

**National Highway Traffic Safety Administration
Regional Operations and Program Delivery
State Questions from the April 2015 Webinar on the OMB Super Circular**

On April 29, 2015, NHTSA hosted a webinar on the OMB Super Circular. At that time, NHTSA asked the States to submit any remaining questions. This document presents the submitted questions and provides NHTSA's responses in red.

Required Subaward Information

AR: During the webinar one of the states stated in a slide that there are 13 required elements that must be contained in the sub-grant award. The Super Circular (2 C.F.R. §200.210 - Information contained in a Federal award) lists more than 13 items. Can we receive a list of the required items?

A: 2 C.F.R. §200.210 refers to information required in for inclusion in a Federal award. The list of required information for inclusion in a subaward appears in the Super Circular at 2 C.F.R. §200.331(a)(1-6).

MO: 2 C.F.R. §200.331(a)(1)(xi) states:

CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement.

What is the "dollar amount made available" referring to? Is it the total contract amount for the sub-recipient? Is it the annual Federal award made available to the pass-through entity? Is it the amount of the drawdown for the sub-recipient on their current requested program reimbursement (regarding the phrase "at time of disbursement")? Some of the amounts listed here are already listed in other data requirements of 2 C.F.R. §200.331(a)(1). Please be specific who and what event the amount is about.

A: The "dollar amount made available" in 2 C.F.R. §200.331(a)(1)(xi) refers to the total amount of Federal funds that the pass-through entity obligates to the subrecipient, broken out and identified by CFDA number. One or more of the amounts described in 2 C.F.R. §200.331(a)(1) may be the same depending on the details of the subaward. The following chart clarifies what each required amount refers to:

Citation	Super Circular Language	Description of required amount
2 C.F.R. § 200.331(a)(1)(vi)	Amount of Federal funds obligated by this action	The amount of Federal funds that the pass-through entity obligates to the subrecipient in the specific subaward document.
2 C.F.R. § 200.331(a)(1)(vii)	Total amount of Federal funds obligated to the subrecipient	Combined amount of all Federal funds that the pass-through entity obligates to the same subrecipient prior to the current obligation (i.e., when the subaward is made in increments).
2 C.F.R. § 200.331(a)(1)(viii)	Total amount of the Federal award	Total amount of Federal funds that the pass-through entity obligates to the subrecipient in the current fiscal year. This is the combined total of the above two amounts ((a)(1)(vi) + (a)(1)(vii)).
2 C.F.R. § 200.331(a)(1)(xi)	CFDA number and name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement.	The amount of Federal funds that the pass-through entity obligates to the subrecipient, broken out and identified by CFDA number (for example, Section 402 and Section 405 funds have different CFDA numbers).

Risk Assessment:

AR: During the webinar, one of the States said that the risk assessment could be done at any time. The Super Circular states that the risk assessment is to be done prior to making a Federal award (2 C.F.R. §200.205). I just wanted to be clear that pass-thru entities must also conduct their risk assessments on sub-recipients prior to award.

A: The risk assessment is always a pre-award requirement. (The purpose of the risk assessment is to determine the appropriate subrecipient monitoring. In order to do this effectively, the risk assessment must be done prior to award.)

KS: Beginning in FY 16, the State Highway Safety Office (SHSO) must conduct a risk assessment on each grantee. What about multi-year agreements? Is documentation of a risk assessment in the first year of a multi-year agreement sufficient to meet this requirement?

A: The purpose of the risk assessment is to determine the appropriate subrecipient monitoring. It needs to be done only once, prior to award. Thereafter, monitoring is sufficient to ensure that the award funds are used properly during the term of the award.

PA:

Scenario:

The SHSO gives an award to an entity which then sub-grants to others (ex: SHSO gives §402 funds to a Community Traffic Safety Program which then subgrants to local agencies).

Questions:

Is each subgrantee/subrecipient subject to a risk assessment? If yes, who is required to conduct it – the SHSO or its initial subgrantee?

A: Yes. All subrecipients are subject to a risk assessment. Just as the SHSO is a pass-through entity, a subgrantee that passes on Federal grant funds via a subaward or contract is also a pass-through entity. All pass-through entities, including States and subrecipients that provide funds to a different subrecipient, are responsible for all requirements of 2 C.F.R. § 200.331, including the requirement to conduct a risk assessment.

PA:

Scenario:

The SHSO gives an award to an entity who then subcontracts to a firm (ex: SHSO gives §405(b) award to an entity who then contracts to do the seat belt survey).

Questions:

Is the contractor subject to a risk assessment? If yes, who is required to conduct it – the SHSO or its initial subgrantee?

A: No. Pass-through entity requirements, including the requirement to conduct a risk assessment, do not apply to contracts. If an SHSO makes an award via contract, the SHSO must follow State procurement laws.

Cost Principles

MO: We work with several advisory councils, task forces, or subcommittees in various program areas and have some questions regarding 2 C.F.R § 200.422 in the Super Circular. The language reads:

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards.

- Does this mean that we cannot cover any meals, mileage, lodging expenses to conduct advisory councils, subcommittee meetings, etc.?
- We also provide funding for board/subcommittee members' attendance at national conferences or other related conferences or training as needed. Funding may be used for lodging, registration, travel and/or meals. Is that prohibited?
- Since MAP-21 requires development of strategic plans that are approved by the appropriate task force (impaired driving, occupant protection), are these subcommittees exempt?

A: The Super Circular allows Federal awarding agencies to authorize costs incurred by advisory councils or committees. NHTSA will use this authority to authorize use of an advisory council or committee (which includes task forces and advisory boards) subject to certain conditions and limitations. States must obtain authorization from the Regional Administrator before vouchering for costs of an advisory council under an approved highway safety plan.

NHTSA will authorize an advisory council if it:

- Supports the State's highway safety program;
- Is an eligible use of the specific grant funds used (e.g., if an advisory council is paid for using Section 154 or 164 grant funds, the task force must be limited to addressing alcohol-impaired driving countermeasures); and
- Is allocable (e.g., if an advisory council is used for both grant purposes and other purposes, the costs must be apportioned accordingly) (see 2 C.F.R. § 200.405).

Even if an advisory council is authorized by the Regional Administrator, the following costs of the advisory council are not allowable:

- * • All costs, if the advisory council is required to qualify for the grant by which it is funded (e.g., the costs of a task force required to qualify for a Section 405 grant may not be reimbursed using Section 405 funds, but may be eligible for funding using other NHTSA grant funds as noted above);
- General costs of government (2 C.F.R. § 200.444);
- * • Travel—and associated costs such as mileage, meals, lodging expenses—for members of an advisory committee who are not SHSO employees (2 C.F.R. § 200.474 provides that certain travel costs are allowable, but only for employees of a recipient);
- Conference and training costs—including associated lodging, registration, travel, and meals—of advisory council members;
- Unreasonable costs (e.g., costs in excess of normal market value or costs inconsistent with typical purchasing policies of the SHSO) (see 2 C.F.R. § 200.404); and
- Costs that are otherwise unallowable under the Super Circular's Cost Principles or under Federal or State statutes, regulations and procedures (see 2 C.F.R. § 200.403)

of the Agency that coordinates the advisory council
cost of advisory council
Employees of the Agency who participate in the council

SC: States need to know the implications of 2 C.F.R. § 200.421(e)(2) of the Super Circular. Are states no longer going to be able to establish highway safety booths at fairs, festivals, and special events? Will there no longer be any highway safety conferences allowed? How does this impact Lifesavers, the GHSA Annual Conference, etc., all of which are paid for directly or indirectly, at least in part, with Federal highway safety funds? Will staff not be allowed to provide briefings to law enforcement, the media, and the general public, since staff cannot be paid to do so? Will the costs of meeting rooms, displays and exhibits really not be an allowable expense?

A: The Super Circular states that "costs of meetings, conventions, convocations, or other events related to other activities of the entity" (emphasis added) are unallowable advertising and public relations costs. 2 C.F.R. §200.421(e)(2). This provision prohibits NHTSA grant funds from being used for purposes that are not grant-specific, such as a law enforcement graduation ceremony. It does not prohibit the use of NHTSA grant funds for costs of meetings, conventions, convocations, or other events related to highway safety activities, such as Lifesavers and GHSA conferences and rental costs for a highway safety oriented booth at the State fair. Those costs continue to be allowable, subject to the provisions of 2 C.F.R. § 200.432 and the conditions of each NHTSA grant program.

Indirect Cost Rate

(See NHTSA's Indirect Cost Rate Q&A document entitled *Indirect Cost Rate – Requirements of OMB's Super Circular (2 C.F.R. Part 200)* for more detailed information)

GHSA:

- What if an agency doesn't want its federally negotiated rate? Can it choose to use zero or a lower rate?

A: Yes. See Q-1 of the Indirect Cost Rate Q&A for more information.

- Do we need to provide the indirect cost rate for all subrecipients?

A: If a subrecipient has a federally negotiated indirect cost rate, the pass-through entity must use that rate and may not require or entice the subrecipient to accept a lower rate. If a subrecipient does not have a federally negotiated indirect cost rate, the pass-through entity may either negotiate a rate with that subrecipient or apply the de minimis indirect cost rate of 10% of modified total direct costs. If a subrecipient voluntarily opts not to request indirect costs, the pass-through entity is not required to pay for indirect costs.

From Region 1 States:

- 1) While states cannot negotiate the indirect rate, do they have to pay indirect in any circumstance a subgrantee asks for it? In other words, do States always have to pay an indirect rate?

A: If a subrecipient has a federally negotiated indirect cost rate and requests that rate, the State must pay that rate and may not request or require the subrecipient to offer a lower or zero indirect cost rate.

- 2) As a follow up to that, can indirect rate be used as match (as opposed to being paid with NHTSA funds)?

A: Yes. See Q-6 and Q-7 of the Indirect Cost Rate Q&A for more information.

AR: Is there any consideration by NHTSA to limit indirect cost rates charged to its grants? According to the Super Circular, agencies are allowed to use a different rate only when required by statute, regulation or approved by the head of a Federal awarding agency. 2 C.F.R. §200.414. See excerpt below:

c) Federal Agency Acceptance of Negotiated Indirect Cost Rates. (See also §200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should

incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

A: No. These excerpted provisions are intended by OMB for extenuating circumstances. Deviations may not be used for typical subawards under NHTSA grants.

BIA: If a Tribe is only buying CPS seats, would they still be able to apply an indirect cost against that purchase?

A: Purchase of CPS seats by either a Tribe or a State is a procurement of goods, and therefore should be made using a contract. Contracts for procurement of goods are not subject to the Super Circular's requirements regarding indirect cost rates.

CA: Can a non-Federal entity (subgrantee) use their indirect costs as match? For example, can a university applying for a grant through the highway safety office apply their indirect costs as match?

A: This is a question of State law. See Q-7 of the Indirect Cost Rate Q&A for more information.

CA:

- Does the grantee have the option of not claiming their federally agreed upon indirect cost rate to minimize the impact to their grant funds?

A: Yes. See Q-1 of the Indirect Cost Rate Q&A for more information.

- Does the grantee have the option to use a lower rate?

A: Yes. See Q-1 of the Indirect Cost Rate Q&A for more information.

- If the grant goes through a pass-through agency, can both the SHSO and the subrecipient claim an indirect cost rate and if so, do both entities get indirect costs based on the entire grant amount or is the amount apportioned based on actual funds going to each agency?

A: Indirect costs are based on a percentage (the indirect cost rate) of the modified total direct costs of the relevant entity. The SHSO and the subrecipient will get different indirect costs based on their individual modified total direct costs. According to the Super Circular, "modified total direct costs means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award)."

2 C.F.R. § 200.68.

LA: 2 C.F.R. §200.414(f) seems to limit the amount of indirect costs to the first \$25K of each subaward as defined in 2 C.F.R. §200.68 – Modified Total Direct Cost (MTDC), if the 10% de minimis rate is used; and specifically excludes the portion of any subaward in excess of \$25K. Does the 10% de minimis rate apply only to the first \$25K or is it for the entire amount of the award?

A: States (and subrecipients) that do not already have a federally negotiated indirect cost rate may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC). According to the Super Circular, "modified total direct costs means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts under the award)" (emphasis added). 2 C.F.R. § 200.68. The

subawards referred to here are subawards of the entity receiving the indirect cost rate. For example, if a State has no federally negotiated indirect cost rate and elects the de minimis rate, the MTDC used to calculate the State's indirect costs would only include the first \$25,000 of each subaward or subcontract provided *by the State to a subrecipient* under the award. Similarly, if a subrecipient of the State awards a subgrant or subcontract, the first \$25,000 of each subaward or subcontract provided *by the subrecipient* would be included in the MTDC used to calculate the subrecipient's indirect costs.

MI: I understand we cannot "negotiate" a lower indirect cost rate, but how does OMB define "negotiate." For example, can a university lower its indirect cost rate on its own to make a proposal more competitive or does it have to submit at its federally approved rate? I can see situations where we would put a project out for Request for Proposals and decide not to proceed if the project is not cost effective, for whatever reason, (including higher than anticipated indirect costs). Or do we direct universities to submit at their federally approved indirect cost rate?

A: This question is answered in Q-1 and Q-2 of the Indirect Cost Rate Q&A.

MO: SHSOs receive limited funding to conduct traffic safety programs. In one specific situation, if we apply the new requirement to one of our subrecipients and the contracts they have with our agency it would increase their indirect costs from the negotiated amount of \$109,867.04 to \$653,971.32 in FY16. This is a \$544,104.28 increase in indirect costs to just one subrecipient. If we apply that across the board to other universities it would dramatically impact our traffic safety efforts in the state and would require significant cuts to enforcement contracts. One resolution we considered is if a SHSO can determine a maximum flat indirect cost rate that it will pay prior to grant application submissions and relay this information to potential applicants during the application workshops. Otherwise, we are likely to deny more and more of these types of grants if we are required to pay the Federal indirect cost rate.

A: A flat indirect cost rate is not allowable. See Q-1 and Q-2 of the Indirect Cost Rate Q&A for more information.

MO: If an agency has a federally agreed upon rate but submits an application with no indirect cost rate included, do we have to pay the Federal rate anyway? This usually occurs when the applicant is providing a specific service such as training and charges per course and therefore doesn't charge an indirect cost rate.

A: See Q-5 of the Indirect Cost Rate Q&A for more information.

MO: If an application is denied because the high indirect cost rate is not feasible in the highway safety office's budget, and the applicant asks whether we will approve the application if they lower the indirect costs requested, does that constitute a negotiation initiated by the Highway Safety Office?

A: A SHSO may not encourage or coerce a subrecipient to accept lower indirect costs. See Q-2 of the Indirect Cost Rate Q&A for more information.

MO: Are funds awarded to an institution as indirect costs held to the same strict Buy America requirements as the other line items awarded to the same institution from the same source of funds, or do the indirect costs lose their "identity"?

A: The Buy America Act prohibits the use of Federal highway safety grant funds to purchase steel, iron or manufactured products—i.e., items chargeable as direct costs—unless these products are produced in the United States. NHTSA does not consider indirect costs (items typically benefitting more than one cost objective) to be subject to Buy America requirements.

MO: If a state were to pass a statute that would prohibit or limit indirect cost rates, is there any specific wording or examples that must be included to make it applicable?

A: No wording would allow a State to override the Super Circular's requirement to pay an indirect cost rate. The Super Circular is a Federal regulation on the use of Federal funds; its requirements may not be changed by a State statute.