procedures for programs that are not included in this Supplement. Finally, it simplifies future updates to this Supplement.

Internal Control

Consistent with the requirements of 2 CFR part 200, subpart F, Part 3 includes generic audit objectives and suggested audit procedures to test internal control. However, the auditor must determine the specific procedures to test internal control on a case-by-case basis considering factors such as the non-Federal entity’s internal controls, the compliance requirements, the audit objectives for compliance, the auditor’s assessment of control risk, and the audit requirement to test internal control as prescribed in 2 CFR part 200, subpart F.
Improper Payments

Under OMB guidance, Public Law (Pub. L.) No. 107-300, the Improper Payments Information Act of 2002, as amended by Pub. L. No. 111-204, the Improper Payments Elimination and Recovery Act, Executive Order 13520 on reducing improper payments, and the June 18, 2010 Presidential memorandum to enhance payment accuracy, Federal agencies are required to take actions to prevent improper payments, review Federal awards for such payments, and, as applicable, reclaim improper payments. Improper payments include the following:

1. Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements, such as overpayments or underpayments made to eligible recipients resulting from inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for the incorrect amount, and duplicate payments.

2. Any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments where authorized by statute).

3. Any payment that an agency’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation.

Auditors must be alert to improper payments, particularly when testing the following parts of section III. - A, “Activities Allowed or Unallowed;” B, “Allowable Costs/Cost Principles;” E, “Eligibility;” and, in some cases, N, “Special Tests and Provisions.”

American Recovery and Reinvestment Act

Other than construction activities, there is limited continuing effect of ARRA on audits covered by this Supplement. Programs under which ARRA funding continues to be expended are shown in bold in Part 2 or under “Other Clusters.” In Parts 4 and 5, ARRA requirements for programs that are not exclusively ARRA-funded also are shown in bold.

Organization and Use of Part 3 of the Supplement

The remainder of Part 3 divides the types of compliance requirements into two parts: Parts 3.1 and 3.2.

**PART 3.1 APPLIES TO FEDERAL AWARDS MADE PRIOR TO DECEMBER 26, 2014 WITH TERMS AND CONDITIONS BASED ON THE OMB CIRCULAR A-102 COMMON RULE, OMB CIRCULAR A-110 (2 CFR PART 215), AND THE OMB COST PRINCIPLES CIRCULARS.**

**PART 3.2 APPLIES TO NEW FEDERAL AWARDS AND INCREMENTAL FUNDING ACTIONS WITH CHANGED TERMS AND CONDITIONS BASED ON THE UNIFORM GUIDANCE IN 2 CFR PART 200 (AS ADOPTED OR IMPLEMENTED BY THE FEDERAL AGENCIES) MADE ON OR AFTER DECEMBER 26, 2014.**
NOTE: ALL AUDITS CONDUCTED USING THIS SUPPLEMENT WILL BE CONDUCTED BASED ON 2 CFR PART 200, SUBPART F, AND, THEREFORE, ALL REFERENCES TO AUDIT REQUIREMENTS CITE 2 CFR PART 200, SUBPART F.