

# 2011 OMB Circular A-133 Compliance Supplement Issued



By Tammy Ricciardella, BDO Institute for Nonprofit Excellence<sup>SM</sup>  
 Appeared in *Nonprofit Standard*, July 2011 • Reprinted with permission  
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On June 1, the Office of Management and Budget (OMB) issued the 2011 Circular A-133 Compliance Supplement (the Supplement) dated March 2011. The Supplement is available on OMB's website at [http://www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2011](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2011) in both pdf and Word format. The full version of the Supplement is over 1,500 pages in length. You can download the entire Supplement or sections of the Supplement from the website. The Supplement is applicable to audits of fiscal years that begin after June 30, 2010 and supersedes the 2010 Supplement.

As in the past years, Appendix V lists the changes from the previous Supplement. There were 19 new programs added to the Supplement and five new programs added to the Student Financial Aid Cluster. There is also a summary of specific changes to programs listed by Catalog of Federal Domestic Assistance (CFDA) number. Throughout the Supplement, items that pertain to funds received under the American Recovery and Reinvestment Act (ARRA) are identified in boldface print.

**The following is a summary of some of the major changes from the 2010 Supplement.**

## **New Requirements for the Federal Funding Accountability and Transparency Act (FFATA) of 2006 and subsequent 2008 Amendments**

One of the most significant changes to the Supplement is in Part 3, Compliance Requirements, for both Reporting and Subrecipient Monitoring. These sections have been modified to include the new compliance requirements and suggested audit procedures relating to FFATA. FFATA put into place a new federal reporting system for direct recipients

of non-ARRA funds that requires the reporting of certain subawards. Under FFATA, a subaward is defined as a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received a grant or cooperative agreement award and that is awarded to an eligible subrecipient. For grants and cooperative agreements, the effective date of FFATA was October 1, 2010, for all discretionary and mandatory awards equal to or exceeding \$25,000 with a new Federal Assistance Identification Number (FAIN) made on or after that date. A recipient must report each obligating action of \$25,000 in Federal funds for any subawards. The reporting is made to the FFATA Subaward Reporting System (FSRS) and is required to include the date of the subaward, subaward amount, subaward number and other details. The auditor will be selecting a sample of recipient payments for first-tier subawards to determine that all amounts reported are supported by documentation and to determine that the filing was completed in a timely basis.

## **Comparison of ARRA and FFATA Requirements**

The Reporting compliance requirement section in Part 3 also includes a new table that helps auditors distinguish for purposes of the OMB Circular A-133 audit the reporting requirements that apply to reporting by recipients under ARRA and those that apply to reporting under FFATA.

## **Part 4 Applicability of FFATA Reporting**

There is a new section entitled Subaward Reporting under the Transparency Act that is now included in each program and cluster in Part 4. This new section notes whether FFATA reporting is "applicable" or "not applicable." There are several reasons why FFATA reporting may not be applicable to a program and/or cluster, such as: (1) there are no subawards under the program, (2) the program is exempt because it is ARRA funded, or (3) the program is not a grant or cooperative agreement. If you have programs or clusters with both ARRA and non-ARRA funding, the FFATA reporting only applies to the non-ARRA funds.

## **Clarification Regarding ARRA Section 1512 Reporting**

The Reporting section in Part 3 has been updated to clarify the requirements of the quarterly reporting requirement under Section 1512 of ARRA (Section 1512 reporting). OMB has clarified in the Supplement that when recipients do not have the actual expenditure amounts for the quarter within the 10

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days allowed, they must use the “best available data” for the full quarter which can include estimates. So, if a recipient has two months of finalized data and the third month can only be estimated due to the timing of the reporting, this final month can be reported based on estimates. However, the recipient should have a process in place to review the reports they submitted and compare the estimated amounts to the actual finalized results, to determine if there are any material differences that would require that the report be

*“...the recipient should have a process in place to review the reports they submitted and compare the estimated amounts to the actual finalized results...”*

corrected during the continuous correction period. If there are no material differences between the estimates used on the report submitted and the actual finalized results, the recipient does not have to correct a submitted report. This clarification states that the “lag” method being used by some entities is not acceptable and if used would be considered a compliance finding. OMB did state that the finding would not be considered a material weakness or affect the compliance opinion and would not have questioned costs associated with the finding. The “lag” method is where a recipient is using the finalized financial data from two months of the quarter but due to not having the final month closed due to the timing, they used the last month of the previous quarter.

## Clarification of Buy American Act Requirements

The Procurement and Suspension and Debarment compliance requirement in Part 3 has been modified to include additional information related to international agreements and the Buy American Act. Entities with funds that are used for purchases of iron, steel and other manufactured goods should review these clarifications.

## Update to Subrecipient Monitoring

The Subrecipient Monitoring compliance requirements in Part 3 have been updated to add the requirement that non-ARRA first-tier subrecipients must obtain DUNS numbers as part of eligibility for a subaward. The update also clarifies that for ARRA awards, a subrecipient is not required to be registered in the Central Contracting Registration (CCR) at the time of the award.

## Contacts for A-133 Audits

A table has been added to the Supplement that provides programmatic contact information for programs by CFDA number to obtain specific information about a federal program or its programmatic requirements. OMB notes that these are program contacts and they are not familiar with the nuances of A-133, so only programmatic questions should be posed to these individuals.

## Disaster Waivers

Appendix VI provides updated information on the waivers and special provisions granted by Federal agencies. Many of the waivers and/or special provisions are directed toward recipients affected by Hurricanes Katrina and Rita in 2005.

## Exclusion of Certain ARRA Programs from the Single Audit Requirement

Included in Appendix VII of the Supplement is a list of ARRA-funded programs that are not covered by the Single Audit requirements, and therefore, are not required to be included in the Schedule of Expenditures of Federal Awards (SEFA) or in the determination of major programs. This appendix has also been updated to include a list of ARRA programs that are not covered in Parts 4 and 5 of the Supplement but that are potentially subject to an A-133 audit.

## ARRA Findings Requirements

Included in Appendix VII to the Supplement is a paragraph that notes that the details of findings reported for ARRA funds must include explicit identification of the applicable ARRA programs that are affected by the finding.

## Appendix VII Reminders

Appendix VII continues to follow the same guidance introduced in the 2010 Supplement regarding the effect of ARRA expenditures on the major program determination process and the fact that ARRA funds need to be separately identified in the SEFA and on the Data Collection Form. In addition, the clarification remains that an entity cannot be a low-risk auditee if they have not submitted their A-133 reporting package to the Federal Audit Clearinghouse within the nine-month time period. The OMB guidance that recommends that agencies not grant extensions to grantees is repeated again. It is recommended that organizations review the 2011 Supplement for a full list of changes that may affect them and ensure they have complied with all the applicable compliance requirements.

For more information, contact Tammy Ricciardella, director, at [tricciardella@bdo.com](mailto:tricciardella@bdo.com).

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morale as a result. Also note that this approach may increase staffing costs for non-exempt employees if the increased work load results in their working additional hours.

Holding employees' wages at their current level is yet another option. Before implementing a wage freeze, check the terms of any collective bargaining agreements or employment contracts. Also ensure that salaries paid to employees hired during a wage freeze are consistent with those paid to existing employees. Finally, keep in mind that while your organization can freeze non-exempt employees' hourly wage rates, it must still pay them for all hours worked, including overtime pay, if applicable.

## Conclusion

In tough economic times, CAAs should consider short-term and long-term goals and work creatively to implement cost-saving measures to help them stay on the path towards those goals. Although the cost-saving measures outlined in this article are discussed separately, a CAA may choose a combination of the options to best meet its needs.

See end notes on this page.

*The CAPLAW Update Newsletter is part of the National T/TA Strategy for Promoting Exemplary Practices and Risk Mitigation for the CSBG program and is presented by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration of Children and Families, Office of Community Services Cooperative Agreement Number 90ET0429 and 90ET0432. Any opinion, findings, and conclusions, or recommendations expressed in this newsletter are those of the authors and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration of Children and Families.*

# Article Endnotes

## Workforce Options in Leaner Times

1. See Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.; Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq..
2. 29 U.S.C. §§ 2101-2109.
3. 2 C.F.R. § 230 (OMB Circular A-122), App. B, par. 8.k.
4. Two U.S. Department of Health and Human Services Departmental Appeals Board (DAB) decisions illustrate that failing to have such a policy or agreement in place is likely to result in severance payments being disallowed. See *Alcoholism Center for Women*, DAB No. 222 (1981) and *South Central Florida Health Systems Council*, DAB No. 488 (1983). These decisions are available online at <http://www.hhs.gov/dab/decisions/index.html>.
5. Note that under federal cost principles and Internal Revenue Code requirements for tax-exempt organizations, compensation – including severance – paid to employees must be reasonable. For nonprofit CAAs, where an employee receives more than \$150,000 in compensation (including severance) for the year, information about that employee's compensation, including severance paid, may need to be reported to the IRS on Schedule J of the organization's Form 990. In some cases, states also require nonprofits to report certain severance payments to their state charity regulators.
6. See 29 U.S.C. § 621 et seq.; see also 29 C.F.R. § 1625.2.
7. 29 U.S.C. § 201 et seq.
8. 29 U.S.C. §§ 206, 207; see also 29 C.F.R. § 541 et seq.
9. 29 U.S.C. §§ 206, 207; see also 29 C.F.R. § 541 et seq.
10. See Department of Labor (DOL) Fact Sheet #70 available online at <http://www.dol.gov/whd/regs/compliance/whdfs70.pdf>.
11. 29 C.F.R. § 541.602 (a); DOL Fact Sheet #70.
12. DOL Fact Sheet #70.
13. See 29 C.F.R. § 541.602 (a).
14. See 29 C.F.R. § 541.602 (a); DOL Fact Sheet #70.
15. 29 C.F.R. § 541.710.

## Oral Complaints: Casual Workplace Banter or Properly Filed Claim under Wage & Hour?

1. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 179 L. Ed. 2d 379 (2011).
2. 29 U.S.C.A. § 215 (emphasis added).

## Employer Liability for USERRA and Other Discrimination Claims Expanded

1. *Staub v. Proctor Hosp.*, 131 S.Ct. 1188, 1194 (2011)
2. 38 U.S.C. § 4311(a)
3. 38 U.S.C. § 4311(c)
4. See *Staub*, 131 S.Ct. at 1191; see also; 42 U.S.C., § 2000e-2(a), (m)

## Are CAAs Required to Comply with E-Verify?

1. See Instant Verification of Work Authorization, U.S. Citizenship and Immigration Services, available at <http://www.uscis.gov>.
2. *Ariz. Rev. Stat. §§23-211, 212, 212.01.*
3. *Chamber of Commerce of the U.S. v. Whiting*, 131 S.Ct.1968.