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Community Action Program Legal Services, Inc.

Navigating the OMB Super Circular & CSBG Standards from a Legal Perspective

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Eleanor Evans, Esq.

CAPLAW

(617) 357-6915

eleanor.evans@caplaw.org

www.caplaw.org

Navigating the OMB 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.
- Link to 2/14/14 COFAR FAQ: <https://cfo.gov/wp-content/uploads/2013/01/2-C.F.R.-200-FAQs-2-12-2014.pdf>

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 subawardsare 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 Assistance 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

Subpart E – Cost Principles

200.400 Policy Guide

- Awardees responsible for:
 - Administering award efficiently and effectively using sound management practices
 - Recognition of each entities unique combination of staff, facilities and experience
 - Complying with funding source requirements
 - Maintaining internal accounting policies and practices consistent with cost principles
 - Supporting costs charged with adequate documentation
 - Not earning or keeping any profit unless expressly authorized by award terms & conditions

Cost Principles: Basic Considerations

200.405 Allocable Costs

- Still may not shift costs to overcome funding deficiencies or avoid restrictions; *however, costs that are allowable under two or more federal awards may be shifted if permitted by existing federal statutes, regulations or award terms and conditions*

200.405 Allocable Costs

- Direct cost allocation principles:
 - If a cost benefits two or more projects or activities:
 - in determinable proportions, cost should be allocated based on proportional benefit
 - in non-determinable proportions, costs may be allocated or transferred on any reasonable documented basis
 - Equipment or other capital assets costs are assignable to the authorizing federal award regardless of the use when no longer needed for original purposes

200.407 Prior Written Approval

- Now grouping of all prior approval requirements in one regulation
- Absence of prior approval will not affect reasonableness or allocability determination unless prior approval was specifically required

200.411 Adjustment of Previously NICR Containing Unallowable Costs

- Generally, unallowable costs included in NICR must be adjusted and/or a refund made:
 - Not a reopening of the rate negotiation
 - Future – unallowable costs removed, rates adjusted
 - Past – cash refund (including interest) issued
 - If provisional or fixed rates, adjustments will be made when rates finalized
 - Current – adjustment made or refund issued

200.413 Direct Costs

- Salaries of administrative and clerical staff will be treated as indirect (F&A) costs
- Direct charging allowed if:
 - Costs integral to a project or activity;
 - Individuals involved specifically identified with the project or activity;
 - Costs explicitly included in budget or prior written approval received; and
 - Costs not recovered as indirect

200.414 Indirect (F&A) Costs

- Negotiated rates must be accepted by all Federal awarding agencies
 - Different rates permitted only when required by Federal law or approved by Federal agency
 - Must notify OMB of approved deviations
 - Federal agency must make publicly available deviation policies, procedures and general decision-making criteria
 - Notice of funding opportunities must include indirect cost rate reimbursement, matching or cost share policies

200.414 Indirect (F&A) Costs

- If never received NICR may elect to charge a *de minimis* 10% rate and use indefinitely
 - Methodology must be used consistently for all federal awards until choose to negotiate which may do at any time
- If have NICR, may apply for one time extension for up to four years
 - Extension subject to review and approval
 - May not request rate review until end of extension period
 - Must re-apply to negotiate rate

Pass-through Entity

- A non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program, § 200.74
- Pass-through entities must provide subrecipients with certain specified information, including (among other things):
 - An approved federally NICR between the subrecipient and the federal gov't, 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, § 200.331(a)(4)

200.415 Required Certifications

- Expenditure certification required to assure payments are proper and in accordance with:
 - Award terms and conditions
 - Approved project budgets
 - Annual and final fiscal reports or vouchers requesting payment under the agreement
- Must be signed by an official authorized to legally bind entity
- Sample certification language included in regulation

200.415 Required Certifications

- Cost allocation plan or indirect cost rate proposal certification must be:
 - Maintained on file
 - On forms in the appendices
 - Signed by an individual no lower than VP or CFO
- If don't elect 10% rate or submit a certified rate or plan proposal, Federal gov't may disallow all indirect costs or unilaterally establish a plan or rate

Cost Principles: Selected Items of Cost

200.421 Advertising and Public Relations

- Includes program outreach as an allowable advertising cost

200.425 Audit Services

- Unallowable audit services costs include audits:
 - Not conducted in accordance with Single Audit requirements and
 - That fall below the Single Audit threshold
- Costs of financial statement audits, when don't currently have a federal award, may be included in indirect cost proposal or cost allocation plan's indirect cost pool

200.425 Audit Services

- Pass-through entities may charge for cost of agreed-upon-procedures to monitor subrecipients exempted from Single Audit Act as long as:
 - Conducted in accordance with GAGAS,
 - Paid for and arranged by pass-through entity, and
 - Limited in scope to one or more of the following:
 - Activities allowed or unallowed,
 - Allowable costs/cost principles,
 - Eligibility, and
 - Reporting

200.428 Collections of Improper Payments

- Costs incurred to recover improper payments are allowable as either direct or indirect costs, as appropriate
- Amounts collected may be used in accordance with cash management standards set forth in § 200.305 discussing payments
 - §200.305 addresses minimizing the time elapsing between the transfer of funds

200.430 Compensation – Personal Services

- **Additional allowability requirement for compensation:** appointment (hire) must be made in accordance with the entity's rules and policies and any applicable federal laws
- Removal of language requiring prior approval from awarding agency for overtime, extra-shift and multi-shift premiums payments

200.430 Compensation – Personal Services

- Outside employment for professional services analysis:
 - Must follow written outside employment policies for professional services
 - If none exist or fail to adequately define permissible extent of work, federal gov't may require work on federal awards allocated between non-federal activities and non organizational professional activities
 - If arrangement deemed excessive or inconsistent with award COI terms and conditions, awarding agency will negotiate arrangements on a case-by-case basis

200.430 Compensation – Personal Services

- Charges must be based on records accurately reflecting work performed
- If meet following standards, no additional documentation required:
 - Supported by system of internal control
 - Incorporated in official records
 - Reasonably reflect the total compensated activity
 - Encompass all activities – federal and non federal
 - Comply with established accounting practices and policies
 - Support distribution of employee’s salary among specific activities or cost objective

200.430 Compensation – Personal Services

- If use budget estimates (estimates determined before services are performed) must:
 - Have system that produces reasonable approximation of actual activity
 - Enter significant changes into records in a timely manner
 - Follow processes to review after-the-fact interim charges to estimate and ensure final amount charged is accurate, allowable and properly allocated

200.430 Compensation – Personal Services

- For blended funding:
 - May account for combined use based on performance metrics if all involved federal awarding agencies approve
 - Must submit request for waiver of standards based on documentation that:
 - Describes method of charging costs,
 - Relates charging of costs to a specific activity applicable to all funding sources and
 - Is based on quantifiable measures of the activity in relation to time charged

200.430 Compensation – Personal Services

- If don't meet documentation standards, may be required to submit PARs

200.431 Compensation – Fringe Benefits

- Cost of fringe benefits for leave (annual, FMLA, sick, holidays, court, military, administrative, etc.) allowable if:
 - Provided for under established written leave policies,
 - Equitably allocated to all related activities including federal awards, and
 - Accounting basis (cash or accrual) selected for costing each type is consistently followed

200.432 Conferences

- Cost of identifying, but not providing, locally available dependent-care resources are allowable
- Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the award

200.433 Contingency Provisions

- Contingency reserves still unallowable
- Some contingency amounts allowed to be explicitly included in budget estimates to extent they are necessary to improve the precision of those estimates
 - Estimates must be based on broadly accepted cost estimating methodologies and accepted by funding source

200.434 Contributions and Donations

- Depreciation on donated assets is permitted as long as the donated property is not counted towards cost sharing or matching

200.436 Depreciation

- No more use allowance
 - When replacing use allowance with depreciation method, depreciation must be computed as if asset has been depreciated over its entire life
- Charges must be supported by adequate property records and physical inventories (taken at least every 2 yrs) to ensure assets useable, used and needed
- Must maintain records showing that adequate depreciation taken

200.437 Employee Health and Welfare Costs

- Employee morale cost removed

200.438 Entertainment Costs

- Entertainment costs (includes amusement, diversion and social activities) are allowable if:
 - Have a programmatic purpose and
 - Are authorized either in the approved budget or with prior written approval from federal agency

200.439 Equipment and Other Capital Expenditures

- Removed language stating that equipment and other capital expenditures are unallowable as indirect costs
- If instructed by federal awarding agency to dispose of or transfer equipment, then cost of such disposal or transfer is allowable

200.441 Fines, Penalties, Damages and Other Settlements

- Other settlement costs and damages resulting from violations of, alleged violations of or failure to comply with laws and regs are unallowable except when incurred as a result of compliance with Federal award provisions or with prior written approval from the awarding agency

200.422 Fundraising and Investment Management Costs

- Fundraising costs for meeting federal program objectives are allowable with prior written approval
- Investment counsel and staff costs (currently unallowable) are allowable when associated with investments covering pension, self insurance or other funds which include federal participation

200.447 Insurance & Indemnification

- Reserves covering the risk of loss or damage to Federal property, to the extent that entity is liable for such loss or damage, are unallowable unless specifically required or approved
- Reserves for self–insurance programs (worker’s comp, unemployment insurance, severance pay) still allowable but more criteria to meet
- Insurance refunds must be credited against insurance costs in the year the refund is received

200.449 Interest

- Includes general statement that “financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section”

200.449 Interest

- Following conditions must be considered when determining allowability of interest:
 - Entity uses capital assets for federal award
 - Facilities/equip. costs limited to FMV via unrelated party
 - Financing obtained via an arm's length transaction
 - Interest costs result from least expensive financing alternative
 - Interest costs expensed/capitalized in accordance with GAAP
 - Earnings generated by investment of borrowed funds used to offset current interest costs
 - Conditions for debt arrangements over \$1 million to purchase or construct facilities are followed
 - Interest from fully depreciated asset is unallowable

200.451 Losses on Other Awards or Contracts

- Any excess costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable
- All losses are not allowable indirect costs and are required to be included in the appropriate indirect cost rate base for allocation to indirect costs

200.454 Memberships, Subscriptions & Professional Activity Costs

- Costs of membership in organizations whose primary purpose is lobbying are unallowable

200.460 Proposal Costs

- Proposal costs include:
 - Preparing bids, proposals, or applications on potential Federal/non-Federal awards or projects, including development of support data
 - Successful and unsuccessful bids
- Current costs treated as indirect (F&A) and allocated to all entity activities
- No past proposal costs will be allocable to current accounting period

200.462 Rearrangement and Reconversion Costs

- Must charge costs incurred for ordinary and normal rearrangement and alteration of facilities as indirect
- May now charge costs for special arrangements and alterations specifically for an award as direct
 - Must still obtain prior approval from federal awarding agency but now have option of obtaining from pass-through entity

200.471 Termination Costs

- Removed indirect costs related to salaries and wages from the list of allowable settlement expenses

200.472 Training & Education Costs

- Now just says that the cost of training and education provided for employee development is allowable

200.474 Travel Costs

- Per diem rates still a default if no acceptable travel policy in place
- Method(s) used for charging costs must be in accordance with written travel reimbursement policy
- To charge travel costs directly to a Federal award documentation must justify that:
 - Participation is necessary to the Federal award; and
 - Costs are reasonable and consistent with established travel policy

200.474 Travel Costs

- May use federal funds to cover temporary dependent care costs that directly result from travel to conferences as long as the costs are:
 - A direct result of the individual's travel for the award,
 - Consistent with documented travel policy, and
 - Only temporary during the travel period
- Travel costs for dependents are unallowable
 - Except for travel for 6 months or more with prior approval from federal awarding agency

Subpart F – Audit Requirements

Audit Requirements

- Threshold for Single Audit requirement raised to \$750,000. *§ 200.501.*
- See table in *§ 200.518* with threshold values to determine where federal programs fall in terms of risk and required audit level. Determination of Type A programs will now be based on higher value of \$750,000.
- To qualify for low-risk status, grantee must use GAAP unless another basis is required by state law. *§ 200.520.*

Audit Requirements

- The threshold for reporting questioned costs has been raised to \$25,000 for major programs. *§ 200.516.*
- All audits will be available for public inspection on the internet, on the website of the Federal Audit Clearinghouse. *§ 200.512.*
- If additional audits required then fed. awarding agency or state gov. must first review the Federal Audit Clearinghouse for existing audits and rely on the information there to the extent possible. *§ 200.503.*

Audit Requirements

- Audit due dates that fall on Saturday, Sunday, or Federal holiday, are due the following business day. *§ 200.512.*
- In addition to the sanctions provided for under A-133 for noncompliance with audit requirements the federal agency or state may now also initiate suspension or debarment proceedings. *§§ 200.505, 200.338.*
- When selecting an auditor, the grantee must also review peer review reports. *§ 200.509.*

CSBG Organizational Standards from a Legal Perspective

Background

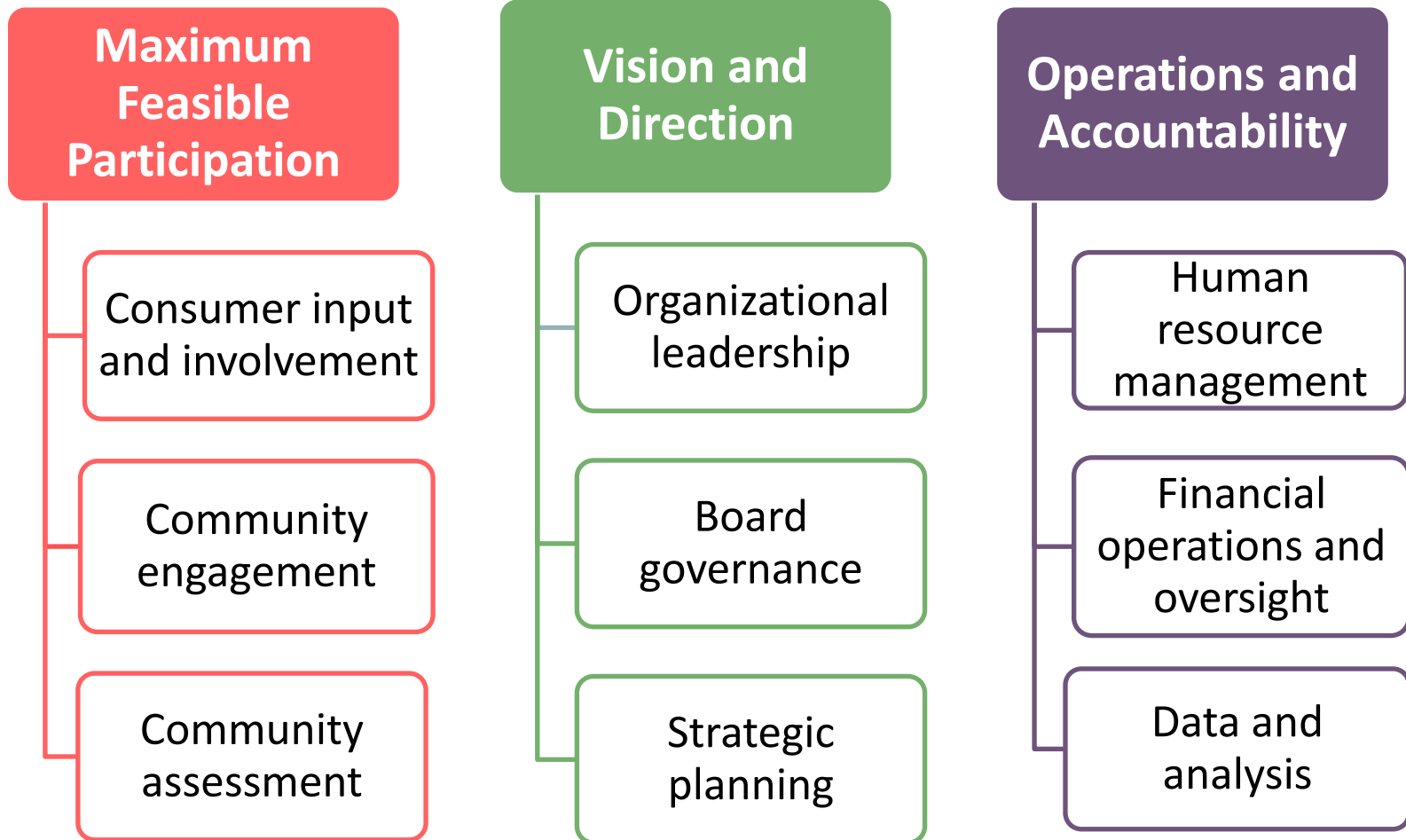
- Administration CSBG budget language
- Organizational Standards Center of Excellence grant to nat'l Community Action Partnership
- Also, Urban Institute contract for performance standards and ROMA Next Generation grant - NASCSP
- CAA network input
- Pilot testing in states
- Submission to OCS, including implementation recommendations
- Proposed CSBG reauthorization legislation

CSBG Organizational Standards

- 56 standards developed by CSBG Organizational Standards Center of Excellence (COE) and issued in proposed form by federal Office of Community Services (OCS)
 - OCS draft information memorandum (IM)
http://www.communityactionpartnership.com/storage/cap/documents/OSCOE/csbg_organizational_standards_im_draft.pdf
- Standards established to ensure CAAs have capacity to provide high-quality services to low-income individuals & communities
- Draft IM: OCS expects states to report on establishment and implementation of standards no later than FY2016
 - States to work with CAAs to increase accountability

CSBG Organizational Standards

Organized into three thematic groups



Objectives of Organizational Standards

- Current iteration - not “excellence” but minimum threshold for compliance and monitoring by states
- National standard or state-by-state adoption?
- Next step – one to five scale
 - CAAs would use for self –improvement
 - States would use for training and technical assistance, recommendations for best practices
- OCS would like to use as basis for competition if legislative change

Implementation of Standards

- Voluntary Adoption
 - By CAAs
 - By States
 - Follow state law on adoption of rules and regulations
 - Incorporate as standards into contracts
 - Provide sufficient lead time
 - Provide training and technical assistance
 - OCS role in encouraging adoption
 - Information Memorandum
- Mandatory Adoption
 - Congress would need to amend federal CSBG Act

Some Leadership Standards

- 4.1** Board has reviewed mission statement in last 5 years and assured that:
- Mission addresses poverty; and
 - Programs and services are in alignment with mission
- 4.4** Written succession plan is in place for CEO/ED, approved by Board, that contains procedures for covering emergency/unplanned, short-term absence of 3 months or less, and outlines process for filling a permanent vacancy (Private CAAs)
- Public CAAs: Adhere to local government policies re interim appointments and filling permanent positions

Some Governance Standards

- 5.1** Board is structured in compliance with CSBG Act:
- At least one third democratically-selected representatives of low-income community;
 - One-third local elected officials (or their representatives); and
 - Balance from major groups and interests in community
- 5.2** Board has written procedures that document democratic selection process for low-income board members adequate to assure that they are representative of low-income community

Some Governance Standards

- 5.3** Bylaws have been reviewed by an attorney within past 5 years
- 5.4** Documentation that board members receive and review bylaws at least every two years
- 5.5** Board meets in accordance with frequency and quorum requirements and fills board vacancies as set out in bylaws
- 5.6** Each board member has signed conflict of interest policy within past 2 years
- 5.8** Board members provided with training on duties and responsibilities within past 2 years

Some Human Resources Standards

- 7.1** The CAA has written personnel policies reviewed by attorney and approved by Board within past 5 years (private CAA)
- 7.2** The CAA makes available Employee Handbook (or personnel policies in cases without a Handbook) to all staff and notifies staff of any changes
- 7.4** Board conducts performance appraisal of CEO/Executive Director within each calendar year (private CAA)

Some Human Resources Standards

- 7.5** Board reviews and approves CEO/Executive Director compensation within every calendar year
- Public CAA – Compensation of CAA Department head is made available according to local government procedure
- 7.7** The CAA has a whistleblower policy approved by Board within past 5 years
- Public CAA – Provides copy of any existing local government agency whistleblower policy to tripartite board at time of orientation

Using Legal Resources: Attorneys

- Knowledgeable local counsel is essential
- Procurement process
- Key areas of expertise:
 - Employment and labor law
 - Nonprofit organizations
 - Real estate and contract law
- Attorney on board of directors, or as consultant to board, required for Head Start grantees
- Understand contract and billing structure
- Pro bono services

Legal Resources: Training and Policies

- Use attorneys or other qualified professional to conduct training on human resources issues
 - For example, discrimination, sexual harassment, wage and hour law
- Consider in-person on-site or off-site training, videos, online training, webinars, newsletters
 - CAPLAW website has many free recorded webinars and content on HR issues
- Communicate training throughout organization
- Use attorneys to review or draft and update personnel policies

Legal Resources: Monitoring

- Use attorneys and other experts to prepare for key reviews, like Head Start
- Seek advice of attorneys in responding to monitoring and audit findings, cost disallowances
- Attorneys may be able to provide specific authority for your position and assist in persuasive arguments

Using Legal Resources:

Nonprofit Status and Bylaws

- Legal advice in creating structure, and ensuring compliance with law, for new ventures and affiliations
 - New legal entities, preserving tax-exempt status, mergers
 - Determine status of existing grants
- Legal review of bylaws and board policies
 - Organizational standards: every 5 years
 - Update to be consistent with new laws
 - Bring into line with changing practices and operations of CAA
 - Review board size and structure
 - Conflict of interest and whistleblower policies

Ensuring Compliance: What Else?

- Tone at the top
 - Oversight role of board
 - Culture of compliance
 - Board and ED setting the right tone by word and example
- Systems are set up, implemented, followed, and monitored
- Written policies
- Competent auditors
- Assigning responsibility
- Holding staff accountable

Some Relevant CAPLAW Resources

- Visit www.caplaws.org
 - Exemplary Legal Practices and Policies Guidebook
 - Top-Notch CAA Toolkit: Governance and Financial Issues
 - CAPLAW Bylaws Toolkit
 - Employer Smarts program



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