

**OMB Circulars. A- 102 and A- 110:
Problems, Inconsistencies, and Suggestions for Clarification'**

- 1 . Combine the circulars and have separate sections on states' rights and tribal government rights. (this would be similar to the A-31 proposal for the cost principles - suggestion was made before the decision to drop A-31 idea).

2. Add Indian tribes to the title of A- 102.

3. Although A-102 "belongs to the agencies" rather than OMB, this stance is not user-friendly. OMB should either post the current version of the common rule (incorporating all changes to date) on its site or it should be added to the Federal Commons (with a link from OMB's site). The inconsistency between the treatment of the A- 102 common rule as not belonging to OMB, while the A- 110 common rule does belong to OMB, does not make sense to the recipient community.

4. Referring to the A-102 common rule as "The Common Rule" causes confusion now that several other documents are in common rule format, e.g., A- 110, Drug-Free Workplace.

5. The relationship between A- 102 and A- 110 and those circulars to the cost principles is not clear. While it may not be practical to include this explanation in the circulars, it might be possible to provide an explanation of who follows what circular on OMB's Web site and on the Federal Commons. Such an explanation should also explain that A-102 and A-110 are implemented by the agencies, whereas the cost principles exist only in the version issued by OMB. The current setup and language on OMB's Web site assumes that people know what the circulars are and to whom they apply. Why include an explanation of what happened to the attachments to the former A- 110 but not explain to people new to grants what the circulars are and who has to follow them? We have met a lot of students over the years who didn't understand what the circulars were and so literally ignored them. Incorporating them by reference in grant agreements does not appear to be universally effective. Even some long-time grant recipients might benefit from a primer on what the circulars are and who is expected to follow them.

6. Many recipients (especially states) don't understand concept of flowdown. Some assume that because states follow state law and procedures for awarding and administering subawards that their subrecipients are not subject to the circulars. Statement that A110 applies to subrecipients appears in T 2 of the A- 110 circular, but nowhere in A-102 - since it's a requirement that applies to users of A-102, wouldn't it make sense to put it somewhere in A102?
7. A-133 has greatly clarified the difference between a subrecipient and a vendor. This clarification should be continued in A- 102 /A110. In particular, the circulars should elaborate on the premise stated in the definition of subgrant/subaward that even if the pass-through entity calls a subaward a contract, it is still assistance (and therefore subject to flowthrough of administrative requirements and cost principles). Burying this concept in the definitions does not draw enough attention to it. A lot of passthrough entities are breaching the spirit of passing through funds as assistance.
8. Many people don't understand what a cost-reimbursable agreement is vs. being paid by reimbursement. At a minimum, the term should be clearly defined/ explained in the circulars. Better yet, invent a new term that won't cause confusion (one staff member suggested "at-cost agreement").
9. Consistent use of language between circulars would help - e.g., special terms and conditions vs. high-risk, subgrant vs. subaward. All definitions should be standardized.
10. Need to clarify that federal award includes the matching share (clear only on SF-424 - not clear in A- 102, A- 110, or A- 133).
11. Property: if states use their own procedures to acquire property, what right does the federal government have to subsequently take title to property purchased by the state? Need to clarify this.
12. Interest payments should be the same: A-110 '-.22(k)(2) and (1) sets the limit of funds that can be kept for administrative expenses at \$250.00; A-102 '_.21(h)(2)(i) sets the limit at \$100.00.

13. According to A- 110 '-. 22(i) (1), federal agencies are not permitted to require recipients to maintain separate bank accounts; whereas under A-102 '-.21(h)(2), a separate bank account can be required in the agreement.
14. A-110 '-.22(k) requires most recipients to maintain funds in interest-bearing accounts; A-102 does not.
15. A-102 '-.24(c)(2) excludes fringe benefits and overhead costs from valuation of donated services; A- 110 '-.23(e) excludes only overhead costs. Also, there is a discrepancy between A-122 '12.a(6)(b) and A-110 '-.23(e) - are fringe benefits to be included when calculating the value of services donated by another organization?
16. A- 110 '-.52(a)(2)(iv) requires recipients to submit the SF-272 15 calendar days after the end of each quarter. A-102 '-.41(c)(4) requires the SF-272 to be submitted 15 working days following the end of each quarter.
17. A-102 '-.36(b)(9) requires records and files for all procurements, regardless of dollar value; A- 110 '-.46 requires records and files only for procurements in excess of the small purchase threshold.
18. OMB announced the applicability of the FASA simplified acquisition threshold to A- 110 in a buried sort of way (see 60 FIR 19639). Since the text of the circular and common rule have never been updated to reflect this applicability, it's not clear that the threshold applies.
19. There is confusion about references to "small purchase threshold" in A- 110 - clarify by inserting "federal" or "the recipient organization's" in front of "small purchase threshold" each time the -term is used. See the following sections: '-2(ee), '-44(e)(2)-(5), '-.46, and '-.48(a)-(b),(d),(e); and Appendix A, introductory sentence and paragraph 8. Also, references to "small purchase threshold" should be changed to "simplified acquisition threshold" where applicable (as was done to A- 102) and updated to \$100,000.
20. A-110 appendix needs to be -updated to reflect FASA and Byrd Anti-Lobbying changes. Also, most agency implementations still do not reflect the updated thresholds resulting from FASA (e.g., Contract Work Hours and Safety Standards Act).

21. A-102 '-.36(i)(2) requires that all contracts in excess of \$10,000 contain termination provisions; A-110 '-.48(b) requires only that contracts in excess of the simplified acquisition threshold contain termination provisions.
22. A- 110 '-. 53 (e), under Retention and access requirements for records, allows interviews of recipient personnel; A-102 '-.42(e)(1) does not mention interviews of recipient personnel.
23. A- 110 Appendix A, paragraph 1, applies Equal Employment Opportunity to all contracts; A-102 '-.36(i)(3) applies it only to construction contracts in excess of \$ 10,000.
24. A-110 Appendix A, paragraph 2, applies the Copeland "AntiKickback" Act to contracts for construction or repair in excess of \$2,000 (in accordance with FASA, this should be updated to \$100,000); A-102 '-.36(i)(4) applies it to all contracts for construction or repair, regardless of dollar value.
25. **A-102** '-.36(i)(6) should begin "Compliance with Sections 102 and 107..."