USDA
United States Department of Agriculture

Food and Nutrition Service

Park Office Center

3101 Park Center Drive
Alexandria
VA 22302

DATE: October 30, 2015

MEMO CODE: SP 02-2016; CACFP 02-2016; SFSP 02-2016

SUBJECT: Questions and Answers on the Transition to and Implementation of 2 CFR Part 200

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Federal agencies including Food and Nutrition Service (FNS), State agencies, and Child Nutrition Program operators are currently transitioning from former Federal grants management rules in 7 CFR Parts 3016, 3019, and 3052; and the cost principles in 2 CFR Parts 220 (A-21), 225 (A-87), and 230 (A-122) to the implementation of new rules at 2 CFR Part 200, commonly referred to as the Super-Circular. These rules, first published on December 26, 2013, directed Federal agencies to "implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective [no later than] December 26, 2014, unless different provisions are required by statute or are approved by the Office of Management and Budget (OMB)."

FNS has received many questions related to implementation of 2 CFR Part 200 and understands that changes to financial and procurement systems are costly and require time to develop and implement. Therefore, FNS will work with State agencies during this transition period and will seek to answer questions and provide guidance as needed. A list of common questions and answers received to date is attached.

State agencies are reminded to distribute this memorandum to Program operators immediately. Program operators should contact their State agency for additional information, as needed. State agencies with questions concerning this guidance may contact the appropriate FNS Regional Office.

Original Signed

Sarah E. Smith Holmes
Director
Program Monitoring and Operational Support Division
Child Nutrition Programs

USDA is an Equal Opportunity Provider, Employer and Lender

Attachment

Questions and Answers Regarding Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200

General Requirements and Procurement Standards

1. **What is the implementation date of the new rules at 2 CFR Part 200 for State agencies and Program operators?**

   The new rules become applicable to a particular Federal award depending on when the award was made as implementation does not retroactively change award terms and conditions. State agencies received FNS entitlement and grant program funds effective October 1, 2014-September 30, 2015, which preceded the effective date of 2 CFR Part 200, December 26, 2014. These funds were subject to existing rules through September 30, 2015. Therefore, awards under these Programs made on, or after, October 1, 2015, are subject to regulations at 2 CFR Part 200 as of October 1, 2015.

   As for Program operators, 2 CFR Part 200.110 is silent on the effective date for subgrants made by States. However, OMB clarified this as the date when the State receives the 2016 Federal fiscal year (FY) award and begins funding subgrantees (Program operators). Therefore, new rules apply to Program operators effective October 1, 2015. When implementing 2 CFR Part 200, Program operators must implement the rule in its entirety and cannot selectively apply provisions of the old and new rules, in the interim. The only exception is found in 2 CFR Part 200.110(b) which addresses timeframes for audits. (See Q5 below.)

2. **Are the rules for discretionary grants, or competitive grants, the same as for Program funds, such as Team Nutrition or other grants?**

   Implementation is the same for discretionary grants such as Team Nutrition Training, Equipment, and other grant funds, as for Program funds. Grants awarded prior to December 26, 2014 remained under applicable rules through September 30, 2015. Grants awarded on or after December 26, 2014, are subject to 2 CFR Part 200.

3. **Is there a grace period for implementation of new procurement standards in 2 CFR Part 200.317-326?**

   Yes. 2 CFR Part 200.110(a) provides a grace period to Program operators enabling them to postpone implementation of new procurement standards for up to two additional fiscal years after December 26, 2014 in order to make the necessary changes to their procurement systems. This grace period is provided because many procurement systems are entity-wide

and changing them therefore requires extensive coordination and revision beyond the purview of individual Program officials. However, Program operators electing to postpone implementation of the new procurement rules must document this decision in their internal procurement policies and follow 7 CFR Parts 3016 and 3019 and applicable program regulations, accordingly.

Furthermore, Program operators may implement entity-wide system changes to comply with 2 CFR Part 200 after the effective date of December 26, 2014 without penalty.

4. **Do the new rules change the terms and conditions of awards made prior to implementation of 2 CFR Part 200?**

   The new rules do not change the terms and conditions of Federal awards made prior to implementation of 2 CFR Part 200. Therefore, flexibility is provided for Program operators with awards made under previous rules and awards made under new rules at 2 CFR Part 200.

5. **When a State purchases on behalf of Program operators, may States use the same policies and procedures as it uses with non-Federal funds as allowed in 2 CFR Part 200.317, or must States comply with procurement standards in 2 CFR Part 200.318-326?**

   When a State conducts a competitive solicitation and awards a contract for products or services on behalf of Program operators that will be purchased by Program operators using Federal funds in the nonprofit food service account, procurement standards at 2 CFR Part 200.318-.326 apply. That is because the State agency would be conducting a type of transaction that is actually the responsibility of its subgrantee, Program operators.

6. **What procurement standards must State agencies follow when conducting procurement activities using Federal funds?**

   For State agencies, 2 CFR Part 200.317 provides that "when procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with 2 CFR Part 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by 2 CFR Part 200.326 Contract provisions." All Program operators, including subrecipients of a State, will follow 2 CFR Part 200.318 General procurement standards through 2 CFR Part 200.326 Contract provisions.

7. **What procurement standards must Program operators follow when conducting procurement activities using Federal funds?**

   For Program operators, 2 CFR Part 200.318 requires that Program operators must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards which include:

- Maintain written standards of conduct [covering real or apparent] conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. As referenced, 2 CFR Part 200.213 goes on to "restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities."
- Maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Program operators of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the Program operator unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.
- Have written procedures for procurement transactions that incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

8. What procurement methods must Program operators use to achieve full and open competition?

2 CFR Part 200.320 identifies procurement methods available to Program operators. These include:

- Micro-purchase procedures- procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold ($3,500). (See 2 CFR Part 200.67 Micro-purchase) To the extent practicable, Program operators must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the operator considers the price to be reasonable.

- Small purchase procedures- (purchases valued *below* the Small Acquisition Threshold, the Federal is $150,000), price or rate quotations must be obtained from an adequate number of qualified sources.

- Sealed bids- (purchases valued *above* the Simplified Acquisition Threshold, Federal $150,000 as noted above), bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. When used, the following requirements apply:
  - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
  - The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
  - All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
  - A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - Any or all bids may be rejected if there is a sound documented reason.

- Competitive proposal: (purchases valued *above* the Simplified Acquisition Threshold, Federal $150,000 as noted above), achieved by more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.
  - Generally used when conditions are not appropriate for the use of sealed bids. In this case, the requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - Proposals must be solicited from an adequate number of qualified sources; Program operators must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; and

- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Additionally, Program operators must ensure all solicitations include specifications, contract terms, conditions, required contract provisions, and evaluation and scoring criteria for determining contract award.

- Noncompetitive proposals: (purchases valued *above* the Simplified Acquisition Threshold, Federal $150,000 as noted above), procurement through solicitation of a proposal from only one source and may be used only when one or more as follows:
  - The item is available only from a single source;
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - The Federal awarding agency or State agency expressly authorizes noncompetitive proposals in response to a written request from the Program operator; or
  - After solicitation of a number of sources, competition is determined inadequate.

9. When using the micro-purchase method, what is meant by "aggregate dollar value" in 2 CFR Part 200.320(a)?

A procurement method newly available in 2 CFR Part 200.320(a) is the micro-purchase method. Micro-purchase is defined in 2 CFR Part 200.67 as "a purchase of supplies or services using simplified acquisition procedures, the *aggregate amount* of which does not exceed the micro-purchase threshold. [...] The micro-purchase threshold [...] is $3,500 [...] periodically adjusted for inflation." The micro-purchase threshold was adjusted as of October 1, 2015.

Micro-purchases comprise a subset of small purchase procedures, which are relatively simple and informal methods for acquiring products and services that do not cost more than the Simplified Acquisition Threshold. The Federal Threshold is currently set at $150,000. The key differences between the regular small purchase method and micro-purchasing are that: (1) purchase orders may be awarded without soliciting any competitive quotations if the Program operator considers the cost (s) to be reasonable. (2) a Program operator may purchase products and services (similar or dissimilar purchased at once as a single, collective unit) whose aggregate cost is less than $3,500 in a single transaction without soliciting competitive quotations, if the Program operator considers the price to be reasonable; and (3) competition is achieved by distributing purchase transactions equitably among qualified sources. Specific products or services to which micro-purchase procedures may apply will vary among Program operators depending on their small purchase procedures. Regular small purchase procedures apply to procurements valued over $3,500 and less than $150,000.

One example of when micro-purchase procedures may be used is when items normally awarded using small purchase procedures or sealed bids/competitive proposals; however, when ordered, are not received from the awarded vendor. When this occurs, the item(s) may be purchased (less than $3,500 worth) equitably among qualified sources, if the price is

reasonable. The micro-purchase threshold may not be used in lieu of applicable procurement methods that may achieve a more economical approach.

10. Does "aggregate" limit competition when soliciting for a prime vendor?

The aggregate dollar amount as described above and applied to the micro-purchase method may only effect soliciting for a prime vendor if the Program operator determines that consolidating or breaking out procurements results in a more economical purchase. (2 CFR Part 200.318(d))

11. What is considered a "transaction" when considering aggregate cost and micro-purchase methods?

A transaction is an occurrence in which two or more entities exchange goods, services, or money between or among them under an agreement formed for their mutual benefit. The following examples illustrate transactions in the context of micro-purchasing:

A Program operator purchases computer paper, ink cartridges, paper towels, and cleaning fluids from the same supplier at the same time. That would be a single transaction. If the aggregate cost of these items (that is, the total bill) does not exceed the micro-purchase threshold, the transaction as a micro-purchase under 2 CFR Part 200.320(a).

A Program operator makes the following purchases on the same day at two separate locations: computer paper and ink cartridges at a retail office supply store, and paper towels and cleaning fluids at a different retail store. The dollar amount spent at each supplier is less than the micro-purchase threshold. Each purchase is a separate transaction made from different suppliers. Neither supplier is involved in the transaction with the other. Therefore, these transactions are micro-purchases and the Program operator has distributed purchases among qualified suppliers.

12. What is meant by distributing micro-purchases equitably among qualified suppliers and "spreading the wealth"?

Program operators using the micro-purchase method may not always purchase from only one source; rather, purchases must regularly be made using available qualified sources. This provides qualified sources the opportunity for business or "spreading the wealth". For example, a purchase of computer paper valued $1,000, qualifies as a micro-purchase. No competitive price quotation is necessary for the purchase and no cost or price analysis applies. However, the Program operator's written procurement procedures, as required in 2 CFR Part 200.318(a), must include a procedure that such purchases must be rotated among qualified suppliers.

13. How do the new procurement standards affect Program operators purchasing cooperatively?

Program operators purchasing cooperatively for common or shared goods and services through State and local intergovernmental agreements or inter-entity agreements are

encouraged. (See 2 CFR Part 200.318(e)) When entering into these agreements, Program operators are reminded that all procurement standards in Program and government-wide regulations apply to the cooperative in the same way as to the Program operator. The Program operator is responsible for ensuring all contracted vendors have been properly procured and contract monitoring is performed. Often in such cooperative arrangements, Program operators fail to take into account that "piggybacking" onto an awarded contract without a provision for "piggybacking" in the original solicitation may create a material change thereby requiring a new solicitation. Likewise, paying a fee and becoming a member of a third-party vendor that manages or buys products on behalf of the cooperative, or Program operator, is not allowed unless the services of a third-party vendor has been competitively procured.

Procurement Standards in Program Regulations (7 CFR Parts 210.21, 215.14a, 220.16, 225.17, 226.22 and 250.53)

14. Where are the existing procurement standards in Program regulations that must be included in solicitations and contracts, when applicable?

Program procurement standards are found in Program regulations for all Child Nutrition Programs as follows:

Programs	Buy American	Cost-reimbursable Contract Provisions	Geographic Preference
NSLP and SBP	7 CFR Parts 210.21(d) and 220.16(d)	7 CFR Parts 210.16, 210.21(f), 215.14a(d), 220.16(e), and 250.53(a-b)	7 CFR Part 210.21(g) and 220.16(f)
SMP	-	7 CFR Part 215.14a(d)	7 CFR Part 215.14a(e)
SFSP	-	-	7 CFR Part 225.17(e)
CACFP	-	-	7 CFR Part 226.22(n)

Cost Principles and Audit Requirements

15. How do the new regulations at 2 CFR Part 200.110(b) affect State and Program operator FY audits?

The fiscal years of States and Program operators vary often beginning on January 1, July 1, October 1, or other dates, with audits occurring after the close of the FY. Audit requirements at 2 CFR Part 200, Subpart F instruct auditors to begin using Subpart F for audits of fiscal years beginning on, or after, December 26, 2014. (2 CFR Part 200.110(b))

16. When a single audit identifies noncompliance with Federal regulations, how will USDA address physical sanctions imposed by A-133 auditors that are not based on reimbursement claims?

1). As we understand the question, the State is asking not about fiscal sanctions, but about disallowing Federal funds paid to Program operators as the result of audit findings. There is a conceptual difference between the two. 2 CFR Part 200.338 explains a sanction as a remedy for a Program operator's failure to carry-out the Program to its awarding agency's satisfaction. Its purpose is to obtain correction of the conditions that generated the finding. The dollar amount sanctioned may or may not relate to a disallowed amount generated by an audit. For example, Program regulations at 7 CFR 235.11(b) authorize FNS to sanction a State agency, by recovering, withholding, or cancelling payment of up to one-third of the State Administrative Entitlement funds, if FNS has found it deficient in certain subgrantee monitoring and program reporting functions. A sanction generally results in the denial of funds payable to, but not yet paid to, a Program operator. Audit findings generate claims for the recovery of funds already paid to and expended by that operator.

2). Both fiscal sanctions and fiscal action on audit claims are administrative actions. Auditors do not have administrative authority. They can recommend that Program managers impose sanctions or establish claims, but cannot do so themselves. Thus, an audit recommendation for sanctions or claims action is not always the last word on the subject.

3). A meal-based claim is generated by a determination that meals for which a Program operator had been reimbursed failed to meet regulatory requirements, nutritional and/or served to ineligible persons. The claim amount is computed by the same formula used to determine the reimbursement payments to begin with: meals-times-rates. The alternative is a cost-based claim, which FNS or the State agency establishes to recover funds paid for reimbursement of costs that had subsequently been disallowed. As a general proposition, such a claim is asserted for the amount of the disallowed cost(s).

17. What are the circumstances that require prior written approval for costs to be allowed when Federal funds are used.

Specific circumstances for prior written approval are identified in 2 CFR Part 200.407 and the location of each item of cost is designated therein. These include: use of grant agreements (including fixed amount awards), cooperative agreements, and contracts; cost sharing or matching; program income; revision of budget and program plans; real property; equipment; fixed amount subawards; direct costs; compensation—personal services; compensation—fringe benefits; entertainment costs; equipment and other capital expenditures; exchange rates; fines, penalties, damages and other settlements; fund raising and investment management costs; goods or services for personal use; insurance and indemnification; memberships, subscriptions, and professional activity costs; organization costs; participant support costs; pre-award costs; rearrangement and reconversion costs; selling and marketing costs; taxes (including value added tax); and travel costs.

18. Is there a system for identifying and addressing excessive fund balances in the NSLP and SBP? There seems to be a disconnect between the single audit or other reporting mechanisms?

If there is a disconnect between "fund balance" and "net cash resources" this may be driven by confusion between the terms. In NSLP Program regulations at 7 CFR Part 210.14(b) require a school food authority (SFA) to limit the net cash resources of its nonprofit school food service account to an amount that does not exceed three months average expenditures of the account (or a higher level approved by the State agency). 7 CFR Part 210.19(a) directs the State agency to ensure that each SFA's net cash resources do not exceed the prescribed level by: (a) monitoring the net cash resources of each SFA's nonprofit school food service account through reviews, audits, or other means; and (b) directing any SFA whose net cash resources are found in excess of the prescribed level to take corrective action. The purpose of this requirement is to make sure SFAs use their resources to operate and/or improve their school food services rather than hoarding them.

On the other hand, fund balance is a financial accounting concept rather than a program-specific requirement. It is reported in an accounting entity's financial statements as the difference between that entity's assets and its liabilities. A SFA's management may determine that their fund balance is "excessive". However, as described above, only when the net cash resources exceeds 3 months average operating expenditures, or an amount as approved by the State agency in accordance with 4 CFR Part 210.14(b), must action be taken as may be required by the State agency in 7 CFR Part 210.19(a)(1).

19. With all the Program changes in recent years, State agencies need clarification what performance reports are required.

The purpose of performance reporting is to enable awarding agencies to gauge how fully program objectives are being achieved. FNS has prescribed no such reports except for the claims for reimbursement required of subgrantees and the FNS-10, FNS-44, and FNS-418 for State agencies overseeing Child Nutrition Programs. The reporting sections of the Compliance Supplement write-ups on the Child Nutrition Cluster and the CACFP classify these reports as "Special Reporting" rather than "Performance Reporting." They also identify performance reporting as "not applicable" to these programs. For additional information States may reference 2 CFR 200.328 (Monitoring and reporting program performance).

20. If a SFSP Program operator is contracting meals with sites that are not operator-owned; rather, the site is under contract with the Program operator and not a sub-recipient, does the site need an A-133 audit?

Program operators are subject to the audit requirements in 2 CFR Part 200.501 and these requirements are based on the amount of Federal funds expended. The audit requirement for funds expended by Programs was increased from $500,000 to $750,000 and is applicable, when adopted.