

# Pass-through Entity and Subrecipients OVERVIEW

State of South Dakota

# Outline

1. Why are we here?
2. Background Information
  - Federal Grant Compliance
3. Uniform Grant Guidance
4. Subrecipient vs Contractor
5. Pass-through Entity and Subrecipients Compliance

# DISCLAIMER

Keith Senger is not a Federal Grant expert

- I have not received any special training
- I do not have all the answers
- I have never administered a Federal Grant
- **We are all in the same situation – we will learn together**

# Why are we here?

The State has widespread non-compliance with areas of the Uniform Grant Guidance

- Pass-through entity/subrecipient
- One of the concerns that initiated the Governor's Internal Control Initiative
- SB 162
- Every agency is doing things differently
- The State has no central guidance

# Federal Grant Compliance Hierarchy

## Grants made Prior to December 26, 2013

1. Office of Management and Budget (OMB) Circulars
  - A-122 (Cost Principles for Non-Profit Organizations)
  - A-87 (Cost Principles for State, Local, and Indian Tribal Governments)
  - A-21 (Cost Principles for Educational Institutions)
  - A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profits)
  - A-102 (Grants and Cooperative Agreements with State and Local Governments)
  - A-89 (Federal Domestic Assistance Program Information)
  - A-133 (Audits of States, Local Governments, and Non-Profit Organizations)
  - A-50 Audit Follow-Up
  - Others
2. Grant Specific Regulations
  - Code of Federal Regulations (CFRs)
  - Grant Agreements

# Federal Grant Compliance Hierarchy

Grants made After December 26, 2013

1. Uniform Grant Guidance
  - ONE DOCUMENT – “Super Circular”
2. Grant Specific Regulations
  - Code of Federal Regulations (CFRs)
  - Grant Agreements

# Uniform Grant Guidance Super Circular

- ▶ Subpart A – Acronyms and Definitions
- ▶ Subpart B – General Provisions
- ▶ Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards
- ▶ Subpart D – Post Federal Award Requirements
- ▶ Subpart E – Cost Principles
- ▶ Subpart F – Audit Requirements

# OMB – Super Circular – Definitions

## ▶ Pass-through Entity:

a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (200.74)

## ▶ Subaward:

an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (200.92)

## ▶ Subrecipient:

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 (200.93)

## ▶ Contract:

a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (200.22).

## ▶ Contractor:

an entity that receives a contract as defined in §200.22 Contract (200.23)



# Uniform Grant Guidance Super Circular

## Subpart D – Post Federal Award Requirements

- ▶ Subrecipient Monitoring and Management
  - 200.330 – Subrecipient and contractor determination
  - 200.331 – Requirements for pass-through entities
  - 200.332 – Fixed amount subawards

# Subrecipient vs Contractor

- ▶ Part 200.330
- ▶ (a) *Subrecipients.*
  - A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient.
  - Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
    1. Determines who is eligible to receive what Federal assistance;
    2. Has its performance measured in relation to whether objectives of a Federal program were met;
    3. Has responsibility for programmatic decision making;
    4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
    5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

# Subrecipient vs Contractor

- ▶ Part 200.330
- ▶ (b) *Contractors.*
  - A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor.
  - Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
    1. Provides the goods and services within normal business operations;
    2. Provides similar goods or services to many different purchasers;
    3. Normally operates in a competitive environment;
    4. Provides goods or services that are ancillary to the operation of the Federal program; and
    5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

# Subrecipient vs Contractor

- ▶ Subrecipient vs Contractor determinations are not always straightforward
- ▶ No single factor will dictate the existence of one relationship or the other in all cases
- ▶ An organization need not possess all of the subrecipient characteristics in order to be a subrecipient
- ▶ Some characteristics of both a contractor and subrecipient can exist under the same agreement

# Subrecipient vs Contractor

- ▶ Substance of the relationship is more important than the form of the agreement
- ▶ Not all of the characteristics listed need to be present in all cases
- ▶ The pass-through entity must use its judgment in all cases

# Requirements of Pass-through Entities to Subrecipient

## PART 200.331 – Extensive list

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) though (xiii)

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) 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 (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

# Requirements of Pass-through Entities to Subrecipient

## PART 200.331 – Extensive list

(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 in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

# Requirements of Pass-through Entities to Subrecipient

## PART 200.331 – Extensive list

(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:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.



# Requirements of Pass-through Entities to Subrecipient

## PART 200.331 – Extensive list

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) 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.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

# Subrecipient Monitoring

Pass-through entities are required to do the following (200.331)

- ▶ Perform risk assessments to determine appropriate subrecipient monitoring (NEW CONCEPT introduced with the Super Circular)
- ▶ Perform appropriate and ongoing monitoring of each subrecipient. On-site reviews, training, technical assistance, and contracting for an agreed-upon procedure engagement for monitoring are all examples of various monitoring efforts organizations may employ
- ▶ Review reports that the pass-through entities require of the subrecipient
- ▶ Verify subrecipients have audits, as needed (see 200.501 – Audit requirements)
- ▶ Consider how to address subrecipient noncompliance
- ▶ Issue a management decision for audit findings of the subrecipient within six months

# Audit Requirements (200.501)

(a) *Audit required.* 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 in accordance with the provisions of this part.

(b) *Single audit.* 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 audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

# Uniform Grant Guidance (UGG)

## Areas of Concern

### Pass-through entity/subrecipients

1. Subrecipient vs contractor determinations – 2 CFR 200.330
2. Pre-award risk assessments – 2 CFR 200.331(b)
3. Notification requirements – 2 CFR 200.331(a)
4. Subrecipient monitoring – 2 CFR 200.331(d) and (e)
5. Post-award risk assessments – 2 CFR 200.331(d) and (g)
6. Subrecipient audit requirements 2 CFR 200.331(f)
7. Grant agreement form guidance (minimum requirements – do's and don'ts)
8. Attestation – SB162
  - a) Conflict of interest policy of subrecipient
  - b) IRS form 990 of subrecipient
  - c) Effective internal control system of subrecipient
  - d) Single Audit of subrecipient
  - e) Other...
9. Posting of Grant Agreements and Attestation forms – SB162

# Suggested Solutions

## 1. BFM has worked with other state agencies and developed several statewide tools

- Statewide Subrecipient vs Contractor Checklist
- Statewide Subrecipient Risk Assessment tool
- Notification requirement tools
- Attestation Form
- Posting of Grant Agreement

## 2. UGG Work Group

- Tackle the 9 items previously discussed
- Present a plan designed to provide reasonable assurance the State is in compliance with our pass-through entity obligations to the SBIC at a future meeting
- Tackle other UGG compliance issues