



FEMA

Grant Programs Directorate Information Bulletin
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MEMORANDUM FOR: All State Administrative Agency Heads
All State Administrative Agency Points of Contact
All Urban Areas Security Initiative Points of Contact
All State Homeland Security Directors
All State Emergency Management Agency Directors
All Eligible Regional Transit Agencies
All Private Sector Transportation Security Partners
All Public and Private Sector Port Security Partners
All Tribal Nation Points of Contact

FROM: Brian E. Kamoie
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Federal Emergency Management Agency

A handwritten signature in blue ink, appearing to read "B. E. Kamoie".

SUBJECT: FEMA's Implementation of 2 C.F.R. Part 200, the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Super Circular" or "Omni Circular")

This Information Bulletin (IB) provides guidance and information regarding FEMA's implementation of Title 2, Part 200 of the Code of Federal Regulations (C.F.R.), the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Super Circular" or "Omni Circular"). FEMA's Grant Programs Directorate (GPD) would like to remind our partners that the Department of Homeland Security adopted 2 C.F.R. Part 200 on December 19, 2014 in an Interim Final Rule that will be effective on December 26, 2014. Now that DHS has adopted 2 C.F.R. Part 200, these new regulations will apply to all new FEMA grant awards that are made on or after December 26, 2014. The new regulations will supersede 44 C.F.R. Part 13, and the Office of Management and Budget (OMB) Circulars A-21, A-87, A-89, A-102, A-110, A-122, A-133, and sections of A-50 for all FEMA awards made on or after December 26, 2014.

This IB applies to the following grant programs:

- Assistance to Firefighters Grant Program (AFG)
 - Assistance to Firefighters Grants (AFG)
 - Staffing for Adequate Fire & Emergency Response Grants (SAFER)
 - Fire Prevention and Safety Grants (FP&S)
- Emergency Management Performance Grants (EMPG) Program
- Homeland Security Grant Program (HSGP)

- State Homeland Security Grant Program (SHSP)
- Urban Areas Security Initiative (UASI)
- Operation Stonegarden (OPSG)
- Tribal Homeland Security Grant Program (THSGP)
- Nonprofit Security Grant Program (NSGP)
- Intercity Passenger Rail Security Grant Program (IPR)
- Port Security Grant Program (PSGP)
- Transit Security Grant Program (TSGP)

The following provides information regarding 2 C.F.R. Part 200 and provides a high level summary of some of the substantive changes that will impact all non-Federal entities that receive awards or subawards under the above listed programs.

Background on 2 C.F.R. Part 200 (the Super Circular):

2 C.F.R. Part 200 is an OMB reform of regulations that apply to federal financial assistance, streamlining the language from eight existing OMB circulars into one consolidated set of guidance in the code of Federal regulations.

- In the past, each Federal agency published its own administrative grant regulations in different volumes of the Code of Federal Regulations (C.F.R.).
- For FEMA, these requirements were found primarily in 44 C.F.R. Part 13 (for state, local, and tribal governments) and 2 C.F.R. Part 215 (for schools, hospitals, and other provide non-profit entities), among others.

The Super Circular is aimed at eliminating duplicative or almost duplicative language, and is intended to make compliance with the regulations less burdensome for recipients and subrecipients of federal financial assistance. OMB also intended the reform to reduce the number of audit findings that resulted more from unclear guidance than from actual non-compliance.

2 C.F.R. Part 200 provides guidance on the *administrative* aspects of federal grants (e.g. how grants are awarded, managed, audited, and closed-out). Administrative requirements associated with FEMA grants *will be* affected by the Super Circular. The Super Circular does NOT change the *programmatic substance* of FEMA's financial assistance programs. For example, 2 C.F.R. Part 200 will not change:

- Eligibility criteria for non-disaster grant programs;
- The statutory purposes and objectives of FEMA's non-disaster grant programs; and
- The statutorily-allowable costs and activities under FEMA's non-disaster grant programs.

Effective Date for 2 C.F.R. Part 200

The Super Circular will apply to non-disaster grants that FEMA awards on or after December 26, 2014. With the exception of the audit requirements in Subpart F, the Super Circular will not apply retroactively to existing FEMA non-disaster awards. For existing FEMA non-disaster grants awarded before December 26, 2014, recipients and subrecipients should continue to

follow the applicable legacy regulations identified in the terms and conditions of their award packages.

The effective date for the audit requirements in 2 C.F.R. Part 200 is not tied to the date any specific federal awards were made. Instead, the effective date for the audit requirement depends on when the recipient's or subrecipient's fiscal year began that is subject to the audit. States, local governments, Indian Tribes, institutions of higher education, and non-profit organizations that are required to perform a single or program-specific audit under the *Single Audit Act* will follow the audit requirements in Subpart F of 2 C.F.R. Part 200 for audits of their fiscal years that begin on or after December 26, 2014. For audits of fiscal years that began prior to December 26, 2014, these non-federal entities will continue to follow the audit requirements outlined in OMB Circular A-133.

OMB has stated that recipients and subrecipients who wish to implement entity-wide system changes now, in order to comply with the new requirements of 2 C.F.R. Part 200 after the effective date, will not be penalized for doing so.

Applicability of 2 C.F.R. Part 200 to Classes of Recipients and Subrecipients

The legacy OMB Circulars and regulations on Uniform Administrative Requirements and Cost Principles applied to different non-federal entities, all depending on what type of entity was concerned. For example, 44 C.F.R. Part 13 provided the Uniform Administrative Requirements only for States, local governments, and Indian Tribes that were recipients or subrecipients of FEMA awards. Similarly, OMB Circular A-110 (2 C.F.R. Part 215) provided the Uniform Administrative Requirements for awards and subawards to Institutions of Higher Education, Hospitals, and other non-profits.

The new Super Circular located at 2 C.F.R. Part 200 provides one set of Uniform Administrative Requirements, Cost Principles, and audit requirements for federal awards and subawards to all non-Federal entities. "Non-Federal entities" are states, local governments, Indian Tribes, institutions of higher education, or nonprofit organizations that carry out federal awards. For-profit entities are also subject to 2 C.F.R. Part 200, Subparts A through E. For-profit entities are NOT subject to Subpart F.

NOTE: Of particular significance, the new regulations will apply equally to both governmental and non-profit organizations. Non-profit organizations – whether as direct recipients or as subrecipients of Federal awards – will no longer be required to follow a different set of rules (which has often led to confusion in the past).

Highlights of Substantive Changes in 2 C.F.R. Part 200

2 C.F.R. Part 200 consists of six (6) subparts and eleven (11) separate appendices. Recipients and subrecipients of FEMA awards are strongly encouraged to review 2 C.F.R. Part 200 in its entirety, because it does contain substantive changes. This section contains a brief overview of some of the substantive changes in 2 C.F.R. Part 200, but it is not intended to be an exhaustive discussion of all of the changes in the new regulation. This section is for informational purposes only. Recipients and subrecipients of FEMA awards must continue to follow the terms and

conditions of their individual awards. To the extent the terms and conditions of an individual award conflicts with this summary, the terms and conditions of the award control.

Subpart A – Acronyms and Definitions

There are 98 terms that have specific defined meanings under the new Super Circular. Please make sure to consult these definitions as many of these terms are new and affect how other provisions of the Super Circular should be interpreted.

Examples of new terms include:

- Recipient – meaning 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. NOTE: the term “recipient” replaces the term “grantee.”
- Subrecipient – meaning a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. NOTE: The term “subrecipient” replaces the term “subgrantee.”
- Pass-through Entity – means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. NOTE: many States and State Administrative Agencies will be considered “pass-through entities” under the new regulation.

Subpart B – General Provisions

▪ **§ 200.112 Conflict of Interest**

To eliminate and reduce the impact of conflicts of interest in the subaward process, recipients and pass-through entities must follow their own policies and procedures regarding the elimination or reduction of conflicts of interest when making subawards. Recipients and pass-through entities are also required to follow any applicable State, local, or tribal statutes or regulations governing conflicts of interest in the making of subawards.

The recipient or pass-through entity must disclose to FEMA, in writing, any real or potential conflict of interest as defined by the Federal, state, local, or tribal statutes or regulations or their own existing policies that may arise during the administration of the federal award. Recipients and pass-through entities must disclose any real or potential conflicts to their Program Analyst within five days of learning of the conflict of interest. Similarly, subrecipients must disclose any real or potential conflict of interest to the pass-through entity as required by the Recipient’s conflict of interest policies, or any applicable State, local, or tribal statutes or regulations.

Conflicts of interest may arise during the process of FEMA making a Federal award in situations where an employee, officer, or agent, any members of his or her immediate family, his or her partner has a close personal relationship, a business relationship, or a professional relationship, with an applicant, subapplicant, recipient, subrecipient, or FEMA employees.

- **§200.113 Mandatory disclosures**

Recipients and subrecipients must disclose, in a timely manner and in writing to FEMA and/or its pass-through entity, all violations of Federal criminal law involving fraud, bribery, or gratuity potentially affecting the Federal award.

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

Most of the content in Subpart C of the Super Circular refers to the *FEMA's roles and responsibilities* in administering its Federal awards.

- **§200.203 Notices of Funding Opportunities –**

FEMA will issue Notices of Funding Opportunities (NOFOs) for all of its non-disaster grant programs. The NOFO will replace the legacy Funding Opportunity Announcement (FOA), which FEMA has historically used to announce funding opportunities for its non-disaster grant programs.

- **§200.204 Federal awarding agency review of merit proposals**

For *competitive* non-disaster grants and cooperative agreements, FEMA will design and execute a merit review process for applications so that applicants will know the process FEMA uses to select applications for funding. The merit review process for each individual non-disaster grant program will be specifically described in the program's NOFO.

- **§200.205 Federal awarding agency review of risk posed by applicants**

Before making any awards, the federal awarding agency must review information available through OMB- designated repositories of government-wide eligibility qualifications or financial integrity information. FEMA will not make awards to entities listed within the Excluded Parties List System located on SAM.gov, or to entities who are otherwise disqualified from receiving a federal award.

For competitive grants or cooperative agreements, FEMA will conduct an additional review to evaluate the risk posed by applicants before they receive federal awards. FEMA may consider some or all of the factors listed in 2 C.F.R. § 200.205(c) when conducting this review, in addition to other factors. The factors considered during the risk review process for each competitive non-disaster grant program will be specifically described in the program's NOFO.

- **§200.207 Specific Conditions**

Based on FEMA's review of merit proposals and risk, FEMA may impose specific conditions on awards. Conditions may include additional project monitoring, financial reporting, establishing additional prior approvals, and the other conditions listed in 2 C.F.R. § 200.207.

Subpart D – Post-Federal Award Requirements Standards for Financial and Program Management

Much of the content in Subpart D of the Super Circular refers to the *recipients' and subrecipients' roles and responsibilities* in administering their Federal awards. However, some portions of Subpart D also refer to the *FEMA's roles and responsibilities* in administering its Federal awards.

- **§200.307 Program Income**
 Income from royalties and license fees for copyrighted materials, inventions, and patents is now included in the definition of program income. Additionally, FEMA may now negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance of the Federal award ends.
- **§200.308 Revision of Budget and Program Plans**
 This section sets the requirements for when recipients must report deviations from their approved budgets and program plans. This section also sets the requirements for when recipients must request prior approval from FEMA to make changes to their approved budgets. This section also establishes when FEMA may waive the prior approval requirements set forth in this section. Please note that per the terms of this section, FEMA may no longer waive the prior approval requirements for construction projects. You are strongly encouraged to read this section carefully.
- **§200.309 Period of Performance**
 A non-Federal entity may charge to their FEMA award only those allowable costs incurred during the award's stated period of performance. Pre-award costs will generally require prior approval from FEMA to be charged to the award. Recipients should review their specific program NOFOs for program specific requirements related to pre-award costs. Post-award costs – that is, costs that are incurred after the award's period of performance ends – are not chargeable to the award and will be disallowed.
- **§200.313 Equipment**
 Many of the requirements related to the use, management, and disposition of equipment purchased with FEMA grant dollars remain similar to the legacy requirements in 44 C.F.R. Part 13. But, there are some new requirements and clarifications related to grant-funded equipment:

Title – Title to grant-funded equipment will continue to be held by the recipient or subrecipient who purchase the equipment. The regulation establishes, however, that this title is a conditional title, meaning that the title is conditioned on the recipient or subrecipient complying with the use, management, and disposition requirements for equipment in 2 C.F.R § 200.313, and all other 2 C.F.R. Part 200 requirements related to property management that are applicable to equipment.

Encumbering Equipment- Additionally, recipients and subrecipients may not encumber grant-funded equipment without prior approval from FEMA or the pass-through entity. Recipients with specific questions about encumbering equipment should refer to their program NOFO or contact their Program Analyst.
- **§200.314 Supplies**
 FEMA retains an interest in any unused supplies exceeding \$ 5,000 in total aggregate value upon termination or completion of the project or program if they are not needed for any other Federal award. The non-Federal entity must compensate FEMA for its share of the supplies in compliance with 2 C.F.R. § 200.313 & 200.314.

As long as FEMA retains an interest in supplies, the non-Federal entity must not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services.

▪ **§200.329 Reporting on Real Property**

FEMA retains an interest in grant-funded real property until the non-Federal entity disposes of the property in compliance with FEMA's instructions. The pass-through entity or subrecipient is required to submit a report in writing on the status of any grant-funded real property. The reporting requirements recipients and sub-recipients must follow will be outlined in the NOFOs or award documents for non-disaster grants that fund real property. Recipients with specific questions regarding the reporting requirements should contact their Program Analyst.

▪ **§200.317 - § 200.326 Procurement Standards for Federal Awards**

All recipients and subrecipients of FEMA non-disaster grants must follow the applicable procurement standards located at 2 C.F.R. §§ 200.317 – 200.326. In general, the application of these requirements is briefly summarized below. However, procurement is a complex topic and recipients and subrecipients are strongly encouraged to very carefully review the procurement requirements in the new regulation. Recipients with specific questions about the procurement requirements should contact their Program Analyst.

Procurements by States: When procuring property and services under a Federal award, a state recipient or subrecipient must comply with the requirements of 2 C.F.R. § 200.317. The regulation at 2 C.F.R. § 200.317 requires a state recipient or subrecipient to follow the same policies and procedures it uses for procurements from its non-Federal funds, and also requires it to comply with 2 C.F.R. § 200.322 (Procurement of Recovered Materials) and ensure that every purchase order or other contract it issues under a Federal award includes the clauses required by 2 C.F.R. § 200.326 (Contract Provisions).

Procurements by Non-Federal Entities that Are Not States: All non-Federal entities that are not states who are recipients and subrecipients of Federal awards will follow 2 C.F.R. §§ 200.318 - 200.326 when procuring property and services under a Federal award.

NOTE: For Non-Profit Organizations, Institutions of Higher Education, and Hospitals: Non-profit organizations, institutions of higher education (as defined at 20 U.S.C. § 1001), and hospitals that were previously subject to the procurement standards set forth at 2 C.F.R. Part 215, are now subject to the procurement standards set forth at 2 C.F.R. §§ 200.318 – 200.326. These requirements differ from previous requirements and the impacted non-Federal entity should familiarize itself with these new standards.

▪ **§200.331 Requirements for Pass-Through Entities**

Pass-through entities have additional responsibilities when administering subawards, many of which are highlighted in this interim guidance and listed below. This IB does not provide an exhaustive list and pass-through entities must adhere to all of the requirements in 2 C.F.R. Part 200.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes information required in 2 C.F.R. § 200.331.

- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described 2 C.F.R. § 200.331.
- (c) Consider imposing specific subaward conditions upon a subrecipient, if appropriate, and notify subrecipient, as described in 2. C.F.R. § 200.207.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include the requirement found in 2 C.F.R. § 200.331.
- (e) Verify that every subrecipient is audited as required by 2 C.F.R. Subpart F— Audit Requirements when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 C.F.R. § 200.501.
- (f) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (g) Consider taking enforcement action against noncompliant subrecipients as described in 2. C.F.R. § 200.338.

- **§200.338 Remedies for Noncompliance**

FEMA may apply specific award conditions, as outlined in 2 C.F.R. § 200.207, if it is necessary to address a risk posed by an applicant or recipient, including, but not limited to, an applicant's history of failing to comply with the terms of a Federal award or failure to meet expected performance goals. These specific conditions may include, but are not limited to, requiring technical or management assistance, additional financial or programmatic reports and project monitoring, and payments as reimbursements rather than advance payments.

If those additional conditions do not remedy a recipient's non-compliance, additional remedies are available, including:

- (a) Temporarily withholding cash payments;
- (b) Disallowing costs;
- (c) Wholly or partially suspending or terminating the award;
- (d) Suspension or debarment proceedings;
- (e) Withholding further Federal awards for the project or program; and
- (f) Any other remedies legally available.

- **§200.339 Termination**

FEMA or the pass-through entity may terminate a Federal award in whole or in part:

- If a non-Federal entity fails to comply with the terms and conditions of the award;
- For cause; and
- With the consent of the non-Federal entity.

Additionally, the Federal award may be terminated by the non-Federal entity, if they send written notification setting forth the reasons for termination, the effective date, and the

portion to be terminated in the case of partial termination. The award may be wholly terminated where FEMA or the pass-through entity determines an award modified by a partial termination will not accomplish the purposes for which it was made.

▪ **§200.340 Notification of Termination Requirement**

In the event that FEMA or the pass-through entity terminates a Federal award in whole or in part, FEMA or the pass-through entity must provide a written notice of termination to the non-Federal entity whose award is being terminated.

▪ **§200.343 Closeout**

FEMA or the pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. FEMA will include specific information on award closeout for non-disaster grant programs in the program NOFOs.

NOTE: This requirement imposes a *new* requirement on recipients who make subawards. Pass-through entities are now required to closeout subawards when they are completed.

▪ **§200.333 Retention Requirements for Records**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report.

New Exception: When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period, non-Federal entities must keep records for more than the three year period.

Subpart E – Cost Principles

2 C.F.R. Part 200, Subpart E establishes cost principles that recipients and subrecipients will use, in addition to the guidance contained in their NOFOs and award documents, to determine allowable costs under their non-disaster grant awards. States, local governments, Indian Tribes, Institutions of Higher Education, and other non-profits will use these cost principles in connection with their non-disaster grant awards. The new cost principles continue to provide general guidance on what costs are allowable, reasonable, and allocable to Federal awards. In addition, the cost principles continue to contain specific guidance on selected items of cost. Some of these selected items of cost that recipients and subrecipients may find useful include:

- Alcoholic beverages
- Audit services
- Bonding costs
- Compensation – personnel services
- Compensation – fringe benefits
- Conferences
- Entertainment Costs
- Goods or services for personal use
- Pre-award costs
- Termination Costs

- Travel Costs

FEMA recommends all FEMA award recipients and subrecipients review the new cost principles carefully.

NOTE: The new cost principles in Subpart E do NOT apply to hospitals who are recipients or subrecipients of FEMA non-disaster grant awards. Hospitals will continue to follow the cost principles located at 45 C.F.R. Part 74.

Subpart F – Audit Requirements

States, local governments, Indian Tribes, institutions of higher education, and non-profit organizations that are required to perform a single or program-specific audit under the *Single Audit Act* will follow the audit requirements in Subpart F of 2 C.F.R. Part 200 for audits of their fiscal years that begin on or after December 26, 2014. For audits of fiscal years that began prior to December 26, 2014, these non-federal entities will continue to follow the audit requirements outlined in OMB Circular A-133.

Note that the audit threshold in Subpart F has changed. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year.

Additional Resources

The Super Circular is currently located in the Code of Federal Regulations at 2 C.F.R. Part 200. It can be located at the following link:

http://www.ecfr.gov/cgi-bin/text-idx?SID=6ff1948306752298f4e1d604ec4abc51&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl

You may also view the Department of Homeland Security's Interim Final Rule adopting the Super Circular in the Federal Register at 79 FR 75871. Here is a link to the DHS Interim Final Rule:

<http://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28697.pdf>

FEMA will be conducting web-based training to its recipient partners throughout the coming year. A webinar was presented on Thursday, December 18, 2014; the link for the webinar is located at www.fema.gov/grants. Another webinar will be presented on January 7, 2015 at 3:00PM EST and will be located at <https://icpd.adobeconnect.com/supercircular-jan7/>. If you have any questions regarding 2 CFR Part 200, please don't hesitate to contact your FEMA Program Analyst or the Centralized Scheduling and Information Desk at askcsid@dhs.gov or 1-800-368-6498. FEMA is interested in providing our stakeholders with additional webinars focused on subject-specific grants administration topics. If you have ideas or suggestions for what topics you would like FEMA to focus on, please let us know.