

Exploring Revisions to the Uniform Guidance

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Agenda

- What are Grants?
- Compliance Under the Super Circular
- Revisions to the Super Circular

What are Grants?

What are Grants?

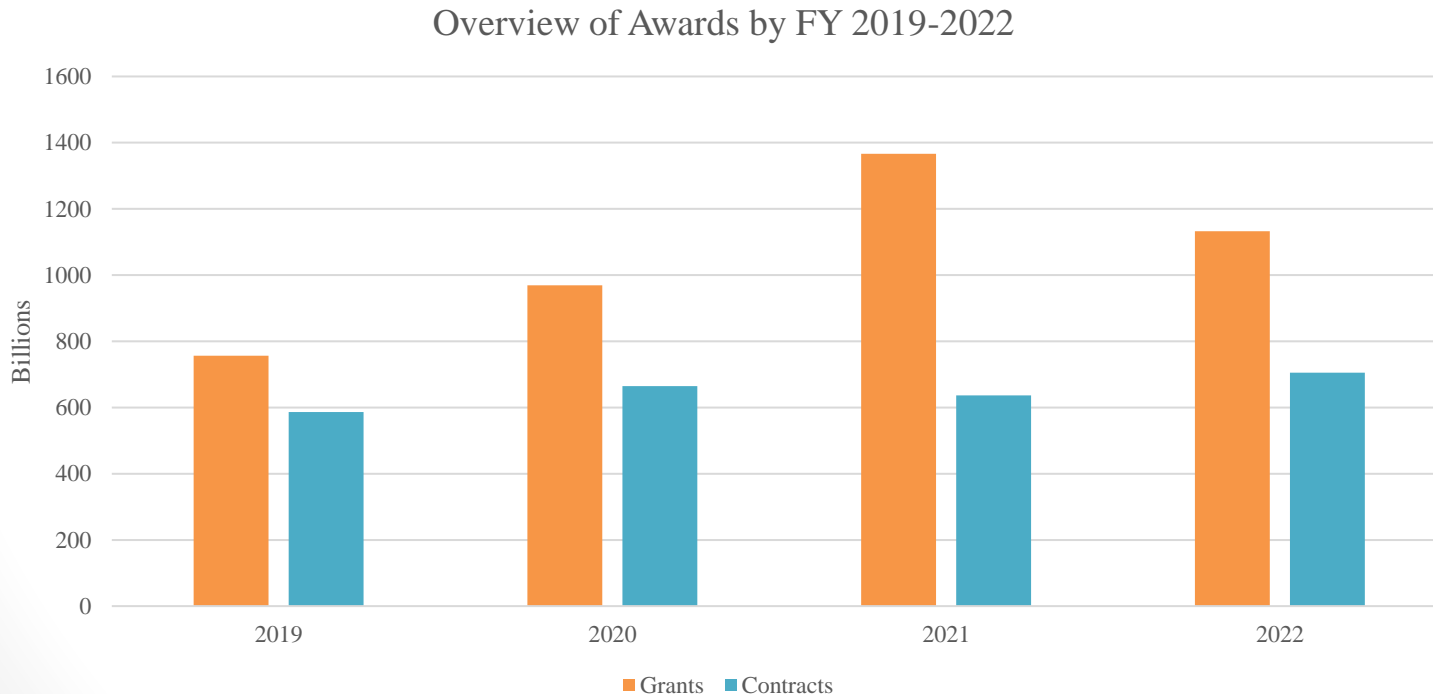
- Federal Grant and Cooperative Agreement Act of 1977
 - **Grants:** Agencies are required to award a federal grant when the goal is to carry out a “*public purpose*” without much involvement by the state or local government.
 - **Contracts:** Agencies are required to use a procurement contract for the “*direct benefit or use*” of the Government—i.e., not for a “public purpose of support or stimulation.”
 - **Cooperative agreements:** Grants in which the government has “*substantial involvement.*”

Who Awards Grants?

- Federal, State, and Local Governments
 - Very strict guidelines for applying to, receiving, tracking, and reporting on Government/Federal grants.
- Foundations
 - A foundation is a non-governmental entity, with a principal purpose of making grants to unrelated organizations, institutions, or individuals for charitable purposes.
- Corporations
 - For-profit companies donate some of their profits or resources to charity.

Federal Awarding Agencies

- In FY 2022, the Federal Government spent over \$1.1 trillion on federal grants.
- Trend in grant spending contrasts with contract spending:



Federal Awarding Agencies (cont.)

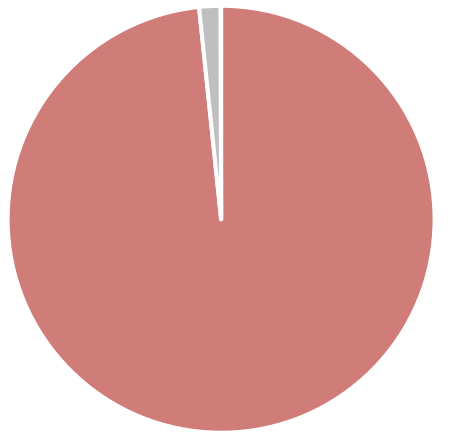
- Top awarding agencies in FY 2022
 - Department of Health & Human Services (HHS) – \$740.2 billion
 - Department of Transportation (DOT) – \$119.6 billion
 - Department of Education (ED) – \$68.3 billion
 - Department of Agriculture (USDA) – \$57.5 billion
 - Department of Homeland Security (DHS) – \$37.6 billion
 - U.S. Agency for International Development (USAID) – \$22 billion
 - Department of Housing and Urban Development (HUD) – \$20.6 billion
 - Department of Labor (DOL) – \$9.4 billion
 - Department of Defense (DOD) – \$9.1 billion
 - National Science Foundation (NSF) – \$8.1 billion

Federal Awarding Agencies (cont.)

- Percentage of grants versus contracts varies by agency:

DOD

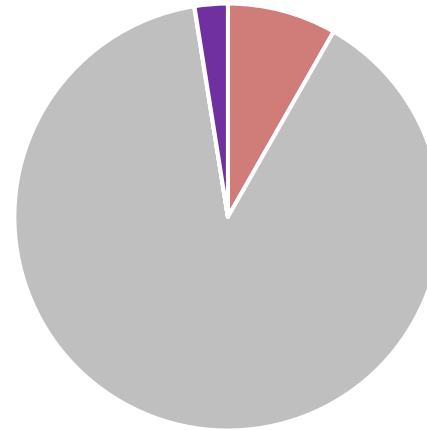
Total Funds Awarded by Type



■ Contracts ■ Grants

DOT

Total Funds Awarded by Type



■ Contracts ■ Grants ■ Loans

Federal Awarding Agencies (cont.)

- Department of Transportation
 - Approximately \$119.6 billion in grants and non-contract assistance in FY 2022
 - Top programs
 - Federal Highway Administration – Highway Planning and Construction
 - Federal Transit Administration – Federal Transit Formula Grants
 - Private sector grants

Federal Awarding Agencies (cont.)

- Department of Homeland Security
 - Approximately \$37.6 billion in grants and non-contract assistance in FY 2022
 - Top programs
 - Federal Emergency Management Agency – Disaster Grants – Public Assistance
 - U.S. Coast Guard
 - Transit Security
 - Private sector grants
 - Cybersecurity

Federal Awarding Agencies (cont.)

- U.S. Agency for International Development
 - Approximately \$22.1 billion in grants and non-contract assistance in FY 2022
 - Top Programs:
 - Bureau for Humanitarian Assistance
 - Foreign Assistance for Programs Overseas (Ukraine, Indo-Pacific Region)
 - Development, Democracy, Innovation
 - Private sector grants

Compliance Under the Super Circular

Super Circular

- Applies to Federal agencies that make Federal awards to non-Federal entities—now “recipients”
- Applicable to all costs related to Federal awards
- Entities must comply with requirements regardless of whether it is a recipient or subrecipient of a Federal award
- The terms and conditions of Federal awards flow down to subawards to subrecipients unless a particular section of this guidance or the terms and conditions of the Federal award specifically indicate otherwise

Super Circular

Part	Applicable	Not applicable

Super Circular

Subparts B-D; Administrative changes

- Requirements for Federal awarding agency management of Federal grant programs:
 - Before the Federal award has been made
 - Imposed on non-Federal entities/recipients in the Federal award

Subparts B-D; Administrative changes

- Recipients must disclose conflicts of interest in accordance with the awarding Federal agency's policy
- Mandatory disclosures are required for recipients or applicants regarding violation of Federal criminal law
 - i.e., bribery, gratuity, or fraud potentially affecting the Federal award
- Applies to new and additional incremental funding of pre-existing awards after December 26, 2014

Subparts B-D; Funding notice requirements

- Subpart C: Pre-Federal Award Requirements and Contents of Federal Awards
 - Instructions for announcement and application processes
 - Use of the appropriate contracting instrument
- Funding notice requirements:
 - Standardization of information
 - Marking of required sections
 - Funding priorities, focus areas, program description, and history
 - Describe substantial agency involvement
 - Additional application requirements must be approved by the OMB

Super Circular

Subparts B-D; Risk assessment

- Prior to making a Federal award, the awarding agency is required to review information made available through OMB-designated repositories of eligibility qualification or financial integrity such as:
 - SAM exclusion and FAPIIS
 - “Do Not Pay”
- The awarding agency will employ a framework to evaluate risks before awarding Federal funds (criteria to be included in the funding announcement)
- General factors to be assessed may include:
 - Financial Stability
 - Quality of management systems
 - Reports and findings from audits
 - History of performance
 - Recipient’s ability to implement statutory, regulatory, or other requirements

Super Circular

Subparts B-D; Required certifications

- To ensure Federal expenditures are proper and in accordance with the terms and conditions of the federal awards, recipients must provide the minimum certifications throughout the program or project:

Report	Certification Owner

Super Circular

Subparts B-D; Internal controls

- Recipients are required to maintain effective internal controls over the Federal award that provides reasonable assurance that the recipient is managing federal funds in compliance with Federal statutes, regulations, and terms and conditions of the federal awards
 - Leading practice is for controls to be in line with the COSO or “Standards for Internal Control in the Federal Government”
- Establish a compliance monitoring process
- Take prompt corrective action when instances of noncompliance are identified in audit findings
- Take protective measures to protect sensitive data

Applicability of COSO and green book

- The guidance specifically requires nonfederal entities to establish and maintain effective internal control over federal awards that provides reasonable assurance that awards are managed in a manner that is compliant with federal statutes, regulations and the terms and conditions of the award
- Given the paradigm shift from a rules based approach to compliance to a principles based requirements model, non-federal entities should strategically invest in a strong system of internal controls that focus on design and effectiveness to ensure compliance with government contracting regulations

Super Circular

Subpart E; Cost principles

- Principles for determining the allowable costs incurred by non-Federal entities under Federal awards
- Recipient is responsible for the “efficient and effective administration of the Federal award through the application of sound management practices”
- Designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute
- Costs that are made unallowable under FAR 31.2 and 31.603 are always unallowable

Super Circular

Subpart E; Cost principles

- Existing negotiated indirect cost rates are utilized until they are due to be re-negotiated
 - If no current rates exist, can use 15%, just raised from 10%, of Modified Total Direct Costs
- The Cost Principles must be used in determining allowable costs performed by the non-Federal entity under Federal Awards
 - Includes fixed-price contracts and subcontracts where costs are used in establishing the price
- The Cost Principles do not apply to:
 - Federal financing in the form of loans, scholarships, fellowships, traineeships, other fixed amounts;
 - For institutes of higher education, capitation awards, based on case counts, according to the terms and conditions of the award;
 - Federal awards to hospitals (see separate Appendix);
 - Fixed amount awards, including cooperative agreements and contracts; and
 - Other awards which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

Super Circular

Subpart E; Cost principles, compensation for personal services

- Consolidates reporting requirements
- Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed
 - Internal controls provide reasonable assurance that the charges are accurate, allowable, and properly allocated
 - Includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates for proper adjustment
- Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented

Subpart F; Audit requirements

- Sets standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards
- Provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits

Super Circular

Subpart F; Audit requirements

- Single audit or Program-specific audit (election; not for R&D work)
 - Requirement threshold increased from \$750,000 to \$1,000,000+ in Federal awards during a fiscal year (exempt if under \$1,000,000)
- Federal due date of single audit remains unchanged – earlier of:
 - 30 calendar days after receipt of the auditor’s report(s), or
 - Nine months after the end of the audit period
- Audit reporting package contents requirements remain unchanged though now made publicly available through the Federal Audit Clearinghouse (FAC)
 - Financial statements
 - SEFA – Schedule of Expenditures of Federal Awards
 - Listing of individual Federal programs by Federal agency
 - Summary schedule of prior audit findings & whether corrective actions have been implemented
- Audit questioned costs reporting threshold raised to \$25,000 (from \$10,000) for a type of compliance requirement

2024 Revisions to the Uniform Guidance

Background

- On April 22, 2024, the Office of Management and Budget (OMB) issued a final rule broadly revising sections of OMB Guidance for Grants and Agreements, following review and consideration of the comments received in response to the proposed guidance published on October 5, 2023.
- The effective date for the final rule is October 1, 2024, although federal agencies may have elected to apply it to federal awards issued as early as June 21, 2024 (60 days from the date of publication of the final rule).
- OMB’s final rule affects recipients and subrecipients of federal financial assistance.
- The changes affect everything from basic definitions of terms such as “federal financial assistance,” to the standard for mandatory disclosures, the threshold for the disposition of equipment and supplies, audit requirements, socioeconomic policies, prior approval requirements, the treatment of indirect costs, and more.

Summary of Changes

- OMB made changes to the same Parts of the Uniform Guidance indicated in the proposed rule: 2 C.F.R. Parts
 - 1 (About Title 2 of the Code of Federal Regulations and Subtitle A),
 - 25 (Universal Identifier and System for Award Management),
 - 170 (Reporting Subaward and Executive Compensation Information),
 - 175 (Award Term for Trafficking in Persons),
 - 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)),
 - 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)),
 - 183 (Never Contract with the Enemy), and
 - 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
- The final rule also updated 2 C.F.R. Part 184 (Buy America Preferences for Infrastructure Projects), which was not changed in the proposed rule.
- OMB's revisions generally reflect a desire to make the rules more flexible and make compliance easier, reducing burden on both agencies and recipients. OMB's revisions, as a whole, intend to advance the following objectives:
 - applicable sections in plain language, improving flow, and addressing consistent use of terms. (1) Incorporating statutory requirements and administration priorities;
 - Reducing agency and recipient burden;
 - Clarifying sections that recipients or agencies have interpreted in different ways; and
 - Rewriting

Plain Language Revisions

- Many of OMB’s proposed changes update the guidance language to increase clarity and consistency.
- Throughout Subparts A – E, the use of “non-federal entity” was replaced with “recipient” and/or “subrecipient.” Subpart F (Audits) retained the use of a non-federal entity to maintain alignment with the statutory provisions of the Single Audit Act.
- Agencies and awardees have long been confused by this term, which was used throughout the guidance.

Mandatory Disclosure

- Under past guidance, recipients and subrecipients (i.e., “non-federal entities”) or Federal award applicants are required to disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 2 C.F.R. § 200.113.
- In the new rule, OMB incorporated the Federal Acquisition Regulation (FAR) “credible evidence” standard to the mandatory disclosure requirement for grants and cooperative agreements.
- Under the new rule, recipients or subrecipients are required to promptly disclose any credible evidence of a violation of federal criminal law potentially affecting the Federal award, or a violation of the civil False Claims Act in writing to the Federal awarding agency and pass-through entity (if applicable) as well as that agency’s Office of Inspector General.
- OMB revised this requirement to better align with the FAR 52.203-13 disclosure requirement by replacing the phrase “potentially affecting” with “in connection with,” and adding the phrase “commission of” before “a violation.”

Mandatory Disclosure Unpacked

- Because its important....
- What Must I disclose? - “credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act”
- When Must I disclose? - “promptly” (was “in a timely manner” before)
- How must I disclose?
 - in writing
 - to the Federal awarding agency or pass-through entity (now recipient)

Thresholds

- OMB raised the threshold amount for the disposition of equipment and supplies.
 - Prior guidance provided that post-award, equipment with a current fair market value of \$5,000 or less may be retained by the non-Federal entity. 2 C.F.R. § 200.313.
 - Final rule raises this threshold to \$10,000.
 - Prior guidance also provided that the non-Federal entity must retain or sell residual supplies exceeding \$5,000 in aggregate value that are not needed for another Federal award. 2 C.F.R. § 200.314.
 - Final guidance raises this threshold to \$10,000.
- OMB also made an upward adjustment on the exclusion threshold of subawards for Modified Total Direct Cost base calculations used in allocating recipients' indirect costs.
 - Previously, modified total direct costs only include up to the first \$25,000 of each subaward, specifically excluding the portion of each subaward in excess of \$25,000.
 - In accordance with the proposed guidance, the final guidance increases the threshold for exclusion from \$25,000 to \$50,000.

Thresholds

- Under the prior rule, pass-through entities were limited to providing subawards based on fixed amounts up to the Simplified Acquisition Threshold (SAT) with prior written approval from the agency. 2 C.F.R. § 200.333.
 - OMB initially proposed to remove the SAT limit for fixed amount subawards entirely.
 - Upon further analysis, OMB determined that a threshold for fixed amount subawards remains warranted.
 - Instead of removing the threshold entirely, OMB doubled the prior threshold from \$250,000 to \$500,000.
- Under past guidance, a non-federal entity that expended \$750,000 or more in Federal awards during the entity's fiscal year must have a Single Audit (or program-specific audit) conducted for that year. 2 C.F.R. § 200.501.
 - OMB raised the audit threshold from \$750,000 to \$1,000,000.

Indirect Rates

- OMB clarified that recipients and subrecipients may notify OMB of any disputes regarding an agency's application or acceptance of federally negotiated indirect cost rates.
- OMB also clarified that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.
- OMB raised the *de minimis* rate from 10% to 15%.
 - OMB specified that while recipients and subrecipients still have discretion to apply a rate lower than 15%, agencies cannot compel them to do so unless required by statute or regulation.
 - OMB also clarified that the *de minimis* rate may not be applied to cost-reimbursement contracts.
- OMB removed the requirement that all indirect rates be publicly available on a government-wide website.

Audit Requirements

- **What wasn't changed:** Currently, auditees are required to prepare a schedule of expenditures of Federal awards (SEFA) for the period covered by the auditee's financial statements. 2 C.F.R. § 200.510. Current guidance dictates what the schedule must include.
- **Proposed:** to add a requirement that, for audits covering multiple recipients, the schedule must identify the recipient of the Federal award.
- **Final Rule:** removed this proposed addition, citing an intention to look for alternative means of making the information available in a manner that would be less burdensome for auditees and auditors.

Audit Requirements

- Awarding Federal agency is responsible for certain audit-related functions for the awards it makes, including submitting annual updates to the compliance supplement to OMB. 2 C.F.R. § 200.513.
 - **Proposed:** updating awarding Federal agency responsibilities to encourage agencies to engage with external audit stakeholders and National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB.
 - **Final Rule:** changed the language to clarify that agencies “should” rather than “are encouraged to” engage with external stakeholders.

Audit Requirements

- In terms of the scope of an audit...
 - **Proposed:** to add a requirement that compliance testing include a test of transactions and other auditing procedures necessary to provide the auditor with sufficient evidence to support an opinion on compliance.
 - **Final Rule:** replaced “and” with an “or” to reflect that testing of transactions may not always be the most appropriate method for every situation.

Audit Requirements

- Audit Reporting
 - The final rule clarified that when the dollar amount of known questioned costs is “not determinable” or unknown, a description of why the dollar amount was undetermined must be reported by the auditor.

Socioeconomic Policies

- As in the proposed guidance, the final guidance clarifies that 2 C.F.R. Part 200 does not prohibit recipients and subrecipients from:
 - Using Project Labor Agreements or similar forms of pre-hire collective bargaining agreements;
 - Requiring commitments or goals to hire people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M-21-28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, provided that a recipient or subrecipient may not prohibit interstate hiring;
 - Requiring commitments or goals to individuals with barriers to employment (as defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. § 3102(24)), including women and people from underserved communities as defined by Executive Order 13985;
 - Using agreements intended to ensure uninterrupted delivery of services;
 - Using agreements intended to ensure community benefits; or
 - Offering employees of a predecessor contractor rights of first refusal under a new contract.

Socioeconomic Policies

- **Proposed guidance:** stated that Federal agencies *may consider allowing recipients or subrecipients to use* the above-discussed practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the Federal financial assistance program, and other requirements of Part 200.
 - Some commenters, who observed that language seemed to indicate that use of the practices remains contingent on Federal agencies allowing recipients to use them
 - **Final guidance:** clarifies that *recipients and subrecipients may use* the listed practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

Socioeconomic Policies

- Consistent with the proposed guidance, the final guidance also:
 - Removes the prohibition on using geographic preference requirements;
 - Clarifies that 2 C.F.R. Part 200 Subpart D does not prohibit recipients and subrecipients from incorporating a scoring mechanism that rewards bidders committing to specific numbers and types of U.S. jobs, as well as certain compensation and benefits;
 - Adds veteran-owned businesses to the types of businesses recipients and subrecipients are encouraged to consider for procurement contracts; and
 - Adds language encouraging Federal award recipients to purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

Prior Approval Requirements

- Prior approval requirements remained largely the same between the proposed and final rules
- Recipients do not need prior approval of individual subrecipients under all circumstances, but *only when making subawards of programmatic activities not proposed by the recipient in the application for an award.*
 - Agencies should not require approval of a change in a proposed subrecipient unless the initial inclusion of a subrecipient was a determining factor in the agency's merit review process.
- Added requirements for prior approval where a recipient or subrecipient requests additional federal funds to complete a project, or transfer funds between construction and nonconstruction work.
- Recipients and subrecipients must seek prior approval for a no-cost extension to the period of performance, but not for one-time extensions authorized by the agency.

Prior Approval Requirements

- Removed a significant number of prior written approval requirements for various costs.
 - Prior written approval will no longer be required for:
 - real property,
 - equipment,
 - direct costs,
 - entertainment costs,
 - memberships,
 - participant support costs,
 - selling and marketing costs, and
 - taxes.
 - **Proposed, but not final:** OMB's proposal to remove the prior approval requirement for exchange rates did not make it into the final rule

That's All Folks

