

Governmentwide Grants Management Requirements

AGENCY: Office of Management and Budget.

ACTION: Final Revision of OMB Circulars A-21, A-87, A-102, A-110 and A-122 and Interim Final Revision of OMB Circular A-110.

SUMMARY: The Office of Management and Budget (OMB) is issuing final revisions to five OMB circulars and, in addition, OMB is issuing interim final amendments to one of these circulars to reflect the Single Audit Act Amendments of 1996. The five Circulars are A-21 ("Cost Principles for Educational Institutions"), A-87 ("Cost Principles for State and Local Governments"), A-102 ("Grants and Cooperative Agreements with State and Local Governments"), A-110 ("Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"), and A-122 ("Cost Principles for Non-Profit Organizations"). The purpose of these revisions is to provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. Additionally, OMB is issuing interim final conforming amendments to Circular A-110 to reflect the enactment of the Single Audit Act Amendments of 1996, the recent rescission of OMB Circular A-128 ("Audits of State and Local Governments"), and the consolidation of its provisions in a revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

DATES: The final revisions and interim final amendments are effective [30 days after publication]. All comments on the interim final amendments should be in writing and must be received by [60 days from publication]. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Grants Management Audit Docket, Office of Federal Financial Management, Office of Management and Budget, Room 6025 New Executive Office Building, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted via the Internet to kahlow_b@a1.eop.gov. Please include the full body of E-mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Office of Financial Federal Financial Management, Office of Management and Budget, (202) 395-3053. The revised OMB Circulars A-21, A-

87, A-102, A-110, and A-122 are available electronically on the OMB Home Page at /OMB. These revised Circulars are also available in paper format by contacting the OMB Publications Office at (202) 395-7332.

SUPPLEMENTARY INFORMATION: On May 14, 1997, the Office of Management and Budget (OMB) proposed a revision (62 FR 26577) of OMB Circulars A-21, "Cost Principles for Educational Institutions," A-87, "Cost Principles for State and Local Governments," A-102, "Grants and Cooperative Agreements with State and Local Governments," A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and A-122, "Cost Principles for Non-Profit Organizations." The proposal would provide a conditional exemption from OMB's grants management requirements and a conditional class deviation from the agencies' Grants Management Common Rule (GMCR) for certain Federal grant programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment.

This exemption could be granted to related Federal non-entitlement grant programs which are administered by State and local governments and which have the following characteristics: the related programs (1) serve a common program purpose, (2) have specific statutorily-authorized consolidated planning and consolidated administrative funding, and (3) are administered by State agencies which are funded mostly by non-Federal sources. In order to promote efficiency in the State and local program administration of such related programs, Federal agencies could exempt these covered State-administered, non-entitlement grant programs from Federal grants management requirements in OMB Circulars A-21, A-87, A-110, and A-122, and the GMCR. The exemptions would be from all but the allocability-of-costs provisions of Circulars A-21 (Section C, subpart 4), A-87 (Attachment A, subsection C.3), and A-122 (Attachment A, subsection A.4), and from all of the administrative requirements provisions of Circular A-110 and the GMCR.

A Federal agency would have the discretion to exempt a Federal grant program from the Federal grants management requirements. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

If a Federal agency exempts a Federal grant program from these requirements, a State would only qualify if it adopts its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extends such requirements to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its

subrecipients. If a State does not adopt such fiscal and administrative requirements, then it would continue to be subject to the Federal grants management requirements.

Response to Comments

OMB received eight comment letters: three from Federal agencies, one from a local government, two from universities, one from a non-profit organization, and one from an interest group.

Four of the letters did not address the substance of the proposed revisions. The letter from the local government asked if the proposal had any relationship to the recent revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," on June 24, 1997 (62 FR 35278); in response to this question, these revisions are not related to that revision of Circular A-133. The letter from the non-profit organization raised concerns about certain other provisions in OMB Circular A-122 which are unrelated to the proposal; OMB will consider these concerns in connection with its review of Circular A-122. A letter from one of the Federal agencies requested an unrelated change to the GMCR and OMB Circular A-110; the issue raised will be considered during OMB's future review of those provisions. A letter from another Federal agency raised concerns about OMB's denial of certain other, unrelated waiver requests from that agency which would have been applicable only to that agency's grant programs.

The other four letters addressed the substance of the proposed revisions. The interest group commenter supported the proposed revisions and recommended that the flexibility afforded to State-administered programs be extended to local-administered programs. This recommendation for flexibility for local-administered programs will be considered during OMB's future review of the five circulars.

The two university commenters objected to the proposal because of its possible effect on those subrecipients, including subcontractors, that are universities. Specifically, the university commenters preferred to be subject only to OMB Circulars A-21 and A-110 (and not also to State grants management requirements) because "We have found that state government does not always do a good job communicating to us what the guidelines are for a given program." The university commenters stated that they are familiar with Circulars A-21 and A-110 and "have systems in place to deal with them." Finally, the Federal agency commenter found the proposal unclear and felt that "the funding agency needs to have not only accountability, but also the consistent accountability afforded by currently imposed Federal cost principles and uniform administrative requirements." The commenter raised a concern about the possible inefficiency of having more than one State grants management system, with one for exempted grant programs (and other State programs), and one for the rest of the Federal grant programs.

OMB would also be concerned if the proposed changes increased burden on State grantees or their subrecipients, as the three commenters apparently believed. However, State grants management

requirements instead of Federal grants management requirements currently apply to several previously-exempted Federal programs as well as to State-funded programs which have no Federal funding. In 1981 and 1982, OMB waived the application of Circulars A-21, A-87, A-102, A-110, and A-122 for certain, selective State-administered programs. As a consequence, OMB believes that the addition of programs with shared, statutorily-authorized consolidated planning and consolidated administrative funding with these already-exempted programs would not result in additional burden on subrecipients and would not result in increased inefficiency. Since OMB does not believe that any negative effects on grantees or subrecipients will ensue from the proposed revisions, OMB is finalizing them.

Accordingly, to provide such a conditional exemption, OMB is adopting the proposed revisions and amending: Section A.3 of Circular A-21; Attachment A Section A.3 of Circular A-87; Section 2 of Circular A-102; Subpart C of Circular A-110 (as a new Section __.29 instead of as Section __.45 as proposed); and, Attachment A Section A of Circular A-122. The amendments are set forth below.

Interim Final Conforming Amendments

In addition to adopting the proposed revisions to the five circulars, OMB is also making conforming amendments to Circular A-110 to reflect the enactment of the Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 1396) and OMB's rescission of Circular A-128 ("Audits of State and Local Governments") and its issuance of the June 24, 1997, revision of OMB Circular A-133 (62 FR 35278, June 30, 1997). The provisions of the 1996 Act and of the revised Circular A-133 apply to audits of fiscal years beginning after June 30, 1996. The revised Circular A-133 co-locates audit requirements for States, local governments, and non-profit organizations. As a consequence, OMB rescinded OMB Circular A-128.

Currently, Circular A-110 refers to the Single Audit Act of 1984 (which was superseded by the 1996 Act), to Circular A-128 (which was rescinded), and to the former version of OMB Circular A-133 (which covered only non-profit organizations, and did not cover State and local governments). These interim final conforming amendments update these references. Additional conforming changes were made to conform with the 1996 Act and revised Circular A-133 (e.g., to reflect that, under the 1996 Act, all non-profit hospitals are now subject to the Act).

OMB has determined, under 5 U.S.C. 553(b)(B), that good cause exists to issue these conforming amendments on an interim final basis. The conforming amendments update the references to the applicable statute and circulars, by replacing the superseded references with current ones. Moreover, under the Single Audit Act Amendments of 1996, the provisions of the 1996 Act (which are reflected in the revised OMB Circular A-133) provide standards that are effective for audits of fiscal years beginning after June 30, 1996. Accordingly, OMB has determined that issuing a proposal for comment on these conforming amendments would be "impractical, unnecessary, and contrary to the public interest."

Availability of Revised Circulars

OMB has prepared updated versions of the five circulars, as amended herein. The revised OMB Circulars A-21, A-87, A-102, A-110, and A-122, as amended herein, are available electronically on the OMB Home Page at /OMB. These revised Circulars, as amended herein, are also available in paper format by contacting the OMB Publications Office at (202) 395-7332.

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Acting Director

1. OMB hereby amends Circulars A-21, A-87, A-102, A-110, and A-122 by adding the three paragraphs that follow, regarding "Conditional exemptions," at the specified places in each Circular: (1) as a new paragraph d under A.3 Purpose and Scope, Application of Circular A-21; (2) as a new paragraph e under Attachment A, A.3 Purpose and Scope, Application of Circular A-87; (3) as a new paragraph j under Section 2, Post-award Policies of Circular A-102; (4) as a new Section __.29 under Subpart C, Post-award Requirements of Circular A-110; and, (5) as a new paragraph 7 under Attachment A, A. Basic Considerations of Circular A-122:

Conditional exemptions. (1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher

Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

2. OMB hereby amends paragraphs (a), (b) and (c) of Section __.26 of OMB Circular A-110 to read as follows:

__.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.