

ALERT

OMB Revises Sections of Uniform Guidance on Grants to Encourage Greater Focus on Program Performance and Implement Statutory Requirements

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WHAT: The Office of Management and Budget (OMB) has recently announced multiple amendments to its *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly referred to as the “Super Circular”, codified in Title 2 of the Code of Federal Regulations), which governs federal grantmaking. These changes seek to incorporate management and compliance improvements linked to the Government’s Results-Oriented Accountability for Grants Cross Agency Priority Goal (Grants CAP Goal), implement statutory provisions from recent iterations of the National Defense Authorization Act (NDAA) and from the Federal Funding Accountability and Transparency Act (FFATA), and clarify areas of existing misinterpretation.

WHEN: These revisions will go into effect on November 12, 2020, except for the changes to 2 CFR §§ 200.216 (the “Huawei Ban”) and 200.340, which became effective on August 13, 2020.

WHAT IT MEANS FOR INDUSTRY: OMB’s Final Guidance addresses a wide variety of topics that impact the day-to-day work of Federal grant recipients. To start, the revisions to the Super Circular support the Grants CAP Goal Executive Steering Committee’s strategies for “maximizing the value of grant funding” by shifting the focus of awarding agencies from strict compliance with grant regulations to balancing compliance with program performance. To this end, OMB included multiple changes encouraging agencies to apply a risk-based, data-driven framework that lessens compliance requirements

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for programs demonstrating successful performance.

The Final Guidance also incorporates numerous statutory requirements into the grant regulations. For example, as we recently discussed in a separate alert, OMB added 2 C.F.R. § 200.216, *Prohibition on certain telecommunications and video surveillance services or equipment*, which implements Section 889 of the Fiscal Year (FY) 2019 NDAA (Pub. L. 115-232) and forbids Federal award recipients from using government funds to enter into contracts (or extend or renew them) with entities utilizing covered telecommunications equipment or services. Additionally, OMB added 2 C.F.R. § 200.183, *Never contract with the enemy*, which implements Title VIII, Subtitle E of the FY 2015 NDAA (Pub. L. 113-291), as amended by Sec. 822 of the FY 2020 NDAA (Pub. L. 116-92), and prohibits recipients from providing funds to persons or entities actively opposing United States or coalition forces involved in contingency operations.

Finally, OMB also clarifies various ambiguities in its grantmaking regulations. For example, the Final Guidance amends 2 C.F.R. § 200.101, *Applicability*, to clarify that Federal awarding agencies may apply the requirements of 2 C.F.R. Part 200, subparts A through E, to other Federal agencies.

Wiley's Government Contracts team plans to release a more detailed summary of OMB's changes to the Super Circular in the near future.