A Brief Overview of the OMB Super Circular

By: Lauren Vitale

On December 26, 2013, the federal Office of Management and Budget (OMB) released its final regulations for the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” These regulations have been informally dubbed the Super Circular or the Omni Circular. The Super Circular made significant changes to the management and administration of federal awards. The most salient of these is clear: If your organization or agency receives federal awards, the Super Circular will affect your federal grant management and administration procedures. As the Super Circular also affects the audit process, new procedures for those responsible for auditing federal awards and programs will also need to be put into place. This article provides a brief overview of the Super Circular and some of its key implications.

The Super Circular can be found in Title 2 of the Code of Federal Regulations, at 2 C.F.R. § 200. It applies to federal agencies that provide federal awards to non-federal entities, and to non-federal entities receiving federal awards. (Nonfederal entities may include state and local government, nonprofits, colleges and universities.) The Super Circular set in motion new and important ramifications for all nonprofit applicants and recipients of federal awards.

For purposes of the Super Circular, the term “federal award” includes federal grants, cooperative agreements and other agreements for federal assistance, like loan agreements. It should be noted that under the Super Circular, distinct responsibilities apply to nonfederal
entities based on whether they are classified as recipients, subrecipients, or pass-through entities.\(^1\) For example, a state as a nonfederal entity may be a direct recipient of a federal award if it receives federal grant funds such as the U.S. Department of Energy Weatherization Assistance Program grant funds.

However, note that federal programs may be exempted from certain Super Circular requirements. For example, some provisions do not apply to entitlement programs such as Medicaid. The OMB may also allow exceptions to Super Circular requirements in unusual circumstances and where not prohibited by statute. However, a federal awarding agency may also apply more restrictive requirements to a class of federal awards or non-federal entities other than those pertaining to audit. These may be approved by the OMB or required by federal statute or regulations.\(^2\) States may also require subrecipients of certain program funds to follow the requirements of the Super Circular.

The Super Circular supersedes and streamlines the requirements from eight OMB Circulars applicable to the administration, use, and audit of federal awards. It consolidates and codifies language found in the following OMB Circulars into the Code of Federal Regulations: OMB Circulars A-21 (Cost Principles for Educational Institutions), A-50 (Audit Follow-up), A-87 (Cost Principles for State, Local, and Indian Tribal Governments), A-89 (Federal Domestic Assistance Program Information), 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-Profits), A-133 (Audits of States, Local Governments, and Non-Profit Organizations), and A-122 (Cost Principles for Non-Profit Organizations).

The Super Circular was developed in response to presidential directives aimed at increasing accountability and efficiency.\(^3\) As a result, the objectives of the Super Circular included more oversight and accountability, reduction of the risk of waste, fraud, and abuse, elimination of duplicate and conflicting guidance between circulars, the consistent and transparent treatment of costs, the best use of federal resources, streamlined guidance for federal awards, and reduced administrative burdens.

The release of the Super Circular represented the conclusion of a two year effort by the OMB, the federal Council on Financial Assistance Reform (COFAR), and other sectors. This effort included the solicitation of public input and the publication of advance notice of proposed guidance. The final Super Circular regulations were published on December 26, 2013. Non-federal entities were given until December 26, 2014 to comply with the new rules. Federal awarding agencies were required to adopt regulations implementing the Super Circular to be effective by December 26, 2014. (The effective date for a subaward is the same as the effective date of the original federal award from which the subaward is made.)\(^4\) The Super Circular is now in effect for all federal awards or funding increments to nonfederal entities on or after December 26, 2014.

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The Super Circular has had a significant impact in the areas of Administrative Requirements, Cost Principles, and Audit Requirements. It is divided into six parts (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, and Subpart F-Audit Requirements). It also includes several appendices.

If your organization or agency receives federal awards, you should examine your federal grant management and administration procedures for compliance with the Super Circular’s requirements. In addition to examination of fiscal and programmatic monitoring tools and contracts, you should also examine all non-regulatory materials such as program manuals and handbooks for consistency with the Super Circular’s requirements. Those responsible for auditing federal awards and programs will also need to establish procedures that comply with the Super Circular.

Below are a few of the key implications of the Super Circular. This list is by no means exhaustive and is not meant to be specific to any federal award:

- The Super Circular provides that nonfederal entities or applicants must disclose to the federal awarding agency or pass-through entity, in a timely manner and in writing, violations of federal criminal law involving fraud, bribery, or gratuity violations that potentially affect the federal award. Failure to make the required disclosures can result in any of the remedies described in 2 C.F.R. § 200.38, which include suspension and/or debarment.

- The Super Circular provides that nonfederal entities must maintain conflict of interest policies, and must disclose, in writing, potential conflicts of interest to the federal awarding agency or pass-through entity. Therefore, such organizations should educate their staff on what would constitute a conflict of interest and establish plans to satisfy this requirement. See 2 C.F.R. § 200.112 for further information.

- The Super Circular strengthened the requirements surrounding internal controls. OMB emphasized internal controls requirements as extremely important. The Super Circular provides that nonfederal entities must establish and maintain effective internal controls over federal awards so as to provide reasonable assurance that the awards are being managed in compliance with federal regulations, statutes, and award terms and conditions. The Super Circular provides that nonfederal entities must evaluate and monitor their compliance with these legal requirements, and take prompt action when instances of noncompliance are identified in audit findings. They must also take reasonable measures to safeguard protected personally identifiable information and other information that the federal awarding agency or pass through entity designates as sensitive, or that the nonfederal entity considers to be sensitive. See 2 C.F.R. § 200.303 for further information.

- The Super Circular includes several changes about how organizations are audited for federal awards. Significantly, a new higher audit (also informally known as the “A-133 audit”) threshold of $750,000.00 is used, rather than the former audit threshold of $500,000.00. Under this provision, a nonfederal entity that expends $750,000.00 or more in federal award funds during its fiscal year is required to have a single or program audit.
specific audit conducted for that year. This is a change from the previous threshold of $500,000.00. This is effective for nonfederal entity audits of fiscal years beginning on or after December 26, 2014. For further information, see 2 C.F.R. § 200.501.

- The Super Circular also strengthens the requirements pertaining to procurement. It outlines five permissible methods of procurement: Micro-Purchases, Small Purchases, Sealed Bids (Formal Advertising), Competitive Proposals, and Noncompetitive Proposals (Sole Source Procurement). For all procurements, the Super Circular provides that nonfederal entities must maintain records to sufficiently detail the history of the procurement. 2 C.F.R. § 200.317 through § 200.329 provide further information on these requirements. Therefore, organizations and entities should review their policies for compliance with these sections.

Additionally, the Super Circular includes several important sections concerning audit requirements as found in Subpart F, and it made several key changes regarding the treatment of costs. The Super Circular also includes many new and standard definitions. For example, “Contractor” has replaced “Vendor”.


Non-federal entities should direct questions regarding compliance with the Super Circular to the appropriate federal funding agency or oversight agency. Non-federal agencies receiving funds through a pass-through entity, such as a state office, should direct their questions to their pass-through entity. Federal awarding agencies should direct their questions on the Super Circular to the OMB.5

About the Author: Lauren Vitale works as an attorney with the Massachusetts Department of Housing and Community Development. She is admitted to the Massachusetts bar and the U.S. District Court for the District of Massachusetts. Her remarks are made entirely in her individual and personal capacity. They do not necessarily reflect the views of the Department, nor do they evidence or constitute a statement of any practice or policy of the Department.

Alabama Passes New Prison Reform Bill

By: Cleveland M. Patterson, Ill

On May 7, 2015, the Alabama House of Representatives passed Senate Bill 67, the Justice Reinvestment Act, to reduce prison overcrowding in the state. The bill was passed by a vote of 100-5, and Alabama Governor Robert Bentley signed it on May 21. Currently, there are approximately 24,000 inmates in facilities designed to hold approximately 13,000 inmates.6

The bill calls for a reduction in the penalties for non-violent drug and property crimes by creating a new Class D Felony classification. Non-violent felons would then be referred to a community

6Cason, Mike “Alabama Prison Reform Passes; Governor Plans to Sign” AL.com, 7 May 2015. Web. 13 September 2015

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corrections program instead of prison, emphasizing parole supervision and making efforts to keep these felons from returning to prison. This program would cost $25-$26 million per year for five years.7

Alabama State Senator Cam Ward, R-Alabaster, sponsor of the bill, expects there to be a reduction of about 4,200 inmates in the prison population over the course of five years.8 However, there has been some strong opposition to the bill. Mobile County District Attorney Ashley Rich strongly opposes the bill, stating that the bill will hurt crime victims because prosecutors will not be able to ask for jail time until after the fourth conviction. Rich also states that because prosecutors will not be able to send these non-violent felons to prison once convicted, they will be referred to the community corrections program, which is essentially probation.9

Although Gov. Bentley has signed the bill, the law is not scheduled to take effect until January 30, 2016. The law will not be enacted if there is no funding for the bill. Funding for the bill was not included in the state budget prior to the signing of the bill.

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Licensing Portability for Lawyers – the times, they are a changing!

By: Libby Jamison

Many in the legal profession followed the recent discussion in Florida surrounding law license reciprocity for allowing experienced licensed lawyers in other states to become members of the Florida Bar without additional examination. After an uproar from the Florida legal community against reciprocity, the proposal has been shelved... For now!

But the issue of license portability in the legal profession is not going away. New York recently announced that it would begin administering the Uniform Bar Exam (UBE) in July 2016. New Jersey may also follow suit. If so, this would bring the number of states utilizing the UBE to 18. Certainly more will follow in the coming years as the next generation of attorneys seeks more flexibility in their practice of the law. But the UBE is just one part of the portability puzzle in the current law licensing landscape.

Should you decide to relocate to another jurisdiction during your legal career, the current jumble of bar exams and reciprocity is a difficult road to navigate, even for a law school graduate! Some states waive the full bar exam, but require a modified “attorney” exam. If you determine that you do indeed qualify for admission to your new state’s bar without further examination, that determination is just the beginning of the process. Applying for admission via reciprocity can be

8 Cason, Mike “Bentley Signs Prison Reform Bill; Ward Says It Will Be Funded” AL.com, 21 May 205. Web 13 September 2015
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a laborious, time consuming, and expensive process.

Furthermore, reciprocity is not a free for all – the states still have their individual and varying requirements. Many states offering reciprocity require that an attorney have practiced full time for five of the past seven years in order to avoid an additional bar exam entirely. For populations like parents who may have stepped away for a period to raise children or military spouses who move frequently resulting in a gap in practice, these “time in practice” requirements can be significant barriers to continuing a career in the law.

The notion of increased portability for law licensing is supported by many, including the well-known constitutional scholar, Erwin Chemerinsky. In an op-ed from May 2015, Chemerinsky wrote, “The current system, under which each state sets its own requirements and won't recognize out-of-state credentials, is inefficient, burdensome and, frankly, unjustifiable.” He goes on to explain that bar exams were rare until the late 19th century. By the early 1920s, most states had instituted a written exam to ensure familiarity with each state’s unique law.

This trend continued across all professions. The licensing issue recently came to the attention of the White House, which released a report on occupational licensing in July 2015 noting that one-quarter of today’s workers in the United States are required to obtain a state license to do their jobs. This represents a five-fold increase since the 1950s! The report found that “licensing requirements vary substantially by state, creating barriers to workers ... and inefficiencies for business and the economy as a whole.” The administration proposed $15 million in grants to fund states willing to take a hard look at this issue and challenged the states to review best practices to safeguard consumers while maintaining a modernized regulatory system to meet the needs of workers and businesses.

Regarding the practice of law, Chemerinsky argues, “The truth is that basic principles of law do not vary from state to state.” Lawyers are trained and capable of learning the specifics in a new jurisdiction. Additionally, forcing attorneys to memorize rules (many of which they will not use in daily practice and will promptly forget following the exam) does not ensure competence in the practice of the law.

An argument against the current system is not to say that rules and regulations ensuring competence and protecting the public should be discarded. Character and fitness must still be reviewed and approved. Admittees to a new bar must be subject to continuing education and ethical requirements. However, in light of the digital age and the high rate of competition that now exists, a drawn out and complicated re-licensing process relying on an outdated territorial system simply does not serve attorneys or clients well.

Doctors are not required to re-take a medical board if they desire to relocate. Will a similar system be instituted for the legal profession? Only time will tell whether a single national bar is the future of law licensing. In the meantime, we watch to see how the individual states will adapt to the need for change.

About the Author: Libby Jamison manages her own virtual law practice and is Of Counsel to the Law Office of Thomas Carter in Claremont, CA. She currently resides in Rhode Island with her husband, a Navy helicopter pilot. Libby volunteers with the Military Spouse JD Network, Hire Heroes USA, Junior League, and her local spouse group.
NEWS AND ANNOUNCEMENTS

Social Media Team Update

The Social Media Team is pleased to announce the new Social Media Policy! The purpose of this policy is to provide direction on appropriate and effective ways to utilize social media on behalf of the ABA YLD when delivering content, facilitating engagement, and communicating with both members and non-members. The policy includes such information as sample posts, proper use of our social media channels, and (of course!) directions for using the online spreadsheet we set up to capture posts from across the division. The new policy can be found at: http://www.americanbar.org/content/dam/aba/administrative/young_lawyers/leadership_portal/social_media_policy.authcheckdam.pdf

Disaster Legal Services Team

The DLS team is currently implementing DLS in Mississippi, Texas, South Carolina, and California. Earlier this year, we implemented DLS in Texas, Wyoming, Saipan, and Kentucky. We expect this to be a busy year on the DLS front, as NASA predicts that this year’s El Nino is going to be the worst ever.

The DLS team encourages all young lawyers to be prepared in the event of an emergency or disaster, and to coordinate with your local or state bar association to help disaster survivors.

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Upcoming Conferences

Mark your calendars for the upcoming committee meetings and division conferences!

SLG Spring Meeting in San Juan, Puerto Rico: April 8-11, 2016
YLD Spring Conference in St. Louis, Missouri: May 5-7, 2016

There are a lot of great sessions and activities planned you won’t want to miss. Register today!

CALL FOR ARTICLE SUBMISSIONS

Committee members and future authors, we are accepting articles for publication in our quarterly newsletter on an ongoing basis! We welcome any topic of your choice that will further the knowledge, work, or interest of our committee members. Examples of past article topics range from changes in legal trends, recent or historical case decisions with direct and over-reaching impact on our legal work, to professional wisdom for young attorneys on their first day of work. Please submit submissions or inquiries to Committee Chair, Christopher Lake Brown (cbrown@ci.mansfield.oh.us).

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