

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Subtitles A and B

Governmentwide Guidance for Grants and Agreements; Federal Agency Regulations for Grants and Agreements

AGENCY: Office of Management and Budget.

ACTION: Establishment of CFR title for policy guidance for grants and agreements.

SUMMARY: The Office of Management and Budget (OMB) is establishing title 2 in the Code of Federal Regulations (CFR) for grants and other financial assistance and nonprocurement agreements. Title 2 consists of two subtitles, subtitles A and B. In subtitle A, OMB is publishing government-wide guidance to Federal agencies for grants and agreements—guidance that currently is in seven separate OMB Circulars and other OMB policy documents. (The document in today's **Federal Register** immediately following this document publishes one of those circulars in subtitle A.) In subtitle B, Federal agencies that implement the OMB guidance through regulation will publish their agency-wide implementing regulations. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: Effective May 11, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: ephillip@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** document [68 FR 33883] published on June 6, 2003, OMB proposed to establish title 2 of the CFR as a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. The proposal included the establishment of two subtitles within title 2—subtitle A for OMB's government-wide guidance to Federal agencies on the award and administration of grants and agreements and subtitle B for Federal agency

regulations implementing that OMB guidance.

In addition to the proposal to establish title 2 and its subtitles A and B, the June 6 document proposed to establish two chapters in subtitle A—chapters I and II—to enable OMB to publish its government-wide guidance in title 2 in two phases. In the first phase, OMB proposed to move circulars and other guidance, in their current form, into chapter II and to reserve chapter I. In the second phase, as OMB finalizes any changes to its guidance based on recommendations of interagency work groups implementing Public Law 106–107, the June 6 document proposed that OMB would publish the new, changed guidance in chapter I and remove the original guidance from chapter II. If OMB is to make a substantive change in the guidance when publishing it in either chapter I or II of subtitle A, the change will be proposed in the **Federal Register** with an opportunity for public comment.

Finally, the June 6 document proposed that OMB would publish in title 2, subtitle A, an introductory part 1 providing general information about the title. Specifically, part 1 would address the purpose and scope of the title, the applicability of the various portions of the OMB guidance to different types of agreements, and the responsibilities of OMB and the Federal agencies with respect to the guidance.

We received comments on these proposals from: Three State governments; two non-profit organizations; an association representing non-profit entities; one institution of higher education; an association representing academic institutions; a group of universities that participate with Federal agencies in a demonstration program on research administration; and five Federal agencies. We considered all comments in developing this final **Federal Register** document. The following paragraphs summarize the major comments and our responses, organized by the subjects the comments addressed.

II. Comments and Responses

Comments on Publication of OMB Guidance in Title 2 of the CFR

Comment: Commenters had different views on whether we should establish title 2 as a single location for publishing OMB guidance on grants and agreements. Comments from State governments, non-profit organizations, and Federal agencies strongly supported the proposal as a way to help recipients more easily find and use the policy

documents. Comments from the academic community recommended that we not publish the guidance in title 2 at this time because doing so: (1) Would serve little purpose, since the OMB guidance can be found easily now at the OMB Web site; (2) could blur the important distinction between guidance and regulations; and (3) might be the first step toward merging OMB circulars applicable to universities with circulars for other types of recipients, a merger that the academic community historically has not supported.

Response: After careful consideration of the two points of view represented in the comments, we are proceeding with our proposal and are establishing title 2 with a subtitle in which we will publish OMB guidance. We understand that many recipients access OMB circulars at the OMB Web site, and we plan to continue posting the documents at this site (www.whitehouse.gov/omb/circulars). However, the fact that several commenters stated that publishing the guidance in the CFR would make it easier to find and use confirms that there is value in having it in the CFR.

With respect to the difference between guidance and regulation, we note that the academic community comments made a further suggestion that we preface any OMB guidance published in the CFR with statements that clearly make that distinction. We agree. We have included language to make the distinction in § 1.105 of the introductory part 1 of title 2 (see the text of part 1 in this **Federal Register** document, following this preamble).

Finally, we note the academic community's concern about the establishment of title 2 being a possible precursor to a merger of guidance that currently is in separate OMB circulars. However, adoption of the June 6 proposal alone will not cause the organization or substance of the guidance to change. CFR publication does not require the guidance to be organized in any particular way and, as indicated above, our initial activity will be relocating the guidance to title 2 in its current form. Should a recommendation to reorganize the guidance subsequently emerge from the interagency work groups' ongoing efforts to implement Public Law 106–107, that recommendation would be entirely independent of the publication of the guidance in title 2 and the public would have an opportunity to comment on any such substantive change.

Comment: Four commenters raised questions related to combining OMB circulars or applying their policies uniformly to different types of

recipients. Two of the commenters, as discussed in the previous paragraph, recommended that we not establish title 2 at this time because doing so was a possible first step toward a merger of circulars. The other two commenters who addressed this issue supported the publication of the OMB guidance in title 2; one of these, a recipient organization, recommended that any future changes to the OMB circulars continue to distinguish between types of recipients. In another comment, a Federal agency suggested that we simplify the OMB guidance, which is nearly the same for different types of recipients, by consolidating OMB Circulars A-102 and A-110 into a single set of administrative requirements and Circulars A-21, A-87, and A-122 into one set of cost principles. The agency suggested that we maintain separate requirements in each case only when necessary to respect differences between types of recipients.

Response: The comments reflect a diversity of points of view on one issue—the question of combining guidance that currently is located in separate circulars—yet indicate agreement on a second issue—the need to recognize important differences among types of recipients. We infer that the concern about combining circulars stems primarily from a desire to maintain distinctions between types of recipients and is based on an assumption that combining guidance documents will lead to applying the same set of requirements to all recipients. Although we can not anticipate what recommendations the interagency work groups may make for improving the OMB guidance, it should be noted that combining guidance does not require that the guidance be identical for all types of recipients. For example, OMB Circular A-102 currently includes guidance for both awards to States and awards to other governmental organizations; however, the guidance for awards to States differs in some areas from the guidance for awards to other governmental organizations. Both OMB and the interagency work groups work with all types of recipients and appreciate their important distinctions.

Comment: One comment from a group of recipient organizations suggested that an OMB review of the guidance in the current OMB circulars affecting each type of recipient, to ensure internal consistency across the circulars for that type of recipient, would do more for recipients than publishing the OMB guidance in title 2.

Response: We strongly agree that consistency is important. However, the issue of consistency, like the question of

merging circulars, is entirely separate from publication in title 2. As previously noted, the interagency work groups involved in the implementation of Public Law 106-107 may recommend improvements to the OMB guidance—internal consistency, which is an OMB objective, is one element of the work groups' review.

Comment: One commenter recommended that the OMB guidance in title 2 include the compliance supplement to OMB Circular A-133 and the **Federal Register** document [68 FR 38401] amending Circular A-133 to raise the Federal expenditure threshold above which recipients are required to have single audits performed. The commenter also suggested including links to the Federal Acquisition Regulation (FAR) cost principles [48 CFR part 31] for for-profit organizations and to the Generally Accepted Government Auditing Standards (GAGAS).

Response: Agree in part. When we publish OMB Circular A-133 in title 2, we will publish the current version (now available at the OMB Web site), which includes the recent change to the audit threshold. We do not currently anticipate publishing the OMB Circular A-133 compliance supplement in title 2 because the supplement is updated annually and the CFR is more suited to issuances that change less frequently. The suggested links to the FAR cost principles and GAGAS are more appropriate for a Web site than the text of the CFR (no portion of the CFR currently maintains electronic links to the many publications it references and it would be impractical at this time to do so). We will add those links at the OMB Web site, where the OMB guidance in title 2 also will be posted.

Comment: Two commenters suggested that we publish in title 2 the suspension and debarment and lobbying requirements in a way that replaces the Federal agencies' current multiple codifications of common rules implementing the requirements in their own titles of the CFR. The first commenter, a recipient organization, stated that the same requirements also would have to be published in title 48 of the CFR, since they also apply to procurement contracts, but noted that there could be a consolidated publication in title 2 for nonprocurement. The second commenter, a Federal agency, also suggested that the same approach could be used to replace Federal agencies' separate codifications of common rules implementing drug-free workplace requirements and the requirements of

Executive Order (E.O.) 12372 on intergovernmental coordination.

Response: We agree with the suggested approach for nonprocurement debarment and suspension and drug-free workplace requirements and will also consider the same approach for other government-wide guidance, such as the common rule implementing restrictions on lobbying and the common rule implementing E.O. 12372 (although the Executive order applies to more Federal activities than just those resulting in grants and agreements). On November 26, 2003, the Federal agencies published the final common rule on debarment and suspension and on drug-free workplace requirements in the **Federal Register** [68 FR 66533]. We plan to publish the corresponding OMB guidance in subtitle A, chapter I of title 2 in the near future. Once the guidance is published in subtitle A, each agency will publish in subtitle B of title 2 regulatory language that adopts the guidance and will remove that common rule from its own title of the CFR. Thus, the full text of the government-wide policies will appear only once, in the OMB guidelines, and each agency's regulations will adopt those guidance documents (identifying any agency-specific additions, exceptions, or clarifications) without repeating the full text. This approach parallels the way that agencies currently implement the cost principles in OMB Circulars A-21, A-87, and A-122 and the single audit requirements in OMB Circular A-133, where it is the agency regulations that require recipients to comply with these OMB documents.

This approach has at least three benefits for the public and Federal agencies. One benefit is that an applicant or recipient could quickly and easily identify any variations from the common language in an agency's implementation because the agency's regulation would consist of brief language adopting the OMB guidance, rather than the full text of a common rule, followed by statements of any additions, clarifications, or exceptions to the common language. Currently, identifying any agency-to-agency variations from the government-wide language requires locating the original **Federal Register** document in which the Federal agencies adopted the common rule or carefully reading and comparing agencies' separate codifications of the rule. A second benefit of this approach is that it would reduce the volume of regulations since each agency would not duplicate the full text of the OMB guidance in its own regulations.

A third benefit of the approach is that Federal agencies could more quickly

implement OMB guidance than is possible through common rules. Issuing a common rule is a complex and lengthy process, with 30 or more Federal agencies processing the same rulemaking document before it can be sent to OMB and published. Under the new approach, OMB would update its guidance through publication in the **Federal Register** with an opportunity for public comment—the same process used to revise OMB circulars. An agency regulation adopting the OMB guidance would be automatically updated when OMB makes final revisions to its guidance, without a need for further agency rulemaking, just as it works currently with agency regulations adopting the OMB circulars containing the cost principles and single audit requirements. Use of this approach will promote more timely updates to the Federal policy framework.

In response to the first commenter, it also should be noted that the agency adoption of OMB guidelines in title 2 would apply only to assistance and other nonprocurement transactions. There currently is separate coverage in the FAR (title 48 of the CFR) for debarment and suspension, lobbying, and drug-free workplace requirements for procurement contracts. That coverage would not be affected by publication in title 2 of the OMB guidelines or agency regulations adopting them.

Comment: One recipient organization recommended that OMB publish in title 2 a listing of class deviations it granted to Federal agencies from requirements in the OMB guidance. The commenter suggested that doing so would make information about them more readily available on a continuing basis than is the case currently, thereby giving the Federal agency and recipients more opportunity to later revisit the conditions that originally gave rise to the deviation.

Response: We referred this suggestion for consideration by the interagency work groups developing recommendations for future improvements to the OMB guidance.

Comments on Publication of Federal Agency Regulations in Title 2 of the CFR

Comment: Commenters' views on whether Federal agency regulations should be published in title 2 largely paralleled their views on the publication of OMB's guidance in title 2. Comments from State governments and non-profit organizations were supportive of the proposal, as were most comments from Federal agencies, as a way to make the regulations easier to find and use. The academic community

recommended that we reconsider the proposal to publish in title 2, deferring it until a more robust and uniform means of agency implementation of the OMB guidance is developed.

Response: After considering the comments, we are proceeding with our proposal and are establishing a second subtitle in title 2 in which Federal agencies that issue regulations to implement OMB guidance will publish those regulations. We agree that improving Federal agencies' implementation of the OMB guidance is an important objective, as discussed further in the response to the next comment. However, that objective should not affect the decision on whether to publish agency regulations in title 2 because the organization and content of agency regulations is independent of where they are published—whether in title 2 or in the agency's own title of the CFR.

Comment: Five commenters made recommendations for greater uniformity in the format and content of agency regulations on grants and agreements. Three of those commenters, including two Federal agencies, suggested that OMB issue a standard format or organization for agency implementing regulations. Two other commenters, a recipient organization and an association representing recipients, suggested developing uniform government-wide regulations to eliminate the need for applicants and recipients to understand and comply with the implementing regulations of more than two dozen different agencies.

Response: Agree in part. Although the organization of the OMB guidance and agency regulations in subtitles A and B of title 2, respectively, are beyond the scope of this **Federal Register** document, we agree that a standard format would be helpful. Therefore, OMB is working with an interagency work group to consider ways to improve the OMB guidance and to develop an outline, to the extent possible, for agency regulations implementing the guidance.

Regarding the development of uniform government-wide regulations, there is great variety in Federal program purposes, in the needs and preferences of the different types of recipients (e.g., State or local government agencies, institutions of higher education, or other nonprofit organizations) that receive awards under those programs, and in Federal agencies' organizational approaches to carrying out assistance award and administration functions. Developing uniform, government-wide regulations for some parts of the OMB guidance (e.g., parts where differences

in program purposes and recipients are most important) could have an unintended effect of broadening to all agencies, programs, and their recipients more requirements than needed.

While uniform government-wide regulations may not be the best way to implement all aspects of the OMB guidance, a similar approach may work for some of the guidance. As stated in response to an earlier comment, more uniform government-wide implementation of the nonprocurement debarment and suspension and drug-free workplace requirements will be achieved by publishing OMB guidance that agencies can adopt in their regulations (identifying any agency-specific additions, exceptions, or clarifications), in lieu of agencies' separately codifying a common rule. We will continue to look for other opportunities, such as the government-wide guidance on lobbying restrictions, where we can achieve greater uniformity without the unintended effect of imposing unnecessary additional requirements.

Comment: Following on the previous comment, one commenter further suggested that the standard format should organize agency regulations in an order running from pre-award through post-award requirements, much as we do in the current common rule implementing OMB Circular A-102 and the attachment to OMB Circular A-110.

Response: An interagency work group already is considering that order of presentation as it develops recommendations for improving the OMB guidance and an outline for agency implementation of the guidance.

Comment: One recipient organization recommended that OMB require Federal agencies to publish in title 2 listings of the deviations from OMB's government-wide guidance that are required of them by virtue of statutes. The commenter suggested that doing so would provide valuable information to the affected public about the basis for the deviations.

Response: We referred this suggestion for consideration by the interagency work group that will develop an outline for agency implementation of the guidance.

Comment: One commenter said that the proposal in the June 6 **Federal Register** document was correct in limiting agency regulations in title 2 to those for grants and agreements and excluding those for procurement contracts.

Response: We agree. For parts of the OMB guidance in title 2 that apply to procurement contracts as well as to grants and agreements, such as the single audit requirements in OMB

Circular A-133 and the cost principles in OMB Circulars A-21, A-87, and A-122, the implementation of that guidance for procurement contracts properly belongs in the FAR.

Comment: Two commenters suggested that OMB review Federal agencies' regulations implementing the OMB guidance when the agencies publish them in title 2. One of the commenters further recommended that OMB let an agency include requirements that were not in the OMB guidance only when OMB deemed the additional provisions as necessary to carry out the agency's program.

Response: We agree. After we make final changes to the OMB guidance based on recommendations from interagency work groups implementing Public Law 106-107, we will review each Federal agency's regulations for conformity with the guidance when they are published in title 2, subtitle B. While we are not requiring Federal agencies to relocate their regulations in title 2 until we finalize revisions to the OMB guidance, we are not prohibiting agencies from electing to publish their existing regulations in title 2 sooner. However, we think it is likely that we will be able to develop an outline for regulations implementing the guidance, as discussed in response to a previous comment, and therefore agencies may wish to defer publication of their regulations in subtitle B of title 2 until the outline is available. If any agency relocates its current regulations before we finalize the OMB guidance in chapter I of subtitle A, we would not do a complete review of the substance of the regulations (which OMB reviewed when the agency published the regulations in its own CFR title), unless the agency is making substantive changes. We will review the substance of the regulations when the agency subsequently revises them to reflect the final OMB guidance.

With respect to the comment about limiting the content of agencies' regulations, Federal programs that use grants and agreements have a wide variety of purposes. As such, some agencies' regulations for awarding and administering assistance instruments must vary in some ways from those of other agencies. The OMB guidance provides government-wide uniformity for requirements that broadly apply to most Federal programs, but the diversity of programs makes it inappropriate for the OMB guidance to prescribe all of the agency-specific and program-specific requirements that may be needed. We believe that the commenter's intent is served, however, because agencies are required to justify alternative or

additional provisions they include in their regulations when submitted to OMB for review.

Comment: Some components of one Federal department expressed concern that the June 6 **Federal Register** document did not state clearly whether the intent was for agencies to publish in title 2 their program regulations for programs that use grants and agreements, as well as department-wide regulations that address award and administration of grants and agreements in general.

Response: While we would not preclude an agency from moving program regulations that might be appropriate for inclusion in title 2, the intent is to require agencies to publish in title 2 only those regulations that implement the requirements in the OMB guidance and apply to the award and administration of grants and agreements in general (as opposed to those of a specific program). That would include agency-wide regulations and any regulations of agency subcomponents that broadly apply to grants and agreements but would not include program regulations.

Comment: One commenter suggested that OMB set a date "by" which all Federal agencies must publish their regulations in title 2, while another commenter recommended that OMB set a date "on" which they should do so.

Response: It is important to note, as previously discussed, that we plan to publish the OMB guidance in title 2 in two phases. In the first phase, we will publish the circulars in their current form in chapter II of subtitle A. Agencies may publish their regulations in subtitle B during this first phase but they are not required to do so (and, as noted previously, they may wish to wait until an outline for agency implementing regulations is available). During the second phase, we will publish the OMB guidance in chapter I of subtitle A after we: (1) Propose, for public comment, any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106-107; and (2) resolve the comments and finalize the guidance with the help of the working groups.

Various parts of the guidance will become final and be published at different times, so the publication in chapter I will take place over a period of time rather than on a single date. As each part of the guidance is published in final form in chapter I, we will set a deadline for agency implementation of that part.

Comments on Internet Presentation of OMB Guidance and Agency Regulations

Comment: Two commenters expressed views on the advantages and disadvantages of the CFR presentation on the Internet. One Federal agency said that, with the publication of the OMB guidance in the CFR, the Office of the Federal Register would update title 2 quickly each time that OMB made a final change to the guidance and thereby make available on the Internet a fully conformed version of the updated guidance. One recipient organization suggested that OMB organize the Internet presentation in a better way than it currently is organized at the CFR site, where one can retrieve only one CFR section at a time, rather than the entire document, and often retrieves duplicate pages when the pages are common to more than one section.

Response: We appreciate that having the OMB guidance available at the CFR Internet site will be of value to many applicants, recipients, and Federal agencies. We also are committed to continuing to maintain our updated guidance in a timely manner at the OMB Internet site (http://www.whitehouse.gov/omb/grants/grants_circulars.html), where we will maintain a fully conformed version of each document that can be retrieved in its entirety as a single electronic file. Therefore, OMB will not ask the Office of the Federal Register to deviate from its current practice for the CFR when it provides documents for title 2 on the Internet.

Comment: One subcomponent of a Federal agency suggested that electronic links to program regulations should be provided from agency-wide regulations implementing the OMB guidance as it applies to grants and agreements generally.

Response: We encourage any Federal agency with multiple program regulations to help the affected public find the pertinent provisions of those regulations in any way possible, such as providing direct electronic links from a central site at which it posts its agency-wide regulations implementing our guidance.

III. Summary of Actions

In summary, OMB in this **Federal Register** document is establishing a new title 2 of the CFR, "Grants and Agreements," with subtitles A and B. In subtitle A, "Office of Management and Budget Guidance for Grants and Agreements," OMB is publishing its guidance to Federal agencies on the award and administration of grants and agreements. In subtitle B, each Federal

agency with regulations implementing the OMB guidance will have a chapter in which those regulations eventually will be published.

To begin the process of moving OMB circulars to the new title 2, the **Federal Register** document immediately following this one publishes OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," in subtitle A of the new title. OMB will move additional circulars and other policy documents to title 2, subtitle A, in the near future. Meanwhile, the OMB circulars continue to be available on the OMB Web site (<http://www.whitehouse.gov/omb/circulars>).

List of Subjects in 2 CFR Part 1

Cooperative agreements, Grant programs, Grants administration.

Dated: April 29, 2004.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget establishes 2 CFR consisting of subtitle A—Government-wide Grants and Agreements (part 1 and reserved chapters I and II), and subtitle B—Federal Agency Regulations for Grants and Agreements, as set forth below.

TITLE 2—GRANTS AND AGREEMENTS

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

Subpart A—Introduction to Title 2 of the CFR

- Sec.
- 1.100 Content of this title.
- 1.105 Organization and subtitle content.
- 1.110 Issuing authorities.

Subpart B—Introduction to Subtitle A

- 1.200 Purpose of chapters I and II.
- 1.205 Applicability to grants and other funding instruments.

- 1.210 Applicability to Federal agencies and others.
- 1.215 Relationship to previous issuances.
- 1.220 Federal agency implementation of this subtitle.
- 1.230 Maintenance of this subtitle.

Subpart C—Responsibilities of OMB and Federal Agencies

- 1.300 OMB responsibilities.
- 1.305 Federal agency responsibilities.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

Subpart A—Introduction to Title 2 of the CFR

§ 1.100 Content of this title.

This title contains—
(a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies and procedures for the award and administration of grants and agreements; and
(b) Federal agency regulations implementing that OMB guidance.

§ 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.
(b) The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance and not regulation.
(c) Each Federal agency that publishes regulations implementing the OMB guidance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory (Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the guidance).

§ 1.110 Issuing authorities.

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

Subpart B—Introduction to Subtitle A

§ 1.200 Purpose of chapters I and II.

(a) Chapters I and II of subtitle A provide OMB guidance to Federal

agencies that helps ensure consistent and uniform government-wide policies and procedures for management of the agencies' grants and agreements.

(b) There are two chapters for publication of the guidance because portions of it may be revised as a result of ongoing efforts to streamline and simplify requirements for the award and administration of grants and other financial assistance (and thereby implement the Federal Financial Assistance Management Improvement Act of 1999, Pub. L. 106-107).

(c) The OMB guidance in its initial form—before completion of revisions described in paragraph (b) of this section—is published in chapter II of this subtitle. When revisions to a part of the guidance are finalized, that part is published in chapter I and removed from chapter II.

§ 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one part of the guidance to another (note that each part identifies the types of instruments to which it applies).

§ 1.210 Applicability to Federal agencies and others.

(a) This subtitle contains guidance that directly applies only to Federal agencies.
(b) The guidance in this subtitle may affect others through each Federal agency's implementation of the guidance, portions of which may apply to—
(1) The agency's awarding or administering officials;
(2) Non-Federal entities that receive or apply for the agency's grants or agreements or receive subawards under those grants or agreements; or
(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

§ 1.215 Relationship to previous issuances.

Although some the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

Guidance in * * *	On * * *	Previously was in* * *
(a) [Reserved].		
(b) Subchapter B of Chapter II, part 215	Administrative requirements for grants and agreements.	OMB Circular A-110.
(c) [Reserved].		

§ 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards grants and agreements subject to the guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and/or in policy and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant or recipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

§ 1.230 Maintenance of this subtitle.

OMB issues guidance in this subtitle after publication in the **Federal Register**. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

Subpart C—Responsibilities of OMB and Federal Agencies**§ 1.300 OMB responsibilities.**

OMB is responsible for:

(a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230.

(b) Interpreting the policy requirements in this subtitle.

(c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866.

(d) Conducting broad oversight of government-wide compliance with the guidance in this subtitle.

(e) Performing other OMB functions specified in this subtitle.

§ 1.305 Federal agency responsibilities.

The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle.

(b) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance.

(c) Performing other functions specified in this subtitle.

Chapter I—[Reserved]**PARTS 100–199 [RESERVED]****Chapter II—Office of Management and Budget Circulars and Guidance [Reserved]****PARTS 200–299 [RESERVED]****SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS [RESERVED]**

[FR Doc. 04–10351 Filed 5–10–04; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET**2 CFR Part 215****Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110)**

AGENCY: Office of Management and Budget.

ACTION: Policy guidance relocation to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–110 to title 2 in the Code of Federal Regulations (2 CFR), subtitle A, chapter II, subchapter B, part 215 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. This document relates to the previous document in today's **Federal Register** which established 2 CFR as that central location. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: Part 215 is effective May 11, 2004. This document republishes the existing OMB Circular A–110, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3053 (direct) or (202) 395–3993 (main office) and e-mail: ephillip@omb.eop.gov.

SUPPLEMENTARY INFORMATION: In a **Federal Register** document [68 FR 33883] published on June 6, 2003, OMB proposed to establish title 2 of the Code of Federal Regulations (CFR) to serve as

the central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. The document in today's **Federal Register** immediately preceding this notice describes the comments received on the proposal and our responses and establishes the new title 2 CFR, with a subtitle A—Government-wide Grants and Agreements, and a subtitle B—Federal Agency Regulations for Grants and Agreements.

It is important to note that OMB plans to publish its guidance in title 2 in two phases. In the first phase, we are publishing the circulars in their current form in chapter II of subtitle A. During the first phase, agencies may publish their regulations implementing this guidance in subtitle B if they wish, but are not required to do so. In the second phase, OMB will publish guidance in chapter I of subtitle A after we: (1) Propose for public comment any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106–107; and (2) resolve the comments and finalize the guidance with the help of the working groups.

The OMB guidance published in this notice is a relocation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. We have made minor adjustments to conform to the formatting requirements of the CFR, but there are no substantive changes of any type. Agency implementing regulations may continue to reference this guidance using its circular number, title, and section numbers which remain the same, only now preceded by the 2 CFR part number (215). For example, under OMB Circular A–110, section 24 discusses program income, and in 2 CFR program income is discussed in § 215.24.

List of Subjects in 2 CFR Part 215

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: April 29, 2004.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR subtitle A, chapter II by adding a part 215 as set forth below.