

Managing Federal Grant Oversight

The new Super Circular:
2 CFR 200

By Linda Green Angus



Effective December 26, 2014, Congress passed new grant-funding regulations that are intended to strengthen financial integrity and accountability. These regulations are referred to as the Super Circular and are collectively referenced in the Federal Register as 2 CFR 200.¹

The legislation applies to both new awards and to incremental federal funding awarded to or passed through to states, local governments, and other sub-recipients. Here are local government examples:

- In January 2016, the U.S. Department of Housing and Urban Development released the results of the \$1 billion in awards for the National Disaster Resilience Competition grant. The state of California was awarded \$70.3 million for a project that promotes long-term community and watershed resilience in a particular area.
- It named a number of teaming partners that will be participating in managing projects and in awarding funds, including Tuolumne County and Tuolumne County Superintendent

of Schools. As the grant recipient, California and the partner agencies to whom funds are passed through are responsible for grant compliance regarding project management, accounting, and reporting.²

- On October 1, 2015, President Obama declared a national disaster in South Carolina due to storm flooding. In all, 24 counties were designated for U.S. Federal Emergency Management Agency (FEMA) assistance.
- Certain FEMA funds were retained by the state while the bulk of the funding was passed through to county governments, city governments, and housing authorities to administer. Every sub-recipient of grant funding has the same grant compliance obligation that the state has as the direct funding recipient.³
- The U.S. Economic Development Administration (EDA) is currently accepting proposals from applicants that include county, city, and township governments in rural and urban areas to support construction, non-construction, technical assistance, and revolving loan fund projects under EDA's

public works and EAA programs.

Grants and cooperative agreements made under these programs are designed to leverage existing regional assets and support the implementation of economic development strategies that advance new ideas and creative approaches to advance economic prosperity in distressed communities.

When a local government submits a successful proposal, it will contract with EDA to proceed with the projects proposed and will agree with the terms and conditions set forth in the contract. The new Super Circular will be the compliance guide to both EDA and the local government.⁴

The new regulation took the place of and superseded eight former grant-funding regulations or “circulars,” including: A-21, A-50, A-87, A-89, A-102, A-110, A-122, and A-133.

As funding is passed through the federal government to the states, to local governments, and beyond, the accountability and responsibility remains with every entity that ultimately spends or passes grant funding on to other entities.

Assessing Risks

Regulatory compliance obligations are of particular interest to local governments when considering whether to apply for and accept federal grant funds for projects. Grantors, grantees, and pass-through agents are now expected to strengthen oversight of the funds.

Both federal agencies and pass-through entities must evaluate the merits and risks associated with accepting and passing through funding. They must also take actions to assess and to mitigate potential risks of fraud, waste, and abuse prior to money being spent.

The U.S. Office of Management and Budget (OMB) and the U.S. General Services Administration (GSA) have established an integrity and performance system that includes government-wide data with specified information related to the integrity and performance of entities awarded federal grants and contracts, called Federal Awardee Performance and Integrity Information System (FAPIIS).

Various sources of information on the eligibility of organizations for government awards can be found on this system at <https://www.fapiis.gov>. Integrity and performance information found on this site can be used along with other data collected to assess recipient integrity.

Project and Financial Management Assessment

Each entity awarded funding must have systems in place that compare budgets to expenditures. It must also provide written procedures for payment of funds, written procurement rules that comply with the new regulations, and procedures for determining the allowance of costs. An assessment of internal controls around financial reporting also needs to be critically assessed.⁵

Local governments must have confidence that compliance with federal rules and regulations will be maintained. It is extremely important that local governments evaluate the time commitment that the grant project will require.

It is also critical that the local government assess the expertise and

ability of the current internal staff members to ensure that they have the required skills to implement and support the grant project.

If the assessment reveals that the internal staff does not have the time or specific expertise required to manage a grant, local governments can partner with other governments or identify professional contractors with the proper experience and credentials.

Evaluate Pass-Through Risks

Before a local government decides to pass grant funds to other entities, the risk of the pass-through should be evaluated. To determine if the risk is at an acceptable level, local governments should assess the entity's experience with similar awards and the results of previous audits and other indicators of risk.

When a state or local government is in a position to pass federal grant funding through to other entities, the risk and responsibility remains with the local government to make certain that the funding, project timeline, and performance reporting will be managed properly.

The Risk and Remedies of Noncompliance

State and local governments that accept grant funds may face problems when grant funds are not managed and reported correctly.

If a non-federal entity fails to comply with federal statutes, regulations, or the terms of an award, additional conditions may be imposed. Payments can be suspended pending correction of the deficiency, disallowance of costs may result, and ultimately the award may be terminated.

In Louisiana, the state legislative auditor reported on issues on noncompliance in the use of federal Hurricane Katrina funds and noted that "the state could be on the hook to pay the federal government up to \$1.2 billion for Road Home grants" that were passed through to homeowners without the proper systems and oversight in place.⁶

To mitigate the risk of noncompli-

ance with any local government or pass-through entity, a strong monitoring function should be put in place to ensure proper and timely project performance and reporting. Federal grant awards require a comparison of budget to actual reported expenditures. Each project also requires a completion timeline, which must be adhered to unless permission has been obtained for a plan variance.

Key Steps

When determining whether to accept grant funds or to pass them through to other entities, understand the risk assessment process needed to determine the project management, financial skills, and time required to complete the project.

Establish a strong monitoring function. If the internal and external monitoring reveals problems, take steps to remediate the problems and mitigate the risk of the resulting penalties.

If the current staff does not have the time or specific expertise required to manage certain grant projects, consider finding the right partner to ensure successful project management. **PM**

ENDNOTES AND RESOURCES:

- 1 *Federal Register*. TITLE 2—Grants and Agreements; PART 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl.
- 2 HUD National Disaster Resilience Competition Grant: <http://portal.hud.gov/hudportal/documents/huddoc?id=NDRCGrantProf.pdf>.
- 3 South Carolina Flood Disaster 2016: <http://www.scemd.org/component/content/article/21-homepage/public-information/219-severe-flooding>.
- 4 Economic Development Agency: <http://www.grants.gov/search-grants.html?agencyCode%3DHUD>.
- 5 COSO Guidance on Internal Control. Internal Control – Integrated Framework (2013): <http://www.coso.org/ic.htm>.
- 6 Audit: State should recover \$1.2 billion in noncompliant Katrina aid. <http://www.wvtv.com/story/news/local/orleans/2015/12/16/legislative-audit-road-home/77443956>.

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