

1 SUBCONTRACT

2 **35085**

3 This SUBCONTRACT is made and entered, in duplicate, as of September 6,
4 2018 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting held on November 10, 2015, by and between
6 INTERVAL HOUSE, a California nonprofit corporation, with offices located at 6615 E.
7 Pacific Coast Hwy, #170, Long Beach, California 90806 (hereafter "Organization"), and the
8 CITY OF LONG BEACH, a California municipal corporation (hereafter "City").

9 WHEREAS, City has been granted an award by the United States
10 Department of Health and Human Services, Office of Family Assistance ("HHS") for the
11 City's Life Coaching and the Fundamentals of Fatherhood Project ("Program"); and

12 WHEREAS, in order to fulfill its obligations to HHS under the grant award,
13 City desires to engage Organization to meet the Program objectives of strengthening and
14 sustaining stable economic and healthy environments for children and their families; and

15 WHEREAS, Organization desires to perform such work in accordance with
16 the terms and conditions of this Subcontract;

17 NOW, THEREFORE, City and Organization agree as follows:

18 1. HHS GRANT AWARD. Notwithstanding any other provision of this
19 Subcontract, this contract is a Subcontract under the terms of the Notice of Award with
20 HHS. (The award is subject to the requirements as set forth in 45 CFR Part 87. The grant
21 is subject to the requirements as set forth in 45 CFR Part 75.). Each and all of the
22 provisions of the Notice of Award and any amendments thereto shall extend to and be
23 binding upon the parties to this Subcontract. All representations and warranties contained
24 in this Subcontract shall inure to the benefit of HHS.

25 2. SERVICES.

26 A. Organization shall provide services in accordance with HHS'
27 Notice of Award and Attachment "A" entitled "Scope of Work"; Attachment "B"
28 entitled "Budget"; Attachment "C" entitled "DHHS Administration for Children and

1 Families, Office of Family Assistance, New Pathways for Fathers and Families”;
2 Attachment “D” entitled “45 CFR Part 75 - Uniform Administrative Requirements,
3 Cost Principles, and Audit Requirements for HHS Awards”; and Attachment “E”
4 entitled “Health Information in Compliance with the Health Insurance Portability and
5 Accountability Act of 1996 (HIPAA) and the Health Information Technology for
6 Economic and Clinical Health Act (HITECH Act) Business Associate Agreement”;
7 all of which are attached hereto and incorporated by this reference. Organization
8 shall comply with HHS’ Notice of Award in performing its obligations under this
9 Subcontract unless the context clearly indicates otherwise. Organization shall
10 request clarification from City regarding whether or not specific portions of the Notice
11 of Award apply. A breach of the Notice of Award shall be a breach of this
12 Subcontract.

13 B. Organization shall be responsible for adherence to all policies,
14 procedures, rules and regulations contained in this Subcontract and Attachments A-
15 E, the Request for Proposal (“RFP”), if applicable, and Organization’s proposal in
16 response to the RFP, if applicable.

17 3. TERM OF SUBCONTRACT. The term of this Subcontract shall
18 commence on September 30, 2018 and shall expire on September 29, 2019, unless
19 otherwise extended by City at its sole discretion or terminated earlier pursuant to any of
20 the conditions for termination in the Notice of Award.

21 4. PAYMENT.

22 A. City shall compensate Organization a total maximum contract
23 sum not to exceed Twenty-Four Thousand Nine Hundred Ninety-Nine Dollars
24 (\$24,999) for the term of this Subcontract. Upon execution of this Subcontract, City
25 shall disburse funds payable hereunder in due course of payments following receipt
26 from Organization of billing statements in a form approved by City showing
27 expenditures and costs identified in Attachment “B”.

28 B. City shall pay to Organization the amounts specified in

1 Attachment "B" for the categories, criteria and rates established in that Attachment.
2 Organization may, with the prior written approval of the Director of the City's
3 Department of Health and Human Services, or his designee, make adjustments
4 within and among the categories of expenditures in Attachment "B", provided,
5 however, that such adjustment(s) shall not cause the amount of the total budget
6 stated in Attachment "B" to be exceeded.

7 C. Organization shall prepare monthly invoices and submit them
8 to the City within thirty (30) days after the end of the month in which Organization
9 provided services. Organization shall attach cancelled checks and other
10 documentation supporting the charges to each invoice. Failure to submit an invoice
11 and its accompanying documentation within the 15-day period may result in late
12 payment from City. Submission of incorrect invoices or inadequate documentation
13 shall result in the suspension of payment from City. City reserves the right to refuse
14 payment of an invoice (a) received by it thirty (30) days after the end of the month
15 in which Organization provided the services relating to that invoice; (b) including
16 inallocable or ineligible expenses; or (c) for the unauthorized expense of funds
17 requiring written approval for budget changes or modifications.

18 D. If City is unable to draw down funds from HHS for
19 reimbursement to Organization due to failure of Organization to submit required
20 fiscal and programmatic documents within thirty (30) days after the end of the
21 Operational Year, City cannot guarantee payment to Organization. City will not be
22 obligated to pay Organization for costs incurred unless HHS releases funds to City.
23 For this reason, failure of Organization to submit the final invoice and certified APR
24 within thirty (30) days after the end of the Operational Year may result in loss of
25 reimbursement of funds.

26 E. City shall have no obligation to pay Organization until and
27 unless City receives quarterly progress reports that summarizes Organization's
28 performance under this Subcontract during the immediately preceding progress

1 period, and that describes Organization's progress in providing the services stated
2 in Attachment "A".

3 F. City's obligation to pay Organization arises only after receipt of
4 funds from HHS under the Notice of Award.

5 G. City reserves the right to withhold payment of an invoice
6 pending satisfactory completion of an audit, as determined by City in its sole
7 discretion, or Organization's cure of a breach of this Subcontract, as determined by
8 City in its sole discretion, after being notified of such breach by City.

9 H. Organization shall maintain all records relating to the
10 performance of this Subcontract in accordance with generally accepted accounting
11 principles and in the manner prescribed by City. Organization's records shall be
12 current, complete and available for extraction from copy, examination, inspection
13 and audit during its normal business hours, during the term of this Subcontract and
14 for a period of three (3) years after termination as deemed necessary by the City
15 Auditor, any other representative of the City, and HHS or any duly authorized
16 representative of HHS. Organization shall provide access to all documents and
17 materials relating to City and to Organization's operations, and Organization shall
18 provide any information that the City Auditor, other City representatives, HHS, and
19 HHS's representatives require in order to monitor and evaluate Organization's
20 performance. Organization shall provide all reports, documents or information
21 requested by City or HHS within three (3) days after a written or oral request from a
22 City or HHS representative, unless a longer period of time is otherwise expressly
23 stated by said representative. Each month, Organization shall submit performance
24 reports certified by one of Organization's officers or its Executive Director identifying
25 the services performed.

26 I. If examination of these financial and other records by City
27 and/or HHS reveals that Organization has not used these grant fund for the
28 purposes and on the conditions stated in this Subcontract, then Organization

1 covenants, agrees to and shall immediately repay all or that portion of the grant
2 funds which were improperly used. If Organization is unable to repay all or that
3 portion of the grant funds, City will terminate all activities of Organization under this
4 Subcontract and pursue appropriate legal action to collect the funds. Alternatively,
5 to the extent City has been refusing payment of any invoices, City may continue to
6 withhold such funds equal to the amount of improperly used grant funds, regardless
7 of whether the funds being withheld by City were improperly used.

8 J. City reserves the right to review and request copies of all
9 documentation related, directly or indirectly, to the program funded by this
10 Subcontract, including by way of example but not limited to, case files, program files,
11 policies and procedures.

12 K. If Organization spends Seven Hundred Fifty Thousand Dollars
13 (\$750,000) or more in Federal grant funds in an Operational Year, then Organization
14 shall submit an audit report to City in accordance with OMB Super Circular no later
15 than thirty (30) days after receipt of the audit report from Organization's auditor or
16 no later than nine (9) months after the end of the Operational Year, whichever is
17 earlier. If Organization spends less than Seven Hundred Fifty Thousand Dollars
18 (\$750,000) in Federal grant funds in an Operational Year, submission of the audited
19 financial statement is required.

20 5. ORGANIZATION'S OBLIGATIONS.

21 A. Organization will maintain the confidentiality of records
22 pertaining to any individual or family that was provided services through the project.

23 B. Organization, its officers, and employees are not debarred or
24 suspended from doing business with the Federal Government.

25 C. Organization will provide information, such as data and reports,
26 as required by HHS.

27 6. ANTI-DISCRIMINATION.

28 A. In the performance of this Subcontract, Organization shall not

1 discriminate against any employee, applicant for employment or service, or
2 subcontractor because of race, color, religion, national origin, sex, sexual
3 orientation, AIDS, HIV status, age, disability or handicap. Organization shall take
4 affirmative action to assure that applicants are employed or served, and that
5 employees and applicants are treated during employment or services without regard
6 to these categories. Such action shall include but not be limited to the following:
7 employment, upgrading, demotion or transfer; recruitment or recruitment
8 advertising; lay-off or termination; rates of pay or other forms of compensation; and
9 selection for training, including apprenticeship.

10 B. Organization shall permit access by City or any other agency
11 of HHS, state or federal governments to Organization's records of employment,
12 employment advertisements, application forms and other pertinent data and records
13 for the purpose of investigation to ascertain compliance with the fair employment
14 practices provisions of this Subcontract.

15 7. INDEPENDENT SUBCONTRACTOR.

16 A. In performing services hereunder, Organization is and shall act
17 as an independent subcontractor and not as an employee, representative, or agent
18 of City. Organization's obligations to and authority from the City are solely as
19 prescribed herein. Organization expressly warrants that it will not, at any time, hold
20 itself out or represent that Organization or any of its agents, volunteers, subscribers,
21 members, officers or employees are in any manner officials, employees or agents
22 of City. Organization shall not have any authority to bind City for any purpose.

23 B. Organization acknowledges and agrees that a) City will not
24 withhold taxes of any kind from Organization's compensation, b) City will not secure
25 workers' compensation or pay unemployment insurance to, for or on Organization's
26 behalf, and c) City will not provide and Organization and Organization's employees
27 are not entitled to any of the usual and customary rights, benefits or privileges of
28 City employees.

1 8. NON-ASSIGNMENT. This Subcontract contemplates the personal
2 services of Organization and Organization's employees. Organization shall not delegate
3 its duties or assign its rights hereunder, or any interest herein or any portion hereof, without
4 the prior written consent of City which the City may withhold in its discretion. Any attempted
5 assignment or delegation shall be void, and any assignee or delegate shall acquire no right
6 or interest by reason of such attempted assignment or delegation.

7 9. THIRD PARTY BENEFICIARY.

8 A. City and Organization understand and agree that this
9 Subcontract is entered into for the benefit of HHS, and that HHS is hereby expressly
10 made a third party beneficiary of this Subcontract.

11 B. Notwithstanding any other provision of this Subcontract, HHS
12 does not intend for Organization to acquire any rights as a third party beneficiary of
13 Notice of Award.

14 10. INDEMNIFICATION.

15 A. Organization shall indemnify, protect and hold harmless City,
16 its Boards, Commissions, and their officials, employees and agents ("Indemnified
17 Parties"), from and against any and all liability, claims, demands, damage, loss,
18 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
19 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
20 in connection with (1) Organization's breach or failure to comply with any of its
21 obligations contained in this Agreement, or (2) negligent or willful acts, errors,
22 omissions or misrepresentations committed by Organization, its officers,
23 employees, agents, subcontractors, or anyone under Organization's control, in the
24 performance of work or services under this Agreement (collectively "Claims" or
25 individually "Claim").

26 B. In addition to Organization's duty to indemnify, Organization
27 shall have a separate and wholly independent duty to defend Indemnified Parties at
28 Organization's expense by legal counsel approved by City, from and against all

1 Claims, and shall continue this defense until the Claims are resolved, whether by
2 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
3 breach, or the like on the part of Organization shall be required for the duty to defend
4 to arise. City shall notify Organization of any Claim, shall tender the defense of the
5 Claim to Organization, and shall assist Organization, as may be reasonably
6 requested, in the defense.

7 C. The provisions of this Section shall survive the expiration or
8 termination of this Subcontract.

9 11. INSURANCE.

10 A. Without limiting Organization's indemnification of HHS, and
11 during the term of this Subcontract, Organization shall provide and maintain at its
12 own expense the following programs of insurance against claims for injuries to
13 persons or damage to property that may arise from or in connection with the
14 performance of this Contract by Organization, its agents, representatives,
15 employees, volunteers or subcontractors. Such programs and evidence of
16 insurance shall be satisfactory to HHS and the City, and shall be primary to, and not
17 contributing with, any other insurance maintained by HHS.

18 i. Commercial general liability insurance (equivalent in
19 scope to ISO form CG 00 01 11 85 or CG 00 01 1093) in an amount not less
20 than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars
21 (\$2,000,000) general aggregate. Such coverage shall include but not be
22 limited to broad form contractual liability, cross-liability, independent
23 contractors liability, and products and completed operations liability. Such
24 insurance shall neither exclude claims of sexual abuse or misconduct nor
25 include a sublimit lesser than the per claim limit for claims of sexual abuse or
26 misconduct. The City, its Boards and Commission, and their officials,
27 employees and agents shall be named as additional insureds by
28 endorsement (on the City's endorsement form or on an endorsement

1 equivalent in scope to ISO form CG 20 26 11 85), and this insurance shall
2 contain no special limitations on the scope of protection given to the City, its
3 Boards and Commission, and their officials, employees and agents.

4 ii. Workers' Compensation insurance as required by the
5 California Labor Code.

6 iii. Employer's liability insurance in an amount not less than
7 One Million Dollars (\$1,000,000) per claim.

8 iv. Professional liability or errors and omissions insurance
9 in an amount not less than One Million Dollars (\$1,000,000) per claim.

10 v. Commercial automobile liability insurance (equivalent in
11 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
12 an amount not less than Five Hundred Thousand Dollars (\$500,000)
13 combined single limit per accident.

14 If delivering services to minors, seniors, or persons with disabilities,
15 Organization's Commercial General Liability insurance shall not exclude coverage
16 for abuse and molestation. If Organization is unable to provide abuse and
17 molestation coverage, it can request a waiver of this coverage from the City. The
18 City's Risk Manager will consider waiving the requirement if Organization can
19 demonstrate to the satisfaction of the City's Risk Manager that Organization has no
20 exposure, that the coverage is unavailable, or that the coverage is unaffordable. If
21 a request for a waiver is desired, Organization must submit a signed document on
22 Organization's letterhead to the Director of the City's Department of Health and
23 Human Services, who will forward it to the City's Risk Manager, providing reasons
24 why the insurance coverage should be waived. Waivers will be considered on a
25 case by case basis.

26 B. Any self-insurance program, self-insured retention, or
27 deductible must be separately approved in writing by the City's Risk Manager or
28 his/her designee and shall protect the City, its Boards and Commission, and their

1 officials, employees and agents in the same manner and to the same extent as they
2 would have been protected had the policy or policies not contained retention or
3 deductible provisions. Each insurance policy shall be endorsed to state that
4 coverage shall not be reduced, non-renewed, or canceled except after thirty (30)
5 days prior written notice to the City, and shall be primary and not contributing to any
6 other insurance or self-insurance maintained by the City. Organization shall notify
7 the City in writing within five (5) days after any insurance required herein has been
8 voided by the insurer or cancelled by the insured.

9 C. Organization shall require that all contractors and
10 subcontractors that Organization uses in the performance of services under this
11 Contract maintain insurance in compliance with this Section unless otherwise
12 agreed in writing by the City's Risk Manager or his/her designee.

13 D. Prior to the start of performance, Organization shall deliver to
14 the City certificates of insurance and required endorsements for approval as to
15 sufficiency and form. The certificate and endorsements for each insurance policy
16 shall contain the original signature of a person authorized by that insurer to bind
17 coverage on its behalf. In addition, Organization, shall, within thirty (30) days prior
18 to expiration of this insurance, furnish to the City certificates of insurance and
19 endorsements evidencing renewal of the insurance. The City reserves the right to
20 require complete certified copies of all policies of Organization and Organization's
21 contractors and subcontractors, at any time. Organization shall make available to
22 the City's Risk Manager or his/her designee during normal business hours all books,
23 records and other information relating to the insurance coverage required herein.

24 E. Any modification or waiver of these insurance requirements
25 shall only be made with the approval of the City's Risk Manager or his/her designee.
26 Not more frequently than once a year, the City's Risk Manager or his/her designee
27 may require that Organization, Organization's contractors and subcontractors
28 change the amount, scope or types of coverages if, in his or her sole opinion, the

1 amount, scope, or types of coverages herein are not adequate.

2 F. The procuring or existence of insurance shall not be construed
3 or deemed as a limitation on liability relating to Organization's performance or as full
4 performance of or compliance with the indemnification provisions of this Contract

5 12. HIPAA BUSINESS ASSOCIATE AGREEMENT. The Health
6 Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") is applicable
7 to the services under this Subcontract, and Organization shall execute and deliver City's
8 standard Business Associate Agreement as required by HIPAA.

9 13. HHS REPORTS. City shall facilitate the submission of all reports
10 required by HHS based on information submitted by Organization to City. City shall act as
11 the primary contact for Organization to HHS for services provided under this Subcontract.
12 City shall facilitate directly to HHS the submission of any information related to all financial
13 and programmatic matters in this Subcontract, including but not limited to reimbursements
14 of grant funds, requests for changes to Organization's budget, requests for changes to
15 Organization's application for grant funds and requests for changes to Organization's
16 Technical Submission.

17 14. NOTICES. All notices given hereunder this Subcontract shall be in
18 writing and personally delivered or deposited in the U.S. Postal Services, certified mail,
19 return receipt requested, to City at 2525 Grand Avenue, Long Beach, California 90815 Attn:
20 Human Services Bureau Manager, and to Organization at the address first stated above.
21 Notice shall be deemed given on the date personal delivery is made or the date shown on
22 the return receipt, whichever is earlier. Notice of change of address shall be given in the
23 same manner as stated for other notices.

24 15. MISCELLANEOUS.

25 A. The City Manager or designee is authorized to administer this
26 Subcontract and all related matters, and any decision of the City Manager or
27 designee in connection herewith shall be final.

28 B. Organization shall have the right to terminate this Subcontract

1 at any time for any reason by giving thirty (30) days' prior notice of termination to
2 City, and City shall have the right to terminate all or any part of this Subcontract at
3 any time for any reason or no reason by giving thirty (30) days' prior notice to
4 Organization. If either party terminates this Subcontract, all funds held by
5 Organization under this Subcontract which have not been spent on the date of
6 termination shall be returned to City.

7 C. This document constitutes the entire understanding of the
8 parties and supersedes all other agreements, oral or written, with respect to the
9 subject matter herein. This Subcontract shall not be amended, nor any provision or
10 breach hereof waived, except in writing by the parties which expressly refers to this
11 Subcontract.

12 D. This Subcontract shall be governed by and construed pursuant
13 to the laws of the State of California.

14 E. This Subcontract including all exhibits shall not be amended,
15 nor any provision or breach hereof waived, unless in writing signed by the parties
16 which expressly refers to this Subcontract.

17 F. In the event of any conflict or ambiguity between this
18 Subcontract and an exhibit, the provisions of this Subcontract shall govern.

19 G. The acceptance of any service or payment of any money by
20 City shall not operate as a waiver of any provision of this Subcontract, or of any right
21 to damages or indemnity stated herein. The waiver of any breach of this
22 Subcontract shall not constitute a waiver of any other or subsequent breach of this
23 Subcontract.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties hereto have caused this document to be duly executed with all formalities required by law as of the date first stated above.

INTERVAL HOUSE, a California nonprofit corporation

September 19, 2018

By *Carol Williams*
Name Carol Williams
Title Executive Director

_____, 2018

By _____
Name _____
Title _____

**Tom Modica
Assistant City Manager**

"Organization"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

CITY OF LONG BEACH, a municipal corporation

Oct. 10, 2018

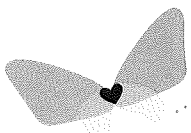
By *R.B.M.*
City Manager

"City"

This Subcontract is approved as to form on 10/5, 2018.

CHARLES PARKIN, City Attorney

By *[Signature]*
Deputy



...on the strength of beautiful new wings we will soar!

INTERVAL HOUSE
Crisis Shelters & Centers for Victims of Domestic Violence

INTERVAL HOUSE
RESOLUTION OF THE GOVERNING BOARD

WHEREAS:

Interval House, a non-profit corporation, is eligible and to apply for grants or funding from federal, state, county, city or private entities during the 2018-2019 fiscal year;

RESOLVED THAT:

1. The Board of Directors of Interval House hereby authorizes Carol Anne Williams, Executive Director, to apply for any grants or funding applications in accordance with the program statute, regulations and all requirements.
2. If the grant or funding application is approved, the Board of Directors authorizes Carol Anne Williams, Executive Director, to sign contracts and amendments with the funding agency on behalf of Interval House's Board of Directors.
3. If the grant or funding application is approved, the Board of Directors of Interval House hereby authorizes the use of funds for eligible activities in the manner presented in the application as approved and in accordance with the program statute and the contracts.

PASSED AND ADOPTED at a regular Board of Directors meeting of Interval House this eight (8th) day of May 2018 by the following vote:

AYES:	12	ABSTENTIONS:	0
NOES:	0	ABSENT:	2

Donna Melody
Donna Melody, President of the Board

5/8/18
Date

ATTACHMENT A: SCOPE OF WORK

2018- 2019 Scope of Work Life Coaching Fundamentals of Fatherhood Project (LCFFP)

Interval House

Project Partner Contact Information

Interval House

6615 E. Pacific Coast Hwy, #170

Long Beach, CA 90803

Phone: 562.594.9492; Fax: 562.596.3370

LCFFP Project Goals

Goal 1 Build program capacity and community awareness by establishing a networked fatherhood response in the City of Long Beach.

Goal 2 Strengthen and sustain stable economic and healthy environments for children by developing and enhancing fathers' positive, involved, nurturing and authoritative parenting and co-parenting skills, as well as the job and career readiness and employment of these fathers

Goal 3 Conduct performance measure/ continuous quality assurance practices to assess and realign LCFFP project processes.

Interval House Staff Positions for LCFFP Project

- IPV Educator (DV Advocate)
- Director of Programs

2018-2019 Objectives:

Obj. 1: Develop IPV screening tool and Best Practice guide by December 31, 2018.

Activity 1: 3 to 5 question IPV screening tool that will be used by Life Coaches during enrollment/Intake of the program and information will be uploaded onto nFORM.

Activity 2: Develop standardized referral systems (steps) to use the IPV screen tool, a guide for staff to use according to the answers obtained from the IPV screening tool to link participants into appropriate services.

Activity 3: Develop a resource directory for IPV service delivery agencies for staff to readily access.

Activity 4: Develop best practice IPV documentation that includes follow-ups and monitoring for LCFFP staff to upload on nFORM. (Our data collecting system)

Obj. 2: Facilitate 2-hour training to LCFFP staff on how to use IPV screening tool by end of December 2018.

Activity 1: Interval House will work with LCFFP Program manager to schedule 2-hour training

Obj. 3: Conduct Follow Up Intimate Partner Violence (IPV) Training for LCFFP

Activity 1: Interval House will identify IPV training topics and develop training for LCFFP partners by June 2019

Activity 2: Interval House will provide IPV training for LCFFP partners by August 2019

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Obj. 4: Facilitate two-session Intimate Partner Violence (IPV) workshops for up to 10 LCFFP cohorts by September 29, 2019.

Activity 1: Interval House will facilitate two-week IPV sessions for up to 10 LCFFP cohorts by September 29, 2019.

Activity 2: Interval House will provide up to 20 IPV consultations for LCFFP staff and participants tailored based on needs identified through referral protocol.

Obj. 5: Attend Project/Program Meetings

Activity 1: Staff will participate in monthly project partner meetings.

Activity 2: Staff will participate in monthly Continuous Quality Improvement (CQI) meetings.

Activity 3: Staff will participate in all required program trainings.

Obj. 6: Monitoring and Reporting

Activity 1: Staff will collect data, as required by grantor and for CQI purposes.

Activity 2: Staff will provide quarterly reports on program activities for Project reports.

Obj 7: Billing/Invoicing

Activity 1: Interval House will invoice on a monthly basis as required by LBDHHS.

Activity 2: Interval House will provide support documentation for invoicing purposes.

Attachment B

Interval House Life Coaching and the Fundamentals of Fatherhood Project - Year 4 Subcontractor Budget		
1. Agency Name:	Interval House	
2. Agency Address:	6615 E. Pacific Coast Hwy #170, Long Beach, CA 90803	
3. Operational Period :	9/30/2019	to 9/29/2020
Item		
		Budget
PERSONNEL COST		FTE
1. Director of Programs	0.025	2,875
2. DV Advocate	0.325	15,600
3.		
4.		
5 Fringe Benefits @ 23.01%		4,251
TOTAL PERSONNEL COST		22,726
OPERATING COST		
1.		-
TOTAL OPERATING COST		-
INDIRECT COST		
1. 10% of Total Direct Costs		2,273
		2,273
TOTAL BUDGET		24,999

Attachment B

Life Coaching Fundamentals of Fatherhood Project – Year 4

Interval House Budget Narrative

<u>Category</u>	<u>Cost</u>
Personnel Costs	
Director of Programs (\$115,000 yearly salary x .025 FTE) Will oversee the planning and development of IPV curriculum and protocol; facilitate training for project staff and partners on IPV and related topics; supervise IPV educators; participate in project leadership meetings and serve as LCFFP liaison.	\$2,875
DV Advocate (\$48,000 yearly salary x .325 FTE) DV Advocate will facilitate sessions for LCFFP cohorts and provide IPV consultations to LCFFP staff and participants.	\$15,600
Benefits (23.01%) (Total salaries of \$18,475 x 23.01%) Benefits include FICA, State Unemployment, Workers Compensation, Medical Insurance, Retirement, and Life Insurance	\$4,251
Total Personnel Costs	\$22,726
Indirect Costs	
10% of Total Direct Costs (Total direct costs of \$22,276 x 10%) Indirect charges of 10% of salaries and benefits and operating costs, if any.	\$2,273
Total:	\$24,999

Attachment C



Administration for Children and Families

Office of Family Assistance

New Pathways for Fathers and Families

HHS-2015-ACF-OFA-FK-0993

Application Due Date: 07/07/2015

New Pathways for Fathers and Families

HHS-2015-ACF-OFA-FK-0993

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**Department of Health & Human Services
Administration for Children and Families**

Program Office: Office of Family Assistance
Funding Opportunity Title: New Pathways for Fathers and Families
Announcement Type: Initial
Funding Opportunity Number: HHS-2015-ACF-OFA-FK-0993
Primary CFDA Number: 93.086
Due Date for Applications: 07/07/2015

Executive Summary

Notices:

- Applicants are strongly encouraged to read the entire funding opportunity announcement (FOA) carefully and observe the application formatting requirements listed in *Section IV.2. Content and Form of Application Submission*. For more information on applying for grants, please visit "How to Apply for a Grant" on the ACF Grants Page at <http://www.acf.hhs.gov/grants/howto>.

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Family Assistance (OFA) is announcing the solicitation of applications for the competitive award of demonstration grants that support responsible fatherhood activities designed to improve outcomes for fathers and families as authorized by the Claims Resolution Act of 2010 (Pub. L. 111-291).

Grants awarded under this FOA will fund New Pathways for Fathers and Families (New Pathways) programs to strengthen positive father-child engagement, improve employment and economic mobility opportunities, and improve healthy relationships (including couple and co-parenting) and marriage. In addition to responsible fatherhood's core services and skills (communication, character building, interpersonal relationships, parenting, economic stability, and conflict resolution) applicants are encouraged to partner with human service agencies and community organizations. These collaborations will help organizations provide comprehensive services to address the social, emotional, and economic stability needs of fathers and their target communities. Economic stability activities include employment, job training, and job skills development. Social and emotional needs refer to services including, but not limited to, partnerships with and referrals to mental health, substance abuse treatment, and trauma-informed care systems.

ACF developed short- and long-term outcomes for all New Pathways. ACF expects that applicants will demonstrate how their proposed program elements and activities directly align with the desired programmatic outcomes contained in the FOA. (see *Section I. Program Description, Program Purpose and Scope, Programmatic Outcomes* for more information.)

These grants will provide 1 year of funding based on currently available funds. ACF intends to support successful programs through annual, non-competitive continuation applications for a 5-year project period, subject to the appropriation of additional funds not contained in the current authorizing legislation. (see *Section II. Federal Award Information, Non-Competitive Continuation* for additional information.)

This is one of four Healthy Marriage and Responsible Fatherhood FOAs.

The Healthy Marriage FOAs are:

Healthy Marriage and Relationship Education Grants (HHS-2015-ACF-OFA-FM-0985); and National Center for Healthy Marriage and Relationship Education (HHS-2015-ACF-OFA-FH-0990).

The Responsible Fatherhood FOAs are:

New Pathways for Fathers and Families (HHS-2015-ACF-OFA-FK-0993); and Responsible Fatherhood Opportunities for Reentry and Mobility (ReFORM) (HHS-2015-ACF-OFA-FO-0992).

The principal distinction between this FOA and the FOA for ReFORM is that the ReFORM FOA targets formerly incarcerated fathers.

Note: Section 403(a) of the authorizing legislation uses the term "Responsible Fatherhood Grants." Therefore, throughout this FOA, ACF uses the terms "fatherhood" and "fathers." However, as described in *Section I. Program Description, Post-Award Requirements, Program Access*, programs funded under this FOA must offer services on an equal basis to eligible fathers and mothers.

I. Program Description

Statutory Authority

The statutory authority for this program is the Claims Resolution Act of 2010 (Pub. L. 111-291).

Description

BACKGROUND

Studies have shown that involved fathers provide practical support in raising children and serve as models for their development (*The Effects of Father Involvement*, Allen and Daly, 2007). Children with involved, loving fathers are significantly more likely to do well in school, have healthy self-esteem, and exhibit empathy and pro-social behavior compared to children who have uninvolved fathers.

In the United States today, however, one out of every three children – over 24 million in total – lives in a home without their biological father present (U.S. Census Bureau, *America's Families and Living Arrangements*, 2011). The presence and involvement of a child's parents protects children from a number of vulnerabilities. More engaged fathers—whether living with or apart from their children—can help foster a child's healthy physical, emotional, and social development (*Handbook of Father Involvement: Multidisciplinary Perspectives, Second Edition*, Cabrera and Tamis-LeMonda, 2012). While evidence shows that children benefit most from the involvement of resident fathers, research has also highlighted the positive effect that nonresident fathers can have on their children's lives (U.S. Department of Health and Human Services, *The Importance of Fathers in the Healthy Development of Children*, 2006).

In view of the challenges and opportunities presented by these findings, ACF, through the New Pathways program, will continue to fund responsible fatherhood efforts designed to strengthen positive father-child engagement, improve social and economic outcomes for fathers and their families, improve healthy relationships (including couple and co-parenting) and support family formation and strengthening through healthy marriage education and activities. The New Pathways program also reflects the priorities articulated in the President's My Brother's Keeper (MBK) initiative, which focuses on identifying methods for young people to reach their full potential, including by removing barriers to success and economic mobility for men and boys of color (See <https://www.whitehouse.gov/my-;brothers-keeper>).

The Claims Resolution Act of 2010 (CRA) authorizes funding for three specific "Promoting Responsible Fatherhood" activities: responsible parenting, economic stability, and healthy marriage. The following is a list of the CRA activities. Each activity includes several elements, which may be combined to accomplish the outcomes described in this FOA.

Responsible Parenting - Activities to promote responsible parenting, such as:

- Counseling, mentoring, and mediation;
- Disseminating information about good parenting practices;
- Skills-based parenting education;
- Encouraging child support payments; and
- other methods.

Economic Stability - Activities to foster economic stability, such as:

- Helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education;
- Dissemination of employment materials;
- Coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives; and
- other methods.

Healthy Marriage - Activities to promote marriage or sustain marriage through activities, such as:

- Counseling, mentoring, disseminating information about the benefits of marriage and two-parent involvement for children;
- Enhancing relationship skills;
- Education regarding how to control aggressive behavior;
- Disseminating information on the causes of domestic violence and child abuse;
- Marriage preparation programs;
- Premarital counseling;
- Marital inventories;
- Skills-based marriage education;
- Financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance;
- Divorce education and reduction programs, including mediation and counseling.

(See *Section IV.2. Part II. The Project Description, Approach* for additional information.)

PROGRAM PURPOSE AND SCOPE

In recent years, ACF has funded responsible fatherhood programs designed to help fathers establish or strengthen relationships with their children, improve long-term economic stability, and overcome obstacles and barriers that prohibit them from being the most effective and nurturing parents.

Well-designed programs funded under this FOA will identify strategies to determine an appropriate set of activities for each participating father. Funds must be used to support and integrate all three authorized activities (i.e., responsible parenting, economic stability, and healthy marriage and relationship education) to fathers, particularly low-income adult fathers, and fathers between the ages of 16 and 24. Applicants are not required to implement all of the *elements* listed under the three authorized activities, but must select one or more elements under each activity. ACF seeks proposals that will expand efforts and incorporate lessons emerging in related fields, including how adverse early experiences and trauma may influence the lives and behaviors of program participants.

Programmatic Outcomes

ACF has identified key short- and long-term outcomes related to implementation of the New Pathways programs and has posted a link to proposed standardized performance measures at www.famlecross-site.info. Well-designed programs funded under this FOA will include approaches in their application

narrative and logic model that align with desired programmatic outcomes identified in this FOA. The emphasis on specific programmatic outcomes is intended to enhance evaluation of the New Pathways program (both local and national) and strengthen program design (see *Section I. Program Description, Post-Award Performance Measure Data and Evaluation Requirements, Local Evaluation and Federal Evaluation* for additional information).

ACF's desired short-term outcomes include:

- improved healthy relationship and marriage skills;
- improved parenting and co-parenting skills;
- increased frequency of father/child engagement;
- increased financial responsibility of fathers;
- progress toward greater economic stability, including increased skill attainment and employment; and
- reduced recidivism (as appropriate).

ACF's long-term outcomes include:

- improved family functioning (couple relationships, parenting, and co-parenting);
- improved adult and child well-being;
- increased economic stability and mobility;
- reduced poverty; and
- reduced recidivism (as appropriate).

Enhanced performance data collection, and local and national evaluations complement the emphasis on achieving short-and long-term programmatic outcomes. ACF has a learning agenda for the New Pathways program that focuses on expanding the knowledge base to improve programming, ensuring continuous quality improvement, and increasing positive outcomes for fathers, couples, families, and children. (See *Post-Award Requirements, Performance Measure Data and Evaluation, Local Evaluations and Federal Evaluation* later in this section for more information.)

The following examples are designed to assist applicants in developing short-term outcomes that will be incorporated in their overall program design and logic model. These examples apply to healthy marriage and/or responsible fatherhood, and are not intended as a preferred or exhaustive list. Outcome measures can be taken from the pre-post surveys, which may also found at www.famlecross-site.info. For example:

- “increased frequency of talking with a child about things s/he is interested in” would be an example of a parenting short-term outcome (other parenting measures may be found in section A of the pre-post survey);
- “increased proportion of participants who use a written budget to plan spending” would be an example of an economic stability short-term outcome (other economic stability measures may be found in section B of the pre-post survey); and
- “increase in the proportion of participants who are satisfied in the way they handle conflict with their partner/spouse” would be an example of a relationship/marriage short-term outcome (other healthy marriage/relationship measures may be found in section C of the pre-post survey).

Responsible Parenting

There is significant research that shows the importance of father involvement in the life of a child (Allen and Daly, 2007). A father's ability to engage in healthy relationships and positive parenting is critical to family stability. Everyday life situations can create obstacles to obtaining the necessary relationships and parenting skills and cause families to separate, leading to father absence. There is also mounting evidence that shows that father involvement is associated with higher educational attainment and other positive outcomes among older children and youth (*Outcomes of Father Involvement*, Fatherhood Institute, 2005). Fathers' involvement during critical adolescent years is linked to children's decreased likelihood for drug use, behavioral problems in school, and participation in risky behaviors.

Responsible parenting activities include using skills-based fatherhood curriculum designed to help fathers learn and apply skills that assist them in fulfilling their roles and responsibilities as fathers, reinforce parental practices that advance child well-being, and improve father-child relationships. ACF is also interested in strategies such as counseling and mentoring to reinforce parenting skills and advance child well-being. These strategies may be designed to address related issues and limitations that may affect father-child and/or family relationships.

Employment, Economic Stability and Mobility

ACF has emphasized the importance of activities related to employment and economic stability in the previous Pathways to Responsible Fatherhood grants. Economic pressures and instability contribute to diminished financial support, and relationship (including father-child and couples) and marital dysfunction. ACF continues to seek proposals with comprehensive employment and economic mobility-focused services.

Further, ACF is interested in programs that include job-driven program components that: (1) build from a solid understanding of local economic conditions and economic growth sectors; (2) include connections to education and training opportunities aligned to these sectors; (3) incorporate partnerships with employers in targeted sectors to increase the likelihood of placement and retention in work; and (4) use evidence-based or research-informed programs and practices. New Pathways programs are strongly encouraged to include other partners that can also provide resources or expertise.

Examples of strategies to include in the design of an employment component include, but are not limited to:

- Identifying in-demand occupations through the use of up-to-date, publicly available labor market information;
- Aligning education and training approaches and partnerships to growth sectors identified through labor market analysis;
- Partnering or networking with employers in growth industries, such as technology, health science, construction, entrepreneurial opportunities, and other income-generating alternatives;
- Coordinating with local businesses, One-Stops, or employment training agencies;
- Partnering with adult education agencies, community colleges, and other education service providers with the goal of participants receiving a GED, certificates, and/or other education and career advancing opportunities;
- Partnering with institutions that offer opportunities for advanced vocational training and certifications; and
- Collaborating with Workforce Investment Boards (WIB) and other employment agencies.

ACF is also interested in project designs that incorporate opportunities for subsidized or unsubsidized employment for fathers participating in the New Pathways programs. Where subsidized employment is included as a part of the comprehensive employment services, program models will ensure that fathers participate in responsible fatherhood classes, case management, follow-up, or program supports throughout the duration of the participant's enrollment in the subsidized employment program. Comprehensive subsidized employment includes clear descriptions of how the program will impart marketable job skills that will assist the individual in obtaining permanent unsubsidized employment. Grant funds may be used to provide employment subsidies for participants who are enrolled in the responsible fatherhood program and who are receiving other appropriate services in the program. Wages for eligible participants must be at or above the state or federal minimum wage

(See Section VIII, Other Information, Additional Resources, Employment and Economic Stability Resources for more information and a toolkit on strategies for improving family economic stability and Building Financial Capability for more information and an interactive resource guide on integrating financial capability into programs.)

Healthy Marriage and Relationship Education

Relationship skills and healthy marriage education programs typically work with both members of a couple when they are still in a relationship together. Research suggests that fatherhood programs that incorporate healthy marriage and relationship education may ultimately increase fathers' long-term engagement with their children, the income available to the child, and child well-being (*Policies that Strengthen Fatherhood and Family Relationships*, Knox, Cowan, A., Cowan, C., and Bildner, Manpower Demonstration Research Corporation, 2010).

Healthy marriage and relationship education programs are designed to bolster the relationship quality for couples by improving specific skills, such as handling conflict and engaging in supportive behaviors toward one another. Changes in the couple relationship could improve children's emotional security and social-emotional development through (1) improved co-parenting (cooperative parenting); (2) less mismanaged parental conflict; (3) increased willingness of a father to be engaged in family life; (4) increased engagement by a father in parenting the child; or (5) improved quality of parenting by mother or father (due to improvement in the overall climate of the home or parents' generalization of their new relationship skills to their relationships with the child) (Knox, Cowan, Cowan and Bildner, 2010). As a result, improvements in the couple relationship may ultimately increase the quality or quantity of the fathers' engagement with his children, whether such improvements increase the amount of time they actually live with their children, the amount of time they spend together if they do not live together, or the quality of the father-child relationship whenever they are together (Knox, Cowan, Cowan and Bildner, 2010).

Healthy relationships with spouses, partners, and children can also have positive effects on employment, and earnings. Likewise, employment, earnings, and economic stability can positively affect the health of relationships with spouses, partners, and children. ACF is particularly interested in programs that incorporate strategies to help fathers develop skills to strengthen and manage relationships with their children and other important individuals in their lives (co-parent, employer, and family members).

Other Program Components

Overall Program Design

ACF seeks clear, well-designed proposals that provide thorough descriptions of how the approach will be implemented. Important factors to consider include:

- reasonable plans for project marketing and outreach;
- a participant recruitment plan;
- a description of the type of activities and services to be offered;
- staffing and training plans;
- partnerships with other organizations;
- programs that are appropriately tailored to the characteristics of the target population, including formerly incarcerated fathers and their families;
- descriptions of curricula, intake and assessment process, frequency and/or intensity of services to be provided, and service delivery format; and
- case management and program supportive services.

Partnerships and Program Collaboration

Partnerships are an important asset to consider in the design and implementation of a program. Strong partnerships are critical to maximizing the effectiveness of a program through leveraging resources, building community support, and increasing access to eligible target population(s). ACF is particularly interested in programs that obtain or use other funding sources to enable the provision of comprehensive support services when the cost of these services is not allowable under this funding.

It is important that the applicant's assessment of the community needs and target population align with those of partnering organizations. Effective partnerships can contribute a wide array of knowledge and activities to each program, and partner organizations should work together to ensure that they utilize each

other's expertise and resources. ACF encourages applicants to consider partnerships with federal initiatives, local agencies, and/or other community programs as part of the overall implementation plan and project design. Examples of key strategic partners include, but are not limited to:

- One-Stop Centers, Workforce Investment Boards (WIB), and other Workforce Innovation and Opportunity Act-funded employment training programs;
- State, local, and tribal Temporary Assistance for Needy Families (TANF) agencies;
- State, local, and tribal child support agencies;
- Child welfare agencies and organizations;
- Domestic violence organizations;
- Legal aid and community action agencies;
- Criminal justice agencies (including youth detention centers, prisons, jails, pre-release centers, courts, probation, parole);
- Local substance and mental health agencies; and
- Public health services.

Trauma-Informed Care

Current Responsible Fatherhood grantees have observed that a number of program participants have experienced early trauma or adverse experiences that may affect their relationships as adults, their skills as parents, and their success in the workforce. Examples of adverse childhood experiences include abuse, neglect, and a range of other dysfunction within the home, such as witnessing domestic violence, or growing up in a home where substance abuse occurs. ACF is interested in program designs that take into consideration lessons emerging from related fields, including trauma, or indicators of trauma and how these experiences may influence the lives and behaviors of program participants. Through the incorporation of appropriate community-based trauma-informed supports, ACF hopes to increase participant success in New Pathways programs and improve interpersonal (including parenting) skills, social skills, employment, and economic mobility.

While grantee organizations cannot use funds awarded under this grant to provide behavioral or mental health care or treatment related to trauma or early adverse experiences, ACF is particularly interested in applicants with a demonstrated ability to coordinate and integrate case planning and service delivery with appropriate providers within the community.

Program Supportive Services and Case Management

ACF is particularly interested in funding projects that include case management strategies that either provide or link to a broad array of community-centered supportive services. These components may range from regular participant contact to facilitate program retention, completion, and access to needed support services, to more intensive services related to employment and economic stability. Adolescent and young adult fathers and expectant fathers with multiple concerns may particularly benefit from case management. Therefore, programs providing targeted services to at-risk young fathers and expectant fathers are expected to provide case management and support services.

At-risk young fathers with multiple and current concerns who find it difficult to access needed support services may particularly benefit from case management (*School-based Case Management*, Smith, National Dropout Prevention Center, 1995). Therefore, programs providing targeted services to at-risk young fathers are expected to provide case management and support services. In contrast, programs that provide services to young fathers within the broader youth population in a traditional high school setting may determine that the provision of supportive services and case management is unnecessary—given the duration of sessions and the limited interaction or access to the students.

Some support services that address needs of program participants cannot be funded by this grant. ACF expects that program designs will likely include strategies to provide and manage support services through other funding, or partner with organizations that can provide the services. For example, since providing trauma-informed behavioral health care, mental health treatment (as stated previously), child support

payments, and substance abuse treatment are not allowable uses of funds, grantees are encouraged to partner with public and community-based organizations to provide participants with access to these services.

Housing

Stable housing is a key factor associated with increased parent-child contact, family stability, and the successful transition of formerly incarcerated fathers into the community. Stable housing may also be needed by fathers without incarceration histories, including young fathers. Applicants whose target populations may include homeless, "doubled-up" (e.g., combined households with at least one additional adult person who is not enrolled in school or not a spouse or partner) and reentering fathers (or young fathers, including those at-risk fathers) are strongly encouraged to engage multiple partners within the community to address this objective and demonstrate the ability to connect participants to transitional, temporary, or permanent housing. Partnerships are particularly essential for the provision of housing as grant funds **may not** be used to subsidize housing, or provide housing vouchers or rental assistance under this grant.

Child Support

Many fathers served by responsible fatherhood programs are in the child support system or have child support obligations. There are potential benefits in establishing strong, positive collaborations between fatherhood programs and local child support agencies. These collaborations can ensure that fathers understand their rights and responsibilities in the child support program. Collaboration may also involve reviewing child support orders to ensure that they are realistic, suspending enforcement remedies while fathers successfully participate in the program, and reducing state-owed child support arrears for fathers who have reached program milestones. Moreover, effective economic stability activities in fatherhood programs can enhance a father's ability to pay support. These collaborations can strengthen the father/child relationship and, ultimately, increase the economic well-being of children. As stated previously, providing funding for child support payments is not an allowable use of grant funds.

PARTICIPANT ELIGIBILITY AND TARGET POPULATIONS

Eligible participants are biological fathers, expectant fathers, adoptive fathers, stepfathers, or a person who is acknowledged as a father figure (e.g., grandfather or foster father) for a dependent child or young adult child up to 24 years of age.

While participant eligibility is not limited to the following populations, ACF has a particular interest in programs that target:

- Fathers and young fathers receiving TANF assistance, as well as those who have previously received, or who are eligible to receive TANF assistance;
- Active-duty military and veteran fathers; and
- Low-income, at-risk fathers and young fathers, including high school dropouts; young fathers involved with the juvenile justice systems; fathers who are in, or aging out of, foster care; non-custodial and custodial single fathers; and refugee and other immigrant fathers.

Special Interest in Serving At-Risk Young Fathers

Over the past 3 years, ACF program data for Responsible Fatherhood and Fatherhood Ex-Prisoner Reentry grantees indicate that of the 75,000 fathers enrolled in programs, approximately 11,830 young fathers between the ages of 18 and 24 participated in relationship, parenting, co-parenting, job readiness services, and skill development. These numbers and additional analyses suggest that there remains a need for targeting responsible fatherhood services to fathers as young as 16 and up to 24 years of age and who face one or more of the following risk factors: are neither in school nor working, have a history with the criminal justice system, or have mental or health conditions (*The Economic Value of Opportunity Youth*, Belfield, Levin and Rosen, Civic Enterprises, 2012).

Youth approaching adulthood face complex life decisions with long-lasting consequences. In particular, the choices they make regarding education, employment, and family formation can affect their likelihood of becoming productive, well-functioning, and self-sufficient adults (*Labor Market Outcomes and Transition to Adulthood*, Danziger and Ratner, Future of Children, 2010). The path to self-sufficiency is especially difficult for male youth who become teenage fathers and are at high risk of dropping out of school, engaging in delinquent or criminal behavior, and abusing drugs or alcohol, all of which may limit their prospects for labor market success (*Kids Having Kids*, Hoffman and Maynard, Urban Institute 2008; *Leave No Youth Behind*, Epstein and Greenberg, Center for Law and Social Policy, 2003).

To respond to these issues, ACF has an interest in funding organizations that are adept at serving at-risk young fathers. The goal is to help young fathers successfully transition to adulthood by strengthening their relationship skills and their employability. Relevant relationship activities include relationship education and skills, healthy marriage education, and parenting education. Employment and economic mobility strategies include job readiness, employment training, career pathways, subsidized and unsubsidized employment, and other work and career advancement activities appropriate for or targeted to young fathers. ACF encourages applicants to provide these services through strong partnership and collaboration efforts. However, applicants with demonstrated experience may provide these services themselves.

POST-AWARD REQUIREMENTS

Program Access

In providing services to eligible persons, grantees may not discriminate on the basis of the potential participant's race, gender, age, disability, or religion. Grantees cannot, on the basis of race, gender, age, disability, or religion, discriminate in determining eligibility, benefits, or services provided, or applicable rules. The projects and activities assisted under these awards must be available to mothers and expectant mothers who are able to benefit from the activities on the same basis as fathers and expectant fathers.

Further, recruitment activities and materials promoting the availability of ACF-funded Responsible Fatherhood services must be carried out in a manner that is consistent with these non-discrimination requirements. Any materials designed to be individually distributed, posted, or expressed in order to promote the availability of ACF-funded Responsible Fatherhood services, such as fliers, pamphlets, advertisements, public service announcements (PSAs) and similar items, must include the following eligibility statement: "These services are available to all eligible persons, regardless of race, gender, age, disability, or religion."

Domestic Violence and Child Maltreatment

Addressing domestic violence, intimate partner violence, dating violence, and child maltreatment are important components of New Pathways programs. The 2010 National Survey of Intimate Partner and Sexual Violence Survey found that more than one in three women (35.6 percent) and more than one in four men (28.5 percent) in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. Given these high rates, it is likely that New Pathways grantees will serve one or more individuals who are experiencing or have experienced domestic violence.

Working collaboratively with domestic violence experts, New Pathways programs can ensure that: (1) all program participants are provided accurate information about domestic violence/dating violence, including where to go for needed support or services; (2) all program participants are provided appropriate and safe opportunities to disclose if they are or have been victims of domestic violence or dating violence; and (3) program staff and volunteers receive adequate training to respond effectively by offering appropriate referrals to domestic violence services when appropriate. Examples of comprehensive approaches to address domestic violence may include, but are not limited to:

- Comprehensive training to staff on how domestic violence impacts their program participants and what to do if domestic violence is disclosed by either the perpetrator or the victim, either after initial

- screening or later in the program;
- Memorandum of Understanding with a local domestic violence agency that describes the role(s) and responsibilities of each entity (including training, protocol development, and reporting), and identifies the resources that each will be responsible for bringing to the program;
 - Safety planning to prepare for and respond to possible disclosed incident of domestic violence or dating violence and crisis intervention, and referrals to other community-based domestic violence services;
 - Comprehensive domestic violence screening and assessment as a first step in providing services and interventions. Those grantees that lack the organizational expertise to respond to matters of domestic violence are expected to make referrals to appropriate community agencies;
 - Consistent and effective development and implementation of domestic violence protocols and collaboration with service providers;
 - Cross-agency referrals; a screening tool to be used during the intake process that focuses on the safety and support of domestic violence victims; curriculum modules that focus on healthy relationships and identifying domestic violence; and
 - Regular staff training on domestic violence; development of training on the reporting of child abuse; or integration of a domestic violence staff provider on site.

Grantees are required to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities. Grantees are also expected to consult with expert or relevant organizations on the prevention, detection, and appropriate response to child maltreatment, and should be familiar with their state's reporting requirements for child abuse and neglect.

Geographic Location

Grantees must directly, or through their affiliates or project partners, have a physical presence in a community, city, or county where services are provided. For purposes of this FOA, ACF defines physical presence as a demonstrated ability to provide direct monitoring and oversight of the service provision; staff and facilitator training; and programmatic, legal, and regulatory compliance in the geographic area or areas an applicant proposes to serve.

Voluntary Participation

Grantees are required to ensure that participation in the program is voluntary and that they will inform potential participants that their involvement is voluntary.

Entrance Conference, Biennial Peer Meeting, and Roundtables

Grantees are expected to attend the entrance conference and biennial peer meetings in Washington, DC. The entrance conference will be held approximately 90 days from the date of grant award. The Authorized Organizational Representative (AOR), Project Director, fiscal staff, the program's local evaluator (described under *Performance Measure Data and Evaluation, Local Evaluation* later in this section), and person responsible for inputting data **must** attend this conference.

Biennial training and technical assistance meetings will occur in the 2nd and 4th years of the project period. The Project Director and up to two additional key staff (e.g., facilitators, case managers, local evaluator) **must** attend the biennial meetings.

During the 3rd and 5th years, OFA expects to host regional roundtables to provide peer-focused technical assistance and training. The Project Director and up to two additional key staff **must** attend the regional round tables.

Planning Period

Grantees will be given up to 9 months for intensive and comprehensive planning. Planning activities include, but are not limited to:

- Finalizing Memoranda of Understanding (MOUs), interagency and/or third-party agreements;

- Undertaking procurement activities;
- Hiring and training staff;
- Obtaining security clearances for program staff to work with correctional facilities (where applicable);
- Training staff and setting up operations for collection of performance measure data; and
- Refining local evaluation plans and obtaining Institutional Review Board (IRB) approval (to be conducted in coordination with a local evaluator).

POST-AWARD PERFORMANCE MEASURE DATA AND EVALUATION REQUIREMENTS

ACF is engaged in a learning agenda to increase understanding of what works and why in the New Pathways programs. The learning agenda activities will also provide valuable information to grantees on performance and outcomes that will facilitate continuous quality improvement. Activities include performance measure collection/reporting and local evaluation. They also include federal evaluation, which will involve a subset of (not all) grantees.

Performance Measure Data

Grantees are required to collect, store, and report data on standardized performance measures in four areas:

- (a) Program applicant characteristics (i.e., clients that apply to your program)
- (b) Program operations
- (c) Enrollment and participation (service delivery)
- (d) Participant outcome measures (i.e., attitudes, beliefs, and actions), both at beginning of the program (pre-test) and at program exit (post-test).

To view measures, please visit www.famlecross-site.info. Standardized measures and reporting across grantees will enable ACF to track programming outputs and outcomes across programs to inform current and future program design, operation, and oversight. Cross-site analyses will further describe programming and outcomes across the grant program.

Grantees will need to obtain and maintain data in the Management Information System (MIS) developed by ACF to comply with the requirement of performance measure data collection: the “Information, Family Outcome, Reporting, and Management system,” or, simply, “nFORM.” nFORM will be capable of managing data for all performance measures required for this grant program and is available free of charge to grantees. Grantees will be required to ask participants to complete pre- and post-tests via an audio-computer assisted self-interview (ACASI), an enabled online survey on a computer or a specified tablet that will link to the nFORM system (a paper and pencil version of pre- and post-tests will be available in the rare case of technology failure, e.g., absence of sufficient connectivity or power outage). Through its contractors, ACF will provide technical assistance to grantees on using nFORM. nFORM will facilitate analysis for internal review of progress and for required federal reporting. Further information on nFORM may be found at www.famlecross-site.info.

Note: Consistent with the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521, under this FOA, OFA will not conduct or sponsor – and a person is not required to respond to - a collection of information covered by such Act, unless it displays a currently valid OMB control number. OFA is seeking approval of its performance measures and nFORM Management Information System through the OMB Office of Information and Regulatory Affairs (OIRA). OFA will not request this information if these performance measures and the nFORM Management Information System are not approved at the time that reports are due.

Local Evaluations

As another component of the learning agenda, grantees are expected to conduct grantee-specific evaluations, called “local evaluations,” to answer one or more grantee-specific research

question. The purpose of these evaluations is to learn from programs in order to improve future programming. ACF is interested in supporting good quality, well-designed evaluations from which programs will learn and expand the evidence base, as well as help ACF learn more about what does and does not work.

Grantees are expected to conduct either a descriptive or impact local evaluation as follows.

- Grantees funded from \$350,000 to \$699,999 per year are expected to conduct a **descriptive** local evaluation.
- Grantees funded from \$700,000 to \$999,999 per year are expected to conduct either a **descriptive or impact** local evaluation;
- Grantees funded from \$1,000,000 to \$2,000,000 per year are expected to conduct an **impact** local evaluation.

The proposed research questions must relate to their specific programming approach that will expand the evidence base. The following are examples of priority topic areas for research investigation:

- *Recruitment and Program Participation* - whether certain kinds of recruitment activities are linked to better participation (more engagement in the program's services);
- *Programming* - whether certain program components or program structures, variations in the intensity and duration of programming, or modifications to increase cultural competency are linked to better outcomes for participants;
- *Program Supports* - whether offering transportation, child care during classes or sessions, or employment-related clothing or tools (in addition to core services), are linked to better outcomes for participants; and
- Overall program outcomes.

For the topic areas listed here, descriptive studies would not have a control/comparison group; impact studies would have a control/comparison group. For example, a program offering three types of services could look for associations between participants' use of those services and outcomes: this would be a descriptive study. On the other hand, the program could randomly assign participants to be eligible to use one, two, or all three services, and then analyze whether the groups had different outcomes: this would be an impact study.

Local evaluations must be designed to help inform future programming and expand the evidence base. Analyses of data must clearly support final reported results, and descriptions of the results must clearly communicate the implications of the study to others in the field.

Local evaluations must be conducted by an independent evaluator (local evaluator). Local evaluators may be universities, research organizations, evaluation consultants, or other institutions with experience in conducting rigorous evaluations. An impact evaluation must have a comparison group who does not receive the services of interest; and, all impact evaluations must include a component to document the program being evaluated (sometimes called an "implementation study" or a "process study"). Applicants proposing control or comparison group research designs are strongly encouraged to consider the standards of the Strengthening Families Evidence Review, specifically the study rating criteria for high and moderate ratings.

As noted earlier, the first 9 months of the grant can be used as a planning period, including the refinement of a research plan. Grantees and their local evaluators are required to work with ACF to refine, improve, develop, or select assessments; pilot (if possible); and make necessary changes to the evaluation design/methods. A final evaluation design and budget will be drafted and submitted. ACF approval will be required prior to implementation of a proposed evaluation plan. A federal contractor may review the evaluation funding for each of the evaluation activities and recommend an adjustment to the proposed level of funding. Where necessary, ACF may adjust the level of local evaluation funding post award. In the event that a local evaluation is not approved, budget and staff that would have supported the local evaluation will instead be directed toward rigorous performance measure data collection, storage, and

monitoring and reporting.

At the end of evaluations, grantees will be required to submit: (a) final reports; and (b) de-identified datasets according to standards that ACF will distribute.

During the planning period or afterwards, grantees will be required to obtain a Federal-wide Assurance (for more information, see <http://www.hhs.gov/ohrp/assurances/assurances/filasurt.html>) and submit their research projects to an Institutional Review Board (IRB). Given this grant program's requirement for collecting and reporting data on performance measures and for conducting a local evaluation, it is highly likely that most grantees will either need IRB approval for collecting performance measures and evaluation data or a waiver from an IRB stating that such approval is not needed. Often local programs utilize their local evaluators', partner universities', or evaluation organizations' IRBs to provide oversight. IRBs provide guidance regarding participant privacy and rights. General information about the HHS Protection of Human Subjects regulations can be obtained at <http://www.hhs.gov/ohrp/>. Applicants also may contact Office for Human Research Protections (OHRP) by e-mail at ohrp@csophs.dhhs.gov or by phone at (240-453-6900).

After local evaluation research plans have been approved, grantees are expected to implement robust evaluations lasting throughout the 5-year grant period, including data collection instrument development (and possibly pre-testing), data collection, analysis, drafting of reports, and multiple dissemination efforts to inform many audiences.

Resources and Consultation

In implementing performance measure data and local evaluation plans, grantees are strongly encouraged to attend webinars (or review archived webinars stored on www.famlecross-site.info) that will be offered during the grant period, and to consult and coordinate with the proposed local evaluator, partner agencies, and community partners.

Technical assistance on aspects of performance measure data and evaluation will be provided to grantees by ACF contractors.

Federal Evaluation

In addition to local evaluations, the federal government is sponsoring federally led evaluations. The federal evaluations will be conducted by independent contractors with experience mounting small and large-scale demonstrations and/or descriptive and impact evaluations. As a condition of acceptance of an award under this FOA, all grantees that are asked are required to participate fully in ACF-sponsored evaluations and adhere to all evaluation protocols established by ACF to be carried out by its designee contractors. In the event that a grantee is selected for the federally led evaluation, the federal government may incorporate the local evaluation into the federally led evaluation, or may waive the local evaluation requirement. In all cases, grantees will still be required to collect performance measures.

The federal evaluations may provide additional funds to grantees to support programming and study participation – for example, to support enhancements to services – as well as technical assistance. Funds may be provided per a separate MOU between the grantee organization and the federal contractor.

(Please see *Section IV.2. The Project Description* for the application requirements related to this FOA.)

ADDITIONAL RESOURCES

ACF expects to host a webinar series on information contained in this FOA. See *Section VIII. Other Information*, for more information on the proposed webinars.

Applicants may review additional resources listed in *Section VIII. Other Information, Reference Websites, Additional Resources*.

II. Federal Award Information

Funding Instrument Type: Grant
Estimated Total Funding: \$47,846,875
Expected Number of Awards: 49
Award Ceiling: \$2,000,000 Per Budget Period
Award Floor: \$350,000 Per Budget Period
Average Projected Award Amount: \$976,466 Per Budget Period
Anticipated Project Start Date: 09/30/2015

Length of Project Periods:

60-month project with five 12-month budget periods

Additional Information on Awards:

Awards made under this announcement are subject to the availability of federal funds.

Applications requesting an award amount that exceeds the *Award Ceiling* per budget period or per project period, as stated in this section, will be disqualified from competitive review and from funding under this announcement. This disqualification applies only to the *Award Ceiling* listed for the first 12-month budget period for projects with multiple budget periods. If the project and budget period are the same, the disqualification applies to the *Award Ceiling* listed for the project period. Please see *Section III.3. Other, Application Disqualification Factors*.

Note: For those programs that require matching or cost sharing, grantees will be held accountable for projected commitments of non-federal resources in their application budgets and budget justifications by budget period or by project period for fully funded awards, even if the projected commitment exceeds the required amount of match or cost share. **A grantee's failure to provide the required matching amount may result in the disallowance of federal funds.** See *Section III.2.* of this announcement for information on cost-sharing or matching requirements.

Non-competitive Continuation

Non-competitive continuation grants will be offered for each of years 2 through 5 of the project period. Funding levels for years 2 through 5 will not exceed the amount awarded in year 1 of the project. Continuation funding will be subject to the availability of funds, satisfactory progress, and a determination that continued funding is in the best interest of the federal government.

Local Evaluation Costs

- Applicants requesting funding levels between \$350,000 and \$699,999 are expected to allocate at least \$35,000 per year for a **descriptive** local evaluation, but no more than 10 percent of the total budget.
- Applicants requesting funding levels between \$700,000 and \$999,999 are expected to allocate at least \$100,000 per year for a **descriptive or impact** local evaluation, but no more than 15 percent of the total budget for either evaluation.
- Applicants requesting funding levels between \$1,000,000 and \$2,000,000 are expected to propose an **impact** evaluation and allocate at least 10, but no more than 15 percent of their total annual funding for local evaluation per year, or at least 15, but no more than 20 percent per year, if proposing a randomized-controlled trial (RCT) impact evaluation.

Award Floor Disqualification

Applications with funding requests that fall below the Award Floor on the amount of the individual awards will be deemed non-responsive and will not be considered for competitive review or funding under

this announcement (see also *Section III.3. Other, Application Disqualification Factors*).

Please see *Section IV.5 Funding Restrictions* for limitations on the use of federal funds awarded under this announcement.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants under this FOA are states, territories, Native American tribes and tribal organizations (including state, territorial, and tribal post-secondary educational institutions), and public and nonprofit community entities (including religious organizations and public and private *nonprofit* post-secondary educational institutions).

Post-Secondary Educational Institutions

For purposes of eligibility under this FOA, “public post-secondary educational institutions,” applying as states, territories or tribes are defined as 2-year community colleges or 4-year colleges or universities that are: (1) established by a state, territorial, or tribal government authority; (2) primarily receives funding from state appropriations (and/or local tax revenue in the case of community colleges); and (3) is legally authorized within a state to provide a program of education beyond secondary education.

Public or Nonprofit Community Entity

Also under this FOA, an applicant applying as a “nonprofit community entity” is defined as a public or private nonprofit organization that is representative of a community or a significant segment of a community and is engaged in meeting human, educational, child-welfare, family well-being, personal growth and improvement, social welfare, or economic growth and mobility needs for the disadvantaged. A public or private post-secondary educational institution may be eligible to the extent that it can demonstrate that it is a “nonprofit community entity,” and applies as such an entity. A public or private nonprofit organization, including a post-secondary educational institution, may demonstrate that it is “representative of a community (or a significant segment)” by involving members of the community (e.g., elected public officials, private sector representatives, and low-income residents) in assessing and addressing local needs.

Further, a post-secondary educational institution that is applying as a “nonprofit community entity” on the basis that it is meeting educational needs for the disadvantaged must be accredited by a nationally recognized accrediting agency or association. Alternatively, it must have been granted pre-accreditation status by such an agency or association (full accreditation must be attained by end of the planning period described in *Section I. Program Description, Post-Award Requirements, Planning Period*).

Note: For-profit entities are not eligible to receive funds under this FOA (including, but not limited to, for-profit businesses, corporations, agencies or organizations, or for-profit institutions of higher education, trade, or technical schools).

(See *Section IV.2 Project Description, Legal Status of Applicant Entity, Additional Eligibility Documentation* for more information and the specific application requirements.)

Applications from individuals (including sole proprietorships) and foreign entities are not eligible and will be disqualified from competitive review and from funding under this announcement. See *Section III.3. Other, Application Disqualification Factors*.

Faith-based and community organizations that meet the eligibility requirements are eligible to receive awards under this funding opportunity announcement. Faith-based organizations are encouraged to review the ACF Policy on Grants to Faith-Based Organizations at: <http://www.acf.hhs.gov/acf-policy-on-grants-to-faith-based-organizations>.

See "Legal Status of Applicant Entity" in *Section IV.2* for documentation required to support eligibility.

III.2. Cost Sharing or Matching

Cost Sharing / Matching Requirement: No

III.3. Other

DUNS Number and System for Award Management Eligibility Requirements (SAM.gov)

All applicants must have a DUNS Number (<http://fedgov.dnb.com/webform>) and an active registration with the Central Contractor Registry (CCR) on the System for Award Management (SAM.gov, www.sam.gov).

Obtaining a DUNS Number may take 1 to 2 days.

All applicants are required to maintain an active SAM registration until the application process is complete. If a grant is awarded, registration at SAM.gov must be active throughout the life of the award.

Plan ahead. Allow up to 10 business days after you submit your registration for it to become active in SAM and an additional 24 hours before that registration information is available in other government systems, i.e. Grants.gov.

This action should allow you time to resolve any issues that may arise. Failure to comply with these requirements may result in your inability to submit your application through Grants.gov or prevent the award of a grant. Applicants should maintain documentation (with dates) of your efforts to register for, or renew a registration, at SAM. User Guides are available under the "Help" tab at <https://www.sam.gov>.

HHS requires all entities that plan to apply for, and ultimately receive, federal grant funds from any HHS Agency, or receive subawards directly from recipients of those grant funds to:

- Be registered in the SAM prior to submitting an application or plan;
- Maintain an active SAM registration with current information at all times during which it has an active award or an application or plan under consideration by an OPDIV; and
- Provide its active DUNS number in each application or plan it submits to the OPDIV.

ACF is prohibited from making an award until an applicant has complied with these requirements. At the time an award is ready to be made, if the intended recipient has not complied with these requirements, ACF:

- May determine that the applicant is not qualified to receive an award; and
- May use that determination as a basis for making an award to another applicant.

Application Disqualification Factors

Applications from individuals (including sole proprietorships) and foreign entities are not eligible and will be disqualified from competitive review and from funding under this announcement.

Award Ceiling Disqualification

Applications that request an award amount that exceeds the *Award Ceiling* per budget period or per project period as stated in *Section II. Award Information*, will be disqualified from competitive review and from funding under this announcement. This disqualification applies only to the *Award Ceiling* listed for first 12-month budget period for projects with multiple budget periods. If the project and budget period are the same, the disqualification applies to the *Award Ceiling* listed for the project period.

Required Electronic Application Submission

ACF requires electronic submission of applications at www.Grants.gov. **Paper applications received from applicants that have not been approved for an exemption from required electronic submission will be disqualified from competitive review and from funding under this announcement.**

Applicants that do not have an Internet connection or sufficient computing capacity to upload large documents to the Internet may contact ACF for an exemption that will allow the applicant to submit applications in paper format. Information and the requirements for requesting an exemption from required electronic application submission are found in "Request an Exemption from Electronic Application Submission" in *Section IV.2. Content and Form of Application Submission*.

Application Deadlines

The deadline for electronic application submission is 11:59 p.m., ET, on the due date listed in the Overview and in Section IV.3. Submission Dates and Times. Electronic applications submitted to www.Grants.gov after 11:59 p.m., ET, on the due date, as indicated by a dated and time-stamped email from www.Grants.gov, will be disqualified from competitive review and from funding under this announcement. That is, applications submitted to www.Grants.gov, on or after 12:00 a.m., ET, on the day after the due date will be disqualified from competitive review and from funding under this announcement.

Applications submitted to www.Grants.gov at any time during the open application period, and prior to the due date and time, which fail the www.Grants.gov validation check, will not be received at, or acknowledged by, ACF.

Each time an application is submitted via www.Grants.gov, the submission will generate a new date and time-stamp email notification. Only those applications with on-time date and time stamps that result in a validated application, which is transmitted to ACF, will be acknowledged.

The deadline for receipt of paper applications is 4:30 p.m., ET, on the due date listed in the Overview and in Section IV.3. Submission Dates and Times. Paper applications received after 4:30 p.m., ET, on the due date will be disqualified from competitive review and from funding under this announcement. **Paper applications received from applicants that have not received approval of an exemption from required electronic submission will be disqualified from competitive review and from funding under this announcement.**

Limit on the Number of Application Submissions

An applicant organization may submit **only one application** in response to this announcement. ACF will accept only the last, on-time application submitted for the competitive review.

Award Floor Disqualification

Applications with funding requests that fall below the Award Floor on the amount of the individual awards, as stated in *Section II. Federal Award Information*, will be deemed non-responsive and will not be considered for competitive review or funding under this announcement.

Notification of Application Disqualification

Applications that are disqualified under these criteria are considered to be “non-responsive” and are excluded from the competitive review process. Applicants will be notified of a disqualification determination by email or by USPS postal mail within 30 federal business days from the closing date of this funding opportunity announcement.

IV. Application and Submission Information

IV.1. Address to Request Application Package

Grants Operations Center
ATTN: HHS-2015-ACF-OFA-FK-0993
1401 Merchatile Lane
Suite 401
Largo, MD 20774
Phone: (888) 242-0684
Email: OFATech@reviewops.org

Electronic Application Submission:

The electronic application submission package is available in the FOA's listing at www.Grants.gov.

Applications in Paper Format:

For applicants that have received an exemption to submit applications in paper format, Standard Forms, assurances, and certifications are available in the Application Package available in the FOA's Grants.gov synopsis at www.Grants.gov. They are also available at <http://www.grants.gov/web/grants/forms/sf-424-family.html>. See *Section IV.2. Request an Exemption from Required Electronic Application Submission* if applicants do not have an Internet connection or sufficient computing capacity to upload large documents (files) to www.Grants.gov.

Standard Forms that are compliant with Section 508 of the Rehabilitation Act (29 U.S.C. § 794d):

Available at the Grants.gov Forms Repository website at <http://www.grants.gov/web/grants/forms/sf-424-family.html>.

Federal Relay Service:

Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1-800-877-8339 (TTY - Text Telephone or ASCII - American Standard Code For Information Interchange).

Section IV.2. Content and Form of Application Submission

FORMATTING ACF APPLICATIONS

In FY 2013 ACF implemented a new application upload requirement. Each applicant applying electronically via www.grants.gov is required to upload only two electronic files, excluding Standard Forms and OMB-approved forms. No more than two files will be accepted for the review, and additional files will be removed. Standard Forms and OMB-approved forms will not be considered additional files.

FOR ALL APPLICATIONS:

Authorized Organizational Representative (AOR)

AOR is the designated representative of the applicant/recipient organization with authority to act on the organization's behalf in matters related to the award and administration of grants. In signing a grant application, this individual agrees that the organization will assume the obligations imposed by applicable Federal statutes and regulations and other terms and conditions of the award, including any assurances, if a grant is awarded.

AOR authorization is part of the registration process at www.Grants.gov, where the AOR will create a short profile and obtain a username and password from the Grants.gov Credential Provider. AORs will only be authorized for the DUNS number registered in the System for Awards Management (SAM).

Point of Contact

In addition to the AOR, a point of contact on matters involving the application must also be identified. The point of contact, known as the Project Director or Principal Investigator, should not be identical to the person identified as the AOR. The point of contact must be available to answer any questions pertaining to the application.

Application Checklist

Applicants may refer to *Section VIII. Other Information* for a checklist of application requirements that may be used in developing and organizing application materials.

Details concerning acknowledgment of received applications are available in *Section IV.3. Submission Dates and Times* of this announcement.

Accepted Font Style

Applications must be in Times New Roman (TNR), 12-point font, except for footnotes, which may be TNR 10-point font.

Page Limitations

Applicants must observe the page limitation(s) listed under "PAGE LIMITATIONS AND CONTENT FOR ALL SUBMISSION FORMATS:". Page limitation(s) do not include SFs and OMB-approved forms.

All applications must be double-spaced. An application that exceeds the cited page limitation for double-spaced pages in the Project Description file or the Appendices file will have the last extra pages removed and the removed pages will not be reviewed.

Application Elements Exempted from Double-Spacing Requirements

The following elements of the application submission are exempt from the double-spacing requirements and may be single-spaced: the table of contents, the one-page Project Summary/Abstract, required Assurances and Certifications, required SFs, required OMB-approved forms, resumes, logic models, proof of legal status/non-profit status, third-party agreements, letters of support, footnotes, tables, the line-item budget and/or the budget justification.

Adherence to FOA Formatting, Font, and Page Limitation Requirements

Applications that fail to adhere to ACF's FOA formatting, font, and page limitation requirements will be adjusted by the removal of page(s) from the application. Pages will be removed before the objective review. The removed page(s) will not be made available to reviewers.

In instances where formatting and font requirements are not adhered to, ACF uses a formula to determine the actual number of pages to be removed. The formula counts the number of characters an applicant uses when following the instructions and using 12-point TNR and compares the resulting number with that of the submitted application. For example, an applicant using TNR, 11-point font, with 1-inch margins all around, and single-spacing, would have an additional 26 lines, or 1500 characters, which is equal to 4/5 of an additional page. Extra pages resulting from this formula will be removed and will not be reviewed.

Applications that have more than one scanned page of a document on a single page will have the page(s) removed from the review.

For applicants that submit paper applications, double-sided pages will be counted as two pages. When the maximum allowed number of pages is reached, excess pages will be removed and will not be made available to reviewers.

NOTE: Applicants failing to adhere to ACF's FOA formatting, font, and page limitation requirements will receive a letter from ACF notifying them that their application was amended. The letter will be sent after awards have been issued and will specify the reason(s) for removal of page(s).

Copies Required

Applicants must submit one complete copy of the application package electronically. Applicants submitting electronic applications need not provide additional copies of their application package.

Applicants submitting applications in paper format must submit one original and two copies of the complete application, including all Standard Forms and OMB-approved forms. The original copy must have original signatures.

Signatures

Applicants submitting electronic applications must follow the registration and application submission instructions provided at www.Grants.gov.

The original of a paper format application must include original signatures of the authorized representatives.

Accepted Application Format

With the exception of the required Standard Forms (SFs) and OMB-approved forms, all application materials must be formatted so that they are 8 1/2" x 11" white paper with 1-inch margins all around.

If possible, applicants are encouraged to include page numbers for each page within the application.

ACF generally does not encourage submission of scanned documents as they tend to have reduced clarity and readability. If documents must be scanned, the font size on any scanned documents must be large enough so that it is readable. Documents must be scanned page-for-page, meaning that applicants may not scan more than one page of a document onto a single page.

PAGE LIMITATIONS AND CONTENT FOR ALL SUBMISSION FORMATS:

In accordance with the two-file requirement for this FOA, applications must be submitted in two files and must not exceed a combined total of 100 pages.

The first file must be titled *Project Description* and must include the following items:

- Table of Contents
- One-page Project Summary/Abstract
- Project Description
- Objective and Need for Assistance
- Outcomes Expected
- Approach
- Project Timetable and Milestones
- Legal Status of the Applicant Entity
- Logic Model
- Organizational Capacity
- Plan for Oversight of Federal Award of Funds
- Geographic Location
- Line-item budget and budget justification, including line-items and justification for performance

measure data and local evaluation

The second file must be titled *Appendices* and must include the following items:

- Program Performance Evaluation Plan
- Funded Activities Plan
- Project Sustainability Plan
- Written certifications and assurances statements for Use of Funds, Data and Local Evaluation, Federal Evaluation, Non-Supplanting, and Voluntary Participation
- Third-Party Agreements and/or MOUs
- Resumes (of key staff, including curriculum vitae for local evaluator, and organizational charts)
- Signed Letter of Agreement with a local evaluator
- Indirect Cost Rate Letter (if applicable)
- Job Descriptions (if key staff not yet hired)

ELECTRONIC APPLICATION SUBMISSION INSTRUCTIONS

Applicants are required to submit their applications electronically unless they have requested and received an exemption that will allow submission in paper format. See *Section IV.2. Application Submission Options* for information about requesting an exemption.

Electronic applications will only be accepted via www.Grants.gov. **ACF will not accept applications submitted via email or via facsimile.**

Each applicant is required to upload ONLY two electronic files, excluding SFs and OMB-approved forms.

File One: Must contain the entire Project Description, and the Budget and Budget Justification (including a line-item budget and a budget narrative).

File Two: Must contain all documents required in the Appendices.

Adherence to the Two-File Requirement

No more than two files will be accepted for the review. Applications with additional files will be amended and files will be removed from the review. SFs and OMB-approved forms will not be considered additional files. **Please do not attach additional documents to the SF-424 at Question 14 and/or after Question 15. Instead of providing a separate response to Question 14, all applicants are required to submit the SF for Project/Performance Site Location(s) (SF-P/PSL). In the SF-P/PSL, applicants may cite their primary location and up to 29 additional performance sites. Documents submitted as attachments to the SF-424 will be removed from the application and will not be reviewed.**

Application Upload Requirements

ACF strongly recommends that electronic applications be uploaded as Portable Document Files (PDFs). One file must contain the entire Project Description and Budget Justification; the other file must contain all documents required in the Appendices. Details on the content of each of the two files, as well as page limitations, are listed later in this section.

To adhere to the two-file requirement, applicants may need to convert and/or merge documents together using a PDF converter software. Many recent versions of Microsoft Office include the ability to save documents to the PDF format without need of additional software. Applicants using the Adobe Professional software suite will be able to merge these documents together. ACF recommends merging documents electronically rather than scanning multiple documents into one document manually, as scanned documents may have reduced clarity and readability.

However, ACF understands that all applicants may not have access to this software. Grants.gov offers a listing of several free PDF conversion programs. These programs can be found on Grants.gov by clicking

on "Support" at the top menu bar and selecting "Technical Support". Under the "Technical Support" section select "Recommended Software." A link to "PDF Conversion Software" is available in the left-hand menu box. Free PDF software, available on this page, will allow users to convert and merge their PDF documents. As an example, ACF is providing written instructions for downloading and using one type of free software listed at Grants.gov at <https://www.acf.hhs.gov/grants/howto#chapter-7> under "How to Apply for a Grant/Submit an Application." [ACF does not endorse any of the software listed on Grants.gov, and applicants are not required to use a specific type of PDF conversion software to submit an application.]

For any systems issues experienced with Grants.gov or with SAM.gov, please refer to ACF's "Policy for Applicants Experiencing Federal Systems Issues" document for complete guidance at https://www.acf.hhs.gov/sites/default/files/assets/systems_issue_policy_final.pdf under "How to Apply for a Grant/Submit an Application."

Required Standard Forms (SFs) and OMB-approved Forms

Standard Forms (SFs) and OMB-approved forms, such as the SF-424 application and budget forms and the SF-P/PSL (Project/Performance Site Location), are uploaded separately at Grants.gov. These forms are submitted separately from the Project Description and Appendices files. See *Section IV.2. Required Forms, Assurances, and Certifications* for the listing of required Standard Forms, OMB-approved forms, and required assurances and certifications.

Naming Application Submission Files

Carefully observe the file naming conventions required by www.Grants.gov. Limit file names to 50 characters (characters and spaces). Special characters that are allowed under Grants.gov's naming conventions, and are accommodated by ACF's systems, are listed in the instructions available in the Download Application Package at Grants.gov. Please also see <http://www.grants.gov/web/grants/support/technical-support/troubleshooting/restricting-special-characters.html>

Use only file formats supported by ACF It is critical that applicants submit applications using only the supported file formats listed here. While ACF supports all of the following file formats, we **strongly recommend that the two application submission files (Project Description and Appendices) are uploaded as PDF documents in order to comply with the two file upload limitation.** Documents in file formats that are not supported by ACF will be removed from the application and will not be used in the competitive review. This may make the application incomplete and ACF will not make any awards based on an incomplete application.

ACF supports the following file formats:

- Adobe PDF – Portable Document Format (.pdf)
- Microsoft Word (.doc or .docx)
- Microsoft Excel (.xls or .xlsx)
- Microsoft PowerPoint (.ppt)
- Corel WordPerfect (.wpd)
- Image Formats (.JPG, .GIF, .TIFF, or .BMP only)

Do Not Encrypt or Password-Protect the Electronic Application Files

If ACF cannot access submitted electronic files because they are encrypted or password protected, the affected file will be removed from the application and will not be reviewed. This removal may make the application incomplete and ACF will not make awards based on an incomplete application.

FORMATTING FOR PAPER APPLICATION SUBMISSIONS:

The following requirements are only applicable to applications submitted in paper format. Applicants must receive an exemption from ACF in order for a paper format application to be accepted for review. See *Section IV.2. Request an Exemption from Required Electronic Application Submission* later in this section

under *Application Submission Options* for more information.

Format Requirements for Paper Applications

All copies of mailed or hand-delivered paper applications must be submitted in a single package. If an applicant is submitting multiple applications under a single FOA, or multiple applications under separate FOAs, each application submission must be packaged separately. The package(s) must be clearly labeled for the specific FOA it addresses by FOA title and by Funding Opportunity Number (FON).

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate sections of the application. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the federal government for review. **All application materials must be one-sided for duplication purposes.**

Addresses for Submission of Paper Applications

See *Section IV.6. Other Submission Requirements* for addresses for paper format application submissions.

Required Forms, Assurances, and Certifications

Applicants seeking grant or cooperative agreement awards under this announcement must submit the listed Standard Forms (SFs), assurances, and certifications with the application. All required Standard Forms, assurances, and certifications are available in the Application Package posted for this funding opportunity at www.grants.gov.

Other versions of required Standard Forms, assurances, and certifications are available at Grants.gov <http://www.grants.gov/web/grants/forms/sf-424-family.html>.

Forms / Assurances / Certifications	Submission Requirement	Notes / Description
SF-Project/Performance Site Location(s) (SF-P/PSL)	Submission is required for all applicants by the application due date.	Required for all applications. In the SF-P/PSL, applicants may cite their primary location and up to 29 additional performance sites. As a Standard Form (SF), this form is not included in the application's page limitation.
Certification Regarding Lobbying (Grants.gov Lobbying Form)	Submission required of all applicants with the application package. If it is not submitted with the application package, it must be submitted prior to the award of a grant.	Submission of the certification is required for all applicants.
SF-424 - Application for Federal Assistance	Submission is required for all applicants by the application due date.	Required for all applications.

<p>SF-424A Budget Information - Non-Construction Programs / SF-424B Assurances - Non-Construction Programs and SF-424C - Budget Information Construction Programs / SF-424D - Assurances Construction Programs</p>	<p>Submission is required for all applicants when applying for non-construction and construction activities under the proposed project. Standard Forms must be used. Standard Forms must be submitted by the application due date.</p>	<p>Required for all applications when applying for non-construction and/or construction activities under the proposed project. Please see special instructions in the <i>Checklist</i> in <i>Section VIII. Other Information</i> in this announcement.</p> <ul style="list-style-type: none"> • Projects that include non-construction and construction activities must submit the SF-424A, B, C, and D, along with the SF-424 and SF-P/PSL. <p>By signing and submitting the SF-424B and/or SF-424D, applicants are making the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination.</p>
<p>DUNS Number (Universal Identifier) and Systems for Award Management (SAM) registration.</p>	<p>A DUNS number is required of all applicants. To obtain a DUNS number, go to http://fedgov.dnb.com/webform. Active registration at the Systems Award Management (SAM) website must be maintained throughout the application and project award period. SAM registration is available at http://www.sam.gov.</p>	<p>A DUNS number and SAM registration are eligibility requirements for all applicants. See <i>Section III.3. Other</i> for information on obtaining DUNS number at http://fedgov.dnb.com/webform and registration at SAM.gov at http://www.sam.gov.</p>
<p>SF-424A - Budget Information - Non-Construction Programs and SF-424B - Assurances - Non-Construction Programs</p>	<p>Submission is required for all applicants when applying for a non-construction project. Standard Forms must be used. Forms must be submitted by the application due date.</p>	<p>Required for all applications when applying for a non-construction project. By signing and submitting the SF-424B, applicants are making the appropriate certification of their compliance with all federal statutes relating to nondiscrimination.</p>

<p>Protection of Human Subjects Assurance Identification / IRB Certification / Declaration of Exemption (Common Rule)</p>	<p>Submission of the required information and forms is due with the application package by the due date listed in the <i>Overview</i> and <i>Section IV.3. Submission Dates and Times</i>. If the information is not available at the time of application, it must be submitted prior to the award of a grant.</p>	<p>Form is available at http://www.hhs.gov/ohrp/assurances/forms/index.html. General information about the HHS Protection of Human Subjects regulations can be obtained at http://www.hhs.gov/ohrp/. Applicants may also contact OHRP by email (ohrp@csophs.dhhs.gov) or by phone (240-453-6900).</p>
<p>SF-LLL - Disclosure of Lobbying Activities</p>	<p>If submission of this form is applicable, it is due at the time of application. If it is not available at the time of application, it may also be submitted prior to the award of a grant.</p>	<p>If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the applicant shall complete and submit the SF-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.</p>

The following documentation must be submitted by the application due date.

Use of Funds

Funds awarded under this FOA must be used only for costs associated with the three authorized Responsible Fatherhood activities listed in *Section I. Program Description, Background*. Funds may also be used to support administrative costs associated with the listed authorized activities.

Applicants must include a written statement that specifically includes:

- A commitment not to use funds for any purposes other than the activities specified in the authorizing legislation and this FOA;
- A commitment not to use funds for any unallowable activity. Applicants must consider in their use of funds if a cost is allowable, reasonable, allocable, and necessary;
- A commitment not to use funds for unauthorized activities, including, but not limited to, an Abstinence Education program;
- A commitment not to include fee-for-service for any activities offered under this program; and
- A commitment not to use grant funds to subsidize housing, provide housing vouchers or rental assistance.

Data and Local Evaluation

Applicants must include a written statement that specifically includes:

- A commitment to document, store, and report on performance using the full set of uniform measures to be provided by ACF; and
- A commitment to conduct a local evaluation.

Federal Evaluation

Applicants must include a clear, written statement that specifically includes:

- A commitment to accept, and fully participate in all aspects of, the federal evaluation if selected, and adhere to all evaluation protocols established by ACF and conducted by its designee contractors;
- A confirmation of the applicant's understanding that:
 - the federal government may incorporate the local evaluation into the federally led evaluation;
 - the federal government may waive the local evaluation requirement; or
 - the local evaluation may continue in parallel to the federal evaluations; and
- A commitment to ensure that partnering organizations comply with the federal evaluation award condition.

Note: Applicants may include a written statement indicating that they have a particular interest in participating in, or being selected for, the federal evaluation (a local evaluation plan is still required of these applicants), and may briefly mention specific program enhancements that they would be interested in adding to their program to be included the federal evaluation.

Voluntary Participation

Applicants must include a written statement that they will ensure that participation in programs is voluntary and that describes how they will inform potential participants that their involvement is voluntary.

Non-Supplanting

Applicants who are current recipients of federal, state, or local financial assistance are required to submit a written assurance or certification that they will not supplant other federal, state, or local funds that otherwise have been made available and that describes how they will ensure that any award of federal funds under this program will not supplant other federal, state, or local funding.

Non-Federal Reviewers

Since ACF will be using non-federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget as well as Social Security Numbers, if otherwise required for individuals. The copies may include summary salary information. If applicants are submitting their application electronically, ACF will omit the same specific salary rate information from copies made for use during the review and selection process.

The Project Description

Part I: The Project Description Overview

Purpose

The project description provides the majority of information by which an application is evaluated and ranked in competition with other applications for available assistance. It should address the activity for which federal funds are being requested, and should be consistent with the goals and objectives of the program as described in *Section I. Program Description*. Supporting documents should be included where they can present information clearly and succinctly. When appropriate, applicants should cite the evaluation criteria that are relevant to specific components of their project description. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Expectations and Instructions

Applicants should develop project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants must prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria in *Section V.1. Criteria*. The text options give a broad overview of what the project description should include while the evaluation criteria identify the measures that will be used to evaluate applications.

Table of Contents

List the contents of the application including corresponding page numbers. The table of contents must be single spaced and will be counted against the total page limitations.

Project Summary/Abstract

Provide a summary of the application's project description. The summary must be clear, accurate, concise, and without reference to other parts of the application. The abstract must include a brief description of the proposed grant project including the needs to be addressed, the proposed services, and the population group(s) to be served.

Please place the following at the top of the abstract:

- Project Title
- Applicant Name
- Address
- Contact Phone Numbers (Voice, Fax)
- E-Mail Address
- Web Site Address, if applicable

The project abstract must be single-spaced, in Times New Roman 12-point font, and limited to one page in length. Additional pages will be removed and will not be reviewed.

Objectives And Need For Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance including the nature and scope of the problem must be demonstrated, and the principal and subordinate objectives of the project must be clearly and concisely stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as well as data describing the needs of the target population and the proposed service area as needed. When appropriate, a literature review should be used to support the objectives and needs described in this section.

Outcomes Expected

Identify the outcomes to be derived from the project. Outcomes should relate to the overall goals of the project as described in *Section I. Program Description*. If research is part of the proposed work, outcomes must include hypothesized results and implications of the proposed research.

Additionally, applicants must include program designs whose proposed strategies and approaches clearly align with the desired programmatic short- and long-term outcomes identified in this FOA (see *Section I. Program Purpose and Scope, Programmatic Outcomes*). Program designs must also link to the performance measures related to those outcomes. Applicants must develop outcomes based upon the program design and components they propose and include a description in their narrative. The applicant must also specify expected short- and long-term outcomes in their logic model.

Approach

Outline a plan of action that describes the scope and detail of how the proposed project will be accomplished. Applicants must account for all functions or activities identified in the application. Describe any design or technological innovations, reductions in cost or time, or extraordinary social and/or community involvement in the project. Provide a list of organizations, cooperating entities, consultants, or other key individuals that will work on the project, along with a short description of the nature of their effort or contribution.

Cite potential obstacles and challenges to accomplishing project goals and explain strategies that will be used to address these challenges.

Applicants must design an approach and implementation strategy for **the full 5-year project period**, assuming continued appropriation of funding.

Applicants must describe an approach that concurrently implements elements from among all three Promoting Responsible Fatherhood authorized activities: responsible parenting, economic stability and mobility, and healthy marriage. Integrated approaches must be designed to help strengthen, establish or reestablish—if necessary—relationships between a father and his children, or a father and his spouse/partner and their children soon after the father is accepted into the program. Applicants' descriptions must include, but are not limited to, discussions of the following activities and how they will be integrated into service provision:

- Responsible parenting activities designed to promote parenting skills and enhance father-child relationships;
- Economic stability activities and comprehensive employment services that lead to improved employability skills and stable employment;
- Healthy marriage and relationship activities designed to promote and sustain marriage and enhance couple, father-child, and/or family relationships; and
- Pre- and post-release case management and supportive services (as applicable).

Applicants must describe how the program will work with a participant to determine the appropriate set of activities for each individual father and their family.

Responsible Parenting

Applicants must identify a skills-based, evidence-based, or evidence-informed curriculum designed to help fathers learn and apply skills that assist them in fulfilling their roles and responsibilities as fathers, reinforce parental practices that advance child well-being, and improve father-child relationships. Applicants must describe which of the following components will be incorporated into proposed skills-based parenting education and father-child relationship enhancement activities:

- Understanding child development and child behaviors;
- Teaching children to problem solve;
- Positive communication with children and other family members;

- Co-parenting;
- Setting limits and using non-violent discipline techniques;
- Child-directed play skills;
- The importance of being an involved father;
- Rebuilding and/or developing trust; and
- Reducing family conflict and enhancing family relationships.

Applicants must describe strategies to reinforce parenting skills and advance child well-being, and enhance father-child and/or family relationships. Strategies must include counseling and/or mentoring (to address factors including the effects of toxic stress, early adverse child experiences, and trauma; impact of father absence; and implications of risky behaviors) and relationship skill building, including interpersonal communication skills, coping and self-management skills, and building support networks.

Economic Stability and Mobility: Comprehensive Employment Services

Applicants must describe an approach to economic stability and employment that: (1) builds from a solid understanding of local economic conditions and economic growth sectors; (2) includes connections to education and training opportunities aligned to these sectors; (3) incorporates partnerships with employers in targeted sectors to increase the likelihood of placement and retention in work; and (4) uses evidence-based practices and approaches.

All applicants must include comprehensive employment services designed to lead fathers to employment. In developing a comprehensive employment approach, applicants must include elements that are designed to enhance the employability skills and/or career advancement of participating fathers. Applicants' descriptions must incorporate two or more of the following activities (applicants may also propose other appropriate services or strategies designed to achieve comprehensive employment services):

- Career counseling/development (assessments of skills levels, aptitudes, abilities, competencies, and support services as needed);
- Encouragement of education, including career-advancing education;
- Job search, job training, job enhancement, job retention and job placement assistance;
- Basic technology training; and
- Pre-employment or soft-skills development that may include basic academic skills.

Applicants must describe one or more strategies for comprehensive employment including, but not limited to:

- Understanding local/regional labor market conditions and needs, including analysis of current and projected job growth through use of labor market information;
- Alignment of education and training programs with in-demand occupations;
- Coordination with employment services and training initiatives; or
- Employer partnerships that align to identified market needs and training programs.

Additionally, applicants must include a description of post-employment supports and case management to help participants gain and retain employment as they move toward economic self-sufficiency.

Where subsidized employment is included as a part of the comprehensive employment services, applicants must describe how program implementation models will ensure that fathers participate in responsible fatherhood services such as classes, case management, follow up, or program supports throughout the duration of the participant's enrollment in the subsidized employment program. Applicants must also include a clear description of how the program will impart marketable job skills that will assist the individual in obtaining permanent unsubsidized employment. Applicants must identify whether subsidized employment wages for eligible participants are either at or above the state or federal minimum wage.

Healthy Marriage and Relationship Education

All applicants must include healthy marriage and relationship education program activities and skills. These activities must be designed to improve skills among fathers that will enable them to form and sustain healthy relationships with their current or future spouse/partner, improve communication between the child's parents, and strengthen the father's or couple's commitment to the well-being of the child. Applicants must describe how they will incorporate the following healthy marriage and relationship skills and activities in their program design:

- Communication skills (including expression, discussion, and negotiation skills);
- Conflict resolution, anger management, and problem-solving skills; and
- Financial planning, education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance.

Curricula

Applicants must describe skills-based curricula that involve evidence-based or evidence-informed interventions designed to improve relationships and marriages, parenting skills, positive father-child engagement, co-parenting, and decision-making. Applicants must describe how they will ensure that each skills-based curriculum will be delivered over time, in no less than the number of hours established within the guidelines required by each author(s) of the selected model. Applicants must describe how the curriculum selected:

- Is father-focused;
- Promotes positive father-child interaction;
- Is culturally appropriate to the target population;
- Supports program goals and outcomes;
- Includes staff development and training components;
- Is age appropriate, particularly when serving teenaged and young adult fathers; and
- Uses technical support provided by the developer (to help support implementation fidelity).

Applicants must identify what curriculum they will use for skills-based healthy marriage, responsible parenting education, and/or services to promote economic stability and mobility, such as job readiness, financial literacy, financial planning and management. Further, applicants must include a rationale for their choice based on the target population that they propose to serve.

Applicants must describe any proposed adaptations from the original evidence and the applicant's rationale for the adaptations (e.g., practice exercises framed in life experiences of lower-income individuals and families; activities tailored to address low education levels; added content on complex family relationships; or modifications to increase relevance for different ethnic/racial population).

Case Management

Applicants must include case management strategies in the project design and service delivery (implementation) plan. The applicants' description must reflect case management that is dependable, steady, and provides sustained support. The description must include, but is not limited to, strategies that:

- Involve regular contact with participants to facilitate program retention, completion, and access to needed supports;
- Have an orientation process, risk and needs assessment, and intake and enrollment procedures;
- Chart the goals, objectives, progress, and milestones and includes employment and education plans; and
- Provide follow-up support services to assist participants with job placement, retention, and advancement.

Where formerly incarcerated fathers are included in the proposed target population, applicants must describe how they will assess and meet the transitional needs of that population. Applicants must demonstrate that program services can be tailored to the needs of both the general and formerly

incarcerated populations they propose to serve. Applicants must describe a strategy to develop strong linkages to related supportive services within the targeted community.

Program Supportive Services

Applicants must include a plan for providing supportive services, including transportation assistance and childcare, that are designed to help reduce barriers to participation and improve program recruitment, retention, and outcomes (funds may be used for the discrete costs of ancillary supportive services). The applicant's plan must include a description of the gaps that exist in the provision of these services and strategies to address them. The applicant must describe, as applicable, how they will address the provision of supportive services that are not fundable under this grant (including, but not limited to trauma-informed behavioral health care; legal assistance, including criminal record expungement and restorative justice programs; health care, including mental health treatment; and substance abuse treatment).

Where supportive services are otherwise available (such as childcare assistance), programs must describe how they will work with public and private social service agencies to maximize the availability and robustness of these services.

Partnerships and Program Collaboration

Applicants must describe federal, state, local, tribal, and/or community-based collaboration and partnership efforts designed to meet the needs of fathers effectively.

Applicants must include a signed MOU between each applicant and the partner agency(ies). A letter of intent from the applicant and all partner agencies can be submitted in lieu of an MOU or third-party Agreement, if neither has been entered into by the time the application is submitted. A letter of intent must provide a timeline for completion of an MOU or third-party Agreement (see *Third-Party Agreements* later in this section for more information).

For programs that include services to incarcerated and reentering fathers, applicants must document partnerships with state, county, and local criminal justice agencies (such as, probation and parole, prisons, jails, and halfway houses). Applicants must demonstrate how they will ensure access to potential participants prior to their release from confinement and for referrals of potential participants who have been recently released into the community. Applicants must show evidence of, or describe how they will gain, access to prisons, jails, halfway houses, and other similar institutions to recruit and serve participants prior to their release. Applicants must describe their plan to partner with probation and parole to support post-release case management services, if applicable.

Domestic Violence Requirement

Applicants must describe how the programs or activities in the application will address, as appropriate, issues of domestic violence, intimate partner violence, and dating violence.

Applicants must also include evidence of consultation with experts in domestic violence or relevant community domestic violence coalitions in developing the proposed programs and activities.

Evidence of consultation also may be demonstrated in the same manner as evidence of other partnership relationships (e.g., MOUs or third-party agreements described previously). The applicant must demonstrate that they have, or will have, collaborative partnerships with providers of domestic violence services that will provide support throughout the duration of the program.

Child Maltreatment

Applicants must describe the strategies they will use to help prevent, detect, and respond to child maltreatment among program participants. Applicants must describe how they will ensure staff familiarity with their state's reporting requirements for child abuse and neglect.

Project Timeline and Milestones

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function, or activity, in such terms as the number of people to be served and the number of activities accomplished. Data may be organized and presented as project tasks and subtasks with their corresponding timelines during the project period. For example, each project task could be assigned to a row in the first column of a grid. Then, a unit of time could be assigned to each subsequent column, beginning with the first unit (i.e., week, month, quarter) of the project and ending with the last. Shading, arrows, or other markings could be used across the applicable grid boxes or cells, representing units of time, to indicate the approximate duration and/or frequency of each task and its start and end dates within the project period.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Program Performance Evaluation Plan

Applicants must describe the plan for the program performance evaluation that will contribute to continuous quality improvement. The program performance evaluation should monitor ongoing processes and the progress towards the goals and objectives of the project. Include descriptions of the inputs (e.g., organizational profile, collaborative partners, key staff, budget, and other resources), key processes, and expected outcomes of the funded activities. The plan may be supported by a logic model and must explain how the inputs, processes and outcomes will be measured, and how the resulting information will be used to inform improvement of funded activities.

Applicants must describe the systems and processes that will support the organization's performance management requirements through effective tracking of performance outcomes, including a description of how the organization will collect and manage data (e.g. assigned skilled staff, data management software) in a way that allows for accurate and timely reporting of performance outcomes. Applicants must describe any potential obstacles for implementing the program performance evaluation and how those obstacles will be addressed.

Additionally, applicants must describe expected program performance activities in three key areas:

(1) Performance Measures. Applicants must describe how they will collect required program data (applicant characteristics, program operations, enrollment and participation (service delivery), and participant outcomes (i.e., attitudes, beliefs, and actions), both at beginning of the program (pre-test) and at program exit (post-test)). Applicants must submit documentation that describes whether and how the local evaluator was consulted in the development of performance measurement data collection plans. Applicants must address their readiness to collect performance measure data, including readiness of staff to collect data – that is, applicants must describe staff qualifications and training; identify specific staff who will be responsible for performance measurement data collection; state any intention to designate staff as data manager(s) or intention to hire a data manager – and capacity to collect data in a uniform, systematic manner. Applicants must describe how they will maintain participant privacy.

Applicants must confirm their expected procedure for collecting applicant characteristics and pre- and post-test data – that is, via ACASI-enabled online survey that uploads to nFORM (paper-and-pencil forms will only be used as backup). Applicants must document that they have budgeted for sufficient computers (laptops, desktop, tablets) that can utilize the specific web-browsers Internet Explorer version 10 or higher or Chrome (version 36 or higher). (With regard to tablets, grantees may use iPad (not Mini) or Samsung Galaxy Tablet 10.1; both tablet models must use the Chrome browser, version 36 or higher. It is possible that other tablets will also work with nFORM as long as they are using Chrome; however, the extensive testing will be conducted with the identified tablet models.)

Applicants must describe whether and how data will be collected by grantee staff, partner agencies, and/or subcontracted evaluators. If applicable, applicants must also include with their applications

letters of agreement with partner agencies and/or subcontracted evaluators that outline the responsibilities of each agency, and that confirm the agencies' agreement to collect and submit performance measurement data. In the rare case where applicants and/or partners do not have access to the internet because of systemic lack of connectivity, the proposal must clearly describe potential avenues for collecting performance measurement data through the internet, as well as indicate a willingness to work with ACF to find ways to implement internet data collection through these other avenues.

(2) *Management Information System (MIS)*. Applicants must confirm their intention to use nFORM for collecting, storing, monitoring, and reporting standardized performance measures.

(3) *Monitoring and Reporting*. Applicants must describe how they will use performance measures, monitor program services, and submit data. Applicants must include details reflecting readiness and capacity to review performance data regularly (e.g., staffing and training to create data reports on a weekly basis, timeline to meet weekly to review data). Applicants must address their readiness and capacity to aggregate, generate, and submit quarterly reports and semi-annual Performance Progress Reports (PPRs).

Funded Activities Evaluation Plan

Applicants must describe the plan for rigorous evaluation of funded activities. The evaluation may be supported by a logic model. The evaluation must assess processes and progress towards the goals and objectives of the project, and whether the project is having the expected effects and impacts. The evaluation plan must specify expected outcomes and any research questions. The plan must discuss how the results of this evaluation will provide greater understanding and improvement of the funded activities. The plan must include a valid and reliable measurement plan and sound methodological design. Details regarding the proposed data collection activities, the participants, and data management, and analyses plans must be described. Applicants must describe any potential obstacles foreseen in implementation of the planned evaluation and how those obstacles will be addressed.

More specifically, applicants must propose a descriptive local evaluation plan or an impact local evaluation plan (in accordance with the funding level requested), which will answer one or more grantee-specific research question(s). Applicants that propose to conduct descriptive evaluations must use data and analysis to describe and explain the importance/implications of the program's processes (such as a process or program implementation study) and/or the program's population (such as a pre-post study).

Applicants that propose to conduct an impact evaluation must have and describe a comparison group who does not receive the services of interest and that is comparable (at baseline, i.e., before a program begins) to those who participate in the service program. In addition to evaluation of impacts on specific outcomes, applicants proposing impact evaluations must also include an examination, in close detail, of the function and form of different parts of service process (i.e., "implementation study" or a "process study").

Applicants must include the following components in their plans:

- **Research questions.** Applicants must precisely state the research question(s), including the specific program measures, and how the answers to the questions will increase ACF's understanding of programming in this field. Applicants must link research question(s) (and the implementation features and/or participant outcomes) to the applicant's proposed logic model.
- **Research design.** Applicants must propose a specific research design in their plans, including details regarding: staffing; timeline; recruitment of participants; planned sample size; measures (including any measures in addition to the required performance measures); data collection methods, including who will collect data (staff, partner agencies, and/or local or other subcontracted evaluators); and analyses methods to be used. If multiple waves of data collection will be conducted, applicants must describe the timing of those waves, and how respondents will be tracked over time for later data

collection.

Applicants must include a justification for why the proposed research design is best suited to answer the research question(s). For impact evaluations, applicants must differentiate the programming for which each group (program/control/comparison) will be eligible, and specify how the groups will be formed or selected.

- **Community support.** Applicants must include plans for incorporating input from partner agencies and community partners in the development of local evaluations, and throughout the execution.
- **Importance for the field.** Applicants must clearly describe how the local evaluation will inform future programming and expand the evidence base, as designed. Applicants must describe how analyses of data will clearly support final reported results, and how targets for dissemination will clearly communicate the implications of the study to others in the field.

Applicants must identify the local evaluator or local evaluator organization and include a signed letter of agreement with this local evaluator. Applicants must include curriculum vitae for the leader of the research project (i.e., Principal Investigator or Research Project Director). For every organization involved (including local evaluator and partners), applicants must include letters of agreement supporting the plan and outlining roles and responsibilities. All curricula vitae, resumes and letters of agreement must be submitted in the application's *Appendices File* (see *Section IV.2. Content and Form of Application Submission, Page Limitations and Content for All Submission Format* for additional information on application submission file placement).

Applicants must identify the IRB they expect to use and must demonstrate a familiarity with that IRB's procedures and review requirements. (Note: IRB requirements may differ for grantees participating in a federal evaluation.)

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project.

Legal Status of Applicant Entity

Applicants must provide the following documentation:

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the IRS's most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax-exemption certificate.
- A statement from a state taxing body, state attorney general, or other appropriate state official certifying that the applicant organization has non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a state or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Unless directed otherwise, applicants must include proof of non-profit status in the *Appendices* file of the electronic application submission.

Additional Eligibility Documentation

Applicants must provide the additional, required documentation, or required credentials, to support eligibility for an award, as described in *Section III. Eligibility Information* of this announcement:

Post-Secondary Educational Institutions

Public post-secondary educational institutions (including community colleges) that apply as states, territories, or tribal entities must submit a written statement or documentation that affirms that the applicant:

- Is established by a state, territorial, or tribal government authority;
- Primarily receives funding through state, territorial, or tribal appropriation;
- Is legally authorized by the state, territory, or tribal authority to provide post-secondary education;
- Provides an educational program for which the institution awards a bachelor's degree, or a 2-year program that is acceptable for full credit toward a bachelor's degree (e.g., associate's degree), or admission to a graduate or professional degree program; and
- Is accredited by a nationally recognized accrediting agency or association, or that it has been granted pre-accreditation status by such an agency or association.
- Applicants with pre-accreditation status, must submit written affirmation or documentation that full accreditation will be attained by the end of the planning period described in this FOA.

Nonprofit Community Entity (including Public or Private Post-Secondary Educational Institutions)

Any applicants that are applying as public or private nonprofit community entities must submit a written statement or documentation that the applicant:

- Is a nonprofit community entity or organization and is recognized as such by the state (See 45 CFR 87.1(h)(1)-(4)).
- Is representative of a community, or a significant segment of a community, by involving members of the community (e.g., elected public officials, private sector representatives, or low-income residents) in assessing and addressing local needs.
- Is engaged in meeting human, educational, child-welfare, family well-being, personal growth and improvement, social welfare, or economic growth and mobility needs for the disadvantaged.

Further, a post-secondary educational institution that is applying as a "nonprofit community entity" on the basis that it is meeting educational needs for the disadvantaged must submit a written statement or documentation that the applicant is accredited by a nationally recognized accrediting agency or association. Alternatively, it must have been granted pre-accreditation status by such an agency or association and full accreditation must be attained by end of the planning period described in this FOA.

Logic Model

Applicants must submit a logic model for designing and managing their project. A logic model is a one-page diagram that presents the conceptual framework for a proposed project and explains the links among program elements. While there are many versions of logic models, for the purposes of this announcement the logic model should summarize the connections between the:

- Goals of the project (e.g., objectives, reasons for proposing the interventions, if applicable);
- Assumptions (e.g., beliefs about how the program will work and its supporting resources. Assumptions should be based on research, best practices, and experience);
- Inputs (e.g., organizational profile, collaborative partners, key staff, budget);
- Target population (e.g., the individuals to be served);
- Activities (e.g., approach, listing key intervention, if applicable);
- Outputs (i.e., the direct products or deliverables of program activities); and
- Outcomes (i.e., the results of a program, typically describing a change in people or systems).

Project Sustainability Plan

Applicants must propose a plan for project sustainability after the period of federal funding ends. Grantees are expected to sustain key elements of their grant projects, e.g., strategies or services and interventions, which have been effective in improving practices and those that have led to improved outcomes for children and families.

Describe the approach to project sustainment that will be most effective and feasible. Describe the key individuals and/or organizations whose support will be required in order to sustain program activities. Describe the types of alternative support that will be required to sustain the planned program. If the proposed project involves key project partners, describe how their cooperation and/or collaboration will be maintained after the end of federal funding.

Organizational Capacity

Provide the following information on the applicant organization and, if applicable, on any cooperating partners:

- Organizational charts;
- Resumes (no more than two single-spaced pages in length);
- Curricula Vitae (CV);
- Financial statements adhering to Generally Accepted Accounting Principles (GAAP), if available, submit statements for up to the two most recently completed fiscal years (this requirement does not apply to start-up organizations);
- Audit reports or statements from Certified Public Accountants/Licensed Public Accountants, if available, submit statements for up to the two most recently completed fiscal years (this requirement does not apply to start-up organizations);
- Copy or description of the applicant organization's fiscal control and accountability procedures;
- Evidence that the applicant organization, and any partnering organizations, have relevant experience and expertise with administration, development, implementation, management, and evaluation of programs similar to that offered under this announcement;
- Evidence that each participating organization, including partners and/or subcontractors, possess the organizational capability to fulfill their role(s) and function(s) effectively;
- Copy or description of the applicant organization's personnel policies;
- Job descriptions for each vacant key position.

Protection of Sensitive and/or Confidential Information

If any confidential or sensitive information will be collected during the course of the project, whether from staff (e.g., background investigations) or project participants and/or project beneficiaries, provide a description of the methods that will be used to ensure that confidential and/or sensitive information is properly handled and safeguarded. Also provide a plan for the disposition of such information at the end of the project period.

Third-Party Agreements

Third-party agreements include Memoranda of Understanding (MOU) and Letters of Commitment. General letters of support are **not** considered to be third-party agreements. Third-party agreements must clearly describe the project activities and support to which the third party is committing. Third-party agreements must be signed by the person in the third-party organization with the authority to make such commitments on behalf of their organization.

Collaboration/consortia applicants must provide letters of commitment or MOU identifying the primary applicant that is responsible for administering the grant. The primary applicant must provide documentation of the commitments made by partnering organizations and describe in detail their roles and responsibilities as partners in the collaboration/consortia.

Plan for Oversight of Federal Award Funds

Provide a plan describing how oversight of federal funds will be ensured and how grant activities and partner(s) will adhere to applicable federal and programmatic regulations. Applicants must identify staff that will be responsible for maintaining oversight of program activities, staff, and partner(s). Applicants must describe procedures and policies used to oversee staff and/or partners/contractors.

Describe organizational records systems that relate financial data to performance data by identifying the source and application of federal funds so that they demonstrate effective control over and accountability for funds, compare outlays with budget amounts, and provide accounting records supported by source documentation.

The Project Budget and Budget Justification

All applicants are required to submit a project budget and budget justification with their application. The project budget is entered on the Budget Information Standard Form, either SF-424A or SF-424C, according to the directions provided with the SFs. The budget justification consists of a budget narrative and a line-item budget detail that includes detailed calculations for "object class categories" identified on the Budget Information Standard Form. Applicants must indicate the method they are selecting for their indirect cost rate. See Indirect Charges for further information.

Project budget calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. If matching or cost sharing is a requirement, applicants must include a detailed listing of any funding sources identified in Block 18 of the SF-424 (Application for Federal Assistance). See the table in *Section IV.2. Required Forms, Assurances, and Certifications* listing the appropriate budget forms to use in this application.

Special Note: The Consolidated and Further Continuing Appropriations Act, 2015 (Pub.L. 113-235), enacted December 16, 2014, limits the salary amount that may be awarded and charged to ACF grants and cooperative agreements. Award funds issued under this announcement may not be used to pay the salary, or any percentage of salary, to an individual at a rate in excess of Executive Level II. The Executive Level II salary of the Federal Executive Pay scale is \$183,300. Please see <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2015/executive-senior-level>. This amount reflects an individual's base salary exclusive of fringe benefits and any income that an individual may be permitted to earn outside of the duties to the applicant organization. This salary limitation also applies to subawards/subcontracts under a ACF grant or cooperative agreement.

Provide a budget justification using the 424A and/or 424C, as applicable, for each year of the proposed project. Provide a budget justification, which includes a budget narrative and a line-item detail, for each year of the proposed project. The budget narrative should describe how the categorical costs are derived. Discuss the necessity, reasonableness, and allocation of the proposed costs.

Note: Applicants' line-item budget and budget justification must include all program-related costs, including travel for all staff required to attend the entrance conference and biennial meetings in Washington, DC, and regional roundtables. See *Section I. Program Description, Post-Award Requirements, Entrance Conference, Biennial Peer Meeting, and Roundtables*.

Budgeting for Evaluation

The applicant's overall line-item budget and budget justification must also include detailed allocations for the range of required performance measure data and evaluation activities, including the following:

- Collection of performance data, including costs of staff training, time to collect data;
- Storage of performance data, including:
 - Desktop/laptop computer or tablet purchase for ACASI on-line applicant characteristics and pre- and post-tests, including headphones and maintenance;
 - Costs for staff to conduct regular activity such as data entry, quality checks, reliability training for coding, etc.; and
- Monitoring and reporting performance data, including costs for staff to analyze data, create and review reports, plan and monitor adjustments.

Local Evaluation Costs

- Applicants requesting funding levels between \$350,000 and \$699,999 are expected to allocate at least \$35,000 per year for a descriptive local evaluation, but no more than 10 percent of the total budget.
- Applicants requesting funding levels between \$700,000 and \$999,999 are expected to allocate at least \$100,000 per year for a descriptive or impact local evaluation, but no more than 15 percent of the total budget for either evaluation.
- Applicants requesting funding levels between \$1,000,000 and \$2,000,000 are expected to propose an impact evaluation and allocate at least 10 percent, but no more than 15 percent of their total annual funding for local evaluation per year, or at least 15, but no more than 20 percent per year, if proposing a randomized-controlled trial (RCT) impact evaluation.

General

Use the following guidelines for preparing the budget and budget justification. When a match or cost share is required, both federal and non-federal resources must be detailed and justified in the budget and budget narrative justification. "Federal resources" refers only to the ACF grant funds for which the applicant is applying. "Non-federal resources" are all other non-ACF federal and non-federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, federal budget; next column(s), non-federal budget(s); and last column, total budget. The budget justification should be in a narrative form.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known at the time of application. For each staff person provide: the title; time commitment to the project in months; time commitment to the project as a percentage or full-time equivalent; annual salary; grant salary; wage rates; etc. Do not include the costs of consultants, personnel costs of delegate agencies, or of specific project(s) and/or businesses to be financed by the applicant. Contractors and consultants should not be placed under this category.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, Federal Insurance Contributions Act (FICA) taxes, retirement insurance, and taxes.

Travel

Description: Costs of out-of-state or overnight project-related travel by employees of the applicant organization. Do not include in-state travel or consultant travel.

Justification: For each trip show the total number of traveler(s); travel destination; duration of trip; per diem; mileage allowances, if privately owned vehicles will be used to travel out of town; and other transportation costs and subsistence allowances. If appropriate for this project, travel costs for key project staff to attend ACF-sponsored workshops/conferences/grantee orientations should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year per unit and an acquisition cost that equals or exceeds the lesser of: (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation, shall be included in or excluded from acquisition cost in accordance with the applicant organization's regular written accounting practices.)

Justification: For each type of equipment requested applicants must provide a description of the equipment; the cost per unit; the number of units; the total cost; and a plan for use of the equipment in the project; as well as a plan for the use, and/or disposal of, the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy, or section of its policy, that includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. This includes office and other consumable supplies with a per-unit cost of less than \$5,000.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third-party evaluation contracts, if applicable, and contracts with secondary recipient organizations (with budget detail), including delegate agencies and specific project(s) and/or businesses to be financed by the applicant. This area is not for individual consultants.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open, and free competition. Recipients and subrecipients, other than states that are required to use 45 CFR Part 75 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceeds the simplified acquisition threshold fixed by 41 U.S.C. § 134, as amended by 2 CFR Part 200.88, and currently set at \$150,000. Recipients may be required to make pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., available to ACF.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each contractor/sub-contractor, by agency title, along with the same supporting information referred to in these instructions. If the applicant plans to select the contractors/sub-contractors post-award and a detailed budget is not available at the time of application, the applicant must provide information on the nature of the work to be delegated, the estimated costs, and the process for selecting the delegate agency.

Other

Description: Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to: consultant costs, local travel; insurance; food (when allowable); medical and dental costs (noncontractual); professional services costs (including audit charges); space and equipment rentals; printing and publication; computer use; training costs, such as tuition and stipends; staff development costs; and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category has one of two methods that an applicant can select. An applicant may only select one.

- 1) The applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant federal agency

Note: An applicant must enclose a copy of the current approved rate agreement. If the applicant is requesting a rate that is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

- 2) Per 45 CFR § 75.414(f) Indirect (F&A) costs, "any non-Federal entity [i.e., applicant] that has never received a negotiated indirect costs rate, ... may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time."

Justification: This method only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Paperwork Reduction Disclaimer

As required by the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521, the public reporting burden for the Project Description and Budget/Budget Justification is estimated to average 60 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information. The Project Description information collection is approved under OMB control number 0970-0139, which expires 10/31/2015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Application Submission Options

Electronic Submission via www.Grants.gov

- Additional guidance on the submission of electronic applications can be found at <http://www.grants.gov/web/grants/applicants/apply-for-grants.html>.
- If applicants encounter any technical difficulties in using www.Grants.gov, contact the Grants.gov Contact Center at: 1-800-518-4726, or by email at support@grants.gov, to report the problem and

obtain assistance. Hours of Operation: 24 hours a day, 7 days a week. The Grants.gov Contact Center is closed on federal holidays.

- Applicants should always retain Grants.gov Contact Center service ticket number(s) as they may be needed for future reference.
- **Contact with the Grants.gov Contact Center prior to the listed application due date and time does not ensure acceptance of an application. If difficulties are encountered, the Grants Management Officer listed in *Section VII. Agency Contacts* will determine whether the submission issues are due to Grants.gov system errors or user error.**

Application Validation at www.Grants.gov

After an application has been successfully submitted to www.Grants.gov, it still must pass a series of validation checks. After an application is submitted, Grants.gov generates a submission receipt via email and also sets the application status to "Received." This receipt verifies that the application has been successfully delivered to the Grants.gov system.

Next, Grants.gov verifies the submission is valid by ensuring it does not contain viruses, the opportunity is still open, and the applicant login and applicant DUNS number match. If the submission is valid, Grants.gov generates a submission validation receipt via email and sets the application status to "Validated."

If the application is not validated, the application status is set to "Rejected." The system sends a rejection email notification to the applicant and the applicant must re-submit the application package. See "What to Expect After Submitting" at www.Grants.gov for more information.

Each time an application is submitted, or resubmitted, via www.Grants.gov, the application will receive a new date and time stamp. Only those applications with on-time date and time stamps that result in a validated application, which are transmitted to ACF, will be acknowledged.

Applicants will be provided with an acknowledgement from Grants.gov that the submitted application package has passed, or failed, a series of checks and validations. Applications that are submitted on time that fail the validation check will not be transmitted to ACF and will not be acknowledged.

NOTE: The Grants.gov validation check can affect whether the application is accepted for review. If an application fails the Grants.gov validation check and is not resubmitted by 11:59 p.m., ET, on the due date, it will not be transmitted to ACF and will be excluded from the review.

Similarly, if an applicant resubmits their application to Grants.gov by 11:59 p.m., ET, on the due date, and the resubmitted application does not pass the validation check, it will not be transmitted to ACF and will be excluded from the review.

Systems Issues

For any systems issues experienced with Grants.gov or SAM.gov, please refer to ACF's "Policy for Applicants Experiencing Federal Systems Issues" document for complete guidance at https://www.acf.hhs.gov/sites/default/files/assets/systems_issue_policy_final.pdf.

Request an Exemption from Required Electronic Application Submission

ACF recognizes that some applicants may have limited or no Internet access, and/or limited computer capacity, which may prohibit them from uploading large files at www.Grants.gov. To accommodate such applicants, ACF offers an exemption from required electronic submission. The exemption will allow applicants to submit hard copy, paper applications by hand-delivery, applicant courier, overnight/express mail couriers, or by other representatives of the applicant.

To receive an exemption from required electronic application submission, applicants must submit a written

request to ACF that must state that the applicant qualifies for the exemption for one of the two following reasons:

- Lack of Internet access or Internet connection, or
- Limited computer capacity that prevents the uploading of large documents (files) at www.Grants.gov.

Applicants may request and receive the exemption from required electronic application submission by either:

- Submitting an email request to electronicappexemption@acf.hhs.gov, or
- Sending a written request to the Office of Grants Management Contact listed in *Section VII. Agency Contacts* in this announcement.

Requests for exemption from required electronic application submission will be acknowledged with an approval or disapproval.

Requests that do not state one of the two listed reasons will not be approved.

An exemption is applicable to all applications submitted by the applicant organization during the Federal Fiscal Year (FFY) in which it is received. Applicants need only request an exemption once in a FFY. Applicants must request a new exemption from required electronic submission for any succeeding FFY.

Please Note: electronicappexemption@acf.hhs.gov may only be used to request an exemption from required electronic submission. All other inquiries must be directed to the appropriate Agency Contact listed in *Section VII*, of this announcement. Queries or requests submitted to this email address for any reason other than a request for an exemption from electronic application submission will not be acknowledged or answered.

All exemption requests must include the following information:

- Funding Opportunity Announcement Title,
- Funding Opportunity Number (FON),
- The listed Catalog of Federal Domestic Assistance (CFDA) number,
- Name of Applicant Organization and DUNS Number,
- AOR name and contact information,
- Name and contact information of person to be contacted on matters involving the application (i.e., the Point of Contact), and
- The reason for which the applicant is requesting an exemption from electronic application submission. The request for exemption must state one of the following two reasons: 1) lack of Internet access or Internet connection; or 2) lack of computer capacity that prevents uploading large documents (files) to the Internet.

Exemption requests must be received by ACF no later than two weeks before the application due date, that is, 14 calendar days prior to the application due date listed in the *Overview* and in *Section IV.3. Submission Dates and Times*. If the fourteenth calendar day falls on a weekend or federal holiday, the due date for receipt of an exemption request will move to the next federal business day that follows the weekend or federal holiday.

Applicants may refer to *Section VIII. Other Information* for a checklist of application requirements that may be used in developing and organizing application materials. Details concerning acknowledgment of received applications are available in *Section IV.3. Submission Dates and Times* of this announcement.

Paper Format Application Submission

An exemption is now required for the submission of paper applications. See the preceding section on "Request an Exemption from Required Electronic Application Submission."

Applicants with exemptions that submit their applications in paper format, by mail or delivery, must submit one original and two copies of the complete application with all attachments. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by the AOR, and be unbound. The original copy of the application must have original signature(s). See *Section IV.6.* of this announcement for address information for paper format application submissions. Applications submitted in paper format must be received by 4:30 p.m, ET, on the due date.

Applicants may refer to *Section VIII. Other Information* for a checklist of application requirements that may be used in developing and organizing application materials. Details concerning acknowledgment of received applications are available in *Section IV.3. Submission Dates and Times* in this announcement.

IV.3. Submission Dates and Times

Due Date for Applications: **07/07/2015**

Explanation of Due Dates

The due date for receipt of applications is listed in the *Overview* section and in this section. See *Section III.3. Application Disqualification Factors.*

Electronic Applications

The deadline for submission of electronic applications via www.Grants.gov is 11:59 p.m., ET, on the due date. Electronic applications submitted at 12:00 a.m., ET, on the day after the due date will be considered late and will be disqualified from competitive review and from funding under this announcement.

Applicants are required to submit their applications electronically via www.Grants.gov unless they received an exemption through the process described in *Section IV.2. Request an Exemption from Required Electronic Application Submission.*

ACF does not accommodate transmission of applications by email or facsimile.

Instructions for electronic submission via www.Grants.gov are available at:
http://www.grants.gov/applicants/apply_for_grants.jsp.

Applications submitted to www.Grants.gov at any time during the open application period prior to the due date and time that fail the Grants.gov validation check will not be received at ACF. These applications will not be acknowledged.

Mailed Paper Format Applications

The deadline for mailed paper applications is 4:30 p.m., ET, on the due date. Mailed paper applications received after the due date and deadline time will be considered late and will be disqualified from competitive review and from funding under this announcement.

Paper format application submissions will be disqualified if the applicant organization has not received an exemption through the process described in *Section IV.2. Request an Exemption from Required Electronic Application Submission.*

Hand-Delivered Paper Format Applications

Applications that are hand-delivered by applicants, applicant couriers, by overnight/express mail couriers, or other representatives of the applicant must be received on, or before, the due date listed in the *Overview* and in this section. These applications must be delivered between the hours of 8:00 a.m. and 4:30 p.m., ET, Monday through Friday (excluding federal holidays). Applications should be delivered to the address

provided in *Section IV.6. Other Submission Requirements*.

Hand-delivered paper applications received after the due date and deadline time will be considered late and will be disqualified from competitive review and from funding under this announcement.

Hand-delivered paper format application submissions will be disqualified if the applicant organization has not received an exemption through the process described in *Section IV.2. Request an Exemption from Required Electronic Application Submission*.

No appeals will be considered for applications classified as late under the following circumstances:

- Applications submitted electronically via www.Grants.gov are considered late when they are dated and time-stamped after the deadline of 11:59 p.m., ET, on the due date.
- Paper format applications received by mail or hand-delivery after 4:30 p.m., ET, on the due date will be classified as late and will be disqualified.
- Paper format applications received from applicant organizations that were not approved for an exemption from required electronic application submission under the process described in *Section IV.2. Request an Exemption from Required Electronic Submission* will be disqualified.

Extensions and/or Waiving Due Date and Receipt Time Requirements

ACF may extend an application due date and receipt time when circumstances make it impossible for applicants to submit their applications on time. These events include natural disasters (floods, hurricanes, tornados, etc.), or when there are widespread disruptions of electrical service, or mail service, or in other rare cases. The determination to extend or waive due date and/or receipt time requirements rests with the Grants Management Officer listed as the Office of Grants Management Contact in *Section VII. Agency Contacts*.

Acknowledgement from www.Grants.gov

Applicants will receive an initial email upon submission of their application to www.Grants.gov. This email will provide a **Grants.gov Tracking Number**. Applicants should refer to this tracking number in all communication with Grants.gov. The email will also provide a **date and time stamp**, which serves as the official record of application's submission. Receipt of this email does not indicate that the application is accepted or that it has passed the validation check.

Applicants will be provided with an acknowledgement from www.Grants.gov that the submitted application package has passed, or failed, a series of checks and validations. Applications that are submitted on time that fail the validation check will not be transmitted to ACF and will not be acknowledged.

See "What to Expect After Submitting" at www.Grants.gov for more information.

Acknowledgement from ACF of an electronic application's submission:

Applicants will be sent additional email(s) from ACF acknowledging that the application has been retrieved from www.Grants.gov by ACF. Receipt of these emails is not an indication that the application is accepted for competition.

Acknowledgement from ACF of receipt of a paper format application

ACF will not provide acknowledgement of receipt of hard copy application packages submitted via mail or courier services.

IV.4. Intergovernmental Review of Federal Programs

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Executive Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Applicants should go to the following URL for the official list of the jurisdictions that have elected to participate in E.O. 12372 http://www.whitehouse.gov/omb/grants_spoc/.

Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of their prospective applications and to receive instructions on their jurisdiction's procedures. Applicants must submit all required application materials to the SPOC and indicate the date of submission on the Standard Form (SF) 424 at item 19.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new awards.

SPOC comments may be submitted directly to ACF to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor East, Washington, DC 20447.

Entities that meet the eligibility requirements of this announcement are still eligible to apply for a grant even if a State, Territory or Commonwealth, etc., does not have a SPOC or has chosen not to participate in the process. Applicants from non-participating jurisdictions need take no action with regard to E.O. 12372. Applications from Federally-recognized Indian Tribal governments are not subject to E.O. 12372.

IV.5. Funding Restrictions

Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are considered unallowable costs under grants or cooperative agreements awarded under this funding opportunity announcement.

Note: Costs incurred for grant application preparation are not considered allowable costs under an award and may not be included in the project budget or budget justification.

Grant awards will not allow reimbursement of pre-award costs.

Purchase of real property is not an allowable activity or expenditure under this grant award.

Local Evaluation Costs

- Applicants requesting funding levels between \$350,000 and \$699,999 are expected to allocate at least \$35,000 per year for a descriptive local evaluation, but no more than 10 percent of the total budget.
- Applicants requesting funding levels between \$700,000 and \$999,999 are expected to allocate at least \$100,000 per year for a descriptive or impact local evaluation, but no more than 15 percent of the total budget for either evaluation.
- Applicants requesting funding levels between \$1,000,000 and \$2,000,000 are expected to propose an impact evaluation and allocate at least 10 percent, but no more than 15 percent of their total annual funding for local evaluation per year, or at least 15, but no more than 20 percent per year, if proposing a randomized-controlled trial (RCT) impact evaluation.

Construction, Alteration and Renovation

Costs for construction and/or major alteration and renovation are not statutorily authorized under this

grant. However, minor alteration and renovation costs for the following purposes may be allowable with the prior approval of the grantor agency: changing the interior arrangement or physical interior characteristics of an existing facility; installing equipment to improve efficiency for its currently designated purpose; or adapting existing equipment to an alternative use to meet a specific programmatic requirement. Additionally, minor alteration and renovation may not exceed \$150,000 or 25 percent of the total approved budget (direct and indirect) for the budget period, whichever is less.

IV.6. Other Submission Requirements

Submit paper applications to one of the following addresses. Also see *Section IV.2. Request an Exemption from Required Electronic Application Submission*.

Submission By Mail

Grants Operations Center
ATTN: HHS-2015-ACF-OFA-FK-0993
1401 Merchantile Lane
Suite 401
Largo, MD 20774

Hand Delivery

Grants Operations Center
ATTN: HHS-2015-ACF-OFA-FK-0993
1401 Merchantile Lane
Suite 401
Largo, MD 20774

Electronic Submission

See *Section IV.2* for application requirements and for guidance when submitting applications electronically via <http://www.Grants.gov>.
For all submissions, see *Section IV.3. Submission Dates and Times*.

V. Application Review Information

V.1. Criteria

Please note: Reviewers will not access, or review, any materials that are not part of the application documents. This includes information accessible on websites via hyperlinks that are referenced, or embedded, in the application. Though an application may include web links, or embedded hyperlinks, reviewers will not review this information as it is not considered to be part of the application documents. Nor will the information on websites be taken into consideration in scoring of evaluation criteria presented in this section. Reviewers will evaluate and score an application based on the documents that are presented in the application and **will not** refer to, or access, external links during the objective review.

Applications competing for financial assistance will be reviewed and evaluated using the criteria described in this section. The corresponding point values indicate the relative importance placed on each review criterion. Points will be allocated based on the extent to which the application proposal addresses each of the criteria listed. Applicants should address these criteria in their application materials, particularly in the project description and budget justification, as they are the basis upon which competing applications will be judged during the objective review. The required elements of the project description and budget justification may be found in *Section IV.2* of this announcement.

The number of bulleted statements under each review criterion does not necessarily reflect an equal distribution of points among corresponding point values. The entire application will be reviewed and evaluated. Particular emphasis will be placed upon the strengths and weaknesses of the application's correlation to the FOA's *Section I. Program Description* and *Section IV.2. The Project Description* or *Section IV.2. The Budget and Budget Justification*.

The criteria for *Performance Measurement and Evaluation* will be assessed and scored in two parts for a potential combined maximum score of 15 points. The first sub-criteria, *Commitments to Data and Evaluation*, will be assessed and scored 0 or 3 points for the extent to which the applicant's plan addresses each of the three listed commitment agreements. No partial points will be awarded. This means that reviewers will award zero points under this sub-criteria to applicants that **do not** positively affirm all three listed commitments, and reviewers will award the full 3 points to applicants that positively affirm all three commitments. The next two sub-criteria, *Performance Measurement Data* and *Local Evaluation Plan* will be assessed together for a potential combined score of 12 points. For this sub-criteria, reviewers may award partial points (i.e., between 0 and 12 points).

PROJECT APPROACH

Maximum Points: 35

The applicant's overall program design, approach, and ability to provide required services adequately will be reviewed and assessed by the following criteria.

0-35 points for the extent to which the applicant:

- Demonstrates a clear, consistent understanding of the stated over-arching purpose of promoting responsible fatherhood, including the statutory activity elements the applicant proposes to implement, and the desired short- and long-term outcomes identified in this FOA.
- Includes information on the need to offer responsible fatherhood through responsible parenting, and economic stability and mobility, and healthy marriage services in the target service area, to a specified target population, and articulates how the proposed program will meet these needs. Demonstrates a clear understanding of the availability of, and gaps in, supportive services available in their community.
- Includes a logic model that provides an overview of the program and clearly links program elements to intended outcomes. The short- and long-term outcomes are clear and measurable, are related to the three authorized activity areas, and align with the ACF programmatic short- and long-term goals.
- Includes a detailed description of how the proposed service strategy will be implemented, including:
 - specific information on the services and activities to be provided within the required areas of responsible parenting, economic stability and mobility, and healthy marriage, as well as case management and supportive services.
 - the integration of responsible parenting, economic stability and healthy marriage activities, and any other allowable services and activities;
 - how participants will be recruited and retained, and how the particular needs of the target population will be taken into consideration; how individual participants will be matched appropriately to component services and activities;
 - how the program will meet the program access and voluntary participation requirements; what types of screening and assessments the program will conduct (including any screening and assessment tools the program will utilize) and for what purposes these screenings and assessments are done.
 - a discussion of the barriers to participation the target population (e.g., recruitment, retention, transportation) may encounter and how these will be addressed, including

- cultural appropriateness.
- identifies curricula and/or other strategies it plans to utilize under each component activity and provides a clearly articulated, justified, and well-documented rationale for selecting those curricula and strategies.
- includes a sound rationale for the proposed skills-based curricula and thoroughly describes its evidence base or how it is evidence informed.
- demonstrates strong partnerships with appropriate public and private social service and community-based agencies to meet needs of the target population.
- Includes a description of the project timeline and milestones for the full project period. The description includes approximate dates for implementation of all components of the project and includes the number of people the program expects to serve each year. The description is clear, thorough, and follows a logical sequence.

In addition to the above criteria, for applicants that propose to include subsidized employment services, the thoroughness of their plan and their organizational capacity and experience in developing and providing subsidized employment services will be reviewed and assessed under the following criterion. (Reviewers will not deduct any points if this option is not selected. The maximum points under Project Approach if the option is proposed will remain 35 points.)

- The components of the subsidized employment model are identified as part of the applicant's project design and implementation and are appropriate to accomplish the specific goals of the project. The description clearly includes strategies to impart marketable job skills that will assist the individual in obtaining permanent unsubsidized employment. The applicant also provides sound and feasible plans to partner with businesses and agencies that will employ or work with the general population of fathers and formerly incarcerated fathers (if targeted) to create employment opportunities. The applicant describes an employment and retention strategy that is responsive and adequate.

All applicants' plan, capacity, and strategy to adequately provide case management and support services will be reviewed and assessed by the following criteria:

- The applicant has a thorough, feasible, and robust strategy for providing effective case management to program participants.
- The applicant has a thorough, feasible, and robust strategy for providing support services, helping participants utilize services available in the community, and providing referrals for support services.

The thoroughness, feasibility, documented consultation, collaboration/partnership, and capacity of all applicants to address issues of domestic violence and child maltreatment will be reviewed and assessed by the following criteria.

- The applicant describes how the programs or activities will address, as appropriate, issues of domestic violence, intimate partner and dating violence, and the description is thorough and feasible.
- The applicant provides evidence of initial consultation with domestic violence experts to assist in the development of appropriate protocols tailored to the program.
- The applicant demonstrates that they have or will have collaborative partnerships with providers of domestic violence services that will provide support throughout the duration of the program, including a process for service referrals.
- The applicant describes how they will develop strategies to help prevent, detect, and respond to child maltreatment among program participants.
- The applicant's description of how they will ensure staff familiarity with their state's requirements for child abuse and neglect is clear, reasonable, and feasible.

ORGANIZATIONAL CAPACITY AND EXPERIENCE

Maximum Points: 20

The applicant's organizational capacity and experience to adequately develop and manage a New Pathways responsible fatherhood program will be reviewed and assessed using the following criteria.

0-20 points for the extent to which the applicant:

- Demonstrates the organizational capacity necessary to oversee federal grants through a description of the organization's fiscal controls, and an explanation of the organization's governance structure, including:
 - a clear description of its financial management experience, and provides evidence of an adequate records system that will allow for effective control over and accountability for funds; and
 - an organizational chart that demonstrates the relationship between all positions (including consultants and/or sub-contractors) to be funded through this grant.
- Demonstrates its current capability to organize and operate the proposed project effectively and efficiently.
- Clearly describes the organization's relevant experience, including previous accomplishments in providing specific services and activities in relevant areas, including promoting responsible fatherhood/improving relationships and/or promoting healthy marriage, implementing high-quality and effective economic stability and mobility employment programs, and addressing domestic violence and child maltreatment.
- Describes the experience and previous accomplishments of program partners in relevant areas.

PERFORMANCE MEASUREMENT DATA AND EVALUATION

Maximum Points: 15

The applicant's plan and capacity to manage proper data collection, documentation, and reporting (including internal accountability and a plan for monitoring performance) and the applicant's plan and capacity to conduct a local evaluation in collaboration with an independent local evaluator (and other measures) will be reviewed and assessed by the criteria listed under each of the following sections.

Commitments to Data and Evaluation

0 or 3 points for the extent to which the applicant's plan addresses the following three commitment agreements. Applicants that do not positively affirm **all** of the following three commitment agreements will not receive any of the 3 points available for this area. **No partial points will be awarded.**

- The applicant affirms a commitment to document, store, and report on performance using the full set of uniform measures to be provided by ACF and using nFORM and the ACASI on-line applicant characteristics and pre- and post-tests;
- The applicant affirms a commitment to conduct a local evaluation; and
- The applicant affirms a commitment to participate in all aspects of any federally sponsored evaluation as a condition of acceptance of funding, and indicates that they will be responsible for ensuring that partnering organizations also comply with the condition of award, as described in the FOA.

After assessing the minimum threshold, all applicants' plan, strategy, and capacity to address the performance measurement data and local evaluation requirements adequately will be reviewed and assessed using the following criteria.

0-12 points (applied to Performance Measurement Data and Local Evaluation combined) for the extent to which:

Performance Measurement Data

- The applicant sufficiently describes comprehensive processes planned or in place to collect data in a uniform, systematic manner while maintaining participant privacy.
- The applicant's plan is consistent with the scope of the data collection effort. Further, the applicant satisfactorily addresses all components as described in the FOA with regard to:
 - staff readiness;
 - the process for whether and how partners will be involved in performance measures data collection and storage, and reporting; and
 - a rigorous process for completing applicant characteristics and pre- and post-tests.
- The applicant provides sufficient detail about the staffing, training, and resources to monitor and report on all components described in *Section IV.2 Project Description, Program Performance Evaluation Plan* components.
- The applicant describes a complete process to-date, and intended process in the future, of consultation with key stakeholders, including community stakeholders, in developing the performance management data collection plan.
- The applicant indicates tasks that are consistent with the goals of the planning period, including efforts that will improve the quality of the performance measurement data.

Local Evaluation Plan

- The applicant proposes a local evaluation plan with adequate detail on how the local evaluation will accomplish a successful study related to a specific research question(s) that is consistent with all components described in *Section IV.2 Project Description, Funded Activities Evaluation Plan*.
- The applicant's plan sufficiently describes the research question(s), research design, sample and sample size, and data collection (including measures) that is consistent with all components described in *Section IV.2 Project Description, Funded Activities Evaluation Plan*.
- The applicant satisfactorily describes plans for training data collectors, and for regularly reviewing submitted data to assess and swiftly address problems.
- The applicant's plan clearly describes how the local evaluation, as designed, will inform future programming and expand the evidence base, how analyses of data will clearly support final reported results, and describes targets for dissemination.
- The applicant indicates tasks that are consistent with the goals of the planning period, including efforts that will improve the quality of the local evaluation.
- The applicant addresses all components related to a local evaluator, including a signed letter of agreement with a local evaluator to conduct the local evaluation independently. The letter from the evaluator clearly indicates an understanding of potential federal evaluation and need for IRB oversight.
- The applicant includes a sound plan for securing informed consent (where appropriate) and working with an IRB for approval of the proposed design and processes. The applicant names the specific IRB to which it expects to apply.
- The applicant's local evaluation plan documents sufficient existing and planned input from partners that is consistent with all components described in *Section IV.2 Project Description, Funded Activities Evaluation Plan*.

PROGRAM MANAGEMENT AND STAFFING

Maximum Points: 15

The applicant's capacity and experience to adequately develop, oversee, manage, staff, and comply with all aspects of a New Pathways responsible fatherhood program will be reviewed and assessed using the following criteria.

0-15 points for the extent to which:

- The applicant's project management approach clearly describes the intended leadership structure and lines of accountability, and identifies a dedicated project director.
- Proposed senior staff has documented experience with project leadership and decision-making processes.
- The applicant identifies each key staff position, including those responsible for direct project oversight (including oversight of partners), management, implementation, and performance assessments of the proposed project. The applicant notes if any positions are vacant, includes job descriptions for vacant positions, and proposes a reasonable and clear approach to filling them.
- The applicant includes detailed information about collaborations, partnerships, and MOUs or third-party Agreements (or letter of intent, if applicable, and as described in the FOA) with organizations and stakeholders that the applicant indicates will be responsible for aspects of the program, will serve as sources of participant recruitment, or will provide services to program participants on a referral basis.
- The applicant's proposed staffing plan demonstrates a sound relationship between the expertise required for key positions and the educational and professional qualifications of the proposed staff, and includes resumes of key staff and consultants which correspond to the organizational chart.
- The applicant includes a written statement regarding its understanding of all unallowable activities under this grant, such as using funds for abstinence education programs, non-programmatic capacity-building, train-the-trainer programs, and no fee-for-service provision. The statement(s) confirms the applicant's commitment not to provide any unallowable activities under this funding.
- The applicant demonstrates an understanding of the non-supplantation provision under this FOA and includes a written statement to comply with the provision.

BUDGET AND BUDGET JUSTIFICATION

Maximum Points: 15

The applicant's line-item budget and budget justification will be reviewed and assessed for thoroughness, soundness, and accountability under the following criteria.

0-15 points for the extent to which:

General

- The applicant includes a budget and line-item justifications for all operating expenses that are consistent with the proposed project objectives and activities. The narrative budget justification clearly states how each line item will be utilized. The applicant provides information about how the funds will be allocated among the program components proposed, including all required items, such as travel to attend the entrance conference and biennial meetings in Washington, DC, and any roundtable meetings.
- The applicant's project costs are allowable, reasonable, allocable, necessary, and are commensurate with the types and range of activities and services to be conducted, the number of participants to be served, and the expected goals and objectives.
- The applicant describes a plan for overall fiscal management, including internal and third-party financial monitoring systems that demonstrate structure and accountability for applicant and any sub-contractors.

Performance Measurement Data

- The applicant's budget is consistent with the proposed plan for the grantee itself as well as for partner agency(ies), evaluators, and others' involvement in performance measure data collection and/or storage and/or reporting.
- For the ACASI online pre- and post-test survey, the applicant's budget adequately reflects purchase of computers or tablets appropriate to the technical requirements for the online survey and communication with the identified MIS system.
- With regard to nFORM, the applicant's budget reflects appropriate costs for staffing, qualifications, and essential initial and maintenance training.
- The applicant's budget reflects appropriate costs for staffing, training, and resources to monitor and report.
- The applicant's budget allocates adequate funding for costs related to all planning period tasks associated with performance measurement data.

Local Evaluation Plan

- The applicant's budget for the local evaluation is clearly detailed, with costs identified for staffing and sub-contract agreements and other direct costs that are consistent with the identified plan and timeline.
- The applicant's budget allocates funding for local evaluation in accordance with the level of federal funds being requested and for costs related to all planning period tasks associated with the local evaluation.

Subsidized Employment

In addition to the above criteria, applicants that propose to include subsidized employment services will also have their line-item budget and budget justification reviewed and assessed under the following criterion:

- The applicant clearly outlines in the budget and budget narrative the financial obligations of both the applicant and the employer(s).

BONUS POINTS

Maximum Points: 5

Impact Evaluation

0 or 5 points:

The following criteria will be applied to applicants that propose local impact evaluations with a RCT. Only those applicants meeting all criteria will receive bonus points. There will be no award of partial points.

(1) *RCT-relevant research question(s)*. The applicant's research question(s) proposed is appropriate for an RCT-design study.

(2) *Random assignment*.

(a) *Method/timing of random assignment*. The applicant describes an appropriate method and timing for how and when random assignment will be conducted, and how it will be monitored so that those assigned to specific comparison groups do not receive program services during the designated research period.

(b) *Comparability of research groups*. The applicant describes appropriate methods to determine/monitor the comparability of the research groups.

(3) *Sample*.

(a) *Unit of analysis and target population(s)*. The applicant states the unit of analysis (e.g., non-residential father, unmarried couple). The applicant describes the target population(s) for their research project and whether the population(s) differs from those who will be served by the grant in

general.

(b) *Sample size.* The applicant states the intended sample size (overall and by year), the estimated attrition, and the anticipated size of the final sample to be used for analyses. The applicant presents a satisfactory power analysis, demonstrating that proposed sample sizes will be able to detect expected effect sizes for the outcomes targeted.

(c) *Methods to promote sufficient program participation.* The applicant describes appropriate methods to ensure that sufficient sample is recruited, enrolls, and participates in the program.

V.2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application. No grant award will be made to an applicant or sub-recipient that does not have a DUNS number (www.dbn.com) and an active registration at SAM (www.sam.gov). See *Section III.3, Other*.

Initial ACF Screening

Each application will be screened to determine whether it meets any of the disqualification factors described in *Section III.3, Other, Application Disqualification Factors*.

Disqualified applications are considered to be “non-responsive” and are excluded from the competitive review process. Applicants will be notified of a disqualification determination by email or by USPS postal mail within 30 federal business days from the closing date of this funding opportunity announcement.

Objective Review and Results

Applications competing for financial assistance will be reviewed and evaluated by objective review panels using only the criteria described in *Section V.1, Criteria* of this announcement. Each panel is composed of experts with knowledge and experience in the area under review. Generally, review panels include three reviewers and one chairperson.

Results of the competitive objective review are taken into consideration by ACF in the selection of projects for funding; however, objective review scores and rankings are not binding. Scores and rankings are only one element used in the award decision-making process.

ACF may elect not to fund applicants with management or financial problems that would indicate an inability to successfully complete the proposed project. Applications may be funded in whole or in part. Successful applicants may be funded at an amount lower than that requested. ACF reserves the right to consider preferences to fund organizations serving emerging, unserved, or under-served populations, including those populations located in pockets of poverty. ACF will also consider the geographic distribution of federal funds in its award decisions.

Please refer to *Section IV.2* of this announcement for information on non-federal reviewers in the review process.

Approved but Unfunded Applications

Applications recommended for approval that were not funded under the competition because of the lack of available funds may be held over by ACF and reconsidered in a subsequent review cycle if a future competition under the program area is planned. These applications will be held over for a period of up to one year and will be re-competed for funding with all other competing applications in the next available review cycle. For those applications that have been deemed as approved but unfunded, notice will be

given of such determination by postal mail.

V.3. Anticipated Announcement and Award Dates

Announcement of awards and the disposition of applications will be provided to applicants at a later date.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will be notified through the issuance of a Notice of Award (NoA) that sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-federal share to be provided (if applicable), and the total project period for which support is contemplated. The NoA will be signed by the Grants Officer and transmitted via postal mail, email, or by GrantSolutions.gov or the Head Start Enterprise System (HSES), whichever is relevant. Following the finalization of funding decisions, organizations whose applications will not be funded will be notified by letter signed by the cognizant Program Office head. Any other correspondence that announces to a Principal Investigator, or a Project Director, that an application was selected is not an authorization to begin performance.

Project costs that are incurred prior to the receipt of the NoA are at the recipient's risk and may be reimbursed only to the extent that they are considered allowable as approved pre-award costs. Information on allowable pre-award costs and the time period under which they may be incurred is available in *Section IV.5. Funding Restrictions*.

VI.2. Administrative and National Policy Requirements

Awards issued under this announcement are subject to 45 CFR Part 75 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. The Code of Federal Regulations (CFR) is available at <http://www.gpo.gov>.

An application funded with the release of federal funds through a grant award does not constitute, or imply, compliance with federal regulations. Funded organizations are responsible for ensuring that their activities comply with all applicable federal regulations.

Prohibition Against Profit

Grantees are subject to the limitations set forth in 45 CFR § 75.215, Special provisions for awards to commercial organizations as recipients (45 CFR § 75.215(b)_Prohibition against profit.), which states that, "...no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs."

Equal Treatment for Faith-Based Organizations

Grantees are also subject to the requirements of 45 CFR § 87.1(c), Equal Treatment for Faith-Based Organizations, which says, "Organizations that receive direct financial assistance from the [Health and Human Services] Department under any Department program may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department." Therefore, organizations must take steps to completely separate the presentation of any program with religious content from the presentation of the Federally funded program by time or location *in such a way that it is clear that the two programs are separate and distinct*. If separating the two programs by time but presenting them in the same location, one program must *completely* end before the other program begins.

A faith-based organization receiving HHS funds retains its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS-funded activities.

Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against federal funding of inherently religious activities, "Understanding the Regulations Related to the Faith-Based and Neighborhood Partnerships Initiative" are available at <http://www.hhs.gov/partnerships/about/regulations/>. Additional information, resources, and tools for faith-based organizations is available through The Center for Faith-based and Neighborhood Partnerships website at <http://www.hhs.gov/partnerships/index.html> and at the <https://www.acf.hhs.gov/programs/ocs/resource/capacity-building-toolkits-for-faith-based-and-community-organizations>.

Award Term and Condition under the Trafficking Victims Protection Act of 2000

Awards issued under this announcement are subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104). For the full text of the award term, go to <http://www.acf.hhs.gov/grants/award-term-and-condition-for-trafficking-in-persons>. If you are unable to access this link, please contact the Grants Management Contact identified in *Section VII. Agency Contacts* of this announcement to obtain a copy of the term.

Requirements for Drug-Free Workplace

The Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106) requires that all organizations receiving grants from any federal agency agree to maintain a drug-free workplace. By signing the application, the Authorizing Official agrees that the grantee will provide a drug-free workplace and will comply with the requirement to notify ACF if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government-wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR Part 182; HHS implementing regulations are set forth in 2 CFR § 382.400. All recipients of ACF grant funds must comply with the requirements in Subpart B - Requirements for Recipients Other Than Individuals, 2 CFR § 382.225. The rule is available at <http://www.gpo.gov/fdsys/pkg/CFR-2001-title45-vol1/content-detail.html>.

Debarment and Suspension

HHS regulations published in 2 CFR Part 376 implement the governmentwide debarment and suspension system guidance (2 CFR Part 180) for HHS' non-procurement programs and activities. "Non-procurement transactions" include, among other things, grants, cooperative agreements, scholarships, fellowships, and loans. ACF implements the HHS Debarment and Suspension regulations as a term and condition of award. Grantees may decide the method and frequency by which this determination is made and may check the Excluded Parties List System (EPLS) located at <https://www.sam.gov/>, although checking the EPLS is not required. More information is available at <https://www.acf.hhs.gov/grants-forms>.

Pro-Children Act

The Pro-Children Act of 2001, 20 U.S.C. §§ 7181 through 7184, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

HHS Grants Policy Statement

The HHS Grants Policy Statement (HHS GPS) is the Department of Health and Human Services' single policy guide for discretionary grants and cooperative agreements. ACF grant awards are subject to the requirements of the HHS GPS, which covers basic grants processes, standard terms and conditions, and points of contact, as well as important agency-specific requirements. Appendices to the HHS GPS include a glossary of terms and a list of standard abbreviations for ease of reference. The general terms and conditions in the HHS GPS will apply as indicated unless there are statutory, regulatory, or award-specific requirements to the contrary that are specified in the Notice of Award (NOA). The HHS GPS is available at <https://www.acf.hhs.gov/grants/discretionary-competitive-grants>.

Freedom of Information Act (FOIA)

Applications funded by federal grant programs are subject to disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Such applications are frequently requested under the FOIA, consistent with the FOIA's requirement to proactively disclose frequently requested materials at 5 U.S.C. § 552(a)(2)(D). Each released application will receive appropriate redaction of specific information to protect personal privacy and competitively sensitive commercial information. Information on filing a FOIA request is available at <http://www.acf.hhs.gov/submit-a-foia-request>.

Award Term and Condition under Title VI of the Civil Rights Act of 1964

Recipients of federal financial assistance must not discriminate on the basis of race, color, national origin, disability, age, and in some cases sex and religion. The HHS Office for Civil Rights provides guidance to grantees in complying with civil rights laws that prohibit discrimination.
www.hhs.gov/ocr/civilrights/understanding/index.html.

HHS provides guidance to recipients of federal financial assistance on meeting the legal obligation to take reasonable steps to provide meaningful access to persons with limited English proficiency.
www.hhs.gov/ocr/civilrights/resources/laws/revisedlep.html. Recipients must ensure their contractors and sub-recipients also comply with federal civil rights laws.

Award Term and Condition for Unpaid Federal Tax Liability

Grantees are subject to the requirement contained in Section 744 of the "Consolidated and Further Continuing Appropriations Act, 2015," (Pub.L. 113-235, Title VII, General Provisions – Government-Wide), which says "None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government."

VI.3. Reporting

Grantees under this funding opportunity announcement will be required to submit performance progress and financial reports periodically throughout the project period. The frequency of required reporting is listed later in this section.

Performance Progress Reports (PPR)

Notice of Award (NoA) documents will inform grantees of the appropriate performance progress report form or format to use. Grantees should consult their Notice of Award documents to determine the appropriate performance progress report format required under their award. Performance progress reports are due 30 days after the end of the reporting period. Final program performance reports are due 90 days after the close of the project period.

For awards that implement the use of the ACF-OGM-SF-PPR, the form is available under "Reporting, Disclosures, and other Standard Forms" at <http://www.acf.hhs.gov/grants/forms#chapter-4>.

Federal Financial Reports (FFR)

ACF grantees are required to use the SF-425 Federal Financial Report (FFR) for expenditure reporting. SF-425 reports will be due as frequently as is required in the terms and conditions of their award using due dates from reports to PMS. The SF-269 is no longer accepted for expenditure reports. If an SF-269 is submitted, the ACF will return it and require the recipient to complete the SF-425.

All expenditure reports will be due on one of the standard due dates by which cash reporting is required to be submitted to PMS or at the end of a calendar quarter as determined by ACF. As a result, a recipient that receives awards from more than one federal program may be subject to more than one approach, but will not be required to change its current means of submission or be subjected to more than eight standard due dates. **A final cumulative SF-425 is due 90 days after the close of the project period.**

For budget periods ending in the months of:	The FFR (SF425) is due to ACF on:
January 01 - March 31	April 30
April 01 - June 30	July 30
July 01 - September 30	October 30
October 01 - December 31	January 30

The SF-425 form in Adobe PDF and MS-Excel formats, along with instructions, is available at http://www.whitehouse.gov/omb/grants_forms.

For planning purposes, ACF reporting periods for awards made under this announcement are as follows:

Performance Progress Reports: Quarterly
Financial Reports: Quarterly

Federal Financial Accountability and Transparency Act (FFATA) Subaward and Executive Compensation

Awards issued as a result of this funding opportunity may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR Part 170. See ACF's Award Term for Federal Financial Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting Requirement implementing this requirement and additional award applicability information at <https://www.acf.hhs.gov/grants/discretionary-competitive-grants>.

Tangible Property Report (SF-428)

All ACF grantees are required to submit the Tangible Personal Property Form (SF-428). The SF-428 is a standard form used to collect information related to tangible personal property: equipment with a unit cost of \$5,000 or more, and residual supplies with an aggregate fair market value exceeding \$5,000. The form consists of the cover sheet and three attachments to be used as required by the terms and conditions of the award: Annual Report; Final Report and a Disposition Request. A Supplemental Sheet, SF-428S, may be used to provide detailed individual item information. The form is available at <http://www.whitehouse.gov/omb/grants/forms>.

Real Property Status Report (SF-429)

All ACF grantees are required to submit the Real Property Status Report SF-429, if applicable. The SF-429 is a standard report to be used by recipients of federal financial assistance to report real property status or to request agency instructions on real property that is provided as Government Furnished Property (GFP) or acquired (i.e., purchased, constructed, or renovated) in whole or in part under a Notice of Award. This form consists of the cover sheet and three attachments to be used as frequently as required in the terms and conditions of the award: General reporting (SF-429A, Attachment A), Request to Acquire, Improve or Furnish (SF-429B, Attachment B), or Disposition or Encumbrance Request (SF-429C, Attachment C). The forms are available at <http://www.whitehouse.gov/omb/grants/forms>.

Quarterly Performance Reports (QPR)

In addition to PPRs, grantees will be required to submit quarterly progress reports (to alternate with PPRs – that is, a QPR after month 3, a PPR after month 6, a QPR after month 9, and a PPR after month 12). Further information may be found at www.famlecross-site.info.

Note: Consistent with the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521, under this FOA, OFA will not conduct or sponsor – and a person is not required to respond to – a collection of information covered by such Act, unless it displays a currently valid OMB control number. OFA is seeking approval of its performance measures through the OMB Office of Information and Regulatory Affairs (OIRA). OFA will not request this information if these performance measures are not approved at the time that reports are due.

VII. Agency Contacts

Program Office Contact

Tanya Howell
Administration for Children and Families
Office of Family Assistance

Aerospace Building
901 D St. SW
Washington, DC 20024
Phone: (202) 205-8714
Email: Tanya.Howell@acf.hhs.gov

Office of Grants Management Contact

Tim Chappelle
Administration for Children and Families
Office of Grants Management
Aerospace Building
901 D St. SW
Washington, DC 20024
Phone: (202) 401-4855
Email: Tim.Chappelle@acf.hhs.gov

Federal Relay Service:

Hearing-impaired and speech-impaired callers may contact the Federal Relay Service for assistance at 1-800-877-8339 (TTY - Text Telephone or ASCII - American Standard Code For Information Interchange).

VIII. Other Information

Reference Websites

U.S. Department of Health and Human Services (HHS) <http://www.hhs.gov/>.

HHS Grants Forecast <http://www.acf.hhs.gov/hhsgrantsforecast/index.cfm>.

Administration for Children and Families (ACF) <http://www.acf.hhs.gov/>.

ACF Grants Homepage <https://www.acf.hhs.gov/grants>.

ACF Funding Opportunities <http://www.acf.hhs.gov/grants/open/foa/>.

ACF "How to Apply for a Grant" <https://www.acf.hhs.gov/grants/how-to-apply-for-grants>.

Catalog of Federal Domestic Assistance (CFDA) <https://www.cfda.gov/>.

For submission of a paper format application, all required Standard Forms (SF), assurances, and certifications are available on the ACF Grants-Forms page at <https://www.acf.hhs.gov/grants-forms>.

Standard grant forms are available at the [Grants.gov](http://www.grants.gov/web/grants/forms/sf-424-family.html) Forms Repository webpage at <http://www.grants.gov/web/grants/forms/sf-424-family.html>.

For information regarding accessibility issues, visit the Grants.gov Accessibility Compliance Page at

<http://www07.grants.gov/web/grants/support/technical-support/accessibility-compliance.html>.

Code of Federal Regulations (CFR) <http://www.gpo.gov/fdsys/>.

The *Federal Register* <https://www.federalregister.gov/>.

United States Code (U.S.C.) <http://www.gpo.gov/fdsys/>.

ADDITIONAL RESOURCES

The following are additional resources that may be useful to applicants and grantees as they design and implement their programs. Applicants and grantees are not required to use these resources.

Local Evaluation

The Fatherhood and Marriage Local Evaluation (FaMLE) and Cross-Site Project's website, which has resources for developing programming and local evaluation plans: <http://www.famlecross-site.info>

Webinar Series

ACF expects to conduct a series of webinars on all Healthy Marriage and Responsible Fatherhood FOAs within 15 business days from the date the FOAs are published. Applicants are encouraged check the Healthy Marriage and Responsible Fatherhood website at <https://hmr.acf.hhs.gov/> for more information on dates, times, and webinar registration.

Webinars are also expected to be conducted to discuss performance measure requirements, the nFORM Management Information System, and local evaluation requirements. Also, a webinar describing two federal evaluations (Building Bridges and Bonds, or B3; and Strengthening Relationship Education and Marriage Services, or STREAMS) will be conducted. Applicants are encouraged to check the website www.famlecross-site.info for more information on dates, times, and webinar registration. Webinars will be archived on this website for those who cannot attend.

Employment and Economic Stability Resources

To assist in the development of comprehensive employment strategies for project participants, ACF developed the *Within Reach: Strategies for Improving Family Economic Stability* toolkit, which provides a 360-degree conceptual model for helping low-skill, disadvantaged populations access employment opportunities and supportive services that build toward greater economic self-sufficiency (<https://hmr.acf.hhs.gov/toolkits-and-trainings/within-reach-strategies-for-improving-family-economic-stability/>).

Building Financial Capability

ACF's Office of Community Services resource guide, *Building Financial Capability: A Planning Guide for Integrated Services*, is an interactive guide for community-based organizations interested in integrating financial capability services into existing programs. The interactive tools in the guide walks organizations step-by-step through the process of developing an integration plan, beginning with developing a deeper understanding of clients' financial circumstances and which financial capability services can help them improve their situations. The guide also includes tools to help organizations determine how best to provide financial capability services—whether through referrals, partnerships, or in-house. The final step in the process is the creation of a logic model that serves as a comprehensive roadmap for implementing the integration plan. Building Financial Capability is a practical resource for organizations providing financial capability services for the first time as well as those that want to improve or expand existing efforts.

<http://www.acf.hhs.gov/programs/ocs/resource/afi-resource;-guide;-building-financial-capability>.

Responsible Fatherhood and Healthy Marriage Resources

National Responsible Fatherhood Clearinghouse: <http://www.fatherhood.gov/>

Curriculum

Frequently used Responsible Fatherhood curricula have been reviewed, categorized, and summarized on this website: <http://hmr curriculum.acf.hhs.gov/>.

Domestic Violence Resources

National Hotlines - Free and confidential help is available for victims of domestic violence 24 hours a day. The following hotlines can help victims of domestic violence and sexual violence find support and assistance in their communities:

- National Domestic Violence Hotline – 1-800-799-7233
- National Dating Abuse Helpline – 1-866-331-9474
- National Sexual Assault Hotline (RAINN) – 1-800-656-4673

Domestic Violence Coalitions

Each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa have a Family Violence Prevention and Services Act (FVPSA) funded Domestic Violence Coalition. These coalitions are connected to more than 2,000 local domestic violence programs receiving FVPSA funding across the country. Every coalition provides comprehensive training and technical assistance on a variety of social, legal, and economic issues that affect victims' safety and well-being. Coalitions partner with government, private industry, non-profit organizations, faith-based communities, and other stakeholders to effectively coordinate and improve the safety-net of services available to victims and their dependents.

Additional information about FVPSA funded domestic violence coalitions can be found at: <http://www.acf.hhs.gov/programs/fysb/resource/dvcoalitions>.

Application Checklist

Applicants may use the checklist below as a guide when preparing your application package.

What to Submit	Where Found	When to Submit
SF-LLL - Disclosure of Lobbying Activities	"Disclosure Form to Report Lobbying" is referenced in <i>Section IV.2, Required Forms, Assurances, and Certifications</i> . For electronic application submission, this form is available on the FOA's Grants.gov "Download Opportunity Instructions and Application" page under "Download Application Package" in the section entitled, "Optional." The form is available in the electronic application kit at Grants.gov and at http://www.grants.gov/	If submission of this form is applicable, it is due at the time of application. If it not available at the time of application, it may also be submitted prior to the award of a grant.

	<p>web/ grants/ forms.html by using the link to "SF-424 Family."</p> <p>If applicable, submission of this form is required if any funds have been paid, or will be paid, to any person for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan.</p>	
<p>Protection of Human Subjects Assurance Identification / IRB Certification / Declaration of Exemption (Common Rule)</p>	<p>Referenced in <i>Section IV.2. Forms, Assurances, and Certifications</i>. Additional information and necessary forms are available at http://www.hhs.gov/ohrp/assurances/forms/index.html.</p> <p>For electronic application submission, this form is available on the FOA's Grants.gov "Download Opportunity Instructions and Application" page under "Download Application Package" in the section entitled, "Optional."</p> <p>The form is also available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p>	<p>Submission of the required information and forms is due with the application package by the due date listed in the <i>Overview</i> and <i>Section IV.3. Submission Dates and Times</i>. If the information is not available at the time of application, it must be submitted prior to the award of a grant.</p>
<p>SF-424A - Budget Information - Non- Construction Programs and SF-424B - Assurances - Non- Construction Programs</p>	<p>Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications</i>.</p> <p>For electronic application submission, these forms are available on the FOA's Grants.gov "Download Opportunity Instructions and</p>	<p>Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times</i>.</p>

	<p>Application" page under "Download Application Package" in the section entitled, "Mandatory."</p> <p>Also available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p> <p>These forms are <i>required</i> for applications under this FOA:</p> <ul style="list-style-type: none"> • Projects that include only non-construction activities must submit the SF-424A and SF-424B, along with the SF-424 and SF-P/PSL. 	
<p>Certification Regarding Lobbying (Grants.gov Lobbying Form)</p>	<p>Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications.</i></p> <p>For electronic application submission, these forms are available on the FOA's Grants.gov page under the "Application Package" tab in the section entitled, "Mandatory."</p> <p>Available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p>	<p>Submission is due with the application package. If it is not submitted with the application package, it must be submitted prior to the award of a grant.</p>
<p>SF-424A Budget Information - Non-Construction Programs / SF-424B Assurances - Non-Construction Programs and SF-424C - Budget Information Construction Programs / SF-424D - Assurances Construction Programs</p>	<p>Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications.</i></p> <p>For electronic application submission, these forms are available on the FOA's Grants.gov "Download Opportunity Instructions and Application" page under "Download Application Package" in the section</p>	<p>Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i></p>

	<p>entitled, "Mandatory."</p> <p>Also available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p> <p>These forms are <i>required</i> for applications under this FOA:</p> <ul style="list-style-type: none"> • Projects that include non-construction and construction activities must submit the SF-424A, B, C, and D, along with the SF-424 and SF-P/PSL. 	
<p>SF-Project/Performance Site Location(s) (SF-P/PSL)</p>	<p>Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications.</i></p> <p>For electronic application submission, these forms are available on the FOA's Grants.gov "Download Opportunity Instructions and Application" page under "Download Application Package" in the section entitled, "Mandatory."</p> <p>Also available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p>	<p>Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i></p>
<p>DUNS Number (Universal Identifier) and Systems for Award Management (SAM) registration.</p>	<p>Referenced in <i>Section III.3. Other</i> in the announcement.</p> <p>To obtain a DUNS number, go to http://fedgov.dnb.com/webform.</p> <p>To register at SAM, go to http://www.sam.gov.</p>	<p>A DUNS number and registration at SAM.gov are required for all applicants.</p> <p>Active registration at SAM must be maintained throughout the application and project award period.</p>
<p>SF-424 - Application for Federal Assistance</p>	<p>Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications.</i></p> <p>For electronic application submission these forms are</p>	<p>Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i></p>

	<p>available on the FOA's Grants.gov "Download Opportunity Instructions and Application" page under "Download Application Package" in the section entitled, "Mandatory."</p> <p>Also available at http://www.grants.gov/web/grants/forms.html by using the link to "SF-424 Family."</p>	<p>Do not attach required application elements or additional pages to the SF-424 at Questions 14 or 15! See Section IV.2. Formatting ACF Applications.</p>
Table of Contents	Referenced in <i>Section IV.2. The Project Description.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Project Summary/Abstract	Referenced in <i>Section IV.2. The Project Description.</i> The Project Summary/Abstract is limited to one single-spaced page.	Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
The Project Description	Referenced in <i>Section IV.2. The Project Description.</i>	Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Objectives and Need for Assistance	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Outcomes Expected	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Approach	Referenced in <i>Section IV.2. The Project Description.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Project Timeline and Milestones	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>

Program Performance Evaluation Plan	Referenced in <i>Section IV.2. The Project Description.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Funded Activities Evaluation Plan	Referenced in <i>Section IV.2. The Project Description.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Proof of Non-Profit Status	Referenced in <i>Section IV.2. The Project Description, Legal Status of Applicant Entity.</i>	Proof of non-profit status should be submitted with the application package by the due date listed in the <i>Overview</i> and <i>Section IV.3. Submission Dates and Times.</i> If it is not available at the time of application submission, it must be submitted prior to the award of a grant.
Additional Eligibility Documentation	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Logic Model	Referenced in <i>Section IV.2. The Project Description.</i>	Submission is due with the application package by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Organizational Capacity	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
The Project Budget and Budget Justification	Referenced in <i>Section IV.2. The Project Budget and Budget Justification</i> of the announcement.	Submission is required in addition to submission of SF-424A or SF-424C. It must be submitted with the application package by the due date in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>

Geographic Location	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Written Assurances and Certifications regarding Use of Funds, Data and Local Evaluation, Federal Evaluation, Non-Supplanting, and Voluntary Participation	Referenced in <i>Section IV.2. Required Forms, Assurances, and Certifications, Additional Assurances and Certifications.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Third-Party Agreements (also, MOUs and Consortia Agreements)	Referenced in <i>Section IV.2. Project Description.</i>	If available, submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3.</i> If not available at the time of application submission, due by the time of award.
Resumes	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Protection of Sensitive and/or Confidential Information	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Letter(s) of Agreement with local evaluator	Referenced in <i>Section IV.2. The Project Description.</i>	Submit with the application by the due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>
Indirect Cost Rate Agreement (IDR)	Referenced in <i>Section IV.2. The Project Budget and Budget Justification.</i> The IDR must be submitted with the application package.	If the IDR is available by the application due date, it must be submitted with the application package. If it is not available by the application due date, listed in the <i>Overview</i> and <i>Section IV.3. Submission Dates and Times</i> , it may be submitted prior to the award of a grant.
Job Descriptions	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>

Plan for Oversight of Federal Award Funds	Referenced in <i>Section IV.2. The Project Description.</i>	Submission due by the application due date found in <i>Overview</i> and <i>Section IV.3.</i>
Project Sustainability Plan	Referenced in <i>Section IV.2. The Project Description.</i>	Submission is due by the application due date found in the <i>Overview</i> and in <i>Section IV.3. Submission Dates and Times.</i>

Appendix

Standards for Grantee-level, Independent Evaluation Plans (to be developed during Planning Period, after Award)

Note: Consistent with the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521, under this FOA, OFA will not conduct or sponsor and a person is not required to respond to - a collection of information covered by such Act, unless it displays a currently valid OMB control number. OFA is seeking approval of a local evaluation descriptive template through the OMB Office of Information and Regulatory Affairs (OIRA). OFA will not request this information if this template is not approved at the time that reports are due.

During the planning period, grantees and their local evaluators are required to work with ACF to refine, improve, pilot (if possible), and make necessary changes to the evaluation design/methods. A final evaluation design will be drafted and proposed during this planning period. This Appendix specifies the minimum areas that will be addressed with each evaluation design after award.

(1) *Research question(s).* State the research question(s) with specificity, including the outcomes (such as program implementation features or participant outcomes) to be studied to answer the research question.

(2) *Background.* Describe previous literature or existing research that informs your research questions and how your project will expand the evidence-base.

(3) *Relation to program logic model (i.e., why a program would create the change it expects).* Link the research question(s) (and the implementation features and/or participant outcomes) to the logic model and the theory of change proposed for the program.

(4) *Hypotheses.* State the hypothesized result(s) of the evaluation (pair each hypothesis with a specific research question), and briefly describe why these results are anticipated.

(5) *Research design.* Describe the research design proposed to answer the research question(s). Justify why the proposed research design is best suited to answer the research question(s). If the design will include a program and control or comparison group(s), specify how the group(s) will be formed or selected and differentiate the programming for which each will be eligible. If multiple waves of data collection will be conducted, describe the timing of these waves (when naming follow-up periods, specify whether the follow-up period will be post-baseline or post-program completion). Performance measures may be considered part of your data collection plan. Also describe how respondents will be tracked over time for later data collection.

(6) *Methods to develop research groups (if two (or more) groups will not be compared, this issue does not need to be addressed.)* The control/comparison group and the program/treatment group should be assigned at random or matched on key characteristics.

(a) *Random assignment.* If random assignment will be conducted, describe how and when random

assignment will be conducted. Describe how random assignment will be monitored so that those assigned to specific research groups do not cross-over. Describe methods to monitor the comparability of the research groups.

(b) *Comparison group.* If a comparison group(s) will be created, describe how and when the comparison group will be identified. Detail steps that will be taken to increase the likelihood that participants in both the program/treatment and comparison groups of the project are similar. Describe methods to monitor the comparability of the research groups.

(c) *Other method(s).* If another type of evaluation research design is proposed, such as a regression discontinuity or a single case design, include an adequate description and justification that the proposed design is the most rigorous design possible for addressing the questions of interest.

(7) *Lead staff.* Clearly define the roles of lead staff for the evaluation, especially the Principal Investigator and/or Research Project Director. Articulate the experience, skills, and knowledge of the staff, as well as their ability to coordinate and support planning, implementation, and analysis related to a comprehensive evaluation plan. Include curriculum vitae for the Principal Investigator/Research Project Director and up to four more staff to be involved in the local evaluation in application appendices.

(8) *Sample.*

(a) *Target population(s) and unit of analysis.* Describe the target population(s) and explicitly state whether the population(s) differs from those who will be served by the grant in general. Describe how the target population will be identified. Explicitly state the unit of analysis (e.g., non-residential father, unmarried couple).

(b) *Sample size (If an impact evaluation is not proposed, this issue does not need to be addressed.)* If an impact evaluation is proposed, state the intended sample size (overall and by year), estimated attrition, and the anticipated size of the analytic sample. Provide power analyses demonstrating that proposed sample sizes will be able to detect expected effect sizes for the outcomes targeted. Refer to previous studies of similar interventions for estimates of the sample your study will require, to inform power analyses.

(c) *Methods to promote sufficient program participation.* Detail methods to ensure a sufficient sample is recruited, enrolls, and participates in the program. Describe any incentives to be offered for program participation/completion and/or data collection.

(9) *Data collection.*

(a) *Constructs and measures/data collection instruments.* Clearly articulate the constructs of interest, measures to evaluate those constructs, and specific data collection instruments. Provide any information on the reliability and validity of the data collection instruments. If measures and data collection instruments will be determined during the course of the evaluation planning, describe the process to determine the measures and instruments, including any pre-testing of data collection instruments.

(b) *Consent (and assent) (if youth under the age of 18 will not be involved in the evaluation, the issue of assent does not need to be addressed).* Describe how and when program applicants will be informed of the study and will have the option of agreeing (i.e., consenting) or declining to participate in the study. If youth under the age of 18 will be involved in the evaluation, or other protected populations such as incarcerated individuals, describe how and when their parent(s) or guardian(s) will be informed of the study and will have the option of agreeing (i.e., consenting to) or declining that their child may participate in the study, and describe how and when youth will offer assent to agree or decline to participate in the evaluation.

(c) *Methods of data collection.* Describe how data will be collected. Include a table detailing which data collection measures/instruments will be collected by which persons, and at what point in the

programming, or at what follow-up point. Describe any incentives to be offered to participants for completing surveys or other data collection efforts.

(d) *Ensuring and monitoring high-quality data collection.* Describe plans for training data collectors and for refreshing data collectors about procedures. Detail plans to regularly review data that has been submitted, and assess and swiftly address problems.

(e) *Tracking participants and reducing attrition (if no post-program or follow-up surveys are proposed to be conducted, this issue does not need to be addressed.)* If post-program and/or follow-up surveys will be conducted with participants, describe plans for tracking participants in order to conduct follow-up surveys with as many participants as possible. Describe how you will monitor for both overall and differential attrition.

(10) *Privacy.* Specify how the methods for data collection, storage, and transfer (e.g., transfer of performance data to the federal government) will ensure privacy for study participants.

(11) *IRB/Protection of human subjects.* Include a description of the process for protection of human subjects and institutional review board (IRB) review and approval of the proposed program and evaluation plans. Name the specific IRB to which you expect to apply. Additionally, include a federal-wide assurance in the Appendices of the application.

(12) *Data.* Describe the database into which data will be entered, that is nFORM and/or other databases, including both performance measure data and any additional local evaluation data. Describe the process for data entry (i.e., who will enter the data into the database).

(a) *Data reporting and transfer.* Indicate the ability to produce reports (e.g., for OFA) and to export individual-level data (with all of the above variables) to Excel or a comma-separated format.

(b) *Ability to link.* Indicate an ability to maintain individual identifying information to facilitate linking to data from other sources (e.g., administrative data systems such as unemployment insurance).

(c) *Current security and confidentiality standards.* Indicate the ability to be able to encrypt data access during transit (for example, accessed through an HTTPS connection), be able to encrypt data at rest (that is, when not in transit), have in place a data backup and recovery plan, require all users to have logins and passwords for them to access the data they are authorized to view, and have current anti-virus software installed to detect and address malware, such as viruses and worms.

(13) *Data Analysis.* Briefly describe the analysis expected to be undertaken. If an impact analysis is proposed, name the key dependent and independent variables, and describe any methods to minimize Type I error (that is, finding positive impacts by chance) such as limiting the number of impacts to be analyzed and/or multiple comparison correction.

(14) *Final reports.* Briefly describe the final reports that are envisioned, and confirm that they will adhere to standards that ACF will distribute.

(15) *Dissemination.* Briefly describe the dissemination efforts associated with the local evaluation to be undertaken, including any dissemination that will occur throughout the life of the evaluation (rather than after the evaluation is completed). Include a brief description of the planned products and potential topic for each product (e.g., a final report on program impacts, a brief on program implementation, etc.), in addition to how, where, and to whom these products will be disseminated.

(16) *Datasets.* Briefly describe the type of dataset that will be transmitted to ACF, including how data will be de-identified.

Attachment D

Pt. 75

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

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- 75.1 Acronyms.
- 75.2 Definitions.

Subpart B—General Provisions

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- 75.101 Applicability.
- 75.102 Exceptions.
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- 75.104 Supersession.
- 75.105 Effects on other issuances.
- 75.106 Agency implementation.
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- 75.108 Inquiries.
- 75.109 Review date.
- 75.110 Effective/Applicability date.
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- 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
- 75.202 Requirement to provide public notice of Federal financial assistance programs.
- 75.203 Notices of funding opportunities.
- 75.204 HHS funding agency review of merit of proposals.
- 75.205 HHS awarding agency review of risk posed by applicants.
- 75.206 Standard application requirements, including forms for applying for HHS financial assistance, and state plans.
- 75.207 Specific award conditions.
- 75.208 Certifications and representations.
- 75.209 Pre-award costs.
- 75.210 Information contained in a Federal award.
- 75.211 Public access to Federal award information.
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- 75.213 Metric system of measurement.
- 75.214 Disclosure of lobbying activities.
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- 75.217 Participation by faith-based organizations.

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Subpart D—Post Federal Award Requirements

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

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- 75.303 Internal controls.
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- 75.306 Cost sharing or matching.
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- 75.309 Period of performance and availability of funds.
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PROPERTY STANDARDS

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- 75.317 Insurance coverage.
- 75.318 Real property.
- 75.319 Federally-owned and exempt property.
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- 75.322 Intangible property and copyrights.
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- 75.324-75.325 [Reserved]

PROCUREMENT STANDARDS

- 75.326 Procurements by states.
- 75.327 General procurement standards.
- 75.328 Competition.
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- 75.330 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- 75.331 Procurement of recovered materials.
- 75.332 Contract cost and price.
- 75.333 HHS awarding agency or pass-through entity review.
- 75.334 Bonding requirements.
- 75.335 Contract provisions.
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PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

- 75.341 Financial reporting.
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Department of Health and Human Services

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 79 FR 76889, Dec. 19, 2014, unless otherwise noted.

Subpart A—Acronyms and Definitions

§ 75.1 Acronyms.

The following acronyms apply to this part:

- CAS Cost Accounting Standards
- CFDA Catalog of Federal Domestic Assistance
- CFR Code of Federal Regulations
- CMA Cash Management Improvement Act
- COG Councils of Governments
- COSO Committee of Sponsoring Organizations of the Treadway Commission
- EPA Environmental Protection Agency
- ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)
- EUI Energy Usage Index
- F&A Facilities and Administration
- FAC Federal Audit Clearinghouse
- FAIN Federal Award Identification Number
- FAR Federal Acquisition Regulation
- FFATA Federal Funding Accountability and Transparency Act of 2008 or Transparency Act—Public Law 109-282, as amended by § 6202(a) of Public Law 110-252 (31 U.S.C. 6101)
- FICA Federal Insurance Contributions Act
- FOIA Freedom of Information Act
- FR Federal Register
- FTE Full-time equivalent
- GAAP Generally Accepted Accounting Principles
- GAGAS Generally Accepted Government Auditing Standards

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GAO Government Accountability Office
GOCO Government owned, contractor operated
GSA General Services Administration
HHS U.S. Department of Health and Human Services
IBS Institutional Base Salary
IHE Institutions of Higher Education
IRC Internal Revenue Code
ISDEAA Indian Self-Determination and Education and Assistance Act
MTC Modified Total Cost
MTDC Modified Total Direct Cost
OMB Office of Management and Budget
PII Personally Identifiable Information
PMS Payment Management System
PRHP Post-retirement Health Plans
PTE Pass-through Entity
REUI Relative Energy Usage Index
SAM System for Award Management
SF 424 Standard Form 424 series and Form Families Application for Federal Assistance
SFA Student Financial Aid
SNAP Supplemental Nutrition Assistance Program
SPOC Single Point of Contact
TANF Temporary Assistance for Needy Families
TFM Treasury Financial Manual
U.S.C. United States Code
VAT Value Added Tax

§ 75.2 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular program or activities. These definitions could be supplemented by additional instructional information provided in government-wide standard information collections.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Audit finding means deficiencies which the auditor is required by § 75.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant, or a Federal, state, local government, or Indian Tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Awardee (see *Non-Federal entity*).

Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

- (1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and
- (2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or

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alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Catalog of Federal Domestic Assistance (CFDA) number means the number assigned to a Federal program in the CFDA.

CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in §75.381.

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Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §75.352(a). A cluster of programs must be considered as one program for determining major programs, as described in §75.518, and, with the exception of R&D as described in §75.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in §75.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For IHEs: Appendix III to part 75 C.11.

(2) For nonprofit organizations: Appendix IV to part 75 C.1.

(3) For state and local governments: Appendix V to part 75 F.1.

(4) For Indian tribes: Appendix VII to part 75 D.1.

Commercial organization means an organization, institution, corporation, or other legal entity, including, but not limited to, partnerships, sole proprietorships, and limited liability companies, that is organized or operated for the profit or benefit of its shareholders or other owners. The term includes small and large businesses and is used

interchangeably with "for-profit organization."

Compliance supplement means appendix XI to part 75 (previously known as the Circular A-133 Compliance Supplement).

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also *Supplies and Information technology systems*.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see *Subaward*).

Contractor means an entity that receives a contract as defined in *Contract*.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also *Final cost objective* and *Intermediate cost objective*.

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Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). This may include the value of allowable third party in-kind contributions, as well as expenditures by the recipient. See also §75.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Departmental Appeals Board means the independent office established in the Office of the Secretary with delegated authority from the Secretary to review and decide certain disputes between recipients of HHS funds and HHS awarding agencies under 45 CFR part 16 and to perform other review, adjudication and mediation services as assigned.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also *Capital assets, Computing devices, General purpose equipment, Information technology systems, Special purpose equipment, and Supplies.*

Excess property means property acquired in whole or in part under the control of any Federal awarding agency that, as determined by the head of the awarding agency or his/her delegate, is no longer required for the agency's needs or the discharge of its responsibilities.

Expenditure report means:

(1) For non-construction awards, the SF-425 Federal Financial Report (FFR) (or other OMB-approved equivalent report);

(2) For construction awards, the SF-271 "Outlay Report and Request for Re-

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imbursement" (or other OMB-approved equivalent report).

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to sub-recipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees;

(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an "agency" as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by subpart F of this part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: <http://harvester.census.gov/sac/>. Any future updates to the location of the FAC may be found at the OMB Web site.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101; or

(1) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 75.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of *Federal financial assistance*, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of *Federal financial assistance*, *grant agreement*, and *cooperative agreement*.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance:

(1) For grants and cooperative agreements, *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

- (i) Grants;
- (ii) Cooperative agreements;
- (iii) Non-cash contributions or donations of property (including donated surplus property);
- (iv) Direct appropriations;
- (v) Food commodities; and
- (vi) Other financial assistance (except assistance listed in paragraph (b) of this section).

(2) For subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

- (i) Loans;

- (ii) Loan Guarantees;
- (iii) Interest subsidies; and
- (iv) Insurance.

(c) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 75.502(h) and (i).

Federal interest means, for purposes of § 75.343 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) Federal share of total project costs; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

- (i) Research and development (R&D);
- (ii) Student financial aid (SFA); and
- (iii) "Other clusters," as described in the definition of Cluster of Programs

Federal share means the portion of total project costs that are paid by Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also *Cost objective* and *Intermediate cost objective*.

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding

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agency or pass-through entity. Accountability is based primarily on performance and results. See §§75.201(b) and 75.353.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a *Foreign Public Entity*.

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by

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the Comptroller General of the United States, which are applicable to financial audits.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also *Equipment* and *Special Purpose Equipment*.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Grantee (see *Recipient*)

HHS awarding agency means any organization component of HHS that is authorized to make and administer awards.

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment:

(1) Means any payment that should not have been made or that was made

in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(2) [Reserved]

(a) [Reserved]

(b) Includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendix III through appendix VII, and appendix IX of this part.

Indirect (Facilities and Administration or F&A) costs means costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Information technology systems means computing devices, ancillary equip-

ment, software, firmware, and similar procedures, services (including support services), and related resources. See also *Computing devices and Equipment*.

Institution of Higher Education (IHE) is defined at 20 U.S.C. 1001.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also *Cost objective* and *Final cost objective*.

Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards:

(1) Transactions are properly recorded and accounted for, in order to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Transactions are executed in compliance with:

(i) Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and

(ii) Any other Federal statutes and regulations that are identified in the Compliance Supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

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(2) Reliability of reporting for internal and external use; and

(3) Compliance with applicable laws and regulations.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *Program income*.

(1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term "direct loan obligation" means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term "loan guarantee" means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term "loan guarantee commitment" means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;

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(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and

(13) Any other agency or instrumentality of a multi-, regional, or intrastate or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 75.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 75.503(e).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or non-profit organization that carries out a Federal award as a recipient or sub-recipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 75.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In

some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§ 75.210(a)(5) and 75.352(a)(1)(v)).

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, or securities.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public Web sites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Principal Investigator/Program Director (PI/PD) means the individual (s) designated by the recipient to direct the project or program being supported by the grant. The PI/PD is responsible and accountable to officials of the recipient organization for the proper conduct of the project, program, or activity.

Prior approval means written approval by an authorized HHS official

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evidencing prior consent before a recipient undertakes certain activities or incurs specific costs.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §75.307(f). (See *Period of performance*.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also §§75.307, 75.407 and 35 U.S.C. 200-212 (applies to inventions made under Federal awards).

Project costs means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Project period (see *Period of performance*).

Property means real property or personal property.

Protected Personally Identifiable Information (Protected PII) *Protected PII* means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. (See also *Personally Identifiable Information (PII)*).

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regula-

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tion, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also *Non-Federal entity*.

Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by HHS award recipients. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR subpart 2.1 and in accordance with 41 U.S.C. 1908. See also *Micro-purchase*

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also *Equipment* and *General purpose equipment*.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1089d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Supplies means all tangible personal property other than those described in *Equipment*. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes

or \$5,000, regardless of the length of its useful life. See also *Computing devices and Equipment*.

Surplus property (see *Excess property*)

Suspension of award activities means an action by the HHS awarding agency requiring the recipient to cease all activities on the award pending corrective action by the recipient. It is a separate action from suspension under HHS regulations (2 CFR part 376) implementing Executive Orders 12549 and 12689.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that:

- (1) Benefit a federally assisted project or program; and
- (2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Total Costs (see § 75.402).

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds authorized under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.

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Subpart B—General Provisions

§ 75.100 Purpose.

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 75.101. HHS awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 75.102 and 75.210, or unless specifically required by Federal statute, regulation, or Executive Order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for HHS awarding agency management of Federal grant programs before the Federal award has been made, and the requirements HHS awarding agencies may impose on non-Federal entities in the Federal award.

(c) *Cost principles.* Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles

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except where restricted or prohibited by statute.

(d) *Single audit requirements and audit follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for HHS awarding agencies and pass-through entities when using the results of these audits.

(e) For OMB guidance to Federal awarding agencies on Challenges and Prizes, please see M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

§ 75.101 Applicability.

(a) *General applicability to Federal agencies.* The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(b)(1) *Applicability to different types of Federal awards.* The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to sub-awards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 75.351 through 75.353, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise. This table must be read along with the other provisions in this section

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The following portions of the part:	Are applicable to the following types of Federal Awards (except as noted in paragraphs (d) and (e)) below:	Are NOT applicable to the following types of Federal Awards:
Subpart A—Acronyms and Definitions. Subpart B—General Provisions, except for §§ 75.111, 75.112, and 75.113. Sections 75.111, 75.112, and 75.113.	—All. —All. —Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subparts C—D, except for Subrecipient Monitoring and Management.	—Grant agreements and cooperative agreements.	—Agreements for: loans, loan guarantees, interest subsidies and insurance —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs
Subpart D—Post Federal Award Requirements, Subrecipient Monitoring and Management. Subpart E—Cost Principles.	—All. —Grant agreements and cooperative agreements, except those providing food commodities. —Cost-reimbursement contracts awarded under the Federal Acquisition Regulations and cost-reimbursement and subcontracts under these contracts in accordance with the FAR. —Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation whenever cost analysis is performed or the contract requires the determination or negotiation of costs.	—Grant agreements and cooperative agreements providing food commodities —Fixed amount awards —Agreements for: loans, loan guarantees, interest subsidies and insurance —Federal awards to hospitals (See appendix IX)
Subpart F—Audit Requirements.	—All	

(2) Federal award of cost-reimbursement contract under the FAR to a non-Federal entity. When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D of this part, §§ 75.351 through 75.353 (in addition to any FAR related requirements for monitoring subpart D of this part and subpart F of this part are incorporated by reference into the contract. However, when the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part except for subpart F of this part when they are in conflict. In addition, costs that are made unallowable under 10 U.S.C.

2324(e) and 41 U.S.C. 4304(a) as described in the FAR subpart 31.2 and subpart 31.603 are always unallowable. For requirements other than those covered in subpart D of this part, §§ 75.351 through 75.353, subpart D of this part and subpart F of this part, the terms of the contract and the FAR apply.

(3) With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of

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the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C. 450-458ddd-2.

(c) HHS awarding agencies may apply subparts A through E of this part to Federal agencies (see § 75.215), for-profit entities, foreign public entities, or foreign organizations, except where the HHS awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(d) Except for § 75.202 and §§ 75.351 through 75.353 of subpart D of this part, the requirements in subpart C of this part, subpart D of this part, and subpart E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services, except to the extent that the cost and accounting standards of OMB apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B)); Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grant Awards for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under title V, subtitle D, chapter 2, section 583—the Secretary's discretionary award program) and both the Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant Award (42 U.S.C. 300x-21 to 300x-35 and 42 U.S.C. 300x-51 to 300x-64) and the Mental Health Service for the Homeless Block Grant Award (42 U.S.C. 300x-9) under the Public Health Service Act.

(2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

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(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(e) Except for § 75.202, the guidance in subpart C of this part does not apply to the following programs:

(1) Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (title IV-A of the Social Security Act, 42 U.S.C. 601-619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Social Security Act, 42 U.S.C. 651-699b);

(iii) Foster Care and Adoption Assistance (title IV-E of the Act, 42 U.S.C. 670-679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by § 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa-1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (e)(1) of this section;

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755),

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a),

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

§ 75.102 Exceptions.

(a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances. Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at www.whitehouse.gov/omb.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs except where otherwise required by law or where OMB or other approval is expressly required by this part. No case-by-case exceptions may be granted to the provisions of subpart F of this part.

(c) The HHS awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. An HHS awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) On a case-by-case basis, OMB will approve new strategies for Federal awards when proposed by the HHS awarding agency in accordance with OMB guidance (such as M-13-17) to develop additional evidence relevant to addressing important policy challenges or to promote cost-effectiveness in and across Federal programs. Proposals may draw on the innovative program designs discussed in M-13-17 to expand or improve the use of effective practices in delivering Federal financial assistance while also encouraging innovation in service delivery. Proposals submitted to OMB in accordance with M-13-17 may include requests to waive requirements other than those in subpart F of this part.

§ 75.103 Authorities.

This part is issued under the following authorities.

(a) Subpart B of this part through subpart D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541, the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106).

(b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan

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No. 2 of 1970; and Executive Order No. 11641.

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

§ 75.104 Supersession.

As described in § 75.110, this part supersedes:

(a) The following OMB guidance documents and regulations under Title 2 of the Code of Federal Regulations:

(1) A-21, "Cost Principles for Educational Institutions" (2 CFR part 220);

(2) A-87, "Cost Principles for State, Local and Indian Tribal Governments" (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);

(3) A-89, "Federal Domestic Assistance Program Information";

(4) A-102, "Grant Awards and Cooperative Agreements with State and Local Governments";

(5) A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations" (codified at 2 CFR 215);

(6) A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230);

(7) A-133, "Audits of States, Local Governments and Non-Profit Organizations, and

(8) Those sections of A-50 related to audits performed under subpart F of this part.

(b) This part also supersedes HHS' regulations at 45 CFR parts 74 and 92.

§ 75.105 Effect on other issuances.

For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part are superseded upon implementation of this part by the HHS awarding agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 75.102.

§ 75.106 Agency implementation.

HHS is implementing the language in 2 CFR part 200 in these codified regulations.

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§ 75.107 OMB responsibilities.

OMB will review HHS agency regulations and implementation of 2 CFR part 200, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 75.108 Inquiries.

Inquiries concerning 2 CFR part 200 may be directed to the Office of Federal Financial Management, Office of Management and Budget, in Washington, DC. Inquiries concerning 45 CFR part 75 should be addressed to the HHS awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

§ 75.109 Review date.

OMB will review 2 CFR part 200 and HHS will review 45 part 75 at least every five years after December 26, 2013.

§ 75.110 Effective/Applicability date.

(a) The standards set forth in this part which affect administration of Federal awards issued by Federal agencies become effective December 26, 2014. For the procurement standards in 2 CFR 200.317-200.326, non-Federal entities previously subject to OMB Circular A-110 may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in 2 CFR 200.104) for one additional fiscal year after this part goes into effect. If an entity chooses to remain with the previous procurement standards for an additional fiscal year before adopting the procurement standards in this part, they must document this decision in their internal procurement policies, in accordance with the guidance in appendix XI to this part.

(b) The standards set forth in subpart F of this part and any other standards which apply directly to HHS agencies will be effective December 26, 2013, and will apply to audits of fiscal years beginning on or after December 26, 2014.

§ 75.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the HHS awarding agency receives applications in another currency, the HHS awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 75.112 Conflict of interest.

(a) HHS awarding agencies must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the respective HHS awarding agency or pass-through entity in accordance with applicable HHS awarding agency's policy. As a general matter, HHS awarding agencies' conflict of interest policies must:

(1) Address conditions under which outside activities, relationships, or financial interests are proper or improper;

(2) Provide for advance notification of outside activities, relationships, or financial interests, and a process of review as appropriate; and

(3) Outline how financial conflicts of interest may be addressed.

(b) Agencies with Public Health Service (PHS) funded research will ensure that any conflict of interest policies are aligned with the requirements of 42 CFR part 60, subpart F.

§ 75.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the HHS awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 75.371, including suspension or debarment. (See also 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards**§ 75.200 Purpose.**

(a) Sections 75.201 through 75.208 prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 75.203, 75.204, 75.205, and 75.207, is required only for competitive Federal awards, but may also be used by the HHS awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The HHS awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, HHS awarding agencies, or pass-through entities as permitted in § 75.353, may use fixed amount awards (see § 75.2 Fixed amount awards) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The HHS awarding agency or pass-through entity may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit

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pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the HHS awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the HHS awarding agency or pass-through entity.

§75.202 Requirement to provide public notice of Federal financial assistance programs.

(a) The HHS awarding agency must notify the public of Federal programs in the Catalog of Federal Domestic Assistance (CFDA), maintained by the General Services Administration (GSA).

(1) The CFDA, or any OMB-designated replacement, is the single, authoritative, government-wide com-

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prehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the HHS awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission.

(3) The HHS awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the CFDA as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the HHS awarding agency must submit the following information to GSA:

(1) Program Description, Purpose, Goals and Measurement. A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the HHS awarding agency's performance plan and should support the HHS awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;

(2) Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) Projected total amount of funds available for the program. Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) Anticipated Source of Available Funds: The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));

(5) General Eligibility Requirements: The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and

(6) Applicability of Single Audit Requirements as required by subpart F of this part.

§ 75.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the HHS awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary Information in Notices of Funding Opportunities.* The HHS awarding agency must display the following information posted on the OMB-designated government-wide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

- (1) HHS Awarding Agency Name;
- (2) Funding Opportunity Title;
- (3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);
- (4) Funding Opportunity Number (required, if applicable). If the HHS awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;
- (5) Catalog of Federal Domestic Assistance (CFDA) Number(s);
- (6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant HHS awarding agency.

(b) The HHS awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The HHS awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the HHS awarding agency head or delegate.

(c) *Full Text of Funding Opportunities.* The HHS awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I of this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 75.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 75.204 and 75.205. See also 2 CFR part 27 (forthcoming at time of publication).

(6) Federal Award Administration Information. See also § 75.210.

§ 75.204 HHS funding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the HHS awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.) See also § 75.203.

§ 75.205 HHS awarding agency review of risk posed by applicants.

(a) Prior to making a Federal award, the HHS awarding agency is required by 31 U.S.C. 3921 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of government-wide eligibility qualification or financial integrity information, such as SAM Exclusions, and "Do Not Pay." See also suspension and debarment requirements at 2 CFR part 180 as well as HHS suspension and

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debarment regulations at 2 CFR part 376.

(b) In addition, for competitive grants or cooperative agreements, the HHS awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the HHS awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 75.203.

(c) In evaluating risks posed by applicants, the HHS awarding agency may use a risk-based approach and may consider any items such as the following:

- (1) Financial stability;
 - (2) Quality of management systems and ability to meet the management standards prescribed in this part;
 - (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
 - (4) Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and
 - (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.
- (d) In addition to this review, the HHS awarding agency must comply with the guidelines on government-wide suspension and debarment in 2 CFR part 100, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

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§ 75.206 Standard application requirements, including forms for applying for HHS financial assistance, and state plans.

(a) *Paperwork clearances.* The HHS awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) If applicable, the HHS awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

(c) *Forms for applying for HHS financial assistance.* HHS awarding agencies should use the Standard Form 424 (SF-424 Application for Federal Assistance) series (or its successor) and its program narrative whenever possible. Alternative mechanisms may be used for formula grant programs which do not require applicants to apply for funds on a project basis.

(1) Applicants shall use the SF-424 series or those forms and instructions prescribed by the HHS awarding agency.

(2) For Federal programs covered by Executive Order 12372, as amended by Executive Order 12416, the applicant shall complete the appropriate sections of the SF-424 indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the HHS awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review. (See also 45 CFR part 100.)

(3) HHS awarding agencies that do not use the SF-424 series will indicate on the application form they prescribe whether the application is subject to review by the State under Executive Order 12372.

(4) This section does not apply to applications for subawards.

(5) Except where otherwise noted, or granted by HHS deviation, HHS awarding agencies shall direct applicants to apply for HHS financial assistance through Grants.gov, an OMB-designated Web site for Find and Apply.

(d) *State plans.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12872, States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing Executive Order 12872.

(1) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(2) *Assurances.* In each plan, the State will include an assurance that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in this plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(1i) Repeat the assurance language in the statutes or regulations, or

(1ii) Develop its own language to the extent permitted by law.

(3) *Amendments.* A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations, or

(1i) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 75.207 Specific award conditions.

(a) The HHS awarding agency or pass-through entity may impose additional specific award conditions as needed in accordance with paragraphs (b) and (c) of this section, under the following circumstances:

(1) Based on the criteria set forth in § 75.205;

(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

(3) When an applicant or recipient fails to meet expected performance goals as described in § 75.210, or;

(4) When the applicant or recipient is not otherwise responsible.

(b) These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) The HHS awarding agency or pass-through entity must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable, and

(5) The method for requesting reconsideration of the additional requirements imposed.

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

§ 75.208 Certifications and representations.

Unless prohibited by Federal statutes or regulations, each HHS awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity falls

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to meet a requirement of a Federal award.

(a) The funds governed under this part shall be administered in compliance with the standards set forth in 45 CFR part 87.

(b) For assurances under State plans, see § 75.206(d)(2).

§ 75.209 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 75.458.

§ 75.210 Information contained in a Federal award.

A Federal award must include the following information:

(a) *General Federal award information.* The HHS awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with their unique entity identifier as defined in 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see § 75.2 *Federal award date*);

(5) Period of Performance Start and End Date;

(6) Amount of Federal Funds Obligated by this action,

(7) Total Amount of Federal Funds Obligated;

(8) Total Amount of the Federal Award;

(9) Budget Approved by the HHS Awarding Agency;

(10) Total Approved Cost Sharing or Matching, where applicable;

(11) Federal award project description (to comply with statutory requirements (e.g., FFATA));

(12) Name of HHS awarding agency and contact information for awarding official,

(13) CFDA Number and Program Name;

(14) Identification of whether the award is R&D; and

(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).

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(b) *General terms and conditions.* (1) HHS awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) Administrative requirements implemented by the HHS awarding agency as specified in this part.

(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 75.300.

(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the HHS awarding agency maintains the general terms and conditions.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the HHS awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the HHS awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(c) *HHS awarding agency, program, or Federal award specific terms and conditions.* The HHS awarding agency may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the HHS awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in § 75.203) in addition to being included in a Federal award. See also § 75.206.

(d) *Federal award performance goals.* The HHS awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with HHS awarding agency

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policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The HHS awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the HHS awarding agency.

§ 75.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the HHS awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated government-wide Web site (at time of publication, www.USAspending.gov).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 75.212 Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR parts 180 and 376. These regulations restrict awards, sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 75.213 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, declares that the metric system is the preferred measurement system for United States trade and commerce. HHS awarding agencies will follow the provisions of Executive Order 12770.

§ 75.214 Disclosure of lobbying activities.

Recipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.

§ 75.215 Special provisions for awards to commercial organizations as recipients.

(a) This section contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

(b) Prohibition against profit. Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(c) Program Income. Except for grants for research, program income earned by a commercial organization may not be used to further eligible project or program objectives except in the SBIR and STTR programs.

(d)(1) Commercial organizations that receive awards (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit of a particular award in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, in those cases where the commercial organization receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all awards in accordance with Generally Accepted Government Auditing Standards issued

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by the Comptroller General of the United States; or

(1) An audit that meets the requirements contained in subpart F.

(2) Commercial organizations that receive annual awards totaling less than the audit requirement threshold in subpart F are exempt from HHS audit requirements for that year, but records must be available for review by appropriate officials of Federal agencies or the Government Accountability Office. (See § 75.501).

§ 75.216 Special provisions for awards to Federal agencies.

(a) In order for an HHS awarding agency to make a Federal award to a Federal agency, the HHS awarding agency must have statutory authority that makes such Federal agency explicitly eligible for a Federal award.

(b) All provisions of this part and other HHS regulations apply to Federal entities receiving Federal awards, except for the following:

(1) Except for grants for research, any program income earned by a Federal institution must be used under the deduction alternative. Any program income earned after the end of grant support should be returned to the United States Treasury.

(2) No salary or fringe benefit payments may be made from HHS awarding agency grant funds to support career, career-conditional, or other Federal employees (civilian or uniformed services) without permanent appointments at a Federal institution receiving a grant. While the level of effort required for the project must be allowed by the recipient as part of each individual's official duties, salary costs associated with an individual participating in an official capacity as a Federal employee under a grant to that Federal institution are not allowable costs under an HHS awarding agency grant.

(3) Federal agencies may not be reimbursed for indirect costs under Federal awards.

§ 75.217 Participation by faith-based organizations.

The funds provided under this part must be administered in compliance with the standards set forth in 45 CFR part 87.

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Subpart D—Post Federal Award Requirements

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

§ 75.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements; including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

§ 75.301 Performance measurement.

The HHS awarding agency must require the recipient to use OMB approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the HHS awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance should be measured in a way that will

help the HHS awarding agency and other non-Federal entities to improve program outcomes, share lessons learned, and spread the adoption of promising practices. The HHS awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 75.210. Performance reporting frequency and content should be established to not only allow the HHS awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the HHS awarding agency's program and performance decisions are made.

§ 75.302 Financial management and standards for financial management systems.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 75.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 75.361, 75.362, 75.363, 75.364, and 75.365):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the HHS awarding agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in ac-

cordance with the reporting requirements set forth in §§ 75.341 and 75.342. If an HHS awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 75.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 75.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

§ 75.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of

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the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the HHS awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

§ 75.304 Bonds.

The HHS awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the HHS awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The HHS awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 75.305 Payment.

(a) For states, payments are governed by Treasury-State OMBIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A-2000

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Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 75.302(b)(6). Except as noted elsewhere in these part, Federal agencies must require recipients to use only OMB-approved standard government-wide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the HHS awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers

are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1603-1603r).

(3) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met, when the HHS awarding agency sets a specific condition per § 75.207, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the HHS awarding agency or pass-through entity must make payment within 90 calendar days after receipt of the billing, unless the HHS awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the HHS awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the HHS awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the HHS awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the HHS awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the

subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §§ 75.207, subpart D of this part, 75.371, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129. Under such conditions, the HHS awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated. (See 45 CFR part 30).

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 75.375.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

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(1) The HHS awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for the receipt, obligation and expenditure of funds.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(B) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(1) The non-Federal entity receives less than \$120,000 in Federal awards per year.

(i) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest bearing accounts.

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. Remittances must include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on federal funds. Pertinent details include the Payee Account Number (PAN) if the payment originated from PMS, or Agency information if the payment originated from ASAP, NSF or another federal agency payment system. The remittance must be submitted as follows:

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For ACH Returns:
Routing Number: 051036708
Account number: 303000
Bank Name and Location: Credit Gateway—
ACH Receiver St. Paul, MN

For Fedwire Returns*:
Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve
Bank Treas NYC/Funds Transfer Division
New York, NY

(* Please note organization initiating payment is likely to incur a charge from your Financial Institution for this type of payment)

For International ACH Returns:
Beneficiary Account: Federal Reserve Bank
of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 380 Greenwch Street, New
York, NY 10013 USA

Payment Details (Line 70): Agency Name
(abbreviated when possible) and ALO Agency
POC: Michelle Haney, (301) 492-5086

For recipients that do not have electronic remittance capability, please make check** payable to:

"The Department of Health and Human Services"

Mall Check to Treasury approved lockbox:
HHS Program Support Center
P.O. Box 530231
Atlanta, GA 30353-0231

(** Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

Any additional information/instructions may be found on the PMS Web site at <http://www.dpm.pso.gov/>.

§ 75.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with HHS awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. Furthermore, only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in

any allocation of indirect costs. See also §§ 75.414, 75.203, and appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the HHS awarding agency; and

(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E. If an HHS awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraphs (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the HHS awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (1) of this section at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally negotiated indirect cost rate or, a rate in accordance with § 75.414(f), provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings

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and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the HHS awarding agency has approved the charges. See also § 75.420.

(1) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the

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same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 75.307 Program income.

(a) *General.* Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or HHS awarding agency regulations as program income.

(1) The Patent and Trademark Laws Amendments, 34 U.S.C. 200-212, apply to inventions made under an award for performance of experimental, developmental, or research work.

(2) Unless the terms and conditions for the Federal award provide otherwise, recipients shall have no obligation to HHS with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award. However, no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the HHS awarding agency rights to inventions made by the recipient.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies, are not program income; such proceeds will be handled in accordance with the requirements of subpart D of this part, §§ 75.318, 75.320, and 75.321, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) *Use of program income.* If the HHS awarding agency does not specify in its

regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the HHS awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply unless the recipient is subject to conditions under § 75.207 or § 75.215. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the HHS awarding agency may distinguish between income earned by the recipient and income earned by sub-recipients and between the sources, kinds, or amounts of income. When the HHS awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the HHS awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of the HHS awarding agency (except for IHEs and nonprofit research institutions, as described in paragraph (e) of this section), program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) *Cost sharing or matching.* With prior approval of the HHS awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) *Income after the period of performance.* There are no Federal requirements governing the disposition of income earned after the end of the period

of performance for the Federal award, unless the HHS awarding agency regulations or the terms and conditions of the award provide otherwise. The HHS awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 75.361.

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity has no obligation to the HHS awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Awards, Contracts and Cooperative Agreements" is applicable.

§ 75.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see § 75.2 *Federal share*) or only the Federal share, depending upon HHS awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from HHS awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from HHS awarding agencies for one or more of the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted

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to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the HHS awarding agency, of costs that require prior approval in accordance with subpart B of this part or appendix IX of this part, or 48 CFR part 31, as applicable.

(5) The transfer of funds budgeted for participant support costs as defined in § 75.2 *Participant support costs* to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 75.102 and 75.407.

(8) A fixed amount subaward as described in § 75.353.

(9) The inclusion of research patient care costs in research awards made for the performance of research work.

(10) The provision of subawards by a pass-through entity on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201. See § 75.353.

(11) The recipient wishes to dispose of, replace, or encumber title to real property, equipment, or intangible property that are acquired or improved with a Federal award. See §§ 75.318, 75.320, 75.322, and 75.323.

(12) The need arises for additional Federal funds to complete the project.

(d) Except for requirements listed in paragraph (c)(1) of this section, the HHS awarding agencies are authorized, at their option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the HHS awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the HHS

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awarding agency. All costs incurred before the HHS awarding agency makes the Federal award are at the recipient's risk (i.e., the HHS awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 75.458.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the HHS awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior HHS awarding agency approval when:

(1) The terms and conditions of the Federal award prohibit the extension.

(i) The extension requires additional Federal funds.

(ii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent periods of performance.

(4) For Federal awards that support research, unless the HHS awarding agency provides otherwise in the Federal award or in the HHS awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(e) The HHS awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the HHS awarding agency.

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The HHS awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also §75.407).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the HHS awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart B of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When an HHS awarding agency makes a Federal award that provides support for construction and non-construction work, the HHS awarding agency may require the recipient to obtain prior approval from the HHS awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the HHS awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the HHS awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the HHS awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

(j) All approvals granted in keeping with the provisions of this section shall

not be valid unless they are in writing, and signed by at least one of the following HHS officials:

(1) The Head of the HHS awarding agency that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS awarding agency that made the award; or

(2) The responsible Grants Officer of the HHS awarding agency that made the award or an individual duly authorized by the Grants Officer.

§75.309 Period of performance and availability of funds.

(a) A non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance (except as described in §75.461) and any costs incurred before the HHS awarding agency or pass-through entity made the Federal award that were authorized by the Federal awarding agency or pass-through entity. Funds available to pay allowable costs during the period of performance include both Federal funds awarded and carryover balances.

(b) A non-Federal entity must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the final Federal Financial Report (FFR). This deadline may be extended with prior written approval from the HHS awarding agency.

§§ 75.310-75.315 [Reserved]

PROPERTY STANDARDS

§75.316 Purpose of property standards.

Sections 75.317 through 75.323 set forth uniform standards governing management and disposition of property furnished by HHS or whose cost was charged directly to a project supported by an HHS award. The HHS awarding agency may not impose additional requirements, unless specifically required to do so by Federal statute. The recipient may use its own property management standards and procedures provided they meet the provisions of these sections.

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§75.317 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to other property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§75.318 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* (1) Except as otherwise provided by Federal statutes or by the HHS awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(2) The non-Federal entity shall obtain written approval from the HHS awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purpose consistent with those authorized for support by the HHS awarding agency.

(c) *Disposition.* When real property is no longer needed as provided in subsection (b), the non-Federal entity must obtain disposition instructions from the HHS awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the HHS awarding agency. The amount paid to the HHS awarding agency will be computed by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or im-

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proved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the HHS awarding agency. The amount due to the HHS awarding agency will be calculated by applying the HHS awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the HHS awarding agency or to a third party designated/approved by the HHS awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§75.319 Federally-owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the HHS awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the HHS awarding agency for further Federal agency utilization.

(b) If the HHS awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the HHS awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology

Transfer Act (15 U.S.C. 3710 (1)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999). The HHS awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt Federally-owned property means property acquired under a Federal award where the HHS awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award. The HHS awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt Federally-owned property acquired under the Federal award remains with the Federal Government.

§ 75.320 Equipment.

See also § 75.439.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the HHS awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.

(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the pro-

gram or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the HHS awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the HHS awarding agency, in the following order of priority:

(1) Activities under a Federal award from the HHS awarding agency which funded the original program or project, then

(1) Activities under Federal awards from other HHS awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make the equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by the HHS awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 75.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property subject to the approval of the HHS awarding agency.

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(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a HHS awarding agency, except as otherwise provided in Federal statutes, regulations, or HHS awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the HHS awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with HHS awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise

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disposed of with no further obligation to the HHS awarding agency.

(2) Except as provided in § 75.319(b), or if the HHS awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The HHS awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the HHS awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the HHS awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the HHS awarding agency may direct the non-Federal entity to take disposition actions.

§ 75.321 Supplies.

See also § 75.453.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 75.320(e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal

award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 75.322 Intangible property and copyrights.

(a) Title to intangible property (see § 75.2 *Intangible property*) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the HHS awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 75.320(e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The HHS awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data.

(e) *Freedom of Information Act (FOIA)*.

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the HHS awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If

the HHS awarding agency obtains the research data solely in response to a FOIA request, the HHS awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the HHS awarding agency may assess under the FOIA (6 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(f) The requirements set forth in paragraph (e)(1) of this section do not apply to commercial organizations.

§ 75.323 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be

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held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The HHS awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

§§ 75.324-75.325 [Reserved]

PROCUREMENT STANDARDS

§ 75.326 Procurements by states.

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 § 75.331 and ensure that every purchase order or other contract includes any clauses required by § 75.335. All other non-Federal entities, including subrecipients of a state, will follow §§ 75.327 through 75.335.

§ 75.327 General procurement standards.

(a) The non-Federal entity 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 identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to em-

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ploy any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such

use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must 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. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12888. (See 2 CFR part 376.)

(i) The non-Federal entity must 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.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and
(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order

to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must 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 the non-Federal entity of any contractual responsibilities under its contracts. The HHS awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, tribal, state, or Federal authority having proper jurisdiction.

(l) The type of procuring instruments used must be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved.

§ 75.328 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal"

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product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) 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

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used

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in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 75.329 Procurement procedures.

The non-Federal entity must use one of the following methods of procurement.

(a) *Procurement by micro-purchases.* Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (*See micro-purchase*). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) *Procurement by sealed bids (formal advertising).* 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. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(hi) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) 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 state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) 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;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, for state, local, and tribal governments, the bids must be opened publically;

(iv) 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

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) 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;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting tech-

nical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) *Procurement by noncompetitive proposals.* Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The HHS awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§ 75.330 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

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(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (6) of this section.

§ 75.331 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 75.332 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifica-

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tions. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 75.333 HHS awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the HHS awarding agency or pass-through entity, technical specifications on proposed procurements where the HHS awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the HHS awarding agency or pass-through entity may still review the specifications, with such review usually limited to the

technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the HHS awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the HHS awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the HHS awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the HHS awarding agency's right to survey the system. Under a self-certification procedure, the HHS awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific poli-

cies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 75.334 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the HHS awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the HHS awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(d) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 228.

§ 75.335 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

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§§ 75.336-75.340 [Reserved]

PERFORMANCE AND FINANCIAL
MONITORING AND REPORTING

§ 75.341 Financial reporting.

Unless otherwise approved by OMB, the HHS awarding agency may solicit only the standard, OMB-approved government-wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

§ 75.342 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 75.352.

(b) *Non-construction performance reports.* The HHS awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the HHS awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in

unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the HHS awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the HHS awarding agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with the above-mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the HHS awarding agency program, the HHS awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by HHS awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The HHS awarding

agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the HHS awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The HHS awarding agency may make site visits as warranted by program needs.

(f) The HHS awarding agency may waive any performance report required by this part if not needed.

§ 75.343 Reporting on real property.

The HHS awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the HHS awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or an HHS awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

§§ 75.344–75.350 [Reserved]

SUBRECIPIENT MONITORING AND MANAGEMENT

§ 75.351 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with HHS awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The HHS awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 75.2 *Subaward*. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See § 75.2 *Contract*. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are

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when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 75.352 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.
 - (i) Subrecipient name (which must match the name associated with their unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see § 75.2 Federal award date);
 - (v) Subaward Period of Performance Start and End Date;

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- (vi) Amount of Federal Funds Obligated by this action;
- (vii) Total Amount of Federal Funds Obligated to the subrecipient;
- (viii) Total Amount of the Federal Award;
- (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
- (x) Name of HHS awarding agency, pass-through entity, and contact information for awarding official;
- (xi) OFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the OFDA number at time of disbursement;
- (xii) Identification of whether the award is R&D; and
- (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 75.414).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the HHS awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in § 75.414(f).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes

of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with subpart F, and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
- (4) The extent and results of HHS awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a HHS awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 75.207.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- (1) Reviewing financial and performance reports required by the pass-through entity.
- (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
- (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by § 75.521.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with

program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
- (2) Performing on-site reviews of the subrecipient's program operations;
- (3) Arranging for agreed-upon-procedures engagements as described in § 75.425.

(f) Verify that every subrecipient is audited as required by subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 75.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 75.371 and in program regulations.

§ 75.353 Fixed amount subawards.

With prior written approval from the HHS awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 75.201.

§§ 75.354-75.360 [Reserved]

RECORD RETENTION AND ACCESS

§ 75.361 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the HHS awarding agency or pass-through entity in the case of a subrecipient. HHS awarding agencies and pass-through entities must not impose any other record retention requirements

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upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the HHS awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the HHS awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to

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the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 75.362 Requests for transfer or records.

The HHS awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the HHS awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 75.363 Methods for collection, transmission and storage of information.

In accordance with Executive Order 13642, the HHS awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The HHS awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the HHS awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 75.364 Access to records.

(a) *Records of non-Federal entities.* The HHS awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through

entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the HHS awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the HHS awarding agency or delegate.

(c) *Expiration of right of access.* The rights of access in this section are not limited to the required retention period but last as long as the records are retained. HHS awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 75.365 Restrictions on public access to records.

No HHS awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the HHS awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13526 if the records had belonged to the HHS awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under

§ 75.322. Unless required by Federal, state, local, or tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

§§ 75.366–75.370 [Reserved]

REMEDIES FOR NONCOMPLIANCE

§ 75.371 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations, or the terms and conditions of a Federal award, the HHS awarding agency or pass-through entity may impose additional conditions, as described in § 75.207. If the HHS awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the HHS awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the HHS awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend (suspension of award activities) or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and HHS awarding agency regulations at 2 CFR part 376 (or in the case of a pass-through entity, recommend such a proceeding be initiated by a HHS awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 75.372 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the HHS awarding agency or pass-through entity, if a non-Federal

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entity fails to comply with terms and conditions of a Federal award;

(2) By the HHS awarding agency or pass-through entity for cause;

(3) By the HHS awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the HHS awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the HHS awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the HHS awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 75.381 and 75.386.

§ 75.378 Notification of termination requirement.

(a) The HHS awarding agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.

(c) Upon termination of a Federal award, the HHS awarding agency must provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant government-wide systems or entities of any indications of poor per-

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formance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 75.374 Opportunities to object, hearings, and appeals.

(a) Upon taking any remedy for non-compliance, the HHS awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the HHS awarding agency. The HHS awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

(b) See also:

(1) 42 CFR part 50, subpart D for the Public Health Service Appeals Procedures,

(2) 45 CFR part 16 for the Procedures of the Departmental Appeals Board, and

(3) 45 CFR part 95, subpart A for the time limits for states to file claims.

(4) 45 CFR part 95, subpart E for the State cost allocation plan disapprovals.

§ 75.375 Effects of suspension and termination.

Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the HHS awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the

period of performance in which the termination takes effect.

§§ 75.376-75.380 [Reserved]

CLOSEOUT

§ 75.381 Closeout.

The HHS awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and HHS awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The HHS awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the HHS awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The HHS awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the HHS awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 75.391 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the HHS awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to

the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 75.317 through 75.323 and 75.343.

(g) The HHS awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than 180 calendar days after receipt and acceptance of all required final reports.

§§ 75.382-75.385 [Reserved]

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 75.386 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the HHS awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The HHS awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in subpart F of this part.

(4) Property management and disposition requirements in §§ 75.317 through 75.323.

(5) Records retention as required in §§ 75.361 through 75.365.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the HHS awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

§§ 75.387-75.390 [Reserved]

COLLECTION OF AMOUNTS DUE

§ 75.391 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the HHS awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the HHS awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal. (See also HHS Claims Collection regulations at 45 CFR part 30.)

Subpart E—Cost Principles

GENERAL PROVISIONS

§ 75.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may

be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 75.2 *Indirect (facilities & administrative (F&A)) costs*.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 75.307.

§ 75.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships,

or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also §§ 75.2 Fixed amount awards and 75.201.

(4) Federal awards to hospitals (see appendix IX to part 75).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414-48 CFR 9904.414, and CAS 417-48 CFR 9904.417), apply rather than the allowability provisions of § 75.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organiza-

tions is contained in appendix VIII to part 75. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

BASIC CONSIDERATIONS

§ 75.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 75.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 75.306(b).

(g) Be adequately documented. See also §§ 75.300 through 75.309.

§ 75.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was

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made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

§ 75.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities

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and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefited projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 75.317 through 75.323 and 75.439.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

§ 75.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are:

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Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 75.436 and 75.468, for areas of potential application in the matter of Federal financing of activities.)

§ 75.407 Prior written approval (prior approval).

(a) Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or non-allocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the HHS awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (1) § 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (2) § 75.306 Cost sharing or matching;
- (3) § 75.307 Program income;
- (4) § 75.308 Revision of budget and program plans;
- (5) § 75.309 Period of performance and availability of funds;
- (6) § 75.318 Real property;

- (7) § 75.320 Equipment;
- (8) § 75.353 Fixed amount subawards;
- (9) § 75.413 Direct costs, paragraph (c);
- (10) § 75.430 Compensation—personal services, paragraph (h);
- (11) § 75.431 Compensation—fringe benefits;
- (12) § 75.438 Entertainment costs;
- (13) § 75.439 Equipment and other capital expenditures;
- (14) § 75.440 Exchange rates;
- (15) § 75.441 Fines, penalties, damages and other settlements;
- (16) § 75.442 Fund raising and investment management costs;
- (17) § 75.445 Goods or services for personal use;
- (18) § 75.447 Insurance and indemnification;
- (19) § 75.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (20) § 75.455 Organization costs;
- (21) § 75.456 Participant support costs;
- (22) § 75.458 Pre-award costs;
- (23) § 75.462 Rearrangement and reconversion costs;
- (24) § 75.467 Selling and marketing costs;
- (25) § 75.470 Taxes (including Value Added Tax) paragraph (c); and
- (26) § 75.474 Travel costs.

(b) A request by a subrecipient for prior approval will be addressed in writing to the recipient. The recipient will promptly review such request and shall approve or disapprove the request in writing. A recipient will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal-award to the recipient. If the revision, requested by the subrecipient would result in a change to the recipient's approved project which requires Federal prior approval, the recipient will obtain the HHS awarding agency's approval before approving the subrecipient's request.

(c) For cost-reimbursement contracts under the FAR, the recipient shall obtain prior written approval in accordance with FAR 52.244-2.

§ 75.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the

allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 75.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subpart, certain sections in this subpart describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 75.412 through 75.415);
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 75.416 and 75.417); and
- (c) Special Considerations for Institutions of Higher Education (§§ 75.418 and 75.419).

§ 75.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the HHS awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also subpart D of this part, §§ 75.300 through 75.309.

§ 75.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be

made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (pre-determined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT (F&A) COSTS

§ 75.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct

or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§75.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also §75.405.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

- (1) Administrative or clerical services are integral to a project or activity;
- (2) Individuals involved can be specifically identified with the project or activity;
- (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
- (4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

- (1) Include the salaries of personnel,
- (2) Occupy space, and
- (3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

- (1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also §75.454.
- (2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§75.454 and 75.450.
- (3) Promotion, lobbying, and other forms of public relations. See also §§75.421 and 75.450.
- (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also §75.432.
- (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also §75.442.
- (6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also §75.431.

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§ 75.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the sub-categories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for institutions of higher education, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to part 75.C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 75.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. An HHS awarding agency may use

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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 HHS awarding agency head or delegate must notify OMB of any approved deviations.

(3) The HHS 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 § 75.203(c), the HHS awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved. See also appendix I.C.2 and D.6 of this part. As appropriate, the HHS agency should incorporate discussion of these policies into their outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 75.352(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in appendices III-VII, and appendix IX as follows:

(1) Appendix III to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 75—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Non-profit Organizations;

(3) Appendix V to Part 75—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 75—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 75—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 75—Principles for Determining Costs Applicable to Research and Development

Under Grants and Contracts with Hospitals.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in appendix VII to part 75 (D)(1)(b) may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 75.408, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

§ 75.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I

am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Certification of cost-allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in appendices III through VII, and appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 75.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major non-profit organization as defined in § 75.414(a).

(d) See also § 75.450 for another required certification.

§75.416

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§75.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§75.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a prorated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in appendix V to this part.

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SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

§75.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 75.402 through 75.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§75.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR parts 9900 through 9999 and 48 CFR part 30 (FAR part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently completed fiscal year must disclose its cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in appendix III to part 75. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards.

(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of OAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable HHS agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected HHS awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable OAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 75.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of §§ 75.402 through 75.411. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 75.402 through 75.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the

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Federal award governs. Criteria outlined in § 75.403 must be applied in determining allowability. See also § 75.102.

§ 75.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 75.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of fund-

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ing opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 75.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 75.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the HHS awarding agency or as an indirect cost where allocable to Federal awards. See § 75.444, applicable to states, local governments and Indian tribes.

§ 75.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 75.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 75.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and subpart F of this part—have not been conducted or

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have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D of this part, §§ 75.351 through 75.353) which are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 75.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 75.428.

§ 75.427 Bonding costs.

(a) Bonding costs arise when the HHS awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: Bonds as bid, performance, payment, advance payment, infringement, and fi-

delity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 75.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 75.305.

§ 75.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in appendix III.B.9, as student activity costs.

§ 75.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 75.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies

and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (1) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by an HHS awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and
 (2) Non-organizational professional activities. If the HHS awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reim-

bursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(F), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable

amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) *Incidental activities.* Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the HHS awarding agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the HHS awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental

lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the HHS awarding agency.

(4) *Extra Service Pay* normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.*

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included

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in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(9) *Standards for documentation of personnel expenses.* (i) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities com-

pensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal awards based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are

often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (1)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (1)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (1)(5)(ii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (1)(5)(i) of this section may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (1)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved HHS awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

§75.481 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- (1) They are provided under established written leave policies;
- (2) The costs are equitably allocated to all related activities, including Federal awards; and,
- (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in §75.447); pension plan costs

(see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also §75.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment

compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-retirement health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual

payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the Federal Government's contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(1) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal

wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by law, employer-employee agreement, established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal

entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the HHS awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions for undergraduate education under IRC Section 117(d) as amended, provided that the benefit does not discriminate in favor of highly compensated employees. Federal reimbursement of tuition or remission of tuition is also limited to the institution for which the employee works. See § 75.466, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 75.402 through 75.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 75.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The HHS awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 75.438, 75.456, 75.474, and 75.476.

§ 75.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the HHS awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the HHS awarding agency. As such, contingency amounts

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are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§75.300 through 75.309 of subpart D of this part and 75.403); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the HHS awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§75.431 and 75.447.

§75.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see §75.306). Depreciation on donated assets is permitted in accordance with §75.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of §75.306.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of

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a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(1) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in §75.306.

(g) *Personal property and use of space.*
(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§75.300 through 75.309 of subpart D of this part. The value of the donations must be determined in accordance with §§75.300 through 75.309. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

§75.435 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements.

(a) *Definitions for the purposes of this section.* (1) *Conviction* means a judgment or conviction of a criminal offense by

any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs*. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(1) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(2) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction,

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a deter-

mination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the HHS awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(i)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the HHS awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

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(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final HHS agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide

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for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§75.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity, where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the

renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and

ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

§ 75.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 75.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the

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Federal award or with prior written approval of the HHS awarding agency.

§75.439 Equipment and other capital expenditures.

(a) See §75.2 for the definitions of *Capital expenditures*, *Equipment*, *Special purpose equipment*, *General purpose equipment*, *Acquisition cost*, and *Capital assets*.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the HHS awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the HHS awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the HHS awarding agency, or pass-through entity. See §75.436 for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also §75.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the HHS awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the HHS awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

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§75.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The HHS awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the HHS awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

§75.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the HHS awarding agency. See also §75.435.

§75.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in §75.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are

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unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated an appropriate share of indirect costs under the conditions described in § 75.413.

§ 75.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 75.436 and 75.439.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 75.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are dis-

posed of, the distribution of the proceeds must be made in accordance with §§ 75.317 through 75.323.

§ 75.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 75.474). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 75.435); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see § 75.2 *Local government*), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

§ 75.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to

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the employees. In addition, to be allowable direct costs must be approved in advance by an HHS awarding agency.

§ 75.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(4) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(1) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, *e.g.*, consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably fore-

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seen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 75.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the HHS awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 75.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(1) Contributions to reserves must be based on sound actuarial principles

using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

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§ 75.448 Intellectual property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 75.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a

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result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title there.

§ 75.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets are defined in § 75.2 *Capital assets.* An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(1) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(i) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (1) by the number of

months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after September 23, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to "full coverage" under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), and CAS 417 (48 CFR 9904.417).

§ 75.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1362, as well as the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52308 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or

state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid

material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, IRC secs. 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by IRC sec. 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 75.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 75.415.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 75.802 with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The HHS awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 75.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 75.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but

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keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see §75.439). These costs are only allowable to the extent not paid through rental or other agreements.

§75.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allowable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

§75.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the HHS awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

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(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also §75.450.

§75.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the HHS awarding agency.

§75.456 Participant support costs.

Participant support costs are defined in §75.2. Participant support costs are allowable with the prior approval of the HHS awarding agency.

§75.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to §75.439.

§75.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the HHS awarding agency.

§75.459 Professional services costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the

services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 75.435.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 75.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful

and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 75.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefitting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(c) The non-Federal entity may charge the Federal award before close-out for the costs of publication as prescribed in paragraphs (a) or (b) of this section or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 75.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the HHS awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 75.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the

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size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also §75.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;
- (3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
- (4) Meet the definition of "direct cost" as described in the applicable cost principles.

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§75.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 75.474, and not § 75.464, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 75.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) and (c) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is

one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 75.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate,

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for purposes such as the home office workspace is unallowable.

§75.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the HHS awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in §75.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also §75.431.

§75.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under §75.421) are unallowable, except as direct costs, with prior approval by the HHS award-

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ing agency when necessary for the performance of the Federal award.

§75.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under §75.406.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§75.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§75.470 Taxes (Including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the HHS awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHBs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the HHS awarding agency makes available the necessary exemption certificates,

(ii) Special assessments on land which represent capital improvements, and

(iii) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the HHS awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the HHS awarding agency.

§ 75.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the HHS awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in

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transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity.

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the HHS awarding agency (see also § 75.320(d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

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(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D of this part, §§ 75.371 through 75.375); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 75.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 75.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 75.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 75.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 75.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the HHS awarding agency. See also § 75.432.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

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§ 75.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 75.474.

HHS SELECTED ITEMS OF COST

§ 75.476 Independent research and development costs.

Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

Subpart F—Audit Requirements

GENERAL

§ 75.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among HHS agencies for the audit of non-Federal entities expending Federal awards.

AUDITS

§ 75.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 75.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal

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program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 75.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 75.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 75.351 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractor is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal

award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 75.352.

(i) Recipients and subrecipients that are commercial organizations (including for-profit hospitals) have two options regarding audits:

(1) A financial related audit (as defined in the Government Auditing Standards, GPO Stock #020-000-00-265-4) of a particular award in accordance with Government Auditing Standards, in those cases where the recipient receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all HHS awards in accordance with Government Auditing Standards; or

(2) An audit that meets the requirements contained in this subpart.

(j) Commercial organizations that receive annual HHS awards totaling less than \$750,000 are exempt from requirements for a non-Federal audit for that year, but records must be available for review by appropriate officials of Federal agencies.

(k) See also § 75.215.

§ 75.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at IHEs.* When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal

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awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the HHS agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§75.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such

audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) Federal agency to pay for additional audits. A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. An HHS awarding agency may request that an auditee have a particular Federal program audited as a major program in

lieu of the HHS awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the HHS awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 75.518 and, if not, the estimated incremental cost. The HHS awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this HHS awarding agency request, and the HHS awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 75.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 75.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 75.371.

§ 75.506 Audit costs.

See § 75.425.

§ 75.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including HHS awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 75.511(b), and a corrective action plan consistent with the requirements of § 75.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 75.514(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 75.514(d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule

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of prior audit findings prepared by the auditee in accordance with the requirements of § 75.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 75.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 75.515(d)(1) and findings and questioned costs consistent with the requirements of § 75.515(d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection.

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Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 75.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

- (1) § 75.500 through § 75.503(d);
- (2) § 75.504 through § 75.506;
- (3) § 75.508 through § 75.509;
- (4) § 75.511;
- (5) § 75.512(e) through (h);
- (6) § 75.513;
- (7) § 75.516 through § 75.517;
- (8) § 75.521, and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

AUDITEES

§ 75.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with § 75.509, and ensure it is properly performed and submitted when due in accordance with § 75.512.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 75.510.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 75.511(b) and § 75.511(c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

§ 75.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 75.326 through 75.336 of subpart D of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 75.330, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

§ 75.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 75.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 75.502. While not required, the auditee may choose to provide information requested by HHS awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number

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assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in §75.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in §75.414.

§75.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under §75.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings

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except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in §75.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

§ 75.512 Report submission.

(a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in appendix X to part 75, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its

entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 75.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 75.511(b);

(3) Auditor's report(s) discussed in § 75.515; and

(4) Corrective action plan discussed in § 75.511(e).

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(d) *Submission to FAC.* The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 75.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

FEDERAL AGENCIES

§ 75.513 Responsibilities.

(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for peri-

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ods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a government-wide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This government-wide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, HHS awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable HHS awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in § 75.2 *Cross-cutting audit finding*) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 75.2 *Oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) HHS awarding agency responsibilities. The HHS awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 75.210):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the HHS awarding agency must:

(i) Issue a management decision as prescribed in § 75.521;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see § 75.2 *Cooperative audit resolution*) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by HHS awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the HHS awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

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(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the HHS awarding agency's program management personnel related to the single audit process.

(iv) Promote the HHS awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the HHS awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one HHS awarding agency.

(vii) Ensure the HHS awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the HHS awarding agency's single audit accountable official's mission.

AUDITORS

§ 75.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such

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audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(1) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(1) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting

noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 75.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents

the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data collection form.* As required in § 75.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

§ 75.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, or award agreements, non-compliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

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(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the addressee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 75.516(a);

(vii) An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 75.518(b)(1), or (b)(3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the addressee qualified as a low-risk addressee under § 75.520.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 75.516(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as

a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 75.512(b) when allowed by GAGAS and appendix X to part 75.

§ 75.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the

questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 75.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in

sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a sub-recipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

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(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 75.512(b) to allow for easy referencing of the audit findings during follow-up.

§ 75.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is

aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 75.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal this program. The process in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
(i) Equal to or exceed \$750,000 but less than or equal to \$25 million.	\$750,000.
(ii) Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
(iii) Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
(iv) Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
(v) Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
(vi) Exceed \$20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four

times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 75.502.

(4) For biennial audits permitted under § 75.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) *Step two.* (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 75.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 75.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 75.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve an HHS awarding agency's request that a

Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the HHS awarding agency to comply with 31 U.S.C. 8515. The HHS awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 100 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 75.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 75.519(b)(1), (b)(2), and (c)(1), a single criteria in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* If the auditee meets the criteria in § 75.520,

the auditor need only audit the major programs identified in Step 4 (paragraph (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

§75.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the

expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(1) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have

high risk for noncompliance with requirements of §75.480, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or close-out of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§75.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with §75.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in §75.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the fol-

lowing in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under §75.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under §75.515(c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

MANAGEMENT DECISIONS

§75.521 Management decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* As provided in §75.518(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in §75.518(c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity.* As provided in §75.352(d), the pass-through entity

must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The HHS awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §75.518(c).

APPENDIX I TO PART 75—FULL TEXT OF NOTICE OF FUNDING OPPORTUNITY

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is an HHS awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that an HHS awarding agency would include in that section of an actual announcement.

An HHS awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if an HHS awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, an HHS awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an HHS awarding agency may want to include in Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but that does not preclude repeating the information in Section I or creating a cross reference between Sections A and C.1, as long as a potential ap-

plicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the HHS awarding agency's funding priorities or the technical or focus areas in which the HHS awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the HHS awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the HHS awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the HHS awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in section A, or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. HHS agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the HHS awarding agency returning the application without review or, even though an application may be reviewed, will preclude the HHS awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D. specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.8 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.8.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in

§75.306. This section should refer to the appropriate portion(s) of section D, stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. *Address to Request Application Package—Required.* Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

1. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on

the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).

3. Unique Entity Identifier and System for Award Management (SAM)—Required.

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

(i) Be registered in SAM before submitting its application;

(ii) provide a valid unique entity identifier in its application; and

(iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times—Required. Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information

before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see §75.203).

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the Federal awarding agency plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (e.g., whether it is the date and time by which the Federal awarding agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgement of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. Intergovernmental Review—Required, if applicable. If the funding opportunity is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," the notice must say so. In alerting applicants that they must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site, www.whitehouse.gov/omb/grants/spoc.html.

6. *Funding Restrictions—Required.* Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. *Other Submission Requirements—Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.¹

E. Application Review Information

1. *Criteria—Required.* This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the appli-

cation process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The HHS awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the HHS awarding agency or HHS awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal HHS awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

¹With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each HHS awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the HHS awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. Anticipated Announcement and Federal Award Dates—Optional. This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the HHS awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the HHS awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 75.210.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the HHS awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some

specific terms and conditions that differ from the HHS awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those specific terms and conditions. Doing so will alert applicants that have received Federal awards from the HHS awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required. This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the HHS awarding agency's Federal awards usually require.

G. HHS Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the HHS awarding agency should consider approaches such as giving:

1. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
2. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
3. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

1. Indicate whether this is a new program or a one-time initiative.
2. Mention related programs or other upcoming or ongoing HHS awarding agency funding opportunities for similar activities.
3. Include current Internet addresses for the HHS awarding agency Web sites that

may be useful to an applicant in understanding the program.

4. Alert applicants to the need to identify proprietary information and inform them about the way the HHS awarding agency will handle it.

5. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

APPENDIX II TO PART 75—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the HHS agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, as amended by Executive Order 11375, and implementing regulations at 41 CFR part 60.

D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each

solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.

G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with

all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7871q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1261-1367). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension (Executive Orders 12549 and 12889)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12889 (3 CFR part 1989 Comp., p. 295), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J. See §75.331 Procurement of recovered materials.

APPENDIX III TO PART 75—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHHS (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

c. *Other sponsored activities* means programs and projects financed by Federal and non-

Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §75.468 of this part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of

the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.*

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost

groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1988, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsections B.4.c may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institu-

tions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See §75.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §75.438.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking

areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in §75.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as deprecia-

tion, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the "effective square footage" described in subsection (c)(2)(i) of this section.

(ii) "Effective square footage" allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory "Labs for the 21st Century" benchmarking tool <http://labs21benchmarking.lbl.gov/CompareData.php> and the US Department of Energy "Buildings Energy Databook" and <http://buildingsdatabook.eren.doe.gov/CBECS.aspx>) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-

university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administra-

tion and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 75.413(c) and 75.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses,

operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 75.408. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E of this part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B of this paragraph C.1, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major

function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2, and B.2 through B.3, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in

relation to other Federal awards at the institution.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefiting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in §75.2. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87-636 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of §75.414 Federal agencies must use the negotiated rates for indirect (F&A) costs in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in §75.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 20% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, Identification and assignment of indirect (F&A) costs, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow

changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the "Administration" portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in §75.2.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see the requirements of §75.352.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See §75.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1538.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect

costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section II of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this part 75 at an institution does not exceed \$10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear

inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a. from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: http://www.whitehouse.gov/omb/grants_forms.

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)".

2. Certification of Indirect (F&A) Costs

a. *Policy.* Cognizant agencies must not accept a proposed indirect cost rate unless

such costs have been certified by the educational institution using the Certificate of Indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature:

Name of Official:

Title:

Date of Execution:

APPENDIX IV TO PART 75—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR NONPROFIT ORGANIZATIONS

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in §75.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

"Major nonprofit organizations" are defined in §75.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in §75.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such contracts or subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in §75.2.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in section A.3 of this Appendix, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

8. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §75.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with §75.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and in-

terest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in §75.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of

usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(1) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(1) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in §75.2, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect cost categories could be used if such allocation will result in a

more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.6 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in §75.2).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: "Facilities" and "Administration," as described in section A.3 of this Appendix.

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fund-raising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must

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be computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (1) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (2) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

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e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 75.414.) Where a non-Federal entity only receives funds as a subrecipient, see the requirements of § 75.352.

b. Except as otherwise provided in § 75.414(e), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 75.414(f), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

1. **Required Certification.** No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in subsection b., below. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

2. **Certificate.** Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with Subpart E of part 75.

(3) This proposal does not include any costs which are unallowable under Subpart E of part 75 such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization:
Signature:
Name of Official:
Title:
Date of Execution:

APPENDIX V TO PART 75—STATE/LOCAL GOVERNMENTWIDE CENTRAL SERVICE COST ALLOCATION PLANS

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government." A copy of this brochure may be obtained from the HHS' Cost Allocation Services at <https://rates.psa.gov>.

B. Definitions

1. **Agency or operating agency** means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal

awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in §75.2. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. *Major local government* means local government that receives more than \$100 million in direct Federal awards subject to this part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service, the plan must also include the following: A brief description of the service,* an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.*

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement

health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit:

Signature:

Name of Official:

Title:

Date of Execution:

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate.

Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially in-

complete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) Are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a re-opening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year

involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) A cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D of part 75.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

APPENDIX VI TO PART 75—PUBLIC ASSISTANCE COST ALLOCATION PLANS

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid for Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with

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Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section B, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

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F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) A cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

APPENDIX VII TO PART 75—STATES AND LOCAL GOVERNMENT AND INDIAN TRIBE INDIRECT COST PROPOSALS

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the HHS' Cost Allocation Services at <https://rates.psc.gov>.

4. Because of the diverse characteristics and accounting practices of governmental

units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to part 75.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished

by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefited functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefited functions. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental

unit's activities is potentially adaptable for use as an allocation base provided that: (1) It can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate

for the affected Federal award. Where a "restricted rate" is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in §75.961.

b. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross

referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required Certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this 45 CFR part 75. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rates.

I declare that the foregoing is true and correct.

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Governmental Unit:
Signature:
Name of Official:
Title:
Date of Execution:

M. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in §75.420 of this part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the govern-

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mental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

APPENDIX VIII TO PART 75—NONPROFIT ORGANIZATIONS EXEMPTED FROM SUBPART B OF PART 75

Advance Technology Institute (ATI), Charleston, South Carolina
 Aerospace Corporation, El Segundo, California
 American Institutes of Research (AIR), Washington, DC
 Argonne National Laboratory, Chicago, Illinois
 Atomic Casualty Commission, Washington, DC
 Battelle Memorial Institute, Headquartered in Columbus, Ohio
 Brookhaven National Laboratory, Upton, New York
 Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
 CNA Corporation (CNAO), Alexandria, Virginia
 Environmental Institute of Michigan, Ann Arbor, Michigan
 Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
 Hanford Environmental Health Foundation, Richland, Washington
 IIT Research Institute, Chicago, Illinois
 Institute of Gas Technology, Chicago, Illinois
 Institute for Defense Analysis, Alexandria, Virginia
 LMI, McLean, Virginia
 Mitre Corporation, Bedford, Massachusetts
 Nohlis, Inc., Falls Church, Virginia
 National Radiological Astronomy Observatory, Green Bank, West Virginia
 National Renewable Energy Laboratory, Golden, Colorado
 Oak Ridge Associated Universities, Oak Ridge, Tennessee
 Rand Corporation, Santa Monica, California
 Research Triangle Institute, Research Triangle Park, North Carolina
 Riverside Research Institute, New York, New York
 South Carolina Research Authority (SCRA), Charleston, South Carolina
 Southern Research Institute, Birmingham, Alabama
 Southwest Research Institute, San Antonio, Texas
 SRI International, Menlo Park, California
 Syracuse Research Corporation, Syracuse, New York
 Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
 Urban Institute, Washington DC
 Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
 Other non-profit organizations as negotiated with Federal awarding agencies

APPENDIX IX TO PART 75—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH HOSPITALS

A. Purpose and Scope

1. Objectives

This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Health and Human Services. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

2. Policy Guides

The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health and Human Services as to their scope, applicability and interpretation. It is recognized that:

- a. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.
- b. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.
- c. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.
- d. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.
- e. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program

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differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

3. Application

All operating agencies within the Department of Health and Human Services that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

B. Definition of Terms

1. *Organized research* means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

3. *Research agreement* means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

4. *Instruction and training* means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

5. *Other hospital activities* means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See paragraph C.4 below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in paragraph E.1.) are properly allocable.

6. *Patient care* means those departments or cost centers which render routine or anol-

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lary services to in-patients and/or out-patients. As used in paragraph I.2.w, it means the cost of these services applicable to patients involved in research programs.

7. *Allocation* means the process by which the indirect costs are assigned as between:

a. Organized research,
b. Patient care including departmental research.

c. Instruction and training, and
d. Other hospital activities.

8. *Cost center* means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

9. *Cost finding* is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

10. *Step down* is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue-producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

11. *Scatter bed* is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

12. *Discrete bed* is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

C. Basic Considerations

1. Composition of Total Costs

The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See paragraph C.5.)

2. Factors Affecting Allowability of Costs

The tests of allowability of costs under these principles are:

- a. They must be reasonable.
- b. They must be assigned to research agreements under the standards and methods provided herein.
- c. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See paragraph A.2.e.) and
- d. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. Reasonable Costs

A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

- a. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,
- b. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,
- c. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and
- d. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

4. Allocable Costs

a. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the

amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. Applicable Credits

a. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in paragraph E.1. Typical examples of such transactions are: Purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

b. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

D. Direct Costs

1. General

Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account

groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in paragraph VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

2. Application to Research Agreements

Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see paragraph E.2.d(2)); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

III. Indirect Costs

1. General

Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

2. Criteria for Distribution

a. Base period.

A base period for distribution of indirect costs is the period during which such costs

are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. Need for cost groupings.

The overall objective of the allocation process is to distribute the indirect costs described in paragraph F. to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in paragraph E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in 2.c. below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, paragraph H. provides an alternate method which may be used under certain conditions.

c. Selection of distribution method.

Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under 2.b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

(1) It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of

usage, number of documents processed, population served, and the like); and

(2) It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

d. General consideration on cost groupings.

The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in 2.b. and 2.c. above.

(2) Where any types of expense ordinary treated as indirect cost as outlined in paragraph are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in B.5.) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar services, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

(6) Where the hospital is affiliated with a medical school or some other institution

which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also paragraph.)

e. Materiality.

Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

3. Administration of Limitations on Allowances for Indirect Costs

a. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

(1) The terms and amount authorized in each case conform with the provisions of paragraphs C, E, and I of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

(2) The amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

b. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in 3.a. above, such alternative amounts should be determined in accordance with the following guides:

(1) The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

(2) The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

c. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

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F. Identification and Assignment of Indirect Costs

1. Depreciation or Use Charge

a. The expenses under this heading should include depreciation (as defined in paragraph I.2.(1)) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See paragraph I.2.)

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in paragraph E.2., on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

2. Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

b. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in paragraph E.2.

3. Operation of Plant

a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

b. The expenses included in this category should be allocated to applicable cost cen-

ters in a manner consistent with the guides provided in paragraph E.2., on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

(1) Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

4. Maintenance of Plant

a. The expenses under this heading should include:

(1) All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

(2) All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

(3) Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

b. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

(1) Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

(3) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

5. Laundry and Linen

a. The expenses under this heading should include:

(1) Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

(2) Supplies used in connection with the laundry operation and all linens purchased; and

(3) Amounts paid to outside concerns for purchased laundry and/or linen service.

b. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

(1) Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

6. Housekeeping

a. The expenses under this heading should include:

(1) All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

(2) All supplies used in carrying out the housekeeping functions; and

(3) Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

(1) Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

(2) Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

(3) Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

7. Dietary

a. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

b. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to number of employees.

8. Maintenance (Housing) of Personnel

a. The expenses under this heading should include:

(1) The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

(2) All supplies used in connection with the operation of such dormitories; and

(3) Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

(1) Appropriate credit should be given for all payments received from employees or otherwise to reduce the expense to be allocated;

(2) A net cost per housed employee may then be computed; and

(3) Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

9. Medical Records and Library

a. The expenses under this heading should include:

(1) The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

(2) All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

b. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in paragraph E.2. on a basis that gives

primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

G. Determination and Application of Indirect Cost Rate or Rates

1. Indirect Cost Pools

a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

(1) Such indirect cost rate differs significantly from that which would have obtained under a. above; and

(2) The volume of research work to which such rate would apply is material in relation to other government research at the institution.

c. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribu-

tion of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

2. The Distribution Base

Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to paragraph G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

3. Negotiated Lump Sum for Overhead

A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Overhead Rates

The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

H. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in paragraph H.2, below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

b. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

c. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

2. Abbreviated Procedure

a. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in paragraph I.2.d. and unallowable costs as defined under various headings in paragraph I. and paragraph C.5.

b. Total expenditures as adjusted under the foregoing will then be distributed among (1) expenditures applicable to administrative and general overhead functions, (2) expenditures applicable to all other overhead functions, and (3) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in paragraphs F.2. and 7. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and House-keeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital

activities as defined under paragraph B.5. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in paragraph E. shall be considered as expenditures for all other purposes.

c. The expenditures distributed to the first two groups in paragraph H.2.b. should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in paragraph C.5.a.

d. In applying the procedures in paragraphs H.2.a and 2.b, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

e. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under paragraphs H.2.b and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All Other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under paragraphs H.2.b. and 2.c. above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under paragraph H.2.b.

I. General Standards for Selected Items of Cost

1. General

This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that

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it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

- a. Facilities costs, such as:
 - (1) Depreciation
 - (2) Rental
 - (3) Use charges for fully depreciated assets
 - (4) Idle facilities and idle capacity
 - (5) Plant reconversion
 - (6) Extraordinary or deferred maintenance and repair
 - (7) Acquisition of automatic data processing equipment.
- b. Pre-award costs
- c. Non-hospital professional activities
- d. Self-insurance
- e. Support services charged directly (computer services, printing and duplicating services, etc.)
- f. Employee compensation, travel, and other personnel costs, including:
 - (1) Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation;
 - (2) Morale, health, welfare, and food service and dormitory costs.

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- (3) Training and education costs.
- (4) Relocation costs, including special or mass personnel movement.

2. Selected Items

a. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for:

- (1) The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in paragraph I.2.hh;
- (2) The procurement of scarce items for the performance of the research agreement; or
- (3) The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraphs D. and E. are observed.

b. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

c. *Bonding costs.*

(1) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(2) Costs of bonding required pursuant to the terms of the research agreement are allowable.

(3) Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

d. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

e. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

f. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

g. *Compensation for personal services.*

(1) General

Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see paragraph 1.2.j.), and pension plan costs (see paragraph 1.2.y.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

(2) Payroll Distribution

Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in paragraph (3) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (i) Patient care; (ii) organized research; (iii) instruction and training; (iv) indirect activities as defined in paragraph B.1.; or (v) other hospital activities as defined in paragraph B.5.

(3) Reporting Time or Effort

Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

(4) Preparation of Estimates of Effort

Where required under paragraph (3) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (2) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in

appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

(5) Application of Budget Estimates

Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

(6) Non-Hospital Professional Activities

A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (i) hospital activities, and (ii) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

(7) Salary Rates for Part-Time Appointments

Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

h. Contingency provisions.

Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

i. Depreciation and use allowances.

(1) Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation

when depreciation or other equivalent costs are not considered.

(2) Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

(3) Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (4) below, is an allowable element of research cost provided that the amount thereof is computed:

i. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

ii. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

iii. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

- (a) The straight line method;
- (b) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (a) above;
- (c) The sum of the years-digits method; and

(d) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (b) above.

(4) Where the depreciation method is followed, adequate property records must be

maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(5) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(6) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(7) Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Pub. L. 89-97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966-67, with such percentage being uniformly reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, *Operating Costs* means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other ac-

tivities. *Allowable Costs* means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Pub. L. 89-97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health and Human Services.

(8) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

(9) Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

j. *Employee morale, health, and welfare costs and credits.*

The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance with the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be

credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

k. Entertainment costs.

Except as pertains to j. above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

l. Equipment and other facilities.

The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

m. Fines and penalties.

Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

n. Insurance and indemnification.

(1) Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

(2) Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (i) Types and extent and cost of coverage must be in accordance with sound institutional practice; (ii) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (iii) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(3) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

(4) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

o. Interest, fund raising and investment management costs.

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(2) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

(3) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

(4) Costs related to the physical custody and control of monies and securities are allowable.

p. Labor relations costs.

Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

q. Losses on research agreements or contracts.

Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat amounts for overhead, or legal or administrative limitations.

r. Maintenance and repair costs.

(1) Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

ii. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

(2) Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

s. Material costs.

Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material

cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

t. Memberships, subscriptions and professional activity costs.

(1) Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

(2) Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

(3) Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

u. Organization costs.

Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (1) organization or reorganization of a hospital, or (2) raising capital, are unallowable.

v. Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

w. Patient care.

The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

(1) Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

(2) Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

(3) Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Pub. L. 89-97 (Medicare Program) as defined under the "Principles of Reimbursement For Pro-

vider Costs" published by the Social Security Administration of the Department of Health and Human Services. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with paragraph w.(3).ii.

(4) Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

x. Patent costs.

Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph I.2.j.)

y. Pension plan costs.

Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

z. Plant security costs.

Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

aa. Pre-research agreement costs.

Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

bb. Professional services costs.

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (2) and (3) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include (i) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (ii) the nature and scope of managerial services expected of the institution's own organizations; and (iii) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

(3) Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

cc. Profits and losses on disposition of plant equipment, or other assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term invest-

ments, shall be excluded in computing research agreement costs.

dd. Proposal costs.

Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

ee. Public information services costs.

Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

ff. Rearrangement and alteration costs.

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

gg. Reconversion costs.

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted, are allowable.

hh. Recruiting costs.

(1) Subject to (2), (3), and (4) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(2) In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for

which intended and normal institutional practices in this respect) are unallowable.

(3) Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

(4) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

ii. *Rental costs (including sale and lease-back of facilities).*

(1) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

(2) Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals, medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

(3) Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

jj. *Royalties and other costs for use of patents.*

Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid, or has been administratively determined to be invalid, the patent is considered

to be unenforceable, or the patent has expired.

kk. *Severance pay.*

(1) Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or, by circumstances of the particular employment.

(2) Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(3) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

ll. *Specialized service facilities operated by a hospital.*

(1) The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (2) or (3) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under paragraph C.5.

(2) The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (i) are designed to recover only actual costs of providing such services, and (ii) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography, etc.

(3) In the absence of an acceptable arrangement for direct costing as provided in (2) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

mm. *Special administrative costs.*

Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

nn. Staff and/or employee benefits.

(1) Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave, military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

(2) Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see paragraph I.2.y.), hospital costs or remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

oo. Taxes.

(1) In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (i) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal Income Taxes.

(2) Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

pp. Transportation costs.

Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly

as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

qq. Travel costs.

(1) Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

(2) Travel costs are allowable subject to (3) and (4) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

(3) The difference in cost between first class air accommodations and less than first class air accommodations is allowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(4) Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

rr. Termination costs applicable to contracts.

(1) Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

(2) The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a

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loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

(3) If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

(4) Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (iii) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (ii) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable: (i) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of

subcontracts; and (ii) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

(7) Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

ss. Voluntary services.

The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

APPENDIX X TO PART 75—DATA COLLECTION FORM (SF-SAC)

The Data Collection Form SF-SAC is available on the FAC Web site <https://haverster.census.gov/facweb/Default.aspx>.

APPENDIX XI TO PART 75—COMPLIANCE SUPPLEMENT

The compliance supplement is available on the OMB Web site: (<http://www.whitehouse.gov/omb/circulars/>)

PART 77—REMEDIAL ACTIONS APPLICABLE TO LETTER OF CREDIT ADMINISTRATION

Sec.

77.1 Purpose.

77.2 Scope.

77.3 Conditions that may give rise to remedial actions.

77.4 Remedial actions.

77.5 Remedial action procedures.

77.6 Emergency procedures.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 50 FR 781, Jan. 7, 1985, unless otherwise noted.

§ 77.1 Purpose.

Letters of credit with the United States Treasury, issued by the Department to States or other grantees and contractors, are a convenient means for disbursing Federal funds to recipients of grant awards or contracts (recipient organizations) under the programs of this and other Executive Departments. The sound and efficient operation of the letter-of-credit system is

Attachment E



CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

Health Information In Compliance With the Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered as of September 19, 2018 by and between Interval House, a nonprofit corporation, whose business address is 6615 East Pacific Coast Hwy #170, Long Beach, California 90803 (hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City, a municipal corporation under the laws of the State of California, is a single legal entity which has various departments, including a Department of Health and Human Services that provides a multitude of health care and related services, and other departments that may have access to and use individually identifiable health information, such as human resources, a parks, recreation and marine department, a technology department, a fire department with ambulance services, and a police department; and

WHEREAS, in the course of providing health care, related and other services, the City obtains and may share amongst the various City departments protected health information; and

WHEREAS, Business Associate performs particular duties, functions, activities, or services for, or on behalf of the City; and

WHEREAS, Business Associate receives, has access to or creates protected health information in order to perform such duties, functions, activities or services; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations, including the Privacy Rule and the Security Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations, and under the HITECH Act.
2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.
 - A. Non-disclosure. Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
 - B. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Regulations.
 - C. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
 - D. Notice of Use or Disclosure, Security Incident or Breach. Business Associate agrees to notify the designated privacy official of the Covered Entity of any use or disclosure of protected health information by Business Associate not permitted by this Agreement, any security incident involving electronic protected health information, and any breach of unsecured protected health information without unreasonable delay, but in no case more than thirty (30) days following discovery of breach.
 1. Business Associate shall provide the following information in such notice to Covered Entity:
 - (a) The identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach;
 - (b) A description of the nature of the breach including the types of unsecured protected health information that were involved, the date of the breach and the date of discovery;
 - (c) A description of the type of unsecured protected health information acquired, accessed, used or disclosed in the breach (e.g., full name, social security number, date of birth, etc.);
 - (d) The identity of the person who made and who received

- (if known) the unauthorized acquisition, access, use or disclosure;
- (e) A description of what the Business Associate is doing to mitigate the damages and protect against future breaches; and
 - (f) Any other details necessary for Covered Entity to assess risk of harm to individual(s), including identification of each individual whose unsecured protected health information has been breached and steps such individuals should take to protect themselves.
- 2. Covered Entity shall be responsible for providing notification to individuals whose unsecured protected health information has been disclosed, as well as the Secretary and the media, as required by the HITECH Act.
 - 3. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
 - 4. The parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, unsuccessful security incidents include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic public health information.
- E. Reporting of disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
 - F. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- G. Availability of Information to City. Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524. If Business Associate maintains an electronic health record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- H. Amendment of Protected Health Information. Business Associate agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.
- I. Internal Practices. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the Privacy Rule.
- J. Reporting of Disclosures. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.
- K. Availability of Information to Covered Entity. Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(j) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- A. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate.
- B. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- D. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).

4. PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- A. Business Associate shall not use or disclose protected health information for fundraising or marketing purposes.
- B. Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information solely relates.
- C. Business Associate shall not directly or indirectly receive payment or remuneration in exchange for protected health information, except with the prior written consent of Covered Entity and as permitted by law, including HIPAA and the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate.

5. OBLIGATIONS OF COVERED ENTITY.

- A. Notification of Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
- B. Notification of Change or Revocation of Permission. Covered entity shall notify Business Associate of any changes in, or revocation of,

permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

- C. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.

- 6. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

7. TERM AND TERMINATION.

- A. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall either:
 - 1. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, the violation shall be reported to the Secretary.
- C. *Effect of Termination.*

1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
 2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.
8. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.
- Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.
9. MISCELLANEOUS.
- A. *References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended.
 - B. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and other privacy laws governing protected health information. Amendments must be in writing and signed by the parties to the Agreement.
 - C. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.

- D. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations and the HITECH Act.
10. LAW. This Agreement shall be governed by and construed pursuant to federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.
11. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
12. INDEMNITY.
- A. Business Associate shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents (“Indemnified Parties”), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Business Associate’s breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Business Associate, its officers, employees, agents, subcontractors, or anyone under Business Associate’s control, in the performance of work or services under this Agreement (collectively “Claims” or individually “Claim”).
- B. In addition to Business Associate’s duty to indemnify, Business Associate shall have a separate and wholly independent duty to defend Indemnified Parties at Business Associate’s expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Business Associate shall be required for the duty to defend to arise. City shall notify Business Associate of any Claim, shall tender the defense of the Claim to Business Associate, and shall assist Business Associate, as may be reasonably requested, in the defense. .
13. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations, the HITECH Act and California law.
14. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies

hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.

15. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 333 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.
16. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
17. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.
18. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.
19. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

Interval House
(Name of Business Associate)

a non-profit corporation
(corporation, partnership, individual)

September 19, 2018

By Cara Spellman

Title: Executive Director

_____, 20__

By _____

Title: _____

Tom Modica
Assistant City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER
CITY OF LONG BEACH, a municipal corporation

October 10, 2018

By [Signature]
City Manager or designee

"City"

The foregoing Agreement is hereby approved as to form this 5th day of October, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy