

HOMELESSNESS PREVENTION AND RAPID RE-HOUSING CONTRACT

31833

3 THIS HOMELESSNESS PREVENTION AND RAPID RE-HOUSING
4 CONTRACT (this "Contract") is made and entered, in duplicate, as of September 1, 2010
5 for reference purposes only, pursuant to a minute order adopted by the City Council of
6 the City of Long Beach at its meeting on May 5, 2009, by and between LEGAL AID
7 FOUNDATION OF LOS ANGELES, a nonprofit California corporation ("Organization"),
8 with offices located at 1102 Crenshaw Boulevard, Los Angeles, California 90015-0095,
9 and the CITY OF LONG BEACH, a municipal corporation (the "City").

10 WHEREAS, the City has received a grant from the U.S. Department of
11 Housing and Urban Development ("HUD") from the Homelessness Prevention Fund,
12 hereafter referred to as the Homelessness Prevention and Rapid Re-Housing Program
13 ("HPRP"), under Title XII of the American Recovery and Reinvestment Act of 2009, to
14 provide financial assistance and services to either prevent individuals and families from
15 becoming homeless or help those who are experiencing homeless to be quickly re-
16 housed and stabilized; and

17 WHEREAS, as part of Grant Agreement No. S09-MY-06-0522 between
18 HUD and the City (the "HUD Agreement") the City is required to enter into subcontracts
19 with organizations that provide homelessness prevention assistance to households who
20 would otherwise become homeless, many due to the economic crisis, and to provide
21 assistance to rapidly re-house persons who are homeless, and the City has selected
22 Organization as a sub-recipient of grant funds; and

23 WHEREAS, Organization provides homelessness prevention assistance to
24 households who would otherwise become homeless, or assistance to rapidly re-house
25 persons who are homeless; and

26 WHEREAS, City wishes to support these services by providing HPRP funds
27 to carry out HPRP activities; and

28 WHEREAS, the City Council has authorized the City Manager to enter into

1 a contract with Organization that provides grant funding within a maximum amount and
2 program accountability by the City; and

3 WHEREAS, Organization agrees to perform these services and provide to
4 the City the information and supporting documentation required in this Contract;

5 NOW, THEREFORE, in consideration of the terms and conditions
6 contained herein, the parties agree as follows:

7 Section 1. The above recitals are true and correct and are incorporated
8 in the Contract.

9 Section 2.

10 A. Organization shall provide homelessness prevention
11 assistance to households who would otherwise become homeless, or assistance
12 to rapidly re-house persons who are homeless, in accordance with the terms of
13 HUD Agreement, Attachment "A" entitled "Statement of Work", Attachment "B"
14 entitled "Budget", Attachment "C" entitled "HUD Notice of Allocations, Application
15 Procedures, and Requirements for Homelessness Prevention and Rapid Re-
16 Housing Program Grantees under the American Recovery and Reinvestment Act
17 of 2009 ("HPRP Notice")", Attachment "D" entitled "Office of Management Budget
18 ("OMB") Circular A-110", Attachment "E" entitled "OMB Circular A-122",
19 Attachment "F" entitled "OMB Circular A-133", Attachment "G" entitled "Health
20 Information in Compliance with the Health Insurance Portability and Accountability
21 Act of 1996 Business Associate Agreement", Attachment "H" entitled "Certification
22 Regarding Debarment", Attachment "I" entitled "Certification Regarding Lobbying",
23 all of which are attached hereto and incorporated by reference, and the City of
24 Long Beach Grants Monitoring Guidelines which has been separately provided to
25 Organization and is incorporated by this reference.

26 B. Organization shall adhere to all policies, procedures, rules
27 and regulations established by HUD and sources including but not limited to the
28 HPRP Notice, OMB Circulars, Code of Federal Regulations ("CFR"), United States

1 Codes, City of Long Beach Grants Monitoring Guidelines, this Contract, the City's
2 contract with HUD for the funds dispersed under this Contract, the Notice of
3 Interest ("NOI"), Organization's proposal in response to the NOI, and all
4 Information Bulletins issued by the City's Department of Health and Human
5 Services, Homeless Services Division. In addition to and without in any way
6 limiting the foregoing, Organization shall comply with all laws and regulations set
7 forth in 24 CFR Part 576 and 24 CFR 5.105(a).

8 Section 3. The terms of this Contract shall commence at midnight on
9 October 1, 2010, and, unless sooner terminated as provided herein, shall terminate at
10 September 30, 2011. The term of this Contract may be extended by mutual written
11 agreement between the City and Organization. City may reclaim any unused balance of
12 funds for reallocation to other City approved projects.

13 Section 4.

14 A. Total disbursements made to Organization under this Contract
15 by the City shall not exceed Four Hundred Thirty Eight Thousand Nine Hundred
16 Forty-Four Dollars (\$438,944) for eligible costs and activities over the term of this
17 Contract. Upon execution of this Contract, the City shall disburse the funds
18 payable hereunder in due course of payments following receipt from Organization
19 of billing statements in a form approved by the City showing expenditures and
20 costs identified in Attachment "B".

21 B. The City shall pay to Organization the amounts specified in
22 Attachment "B" for the categories, criteria and rates established in that
23 Attachment. Organization may with the prior written approval of the Director of the
24 City's Department of Health and Human Services, or his designee, make
25 adjustments within and among the categories of expenditures in Attachment "B"
26 and modify the performance to be rendered hereunder stated in Attachment "A";
27 provided, however, that such adjustment in expenditures shall not cause the
28 amount of the total budget stated in Attachment "B" to be exceeded.

1 C. Organization shall prepare monthly invoices and submit them
2 to the City within fifteen (15) days after the end of the month in which Organization
3 provided services. Organization shall attach cancelled checks and other
4 documentation supporting the charges to each invoice. Invoices shall also show
5 units of service and costs identified in Attachment "B". Failure to submit an invoice
6 and its accompanying documentation within the 15-day period may result in late
7 payment or no payment from the City. Submission of incorrect invoices with
8 ineligible/inallocable expenses or inadequate documentation shall result in a
9 Disallowed Cost Report. The Disallowed Cost Report was created to provide
10 detail to Organization for the purpose of communicating disallowed costs due to
11 reasons of insufficient source documentation, ineligible expenses, exceeded line
12 items, and similar reasons. In the event that an item is disallowed in the invoice,
13 Organization will be permitted to resubmit the disallowed costs along with
14 adequate source documentation, other eligible expenses, and the like in the next
15 invoice. The City reserves the right to refuse payment of an invoice (a) received
16 by it thirty (30) days after Organization provided the services relating to that
17 invoice; (b) including inallocable or ineligible expenses; or (c) for the unauthorized
18 expense of funds requiring written approval for budget changes or modifications.

1 Year.

2 F. If the City is unable to draw down funds from HUD for
3 reimbursement to Organization due to failure of Organization to submit required
4 fiscal and programmatic documents within fifteen (15) days after the end of the
5 Operational Year, the City cannot guarantee payment to Organization. The City
6 will not be obligated to pay Organization for costs incurred unless HUD releases
7 funds to the City. For this reason, failure of Organization to submit the final invoice
8 and final reports within fifteen (15) days after the end of the Operational Year may
9 result in loss of reimbursement of funds.

10 G. The City reserves the right to withhold payment of an invoice
11 pending satisfactory completion of an audit, as determined by the City in its sole
12 discretion, or Organization's cure of a breach of or noncompliance with this
13 Contract, as determined by the City in its sole discretion, after being notified of
14 such breach or noncompliance by the City.

15 H. All reimbursement by the City is contingent upon the City's
16 receipt of funds from HUD. The City reserves the right to refuse payment of an
17 invoice until such time as it receives funds from HUD sufficient to cover the
18 expenses in the invoice.

19 I. If funding levels are significantly affected by Federal
20 budgeting or if funds are not allocated and available for the continuance of the
21 services and function performed by Organization, the Contract may be terminated
22 by City at the end of the period for which funds are available. The City shall notify
23 Organization at the earliest possible time of any service, which may be affected by
24 a shortage of funds. No penalty shall accrue to the City in the event this provision
25 is exercised and the City shall not be liable for any damages as a result of
26 termination under this provision of this Contract.

27 Section 5.

28 A. Organization's records relating to the performance of this

Contract shall be kept in accordance with generally accepted accounting principles and in the manner prescribed by the City. Organization's records shall be current and complete. The City and HUD, and their respective representatives, shall have the right to examine, copy, inspect, extract from, and audit financial and other records related, directly or indirectly, to this Contract during Organization's normal business hours to include announced and unannounced site visits during the term of the Contract and thereafter. If examination of these financial and other records by the City and/or HUD reveals that Organization has not used these grant funds for the purposes and on the conditions stated in this Contract, then Organization covenants, agrees to and shall immediately repay all or that portion of the grant funds which were improperly used. If Organization is unable to repay all or that portion of the grant funds, then the City will terminate all activities of Organization under this Contract and pursue appropriate legal action to collect the funds. Alternatively, to the extent the City has been refusing payment of any invoices, the City may continue to withhold such funds equal to the amount of improperly used grant funds, regardless of whether the funds being withheld by the City were improperly used.

B. In addition, Organization shall provide any information that the City Auditor and other City representatives require in order to monitor and evaluate Organization's performance hereunder. The City reserves the right to review and request copies of all documentation related, directly or indirectly, to the program funded by this Contract, including by way of example but not limited to, case files, program files, policies and procedures. Organization shall provide all reports, documents or information requested by the City within three (3) days after receipt of a written or oral request from a City representative, unless a longer period of time is otherwise expressly stated by said representative.

C. Organization shall submit all requested data necessary to complete the Integrated Disbursement and Information System (IDIS) to draw

1 down HPRP funding and report on grant expenditures, as specified by City.

2 D. Organization shall participate in the City's Homeless
3 Management Information System (HMIS) and obtain funding to ensure
4 participation. Organization shall ensure implementation, operation and
5 maintenance necessary for participation throughout the term of this Contract.
6 Further, Organization shall enter data into the HMIS system on a regular basis (at
7 least weekly) and in a timely manner.

8 E. If Organization spends \$500,000 or more in Federal funds in
9 an Operational Year, then Organization shall submit an audit report to the City in
10 accordance with OMB Circular A-133 no later than thirty (30) days after receipt of
11 the audit report from Organization's auditor or no later than nine (9) months after
12 the end of the Operational Year, whichever is earlier. If Organization spends less
13 than \$500,000 in Federal grant funds in an Operational Year, submission of the
14 audit report is optional.

15 Section 6.

16 A. Organization shall comply with all applicable fair housing and
17 civil rights requirements in 24 CFR 5.105(a).

18 B. In the performance of this Contract, Organization shall not
19 discriminate against any employee or applicant for employment because of race,
20 religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS,
21 AIDS related condition, age, disability or handicap. Organization shall take
22 affirmative action to assure that applicants are employed or served, and that
23 employees and applicants are treated during employment or services without
24 regard to these categories. Such action shall include but not be limited to the
25 following: employment, upgrading, demotion or transfer; recruitment or
26 recruitment advertising; lay-off or termination; rates of pay or other forms of
27 compensation; and selection for training, including apprenticeship.

28 C. Organization shall permit access by the City or any other

1 agency of the County, State or Federal governments to Organization's records of
2 employment, employment advertisements, application forms and other pertinent
3 data and records for the purpose of investigation to ascertain compliance with the
4 fair employment practices provisions of this Contract.

5 **Section 7.**

6 A. In performing services hereunder, Organization is and shall
7 act as an independent contractor and not as an employee, representative or agent
8 of the City. Organization's obligations to and authority from the City are solely as
9 prescribed herein. Organization expressly warrants that it will not, at any time,
10 hold itself out or represent that Organization or any of its agents, volunteers,
11 subscribers, members, officers or employees are in any manner officials,
12 employees or agents of the City. Organization shall not have any authority to bind
13 the City for any purpose.

14 B. Organization acknowledges and agrees that (a) the City will
15 not withhold taxes of any kind from Organization's compensation; (b) the City will
16 not secure workers' compensation or pay unemployment insurance to, for or on
17 Organization's behalf; and (c) the City will not provide, and Organization and
18 Organization's employees are not entitled to, any of the usual and customary
19 rights, benefits or privileges of City employees.

20 Section 8. This Contract contemplates the personal services of
21 Organization and Organization's employees. Organization shall not delegate its duties or
22 assign its rights hereunder, or any interest herein or any portion hereof, without the prior
23 written consent of City. Any attempted assignment or delegation shall be void, and any
24 assignee or delegate shall acquire no right or interest by reason of such attempted
25 assignment or delegation.

26 Section 9. Organization shall indemnify and hold harmless the City, its
27 Boards, Commissions, and their officials, employees and agents (collectively in this
28 Section "City") against any and all liability, claims, demands, damage, causes of action,

1 proceedings, penalties, loss, costs and expenses (including attorney's fees, court costs,
2 and expert and witness fees) (collectively "Claims" or Individually "Claim") arising, directly
3 or indirectly, out of any negligent act or omission of Organization, its officers, employees,
4 agents, subcontractors or anyone under Organization's control (collectively "Indemnitor"),
5 breach of this Contract by Organization, misrepresentation or willful misconduct by
6 Indemnitor, and Claims by any employee of Indemnitor relating in any way to workers'
7 compensation. Independent of the duty to indemnify and as a free-standing duty on the
8 part of Organization, Organization shall defend the City and shall continue such defense
9 until the Claim is resolved, whether by settlement, judgment or otherwise. Organization
10 shall notify the City of any Claim within ten (10) days. Likewise, the City shall notify
11 Organization of any Claim, shall tender the defense of such Claim to Organization, and
12 shall assist Organization, as may be reasonably requested, in such defense.

Section 10.

1. Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its Boards and Commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on the City's

1 endorsement form or on an endorsement equivalent in scope to ISO form
2 CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no
3 special limitations on the scope of protection given to the City, its Boards
4 and Commissions, and their officials, employees and agents.

5 2. Workers' Compensation insurance as required by the
6 California Labor Code.

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

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

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

15 6. Blanket Honesty Bond in an amount equal to at least
16 fifty percent (50%) of the total amount to be disbursed to Organization
17 hereunder or Twenty-five Thousand Dollars (\$25,000), whichever is less, to
18 safeguard the proper handling of funds by employees, agents or
19 representatives of Organization who sign as the maker of checks or drafts
20 or in any manner authorize the disbursement or expenditure of said funds.

21 If delivering services to minors, seniors or persons with disabilities,
22 Organization's Commercial General Liability insurance shall not exclude coverage
23 for abuse and molestation. If Organization is unable to provide abuse and
24 molestation coverage, it can request a waiver of this coverage from the City. The
25 City's Risk Manager will consider waiving the requirement if Organization can
26 demonstrate to the satisfaction of the City's Risk Manager that Organization has
27 no exposure, that the coverage is unavailable or that the coverage is unaffordable.
28 If a request for a waiver is desired, Organization must submit a signed document

1 on Organization's letterhead to the Director of the City's Department of Health and
2 Human Services, who will forward it to the City's Risk Manager, providing reasons
3 why the insurance coverage should be waived. Waivers will be considered on a
4 case by case basis.

5 B. Any self-insurance program, self-insured retention or
6 deductible must be separately approved in writing by the City's Risk Manager or
7 his/her designee and shall protect the City, its Boards and Commissions, and their
8 officials, employees and agents in the same manner and to the same extent as
9 they would have been protected had the policy or policies not contained retention
10 or deductible provisions. Each insurance policy shall be endorsed to state that
11 coverage shall not be reduced, non-renewed or canceled except after thirty (30)
12 days prior written notice to the City, and shall be primary and not contributing to
13 any other insurance or self-insurance maintained by the City. Organization shall
14 notify the City in writing within five (5) days after any insurance required herein has
15 been voided by the insurer or cancelled by the insured.

16 C. Organization shall require that all contractors and
17 subcontractors which Organization uses in the performance of services hereunder
18 maintain insurance in compliance with this Section unless otherwise agreed in
19 writing by the City's Risk Manager or his/her designee.

20 D. Prior to the start of performance or payment of first invoice,
21 Organization shall deliver to the City certificates of insurance and required
22 endorsements for approval as to sufficiency and form. The certificate and
23 endorsements for each insurance policy shall contain the original signature of a
24 person authorized by that insurer to bind coverage on its behalf. In addition,
25 Organization, shall, within thirty (30) days prior to expiration of the insurance
26 required herein, furnish to the City certificates of insurance and endorsements
27 evidencing renewal of such insurance. The City reserves the right to require
28 complete certified copies of all policies of Organization and Organization's

1 contractors and subcontractors, at any time. Organization shall make available to
2 the City's Risk Manager or designee all books, records and other information
3 relating to the insurance coverage required herein, during normal business hours.

4 E. Any modification or waiver of the insurance requirements
5 herein shall only be made with the approval of the City's Risk Manager or his/her
6 designee. Not more frequently than once a year, the City's Risk Manager or
7 his/her designee may require that Organization, Organization's contractors and
8 subcontractors change the amount, scope or types of coverages required herein if,
9 in his or her sole opinion, the amount, scope, or types of coverages herein are not
10 adequate.

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

15 Section 11.

16 A. Organization shall comply with all requirements of the City's
17 Municipal Code relating to building code standards in undertaking any activities or
18 renovations using grant funds.

19 B. Organization shall not commence services until the City's
20 Development Services Department has completed an environmental review under
21 24 CFR Part 58, and Organization shall not commence such services until the City
22 informs Organization of the completion and conditions of said environmental
23 review.

24 C. Organization shall provide reports as required by the City and
25 HUD.

26 D. Organization shall accomplish the minimum expenditure,
27 goals, outcomes, milestones and performance standards as required by the City
28 and HUD. Failure by Organization to meet statutory deadlines and

1 accomplishment thresholds as required by the City or HUD may cause funds
2 under this Contract to be recaptured or reallocated.

3 E. In addition to, and not in substitution for, other terms of this
4 Contract regarding the provision of services pursuant to the HPRP program, and
5 except as described in Section 11.F. below, Organization shall not:

6 1. Represent that it is, or may be deemed to be, a
7 religious or denominational institution or organization or an organization
8 operated for religious purposes that is supervised or controlled by or in
9 connection with a religious or denominational institution or organization.

10 2. In connection with costs of its services hereunder,
11 engage in the following conduct:

12 (a) discriminate against any employee or applicant
13 for employment on the basis of religion;

14 (b) discriminate against any person seeking
15 homelessness prevention assistance, or assistance to rapidly re-
16 house persons who are homeless, on the basis of religion or limit
17 such services or give preference to persons on the basis of religion;

18 (c) provide religious instruction or counseling,
19 conduct religious worship or services, engage in religious
20 proselytizing, or exert other religious influence in the provision of
21 services or the use of facilities and furnishings;

22 3. The portion of the facility used for homelessness
23 prevention assistance, or assistance to rapidly re-house persons who are
24 homeless, in whole or in part under this Contract or in which services are
25 provided that are assisted under this Contract shall contain no sectarian
26 religious symbols or decorations.

27 F. Organizations that are religious or faith-based are eligible, on
28 the same basis as any other organization, to participate in the HPRP program.

1 However, an organization that participates in a HUD funded program shall comply
2 with the following provisions if it is deemed to be a religious or faith-based
3 organization.

4 1. Organization may not engage in inherently religious
5 activities, such as worship, religious instruction, or proselytization, as part of
6 the programs or services funded under this Contract.

7 2. If Organization conducts such activities, the activities
8 must be offered separately, in time or location, from the programs or
9 services funded under this Contract, and participation must be voluntary for
10 the beneficiaries of the HUD funded programs or services.

11 3. A religious or faith-based organization will retain its
12 independence from Federal, State, and local governments, and may
13 continue to carry out its mission, including the definition, practice, and
14 expression of its religious beliefs, provided that it does not use direct HUD
15 funds to support any inherently religious activities, such as worship,
16 religious instruction, or proselytization.

17 4. A religious or faith-based organization may use space
18 in their facilities to provide HUD funded services, without removing religious
19 art, icons, scriptures, or other symbols.

20 5. A religious or faith-based organization retains its
21 authority over its internal governance, and it may retain religious terms in its
22 organization's name, select its board members on a religious basis, and
23 include religious references in its organization's mission statements and
24 other governing documents.

25 6. A religious or faith-based organization shall not, in
26 providing program assistance, discriminate against a program beneficiary or
27 prospective program beneficiary on the basis of religion or religious belief.

28 7. HUD funds may not be used for the acquisition,

1 construction or rehabilitation of structures to the extent that those structures
2 are used for inherently religious activities.

3 8. HUD funds may be used for the acquisition,
4 construction, or rehabilitation of structures only to the extent that those
5 structures are used for conducting eligible activities under this Section.
6 Where a structure is used for both eligible and inherently religious activities,
7 HUD funds may not exceed the cost of those portions of the acquisition,
8 construction, or rehabilitation that are attributable to eligible activities in
9 accordance with the cost accounting requirements applicable to HUD funds
10 herein. Sanctuaries, chapels, or other rooms that a HUD funded religious
11 congregation uses as its principal place of worship, however, are ineligible
12 for HUD funded improvements. Disposition of real property after the term of
13 the grant, or any change in use of the property during the term of the grant,
14 is subject to government-wide regulations governing real property
15 dispositions.

16 G. Organization shall provide homeless persons and persons at
17 risk of becoming homeless, with assistance in obtaining:

18 1. Appropriate financial assistance, housing relocation
19 and stabilization services, and other related services; and

20 2. Other Federal, State and local private assistance
21 available for such individuals, including mainstream resources.

22 H. Organization certifies that it will comply with all documents,
23 policies, procedures, rules, regulations and codes identified in Sections 2 and 11
24 of this Contract, and such other requirements as may from time to time be
25 promulgated by HUD.

26 I. Organization shall execute a Certification Regarding
27 Debarment in the form shown in Attachment "H".

28 J. Organization shall execute a Certification Regarding Lobbying

1 in the form shown in Attachment "I".

2 Section 12. Organization certifies that it has established a Drug-Free
3 Awareness Program in compliance with Government Code Section 8355, that it has
4 given a copy of said Program to each employee who performs services hereunder, that
5 compliance with the Program is a condition of employment, and that it has published a
6 statement notifying employees that unlawful manufacture, distribution, dispensation,
7 possession or use of a controlled substance is prohibited and action will be taken for
8 violation.

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

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

24 Section 15. The City Manager or his/her designee is authorized to
25 administer this Contract and all related matters, and any decision of the City Manager or
26 designee in connection herewith shall be final.

27 Section 16. Organization shall have the right to terminate this Contract at
28 any time for any reason by giving thirty (30) days prior notice of termination to the City,

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

5 Section 17. This Contract, including all exhibits and attachments hereto,
6 constitutes the entire understanding of the parties and supersedes all other agreements,
7 oral or written, with respect to the subject matter herein. This Contract shall not be
8 amended, nor any provision or breach hereof waived, except in writing by the parties that
9 expressly refers to this Contract.

10 Section 18. The acceptance of any service or payment of any money by
11 the City shall not operate as a waiver of any provision of this Contract, or of any right to
12 damages or indemnity stated herein. The waiver of any breach of this Contract shall not
13 constitute a waiver of any other or subsequent breach of this Contract.

14 Section 19. This Contract shall be governed by and construed pursuant to
15 the laws of the State of California without regard to conflicts of law principles.

16 Section 20. In the event of any conflict or ambiguity between this Contract
17 and one or more attachments, the provisions of this Contract shall govern.

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

LEGAL AID FOUNDATION OF LOS
ANGELES, a nonprofit California
corporation

By Silvia Argueta
President
Silvia Argueta, Executive Director
Type or Print Name
By _____
Secretary

Type or Print Name

“Organization”
CITY OF LONG BEACH, a municipal
corporation
By John C. Clegg,
Assistant City Manager
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

10.5, 2010

This Contract is approved as to form on 9/27, 2010.

ROBERT E. SHANNON, City Attorney

By Robert E. Shannon
Deputy
John C. Clegg

Attachment “A”

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City of Long Beach
Homelessness Prevention and Rapid Re-Housing Program 2010-2011
Scope of Work

HOMELESSNESS PREVENTION COMPONENT

AGENCY NAME: Legal Aid Foundation of Los Angeles

CONTRACT NUMBER: _____

Program Objective: Provide Homelessness Prevention assistance to eligible households who would otherwise become homeless.

Goals:	PROJECTED YEAR 2 TOTAL GOALS		QUARTER 1 10/1 - 12/31		QUARTER 2 1/1 - 3/31		QUARTER 3 4/1 - 6/30		QUARTER 4 7/1 - 9/30	
			Persons	Households	Persons	Households	Persons	Households	Persons	Households
Financial Assistance										
1. Rental Assistance	152	61			Quarter 1 Performance Benchmarks:	Quarter 2 Performance Benchmarks: (Cumulative)	Quarter 3 Performance Benchmarks: (Cumulative)	Quarter 4 Required Performance Milestones: (Cumulative)		
2. Security and Utility Deposits										
3. Utility Payments	62	25								
4. Moving Cost Assistance										
5. Hotel & Motel Vouchers										
Total - Financial Assistance	152	61	25	10	63	25	114	45	152	61
Housing Relocation & Stabilization Services										
6. Case Management	152	61			Quarter 1 Performance Benchmarks:	Quarter 2 Performance Benchmarks: (Cumulative)	Quarter 3 Performance Benchmarks: (Cumulative)	Quarter 4 Required Performance Milestones: (Cumulative)		
7. Outreach and engagement										
8. Housing Search and Placement										
9. Legal Services	152	61								
10. Credit Repair										
Total - Housing Relocation & Stabilization Services	152	61	25	10	63	25	114	45	152	61
Total To Be Served	152	61	25	10	63	25	114	45	152	61

OUTCOMES

11. 70% of clients served will remain stably housed at exit from program.

Authorized Agency Initials: _____

ATTACHMENT	A	Annual Performance Report for October 1, 2010 - September 30, 2011 is Due: October 30, 2011	
PAGE	/	OF	PAGES

Attachment “B”

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CITY OF LONG BEACH
Homelessness Prevention and Rapid Re-Housing Program - 2010-2011

HOMELESSNESS PREVENTION COMPONENT

Annual Program Budget for Legal Aid Foundation of Los Angeles

City Contract #:

ITEM	ALLOCATION	BUDGETED SERVICE ACTIVITIES
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FINANCIAL ASSISTANCE - HOMELESSNESS PREVENTION ONLY

1. Financial Assistance for Homelessness Prevention Activities	275,000	For financial assistance, to be provided to appropriate third parties, including utility deposits; utility payments; moving cost assistance; rental assistance; security deposits; and hotel/motel vouchers, as detailed in Attachment "C", entitled "Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009"
SUBTOTAL FINANCIAL ASSISTANCE	275,000	Total Project Budget for Financial Assistance

HOUSING RELOCATION AND STABILIZATION SERVICES - HOMELESSNESS PREVENTION ONLY

1. Attorney - 0.30 FTE	23,461	Represents clients in court when necessary, negotiates with landlords, drafts agreements, etc. To include Benefits @ 25% (FICA, Workers Compensation, Unemployment, Health, Vacation, Sick Leave, Retirement, etc.)
2. Paralegal - 1.00 FTE	52,371	Screens potential clients and assist attorney with litigation preparation, etc. To include Benefits @ 25% (FICA, Workers Compensation, Unemployment, Health, Vacation, Sick Leave, Retirement, etc.)
3. Social Worker - 1.00 FTE	61,496	Provides case management to clients and handles HMIS reporting requirements. To include Benefits @ 25% (FICA, Workers Compensation, Unemployment, Health, Vacation, Sick Leave, Retirement, etc.)
4. Facility Costs	6,000	For payment of a portion of utility costs, including, but not limited to, utility costs, janitorial services, and security services
5. Computers	3,000	For payment of computer equipment, accessories, and software costs
6. Printing / Copying	900	For payment of printing / copying costs
7. Library / Litigation	1,200	For payment of legal subscriptions and filing fees
8. Network / Telephone / Communications	3,092	For payment of telephone, internet, and other communications costs
9. Travel / Mileage	1,200	For payment of travel and mileage costs
10. Office Supplies / Postage / Courier Services	2,280	For payment of office supplies, postage, and courier services
SUBTOTAL HOUSING RELOCATION AND STABILIZATION SERVICES	156,000	Total Project Budget for Housing Relocation and Stabilization Services
Administration (2.08%)	8,944	
TOTAL CITY OF LONG BEACH CONTRACT	438,944	Total HPRP Allocation for Year 2 (October 1, 2010 - September 30, 2011)

YEAR 1 EXPENDITURE BENCHMARKS AND MILESTONE FOR HOMELESSNESS PREVENTION

Expenditure Milestones	Cumulative Expenditure Amounts	Justification/Explanation
Expenditure Benchmark - Quarter 1 (October 1 - December 31)	96,568	22% of Total HPRP Allocation for Year 2
Expenditure Benchmark - Quarter 2 (January 1 - March 31)	193,135	44% of Total HPRP Allocation for Year 2
Expenditure Benchmark - Quarter 3 (April 1 - June 30)	289,703	66% of Total HPRP Allocation for Year 2
Required Expenditure Milestone - YEAR 2 (October 1, 2010 - September 30, 2011)	386,271	Agency must expend at least 88% of Total HPRP Allocation for Year 2 by September 30, 2011 for consideration to receive an HPRP Allocation for Year 3.

Authorized Official's Initials: AM

ATTACHMENT <u>B</u>
PAGE / OF / PAGES

Attachment “C”

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-5307-N-01]****Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009****AGENCY:** Office of the Secretary, HUD.**ACTION:** Notice of funding allocations and requirements.

SUMMARY: This Notice advises the public of the allocation formula and allocation amounts, the list of grantees, and requirements for the Homelessness Prevention Fund, hereafter referred to as the “Homelessness Prevention and Rapid Re-Housing Program (HPRP),” under Title XII of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). Congress has designated \$1.5 billion for communities to provide financial assistance and services to either prevent individuals and families from becoming homeless or help those who are experiencing homelessness to be quickly re-housed and stabilized. In order to receive these funds, eligible grantees must submit a substantial amendment to the Consolidated Plan 2008 Action Plan (referred to in this Notice as the “substantial amendment”).

EFFECTIVE DATE: March 19, 2009**OVERVIEW INFORMATION**

A. Federal Agency Name: Department of Housing and Urban Development, Office of Community Planning and Development.

B. Funding Opportunity Title: Funding Availability for the Homelessness Prevention Fund created under Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”), referred to in this Notice as the “Homelessness Prevention and Rapid Re-Housing Program (HPRP).”

C. Publication: This Notice is initially being published on HUD's web site. It will also be published in the Federal Register. All HUD materials will be posted on the HUD Homelessness Resource Exchange at: www.hudhre.info.

D. Catalog of Federal Domestic Assistance (CFDA) Number: 14.257: Homelessness Prevention and Rapid Re-Housing Program (HPRP).

E. Dates: Substantial amendments submitted pursuant to this Notice must be postmarked to HUD no later than 60 days from the date of publication of this Notice. HUD will complete its review of all correctly completed substantial amendments within 45 days of receipt. HUD intends to execute all grant agreements no later than September 1, 2009. Grantees must obligate funds to their subgrantees by September 30, 2009. The Recovery Act requires grantees to expend 60 percent of HPRP grant funds within two years of the date that funds become available to the grantees for obligation (the date that HUD signs the grant agreement), and 100 percent of funds within three years of this date.

F. Additional Overview Content Information:

1. **Funding Allocations.** As required by the Recovery Act, funds will be allocated according to the formula used for the Emergency Shelter Grants (ESG) Program. Pursuant to HUD's discretion under the Recovery Act, HUD has set a minimum grant amount of \$500,000. Funds for communities that would receive less than this amount will be reallocated to the state in which the community is located. A list of eligible grantees is provided in Appendix A.

2. **Modified Requirements for the Consolidated Plan.** The requirements at 24 CFR part 91, as modified by this Notice, shall apply to the application and approval process for HPRP funds.

Specifically, the following requirements shall apply:

a. In order to receive HPRP funds, each eligible grantee must prepare and submit a substantial

amendment to its Consolidated Plan 2008 Action Plan (“substantial amendment”) in accordance with section IV.E. below. The substantial amendment and other required documents must be received by HUD within 60 days of the publication of this Notice.

b. In preparing the substantial amendment, each eligible grantee must follow its citizen participation plan in accordance with 24 CFR part 91, except that the minimum time period for citizens to comment on the substantial amendment shall be reduced to 12 days. HUD does not require that grantees establish a second period of public comment regarding the process for determining subgrantees, but if a grantee has this requirement in place locally, this public comment period may be reduced to 3 days.

c. Each substantial amendment submitted to HUD will be subject to the approval process set forth in 24 CFR 91.500, except that: HUD will approve or disapprove the substantial

amendment within 45 days of receipt; jurisdictions with disapproved substantial amendments may revise and resubmit a substantial amendment within 15 days after HUD sends the first notification of its disapproval; and HUD will approve or disapprove the revised substantial amendment within 15 days of receiving the resubmission.

d. Grantees are not required to report on uses of HPRP funds in their Consolidated Annual Performance and Evaluation Report (CAPER). Instead, the use of HPRP funds will be subject to the reporting requirements established by the Recovery Act, as specified by HUD and the Office of Management and Budget (OMB).

3. Recovery.gov web site: To encourage transparency, HUD will require grantees receiving assistance under HPRP to provide reports that will be used for postings on the Recovery.gov web site. This portal is designed to provide one centralized location for the public to find and analyze information, and report potential fraud, waste, and abuse pertaining to the Recovery Act.

G. For Further Information: For questions about HPRP, please call 1-800-998-9995. For more information about the HPRP, or to view a copy of the Recovery Act, go to www.hudhre.info. Written questions may be sent to: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7266, Washington, DC, 20410. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 800-877-8339.

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I. Funding Opportunity Description

A. Program Description

1. Description. Congress enacted the Recovery Act to help persons affected by the current economic crisis. The purpose of the Homelessness Prevention and Rapid Re-Housing Program (HPRP) is to provide homelessness prevention assistance to households who would otherwise become homeless—many due to the economic crisis—and to provide assistance to rapidly re-house persons who are homeless as defined by section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302). While HUD will allow grantees the discretion to develop prevention and/or rapid re-housing programs that meet locally-defined needs, HUD also expects

that these resources will be targeted and prioritized to serve households that are most in need of this temporary assistance and are most likely to achieve stable housing, whether subsidized or unsubsidized, outside of HPRP after the program concludes. Grantees should take this opportunity to develop strategies to identify eligible program participants, review existing models for prevention and rapid re-housing programs, and create a plan that utilizes all resources available through the Recovery Act in order to provide a comprehensive menu of services to assist eligible program participants.

HPRP is focused on housing for homeless and at-risk households. It will provide temporary financial assistance and housing relocation and stabilization services to individuals and families who are homeless or would be homeless *but for* this assistance. The funds under this program are intended to target two populations of persons facing housing instability: 1) individuals and families who are currently in housing but are at risk of becoming homeless and need temporary rent or utility assistance to prevent them from becoming homeless or assistance to move to another unit (prevention), and 2) individuals and families who are experiencing homelessness (residing in emergency or transitional shelters or on the street) and need temporary assistance in order to obtain housing and retain it (rapid re-housing). Although all eligible activities (described in section IV.A. below) can be used for both populations, considering two eligible populations is a framework for targeting funds that grantees might find useful in establishing local programs and considering the most effective use of funds. HUD is establishing eligibility requirements for program participants (described in section IV.D. below).

It is important to note that HPRP is not a mortgage assistance program. Congress has established other programs to assist with the current mortgage crisis. HPRP funds are only eligible to help program participants—whether they are renters or homeowners about to become

homeless—pay for utilities, moving costs, security deposits and rent in a new unit, storage fees, and other financial costs or services as described in this Notice. HPRP funds are not eligible to pay for any mortgage costs or legal or other fees associated with retaining homeowners' housing.

2. Match. Grantees are not required to match HPRP funds with any other funding source.
3. New Program. Although the funding allocation is based on that of the ESG program, HPRP is a separate program, with a different program purpose and requirements. The table in Appendix B highlights the differences between ESG and HPRP.
4. The requirements in this Notice may be waived in the same manner as regulatory requirements. Grantees must submit a written request to HUD. Upon a determination of good cause, the Assistant Secretary for Community Planning and Development may, subject to statutory limitations, waive any provision of this Notice. Each waiver must be in writing and must specify the grounds for approving the waiver.

B. Definitions

Applicant means a state, territory, metropolitan city, or urban county that submits a substantial amendment and other required documents pursuant to the provisions of this Notice.

Certification means a written assertion, based on supporting evidence, that must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

Consolidated Plan means the plan prepared in accordance with 24 CFR Part 91.

Grantee means the legal entity to which HUD awards an HPRP grant and which is accountable for the use of the funds provided.

Homeless means as the term is defined by section 103 of the McKinney-Vento Homeless

Assistance Act (42 U.S.C. 11302).

HUD means the U.S. Department of Housing and Urban Development.

Metropolitan city means a city that was classified as a metropolitan city under section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) for Fiscal Year 2008. This includes the District of Columbia.

Non-profit subgrantee means any private non-profit organization to which a grantee provides funds to carry out the eligible activities under the grant and which is accountable to the grantee for the use of funds provided.

Private non-profit organization means an organization described in 26 U.S.C. 501(c) that is exempt from taxation under subtitle A of the Internal Revenue Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

Program participant means an individual or family with or without children that is provided HPRP financial assistance or housing relocation and stabilization services through a rapid re-housing or prevention program. In this Notice, the term “household” refers to individuals or families.

State means each of the several States and the Commonwealth of Puerto Rico.

State subgrantee means any unit of general local government or private non-profit organization to which a state distributes HPRP grant amounts.

Subgrantee means any private non-profit organization or unit of general local government to which a grantee provides funds to carry out the eligible activities under the grant and which is accountable to the grantee for the use of the funds provided.

Territory means each of the following: the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a state.

Urban county means a county that was classified as an urban county under section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) for Fiscal Year 2008.

II. ALLOCATIONS

A. Initial Allocation

1. Allocation Formula. The Recovery Act directs HUD to allocate funds to grantees that are eligible under the ESG program, as defined and designated in sections 411 and 412 of subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act, pursuant to the formula authorized by section 413 of that Act. States, urban counties, metropolitan cities, and U.S. territories are eligible grantees under HPRP. Of the \$1.5 billion total appropriated by the Recovery Act for HPRP, Congress set aside 0.5 percent (\$7.5 million) for a portion of HUD's administration of this assistance, including staffing, training, technical assistance, technology, monitoring, research, and evaluation activities. Therefore, \$1,492,500,000 is available for allocation to eligible grantees. Pursuant to law, U.S. territories received 0.2 percent of the total amount of the funding allocation, or \$3,000,000, to be distributed among the several territories based on the ESG formula. After subtracting the grant amount designated for territories, HUD used the ESG formula to allocate the remaining amount, or \$1,489,500,000, to metropolitan cities, urban counties, and states.

2. Minimum Grant Size. Under the ESG program, if, after allocation, any metropolitan city or urban county would receive a grant less than 0.05 percent of the funds available, such amount would be instead reallocated to the state. The Recovery Act provides that the Secretary may establish a minimum grant size for HPRP. The Secretary has utilized this discretion to set the

grant minimum at \$500,000, rather than 0.05 percent (or approximately \$750,000), in order to increase the number of metropolitan cities and urban counties eligible to directly receive formula funds under HPRP. Funds for urban counties and metropolitan cities that fell under this threshold were reallocated to the state in which the jurisdiction was located. The \$500,000 grant minimum resulted in 485 metropolitan cities and urban counties eligible to receive funding, compared to 305 metropolitan cities and urban counties funded under the ESG program. This represents an increase of 180 eligible metropolitan cities and urban counties. Including states and territories, a total of 540 grantees are eligible to receive HPRP funds.

3. Eligible Grantees. Attachment A of this Notice lists all HPRP eligible grantees and the amounts they are eligible to receive.

B. Reallocation

1. Reallocation of Initial Grant. HUD encourages each local jurisdiction receiving an allocation to carefully consider its administrative capacity to use the funds within the statutory deadlines, compared to the capacity of the state administrator. HUD expects that, after such consideration, some jurisdictions may choose to apply for less than the full amount, which will allow the balance of their grants to be reallocated to the state.

a. Declining the grant. If an eligible grantee receiving an allocation of funds under this Notice (as designated in Attachment A) wishes to decline its allocation, the legally authorized official must notify its local HUD field office in writing of its intent to do so. A list of field office contacts is available at: <http://www.hud.gov/offices/cpd/about/staff/fodirectors/>.

b. Requesting less than the allocation. If an eligible grantee wishes to request less than the total allocation amount for which it is eligible, the legally authorized official must notify its local HUD field office in writing of the amount it will request on or before May 18, 2009.

c. Failure to submit a complete application. If an eligible grantee fails to submit a substantially complete substantial amendment for its grant allocation within the timeframes established in sections IV.E. and IV.F. of this Notice, HUD will notify the jurisdiction of the cancellation of its allocation amount and proceed to reallocate the funds.

d. Distribution of reallocated funds. In the case where an urban county or metropolitan city refuses or requests less than its allocation, HUD will reallocate the funds to the state in which the jurisdiction is located. For a state or territory that refuses or requests less than its allocation, HUD will reallocate the funds nationally according to the original formula.

2. Reallocation at 2-Year Statutory Expenditure Deadline. The Recovery Act requires HUD to obligate all funds to grantees by September 30, 2011. In order to meet this requirement and allow for reallocation if grantees have not spent 60 percent of their funds within 2 years, HUD will be closely tracking grantee expenditures via quarterly reporting and the Integrated Disbursement and Information System (IDIS). If any grantee fails to meet the statutory requirement to expend at least 60 percent of its grant amount within 2 years of the date of the grant agreement, or, for grants signed after July 30, 2009 where it appears that the grantee will fail to meet this requirement, HUD will notify the grantee no later than August 1, 2011, and allow the grantee 21 days to submit information to HUD regarding any additional eligible expenses of HPRP funds accrued within the 2-year period in order to bring grantees into compliance with the 60 percent expenditure threshold. If the grantees cannot do this, HUD may then proceed to recapture the unused HPRP funds and reallocate them. The Secretary will determine the process for reallocation of HPRP funds and notify grantees regarding details at a later date. Grantees should note that all reallocated funds received must be expended within 3 years of the date of the grantee's original grant agreement.

III. WHO MAY CARRY OUT ELIGIBLE ACTIVITIES

A. States

A state grantee must make available all of its formula allocation, except for an appropriate share of funds for administrative costs, to the subgrantees listed below to carry out all eligible activities. Any organization receiving HPRP funds shall be subject to all of the requirements that apply to the grantee under this Notice.

1. Units of general local government in the state, which may include metropolitan cities and urban counties that receive grant amounts directly from HUD.
2. Private non-profit organizations, if the local government for the locality in which the program is located certifies that it approves of the program.

B. Metropolitan Cities, Urban Counties, and Territories

Metropolitan cities (including the District of Columbia), urban counties, and territories, or an agency of those governments, may directly carry out eligible activities, or may distribute all or part of their grant amounts to private non-profit organizations to carry out HPRP activities. Any organization receiving HPRP funds shall be subject to all of the requirements that apply to the grantee under this Notice.

C. Alternate Grant Arrangements

Any local government grantee may enter into a subgrant with another local government to carry out the program. A local government grantee may choose this arrangement because another local government has greater capacity or because the grantee wants its program to be cooperatively carried out with another local government. Any organization receiving HPRP funds shall be subject to all of the requirements that apply to the grantee under this Notice.

IV. REQUIREMENTS FOR FUNDING

A. Eligible Activities

Grant funds must be used for eligible activities as described in this Notice. There are four categories of eligible activities for the HPRP program: financial assistance, housing relocation and stabilization services, data collection and evaluation, and administrative costs. These eligible activities are intentionally focused on housing—either financial assistance to help pay for housing, or services designed to keep people in housing or to find housing. Generally, the intent of HPRP assistance is to rapidly transition program participants to stability, either through their own means or through public assistance, as appropriate. HPRP assistance is not intended to provide long-term support for program participants, nor will it be able to address all of the financial and supportive services needs of households that affect housing stability. Rather, assistance should be focused on housing stabilization, linking program participants to community resources and mainstream benefits, and helping them develop a plan for preventing future housing instability. Grantee programs should therefore ensure that there is a clear process for determining the type, level, and duration of assistance for each program participant.

1. Financial Assistance. Financial assistance is limited to the following activities: short-term rental assistance, medium-term rental assistance, security deposits, utility deposits, utility payments, moving cost assistance, and motel and hotel vouchers. Grantees and subgrantees must not make payments directly to program participants, but only to third parties, such as landlords or utility companies. In addition, an assisted property may not be owned by the grantee, subgrantee or the parent, subsidiary or affiliated organization of the subgrantee.

a. Rental Assistance.

(1) Short- and medium-term rental assistance are tenant-based rental assistance that can be used to allow individuals and families to remain in their existing rental units or to help them obtain and remain in rental units they select. Short-term rental assistance may not exceed rental costs accrued over a period of 3 months. Medium-term rental assistance may not exceed actual rental costs accrued over a period of 4 to 18 months. No program participant may receive more than 18 months of assistance under HPRP. After 3 months, if program participants receiving short-term rental assistance need additional financial assistance to remain housed, they must be evaluated for eligibility to receive up to 15 additional months of medium-term rental assistance, for a total of 18 months. HUD is requiring grantees and subgrantees to certify eligibility at least once every 3 months for all program participants receiving medium-term rental assistance. HUD additionally encourages grantees and subgrantees to provide ongoing case management, as needed, to all program participants receiving rental assistance in order to transition them to independence, including permanent housing arrangements (subsidized or unsubsidized).

(2) The grantee determines the amount of short-term and medium-term rental assistance provided, such as “shallow subsidies” (payment of a portion of the rent), payment of 100 percent of the rent charged, or graduated/declining subsidies. A grantee may also set a maximum amount of assistance that a single individual or family may receive from HPRP funds, or may set a maximum number of times that an individual or family may receive assistance, as long as the total amount of assistance that any individual or family receives does not exceed an amount equal to 18 months of rental assistance. Grantees may require program participants to share in the costs of rent, utilities, security and utility deposits, moving, hotel or motel, and other expenses as a condition of receiving HPRP financial assistance. For example, a program may require a program participant to pay a portion of the rent expense for a unit. HPRP assistance

should be “needs-based,” meaning that grantees and/or subgrantees should determine the amount of assistance based on the minimum amount needed to prevent the program participant from becoming homeless or returning to homelessness in the near term. This will also help communities to utilize program resources efficiently to serve as many households as possible.

(3) Rental assistance may also be used to pay up to 6 months of rental arrears for eligible program participants. Rental arrears may be paid if the payment enables the program participant to remain in the housing unit for which the arrears are being paid or move to another unit. If HPRP funds are used to pay rental arrears, arrears must be included in determining the total period of the program participant’s rental assistance, which may not exceed 18 months.

(4) The rental assistance paid cannot exceed the actual rental cost, which must be in compliance with HUD’s standard of “rent reasonableness.” “Rent reasonableness” means that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units. To make this determination, the grantee or subgrantee should consider (a) the location, quality, size, type, and age of the unit; and (b) any amenities, housing services, maintenance and utilities to be provided by the owner. Comparable rents can be checked by using a market study, by reviewing comparable units advertised for rent, or with a note from the property owner verifying the comparability of charged rents to other units owned (for example, the landlord would document the rents paid in other units). For more information, see HUD’s worksheet on rent reasonableness at:

www.hud.gov/offices/cpd/affordablehousing/library/forms/rentreasonablechecklist.doc.

(5) Rental assistance payments cannot be made on behalf of eligible individuals or families for the same period of time and for the same cost types that are being provided through another federal, state or local housing subsidy program. Cost types are the categories of eligible HPRP financial assistance: rent, either the client portion or the subsidy; security deposits, utility deposits, utility payments, moving cost assistance, and hotel/motel vouchers.

b. Security and utility deposits. HPRP funds may be used to pay for security deposits, including utility deposits, for eligible program participants. In contrast to the requirements regarding rental assistance payments, security and utility deposits covering the same period of time in which assistance is being provided through another housing subsidy program are eligible, as long as they cover separate cost types. One example of this would be providing a security deposit for a participant in the HUD-VA Supportive Housing (HUD-VASH) program, which provides rental assistance and services. A program description of HUD-VASH can be found at:

<http://www.hud.gov/offices/pih/programs/hcv/vash/index.cfm>.

c. Utility payments. HPRP funds may be used for up to 18 months of utility payments, including up to 6 months of utility payments in arrears, for each program participant, provided that the program participant or a member of his/her household has an account in his/her name with a utility company or proof of responsibility to make utility payments, such as cancelled checks or receipts in his/her name from a utility company.

d. Moving cost assistance. HPRP funds may be used for reasonable moving costs, such as truck rental, hiring a moving company, or short-term storage fees for a maximum of 3 months or until the program participant is in housing, whichever is shorter.

e. Motel and hotel vouchers. HPRP funds may be used for reasonable and appropriate motel and hotel vouchers for up to 30 days if no appropriate shelter beds are available and subsequent

rental housing has been identified but is not immediately available for move-in by the program participants.

2. Housing Relocation and Stabilization Services. HPRP funds may be used for services that assist program participants with housing stability and placement. Each program participant may receive housing relocation and stabilization services for up to 18 months. These services are limited to the following eligible activities:

- a. Case management. HPRP case management funds may be used for activities for the arrangement, coordination, monitoring, and delivery of services related to meeting the housing needs of program participants and helping them obtain housing stability. Component services and activities may include: counseling; developing, securing, and coordinating services; monitoring and evaluating program participant progress; assuring that program participants' rights are protected; and developing an individualized housing and service plan, including a path to permanent housing stability subsequent to HPRP financial assistance.
- b. Outreach and engagement. HPRP funds may be used for services or assistance designed to publicize the availability of programs to make persons who are homeless or almost homeless aware of these and other available services and programs.
- c. Housing search and placement. HPRP housing search and placement funds may be used for services or activities designed to assist individuals or families in locating, obtaining, and retaining suitable housing. Component services or activities may include: tenant counseling; assisting individuals and families to understand leases; securing utilities; making moving arrangements; representative payee services concerning rent and utilities; and mediation and outreach to property owners related to locating or retaining housing.
- d. Legal services. HPRP funds may be used for legal services to help people stay in their homes,

such as services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist program participants with legal advice and representation in administrative or court proceedings related to tenant/landlord matters or housing issues. Legal services related to mortgages are not eligible.

e. Credit repair. HPRP funds may be used for services that are targeted to assist program participants with critical skills related to household budgeting, money management, accessing a free personal credit report, and resolving personal credit issues.

3. Data Collection and Evaluation.

a. Data Collection. The Recovery Act requires that data collection and reporting for HPRP be conducted through the use of Homeless Management Information Systems (HMIS) or a comparable client-level database. Therefore, reasonable and appropriate costs associated with operating an HMIS for purposes of collecting and reporting data required under HPRP and analyzing patterns of use of HPRP funds are eligible. Eligible costs include the purchase of HMIS software and/or user licenses, leasing or purchasing needed computer equipment for providers and the central server, costs associated with data collection, entry and analysis, and staffing associated with the operation of the HMIS, including training. HMIS activities that are ineligible include planning and development of HMIS systems, development of new software systems, and replacing state and local government funding for an existing HMIS. Only those jurisdictions that do not have an HMIS already implemented may use a portion of these funds for HMIS implementation or start-up activities.

b. Evaluation. Grantees and subgrantees must comply if asked to participate in HUD-sponsored research and evaluation of HPRP. HPRP funds are eligible for costs to the grantee of participating in HUD research and evaluation of the program.

4. Administrative Costs.

a. Administrative costs may be used for: pre-award administrative costs, as defined in section b. below; accounting for the use of grant funds; preparing reports for submission to HUD; obtaining program audits; similar costs related to administering the grant after the award; and grantee or subgrantee staff salaries associated with these administrative costs. Administrative costs also include training for staff who will administer the program or case managers who will serve program participants, as long as this training is directly related to learning about HPRP. Administrative costs *do not* include the costs of issuing financial assistance, providing housing relocation and stabilization services, or carrying out eligible data collection and evaluation activities, as specified above, such as grantee or subgrantee staff salaries, costs of conducting housing inspections, and other operating costs. These costs should be included under one of the three other eligible activity categories.

b. Pre-award administrative costs. Given the urgent need in many communities for this funding and the short timeframe set forth in section V.A.1. for obligation to grantees, grantees will need to act quickly to prepare the HPRP substantial amendment and to undertake other administrative actions. Therefore, HUD is granting permission to grantees receiving a direct allocation of HPRP funds (see Attachment A) to incur pre-award costs in accordance with OMB Circular A-87, Attachment B, paragraph 31 (24 CFR part 225, Appendix B, paragraph 31). All costs and activities funded with pre-award HPRP funds must comply with the Recovery Act statutory language relevant to HPRP, and they must comply with the requirements of HPRP as described in this Notice. Eligible pre-award costs that grantees may incur are costs that are directly related to preparing the application for submission to HUD or participating in HUD-sponsored HPRP training, starting with the publication of this Notice and ending with the execution of the grant

agreement. This includes, but is not limited to, staff costs for preparing the substantial amendment and publication, other costs related to the public comment process, or reasonable travel and accommodation costs related to participation in HUD-sponsored HPRP training.

c. Limitations on administrative costs. No more than 5 percent of the total HPRP grant to the grantee may be spent on administrative costs, whether by the grantee or subgrantee(s). In addition, all administrative costs must be incurred prior to the 3-year expenditure deadline (described in section V.A.2).

d. Sharing of administrative funds. Grantees shall share a reasonable and appropriate amount of their administrative funds with subgrantees.

B. Ineligible and Prohibited Activities

1. Coordination with Recovery Act Resources. Grantees are strongly encouraged, as part of local planning, to maximize all resources that may be available with Recovery Act funds other than HPRP (see chart on Recovery Act resources located at www.hudhre.info). A grantee's local plan for spending HPRP funds should coordinate closely with other Recovery Act funding streams, so that eligible activities under other Recovery Act programs are aligned with HPRP funds to create a comprehensive package of housing and service options available to eligible program participants. The intent of HPRP is to provide funding for housing expenses to persons who are homeless or who would be homeless if not for this assistance. Therefore, financial assistance or services to pay for expenses that are available through other Recovery Act programs, including child care and employment training, are not eligible. Case managers should work to link program participants to these other resources.

2. Mortgage Costs are Ineligible. Financial assistance may not be used to pay for any mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing

a mortgage to make it affordable.

3. Other Ineligible and Prohibited Activities. HPRP funds may not be used to pay for any of the following items: construction or rehabilitation; credit card bills or other consumer debt; car repair or other transportation costs; travel costs; food; medical or dental care and medicines; clothing and grooming; home furnishings; pet care; entertainment activities; work or education related materials; and cash assistance to program participants. HPRP funds may not be used to develop discharge planning programs in mainstream institutions such as hospitals, jails, or prisons. Finally, while training for case managers and program administrators is an eligible administrative cost as long as it is directly related to HPRP program operations, HPRP funds may not be used to pay for certifications, licenses, and general training classes. Programs may not charge fees to HPRP program participants. Any HPRP funds used to support program participants must be issued directly to the appropriate third party, such as the landlord or utility company, and in no case are funds eligible to be issued directly to program participants. If funds are found to be used for ineligible activities as determined by HUD, the grantee will be required to reimburse its line of credit.

C. Discharge Coordination Policy

Grantees must agree to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions), in order to prevent such discharge from immediately resulting in homelessness for such persons. Developing or updating system discharge plans and policies is not an eligible expense under HPRP. However, persons who are being imminently discharged into homelessness from such publicly funded institutions are eligible to receive financial

assistance or services through HPRP as long as they meet the minimum requirements as discussed in section D.2. below.

D. Eligible Program Participants

1. General. HUD allows grantees significant discretion in program design and operation while targeting those who are most in need of temporary homelessness prevention and rapid re-housing assistance. When establishing local programs, grantees should consider how their programs will identify eligible program participants and meet their needs as intended by the Recovery Act. Grantees should consider serving two eligible populations with HPRP funds: persons who are still housed but at risk of becoming homeless and persons who are already homeless. Although persons in both target populations are eligible to receive financial assistance and services under HPRP, creating this distinction can help communities serve households most in need of temporary assistance, as well as track the funds used for rapid re-housing and prevention. Since not all program participants in either of the target populations will have the same level of need, it is not expected that all persons in each target population will receive identical levels of assistance. For example, the scope and intensity of assistance provided to a homeless family may be greater than that provided to a homeless individual. Likewise, a family on the verge of becoming homeless within a few days may require more services or a higher level of assistance than a family whose risk of homelessness is not as imminent or one who may only need a shorter period of financial assistance. Grantees are responsible for verifying and documenting the individuals' risk of homelessness that qualifies them for receiving rental assistance. HUD requires grantees and/or subgrantees to evaluate and certify the eligibility of program participants at least once every 3 months for all persons receiving medium-term rental assistance. Similarly, grantees and subgrantees should carefully assess a household's need and appropriateness for

HPRP. If the household needs more intensive supportive services or long-term assistance, or if a household is not at risk of homelessness, grantees and subgrantees should work to link them to other appropriate available resources.

2. Requirements for All Program Participants. In order to receive financial assistance or services funded by HPRP, individuals and families—whether homeless or housed—must at least meet the following minimum criteria:

1) Any individual or family provided with financial assistance through HPRP must have at least an initial consultation with a case manager or other authorized representative who can determine the appropriate type of assistance to meet their needs. HUD encourages communities to have a process in place to refer persons ineligible for HPRP to the appropriate resources or service provider that can assist them.

2) The household must be at or below 50 percent of Area Median Income (AMI). Income limits are available on HUD's web site at: <http://www.huduser.org/DATASETS/il.html>. Grantees should use HUD's Section 8 income eligibility standards for HPRP.

3) The household must be either homeless or at risk of losing its housing and meet both of the following circumstances: (1) no appropriate subsequent housing options have been identified; AND (2) the household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing.

3. Prevention Assistance. While HUD's definition of homelessness is well-understood, it can be more challenging to identify persons who are housed but who have a very high risk of becoming homeless. There are many people who are housed and have great need but would not become homeless if they did not receive assistance. HUD strongly encourages grantees and subgrantees to target prevention assistance to those individuals and families at the greatest risk of becoming

homeless. It is helpful to remember that the defining question to ask is: "Would this individual or family be homeless *but for* this assistance?"

The requirements set forth in paragraph 2 of this section establish HUD's minimum conditions that an individual or family must meet in order to receive assistance through HPRP. However, HUD strongly encourages communities to consider more factors when designing their local programs and determining a household's level of need for receiving assistance through HPRP. To aid grantees and subgrantees in targeting HPRP funds toward persons most at risk of becoming homeless, a number of potential "risk factors" are listed below that could indicate that a person or family is at a higher risk of becoming homeless. This list represents examples of some commonly identified risk factors for homelessness from scholarly research and practical experience drawn from existing homelessness prevention programs. One way a grantee or subgrantee could use these factors would be to consider the first four criteria on this list as indicative of the most urgent need, and could require that a program participant meet one of these criteria in order to receive the most expensive benefit, "medium-term" rental assistance. Likewise, a grantee might require that a program participant have at least two or more of the risk factors to qualify for any assistance. Grantees and subgrantees should note, however, that this list is optional and not exhaustive; grantees and subgrantees may consider other risk factors or other ways to target persons at risk of homelessness when developing local programs and requirements. Grantees and subgrantees may also consider the expected ability of the program participant to achieve stable housing, unsubsidized or subsidized, outside of HPRP. HUD will provide technical assistance to communities to assist them in developing local programs.

The risk factors for homelessness for consideration by grantees and subgrantees in developing their programs are as follows:

- Eviction within 2 weeks from a private dwelling (including housing provided by family or friends);
- Discharge within 2 weeks from an institution in which the person has been a resident for more than 180 days (including prisons, mental health institutions, hospitals);
- Residency in housing that has been condemned by housing officials and is no longer meant for human habitation;
- Sudden and significant loss of income;
- Sudden and significant increase in utility costs;
- Mental health and substance abuse issues;
- Physical disabilities and other chronic health issues, including HIV/AIDS;
- Severe housing cost burden (greater than 50 percent of income for housing costs);
- Homeless in last 12 months;
- Young head of household (under 25 with children or pregnant);
- Current or past involvement with child welfare, including foster care;
- Pending foreclosure of rental housing;
- Extremely low income (less than 30 percent of Area Median Income);
- High overcrowding (the number of persons exceeds health and/or safety standards for the housing unit size);
- Past institutional care (prison, treatment facility, hospital);
- Recent traumatic life event, such as death of a spouse or primary care provider, or recent health crisis that prevented the household from meeting its financial responsibilities;
- Credit problems that preclude obtaining of housing; or
- Significant amount of medical debt.

4. Rapid Re-Housing Assistance. Rapid re-housing assistance is available for persons who are homeless according to HUD's definition. Individuals and families who meet one of the following criteria, along with the minimum requirements established in paragraph 2 of this section, are eligible under the rapid re-housing portion of HPRP:

- a. Sleeping in an emergency shelter;
- b. Sleeping in a place not meant for human habitation, such as cars, parks, abandoned buildings, streets/sidewalks;
- c. Staying in a hospital or other institution for up to 180 days but was sleeping in an emergency shelter or other place not meant for human habitation (cars, parks, streets, etc.) immediately prior to entry into the hospital or institution;
- d. Graduating from, or timing out of a transitional housing program; and
- e. Victims of domestic violence.

Generally, rapid re-housing program models include short- or medium-term rental assistance and services for households who have barriers to housing, but who are likely to sustain housing after the subsidy ends. The purpose of HPRP rapid re-housing funds is to assist eligible program participants to quickly obtain and sustain stable housing. Therefore, organizations providing assistance should utilize a process to assess, for all potential program participants, their level of service need, other resources available to them, and the appropriateness of their participation in the rapid re-housing assistance portion of HPRP. Program participants who require longer-term housing assistance and services should be directed to programs that can provide the requisite services and financial assistance.

Persons familiar with the Rapid Re-Housing Demonstration Program in the 2008 Continuum of Care competition should note that these funds are not subject to the same

requirements as under that demonstration program. HPRP provides flexibility to grantees to use these funds in a way that meets the needs of the community, as long as grantees, subgrantees, and program participants meet the requirements established in this Notice.

E. Application Requirements

1. Required Submission Documents. HUD will consider a completed application to contain the following three documents:

- a. A completed and signed Standard Form 424 (SF-424);
- b. A completed and signed substantial amendment using form HUD-40119; and
- c. A signed copy of the required certifications.

2. Substantial Amendment. To receive its grant allocation, each grantee must prepare and submit to HUD for approval a substantial amendment to its Consolidated Plan 2008 Action Plan using the form HUD-40119. Each grantee must prepare its substantial amendment in accordance with the Consolidated Plan procedures as modified by this Notice, or HUD will reallocate the funds allocated for that grantee. Eligible grantees must download a copy of HUD-40119 to use in completing and submitting their HPRP substantial amendment from HUD's web site at: www.hud.gov/recovery. To request a paper copy of this form, call 1-800-998-9999. HUD will not approve and will return to the grantee amendments not submitted in the required format. The substantial amendment form requires the grantee to address six major components of its plan to use HPRP funds:

- a. Grantee contact information;
- b. The citizen participation plan and public comments received;
- c. The grantee's plan for distribution, administration, and oversight of funds;
- d. The grantee's plan for collaboration with local organizations receiving Recovery Act funds

and Continuums of Care, and ensuring consistency with the Consolidated Plan;

e. An estimated budget for HPRP funds; and

f. The signature of the official authorized to sign the substantial amendment.

3. Deadline. To receive funding, each eligible HPRP grantee listed in Attachment A must ensure that its complete application is postmarked no later than May 18, 2009. Some grantees' local Consolidated Plan processes require that the grantee make available for public comment a list of the proposed awards to subgrantees prior to finalizing agreements with those subgrantees. A grantee with such local requirements or other timing considerations may need to submit its application in advance of the May 18 deadline in order to obligate funds to subgrantees by September 30, 2009.

4. Process for Submission. Each eligible grantee must provide HUD with two hard copies of the completed substantial amendment, along with the required SF-424 form and certifications. Each eligible grantee must send one hard copy to HUD Headquarters in Washington, DC, and the other to the appropriate HUD Field Office.

a. Addresses for submission:

(1) To HUD Headquarters. Submit the original completed HPRP application (the HPRP substantial amendment form with the other original signed documents) to: U.S. Department of Housing and Urban Development, Office of Special Needs Assistance Programs, Robert C. Weaver Building, 451 Seventh Street, SW, Room 7262, Washington, DC 20410, Attention: Homelessness Prevention and Rapid Re-Housing Program.

(2) To the appropriate CPD Field Office. Also submit one copy of the completed substantial amendment package to the Office of Community Planning and Development of the appropriate HUD field office for your jurisdiction. Please see the following web site for field office

addresses: <http://www.hud.gov/localoffices.cfm>.

b. Security procedures. HUD recommends grantees use the United States Postal Service (USPS) to submit their substantial amendment packages. However, grantees may also use United Parcel Service (UPS), FedEx, or DHL. Due to HUD security regulations, no other delivery service is permitted into HUD Headquarters without escort. Grantees must, therefore, use one of the four carriers listed above.

5. Posting Substantial Amendments Online. To improve transparency, HUD strongly recommends that each grantee post its substantial amendment materials on the grantee's official website as the materials are developed, published, and submitted to HUD.

6. Coordination with CDBG-R. Many grantees will be simultaneously developing a substantial amendment for funding under the Community Development Block Grant-Recovery (CDBG-R) program, pursuant to the requirements in the CDBG-R Notice. In order to ease administrative burden for grantees, any HPRP grantee that is receiving a direct allocation of CDBG-R funding may consolidate the two amendment processes and may submit their CDBG-R substantial amendment simultaneously with their HPRP substantial amendment by the HPRP submission deadline. Grantees interested in this option must also follow the requirements and guidelines described in the CDBG-R Notice.

7. Coordination with Other Community Planning Efforts. Each grantee must coordinate with the local Continuum(s) of Care (CoC) to ensure that HPRP activities are aligned with the CoC's strategies for preventing and ending homelessness (state grantees may designate subgrantees to assume this responsibility). Because persons who are homeless are eligible to receive assistance through HPRP, the impact of these funds will ultimately be reported by CoCs through required point-in-time counts and through other data collected by HUD. In addition, HUD strongly

encourages grantees to coordinate with other local organizations that are planning and carrying out activities related to prevention and rapid re-housing. Such organizations include other Continuums of Care, FEMA Boards, local agencies responsible for administering and implementing ten-year plans (and other plans) to end homelessness, and agencies that administer mainstream resources such as Temporary Assistance to Needy Families (TANF).

HUD also strongly encourages grantees to ensure that program participants are enrolled in all applicable mainstream resources. In particular, grantees should carefully assess how HPRP funds can be used in conjunction with other funds from the Recovery Act to prevent homelessness and rapidly re-house homeless persons, and plan a coordinated approach to serving similar target populations. Federal agencies that received funding for serving persons who are homeless or unstably housed include the U.S. Departments of Education, Health and Human Services, Homeland Security, and Labor.

8. DUNS Number. All grantees and subgrantees are required to register with Dun and Bradstreet to obtain a DUNS number, if they have not already done so, and complete or renew their registration in the Central Contractor Registration (CCR). For more information see 73 FR 23483, April 30, 2008 or go to www.dnb.com.

9. Compliance with Fair Housing and Civil Rights Laws. (1) Grantees and subgrantees must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). (2) If the grantee or subgrantee: (a) Has been charged with an ongoing systemic violation of the Fair Housing Act; or (b) Is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) Has received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and

Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then the grantee is ineligible. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to: (i) A voluntary compliance agreement signed by all parties in response to a letter of findings; (ii) A HUD-approved conciliation agreement signed by all parties; (iii) A consent order or consent decree; or (iv) An issuance of a final judicial ruling or a HUD Administrative Law Judge's decision.

F. Review and Approval of Applications

1. **Review of Applications.** HUD will review each application for completeness and consistency with the requirements of this Notice, and will disapprove incomplete and inconsistent substantial amendments in accordance with 24 CFR 91.500. HUD will notify the grantee within 45 days of receipt that either the application was accepted or it did not meet the requirements of this Notice. If HUD fails to review and/or notify the grantee of approval or required resubmission within 45 days of receipt of the application, the grantee may consider it automatically approved.
2. **Resubmission.** If the application is not approved, the grantee may submit a revised application to HUD, and will have 15 days after HUD sends the first notification of its disapproval to do so, per the same submission requirements above. HUD will then approve or disapprove the revised application within 15 days of receiving the resubmission.
3. **Conditional Grant.** For HPRP grantees that HUD determines are high risk in accordance with 24 CFR 85.12(a), HUD will apply additional grant conditions in accordance with 24 CFR 85.12(b) (see Appendix D of this Notice). Conditional grants may be made where there is

substantial evidence that there has been, or there will be, a failure to meet the requirements of this Notice. In such a case, the reason for the conditional grant, the action necessary to remove the condition, and the deadline for taking those actions will be specified. Failure to satisfy the condition may result in imposition of a sanction or in any other action authorized under applicable federal law.

4. Grant Agreement. The grant will be made by means of a grant agreement executed by HUD and the grantee. The statutory 2- and 3-year deadlines for expenditure of funds begin when the grant agreement is signed by HUD. The grantee must sign and return the grant agreement to HUD within 15 days of the date that HUD signs the grant agreement, or risk losing part or all of the grant amount. Grantees should ensure that sufficient planning is in place to begin to expend funds shortly after the grant agreement is executed.

5. Line of Credit. After HUD processes and approves the substantial amendment and there is a fully executed grant agreement, HUD will establish the grantee's line of credit in the amount of funds included in the substantial amendment, up to the allocation amount.

V. Post-Award Process Requirements

A. Deadlines for Using Grant Amounts

1. Grantee Obligation. Grantees must award or enter into legally binding grant agreements with all subgrantees by September 30, 2009.

2. Expenditure. Each grantee must draw down 60 percent of its HPRP grant funds within 2 years of the date that HUD signed the grant agreement, and must expend 100 percent of its funds within 3 years of this date. If a grantee cannot spend 60 percent of its grant funds within 2 years of the date that HUD signed the grant agreement, HUD may reallocate the grantee's funds. See Section II.B.2 of this Notice for the process of reallocation. Grantees may continue to draw

down funds for up to 90 days after the grant period ends, provided that these funds are used to pay for eligible costs that were incurred before the 3-year expenditure deadline. Any costs incurred after the 3-year deadline, including administrative costs, are not eligible HPRP costs.

B. Method of Payment

Payments are made to the grantee upon its request after the grant agreement has been fully executed. Grantees will use the Integrated Disbursement and Information System (IDIS) to draw down funds. A draw-down is a request for payment against a grantee's line of credit for allowable costs (defined in OMB Circulars A-87 and A-122 (2 CFR parts 225 and 230)) for eligible HPRP activities. Unlike ESG, grantees and subgrantees may be paid in advance, pursuant to procedures outlined in 24 CFR 84.22 for non-profit organizations and 24 CFR 85.21 for units of government.

C. Timeliness Standards

HUD requires that the grantee, or subgrantee if applicable, draw down funds at least quarterly from IDIS.

D. Confidentiality

Each HPRP grantee or subgrantee must develop and implement procedures to ensure:

- (1) The confidentiality of records pertaining to any individual provided with assistance; and
- (2) That the address or location of any assisted housing will not be made public, except to the extent that this prohibition contradicts a preexisting privacy policy of the grantee.

E. Termination of Housing Assistance

The grantee may terminate assistance to a program participant who violates program requirements. Grantees may resume assistance to a program participant whose assistance was previously terminated. In terminating assistance to a program participant, the grantee must

provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must consist of:

- (1) Written notice to the program participant containing a clear statement of the reasons for termination;
- (2) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and
- (3) Prompt written notice of the final decision to the program participant.

F. Responsibility for Grant Administration

Grantees are responsible for ensuring that HPRP amounts are administered in accordance with the requirements of this Notice and other applicable laws. Each grantee is responsible for ensuring that its subgrantees carry out the HPRP eligible activities in compliance with all applicable requirements.

G. Recordkeeping

Each grantee and subgrantee must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require within the timeframe required.

H. Sanctions

1. HUD Sanctions. If HUD determines that, after following appropriate procedures, a grantee is not complying with the requirements of this Notice or of other applicable federal laws, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

- a. Issue a warning letter that further failure to comply with such requirements will result in a

more serious sanction;

- b. Direct the grantee to cease incurring costs with grant funds; or
- c. Require that some or all of the grant amounts be remitted to HUD.

2. Grantee Sanctions. If a grantee determines that a subgrantee is not complying with the requirements of this Notice or other applicable federal laws, the grantee must take appropriate actions, which may include the actions described in part 1 of this section. Any grant amounts that become available to a state as a result of a sanction under this section must, at the option of the state, be made available (as soon as practicable) to other private non-profit organizations or units of general local government located in the state for use within the time periods specified in this Notice, or to HUD for reallocation.

I. Monitoring

Grantees are responsible for monitoring all HPRP activities, including activities that are carried out by a subgrantee, to ensure that the program requirements established by this Notice and any subsequent guidance are met. The grantees must follow the monitoring procedures it established in its substantial amendment submitted for HPRP or as described in its approved Consolidated Plan. Monitoring may be conducted by the local HUD Office of Community Planning and Development, HUD's Office of Special Needs Assistance Programs, HUD's Office of Inspector General, HUD's Office of Fair Housing and Equal Opportunity, or another federal agency to determine whether the grantee complied with the requirements of this program.

J. Summary of the Expedited Process for HPRP Grant Allocations

In combination, the Notice requirements provide the following expedited steps for HPRP grants:

- Proposed substantial amendment published according to the citizen action plan, except that the public comment period may be reduced to 12 calendar days;

- Final application submitted to HUD on or before May 18, 2009 (grant application includes the substantial amendment, SF-424, and certifications);
- HUD expedites review, completing all reviews not requiring additional information from the grantee within 45 days of receipt of the substantial amendment;
- HUD either accepts the substantial amendment and prepares a cover letter, grant agreement, and grant conditions, or disapproves it after allowing the grantee a resubmission;
- Grant agreement is signed by HUD and immediately transmitted to the grantee, “starting the clock” for statutory expenditure deadlines;
- Grantee signs and returns the grant agreements;
- After all requirements are complete and approved by HUD, the grantee may draw down funds from the line of credit and reimburse any eligible pre-award costs incurred.
- Grantee signs agreements with subgrantees by September 30, 2009;
- Initial Performance Report is due to HUD October 10, 2009;
- Quarterly Performance Reports are due to HUD 10 days after the end of each quarter, and Annual Performance Reports are due 60 days after the end of each federal fiscal year;
- Grantee expends 60 percent of grant funds within 2 years of the date that HUD signed the grant agreement. Funds may be recaptured and reallocated if not spent;
- Grantee expends 100 percent of grant funds within 3 years of the date HUD signed the grant agreement. Funds will be recaptured if not spent.
- Grantees will have up to 90 days after the 3-year expenditure deadline to draw down funds for eligible HPRP costs incurred during the 3-year grant period.

VI. Reporting Requirements

A. IDIS

Grantees, and as applicable, subgrantees, will use the Integrated Disbursement and Information System (IDIS) to draw down HPRP funding and report on grant expenditures.

B. HMIS

The Recovery Act requires HPRP grantees to report client-level data, such as the number of persons served and their demographic information, in a Homeless Management Information System (HMIS) or a comparable database. HMIS is an electronic data collection system that facilitates the collection of information on persons who are homeless or at risk of becoming homeless, that is managed and operated locally. HPRP grantees and subgrantees providing financial assistance and services directly will use the HMIS in the applicable Continuum of Care to collect data and report on outputs and outcomes as required by HUD. The required data elements that will be collected in HMIS for HPRP will be included in the revised HMIS Data and Technical Standards, which are forthcoming. If an HMIS has not been implemented in the HPRP grantee's jurisdiction, the grantee may use an alternate system for collecting and reporting data to HUD as long as it meets the data collection and reporting requirements set forth in this Notice and is consistent with HUD's HMIS Data and Technical standards. A list of Continuums of Care is available at: <http://www.hudhre.info/index.cfm?do=viewCocContacts>.

C. Performance Reports

1. The Recovery Act requires grantees to submit quarterly reports. It also requires grantees to have systems and internal controls in place that allow them to separately track and report on Recovery Act funds. These reporting requirements are outlined in section 1512 of the Recovery Act, a copy of which can be found at:

<http://www.hudhre.info/documents/AmericanRecoveryReinvestmentAct.pdf> (see pages 173-174).

2. Each grantee must submit the following performance reports to HUD:
 - a. An Initial Performance Report, which must cover the period between the grant agreement execution date and September 30, 2009 and which will serve as the first Quarterly Performance Report. Grantees will provide information required by Congress and HUD in a format to be prescribed by OMB and HUD, including but not limited to the following items: the total amount of Recovery Act funds received from HUD; the subgrantees and total amounts awarded to each; the amounts of HPRP funds allocated for the four eligible HPRP activity categories (Financial Assistance, Services, Data Collection and Evaluation, and Administrative Costs); the amount expended for each of the above categories; the estimated number of unduplicated individuals and families served; and the estimated numbers of new jobs created and jobs retained. The Initial Performance Report will be due on October 10, 2009.
 - b. A Quarterly Performance Report, submitted in a format to be prescribed by HUD. Grantees will report on many of the same items as in the Initial Performance Report, including HPRP funds expended by activity type, the number of unduplicated individuals and families served, the number of new jobs created, the number of jobs retained, challenges to effective program operation, and other data items. Quarterly Performance Reports are due within 10 days of the end of each quarter for the period of program operation, and will include current quarter and cumulative data.
 - c. An Annual Performance Report will be submitted to HUD in a format to be prescribed by HUD within 60 days of the end of each federal fiscal year. The first Annual Performance Report is due November 30, 2010 for the period ending September 30, 2010. In the Annual

Performance Report, grantees will report on outputs, such as the number of persons served and the demographic characteristics of persons served, HPRP funds expended by activity type, and the number of jobs created and retained, as well as outcomes related to housing stability, to be specified by HUD.

Report Type	Reporting Period
Initial Performance Report – Serves as the first Quarterly Performance report. Due October 10, 2009.	Date of HUD obligation of funds to grantee through September 30, 2009
Quarterly Performance Reports – Due 10 days after the end of each fiscal quarter in which HPRP funds are expended.	October 1 - December 31 January 1 – March 31 April 1 – June 30 July 1 – September 30
Annual Performance Report – Due 60 days after the end of the federal fiscal year for each fiscal year in which HPRP funds are expended.	October 1 – September 30

VII. Other Federal Requirements

A. Conflicts of Interest

1. General. With respect to the use of HPRP funds to procure services, equipment, supplies or other property, states, territories and units of general local government that receive HPRP funds shall comply with 24 CFR 85.36(b)(3), and non-profit subgrantees shall comply with 24 CFR 84.42. With respect to all other decisions involving the use of HPRP funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract,

subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

2. Exceptions. Upon the written request of the grantee, HUD may grant an exception to the restrictions in paragraph 1 above on a case-by-case basis when it determines that the exception will serve to further the purposes of the HPRP program and promote the efficient use of HPRP funds. In requesting an exception, the grantee must provide the following:

- a. For states and other governmental entities, a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- b. For all grantees, an opinion of the grantee's attorney that the interest for which the exception is sought would not violate state or local law.

B. Environmental Requirements

This Notice does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Moreover, consistent with the provisions for administrative and management expenses, tenant-based rental assistance, and supportive services in 24 CFR 50.19(b)(3), (11), and (12), the eligible activities to be assisted under this Notice are categorically excluded from the

requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to environmental review under the related laws and authorities.

C. Habitability Standards

Organizations providing rental assistance with HPRP funds will be required to conduct initial and any appropriate follow-up inspections of housing units into which a program participant will be moving. Units should be inspected on an annual basis and upon a change of tenancy. The minimum habitability standards are listed in Appendix C. Grantees may require more stringent standards.

D. Nondiscrimination and Equal Opportunity Requirements

As stated in section IV.E.8., grantees and subgrantees must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). In addition, grantees must make known that HPRP rental assistance and services are available to all on a nondiscriminatory basis and ensure that all citizens have equal access to information about HPRP and equal access to the financial assistance and services provided under this program. Among other things, this means that each grantee must take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency (LEP), pursuant to Title VI of the Civil Rights Act of 1964. This may mean providing language assistance or ensuring that program information is available in the appropriate languages for the geographic area served by the jurisdiction and that limited English proficient persons have meaningful access to HPRP assistance. This will be a particular issue for state grantees that may not be aware of LEP speaking populations in jurisdictions that are not normally served with ESG funds. To assist grantees, the Department published the "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (72

Federal Register 2732; January 22, 2007). In addition, all notices and communications shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.6.

If the procedures that the grantee intends to use to make known the availability of the rental assistance and services are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for such rental assistance and services, the grantee must establish additional procedures that will ensure that such persons are made aware of the rental assistance and services.

E. Affirmatively Furthering Fair Housing

Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. Grantees and subgrantees will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Examples of affirmatively furthering fair housing include: (1) marketing the program to all eligible persons, including persons with disabilities and persons with limited English proficiency; (2) making buildings and communications that facilitate applications and service delivery accessible to persons with disabilities (see, for example, HUD's rule on effective communications at 24 CFR 8.6); (3) providing fair housing counseling services or referrals to fair housing agencies; (4) informing participants of how to file a housing discrimination complaint, including providing the toll-free number for the Housing Discrimination Hotline: 1-800-669-9777; and (5) recruiting landlords and service providers in areas that expand housing choice to program participants.

F. Lead-Based Paint Requirements

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.) and implementing regulations at 24 CFR part 35, subparts A, B, M, and R shall apply to housing occupied by families receiving assistance through HPRP.

G. Uniform Administrative Requirements

All States, Territories, Urban Counties, and Metropolitan cities receiving funds under HPRP shall be subject to the requirements of 24 CFR part 85. Non-profit subgrantees shall be subject to the requirements of 24 CFR part 84.

H. Equal Participation of Religious Organizations

1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in HPRP. Neither the federal government nor a grantee shall discriminate against an organization on the basis of the organization's religious character or affiliation.
2. Organizations that are directly funded under HPRP may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under HPRP. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under HPRP, and participation must be voluntary for the program participants.
3. A religious organization that participates in HPRP will retain 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, provided that it does not use direct HPRP funds to support any inherently religious activities, such as worship, religious instruction, or

proselytization. Among other things, faith-based organizations may use space in their facilities to provide HPRP-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HPRP-funded religious organization 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.

4. An organization that participates in the HPRP program shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

5. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the state or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, the requirements listed above apply to all of the commingled funds.

I. Lobbying and Disclosure Requirements

The disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment), and implementing regulations at 24 CFR part 87, apply to HPRP. Applicants must disclose, using Standard Form LLL (SF-LLL), "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts.

J. Drug-Free Workplace Requirements

The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) and HUD's implementing regulations at 24 CFR part 21 apply to HPRP.

K. Procurement of Recovered Materials

State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure 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 in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

VIII. Appendices

Appendix A: Eligible Grantees

The following list indicates all grantees eligible to receive assistance under HPRP. This list is also available at: <http://www.hud.gov/recovery/homelesspreventioncov.xls>.

State	Grantee Name	Allocation Amounts
AK	AK State Program	\$1,143,986
AK	Anchorage	\$776,469
AL	AL State Program	\$13,328,942
AL	Birmingham	\$2,735,730
AL	Huntsville	\$529,697
AL	Jefferson County	\$845,709
AL	Mobile	\$1,186,394
AL	Mobile County	\$586,571
AL	Montgomery	\$860,653
AR	AR State Program	\$10,530,746
AR	Little Rock	\$682,197
AS	American Samoa	\$412,935
AZ	AZ State Program	\$7,033,520
AZ	Chandler	\$575,271
AZ	Glendale	\$914,122
AZ	Maricopa County	\$900,303
AZ	Mesa	\$1,405,094
AZ	Phoenix	\$6,996,243
AZ	Pima County	\$1,063,430
AZ	Tempe	\$661,474
AZ	Tucson	\$2,534,340
CA	CA State Program	\$44,466,877
CA	Alameda	\$552,208
CA	Alameda County	\$802,915
CA	Alhambra	\$567,605
CA	Anaheim	\$2,046,908
CA	Bakersfield	\$1,372,351
CA	Baldwin Park	\$605,041
CA	Berkeley	\$1,332,952
CA	Chula Vista	\$819,738
CA	Compton	\$848,514
CA	Contra Costa County	\$1,421,551
CA	Costa Mesa	\$560,237
CA	Daly City	\$510,070
CA	Downey	\$611,834
CA	El Cajon	\$512,686
CA	El Monte	\$1,110,506
CA	Escondido	\$709,782
CA	Fontana	\$783,380

State	Grantee Name	Allocation Amounts
CA	Fremont	\$682,331
CA	Fresno	\$3,130,746
CA	Fresno County	\$1,634,630
CA	Fullerton	\$622,710
CA	Garden Grove	\$1,068,707
CA	Glendale	\$1,346,899
CA	Hawthorne	\$703,261
CA	Hayward	\$703,342
CA	Huntington Beach	\$566,611
CA	Huntington Park	\$656,002
CA	Inglewood	\$918,344
CA	Irvine	\$540,656
CA	Kern County	\$2,076,503
CA	Lancaster	\$564,646
CA	Long Beach	\$3,566,451
CA	Los Angeles	\$29,446,304
CA	Los Angeles County	\$12,197,108
CA	Lynwood	\$646,575
CA	Marin County	\$659,106
CA	Merced	\$515,203
CA	Modesto	\$966,016
CA	Moreno Valley	\$732,872
CA	Norwalk	\$633,782
CA	Oakland	\$3,458,120
CA	Oceanside	\$742,791
CA	Ontario	\$997,869
CA	Orange	\$545,636
CA	Orange County	\$1,556,026
CA	Oxnard	\$1,124,994
CA	Palmdale	\$615,530
CA	Pasadena	\$908,395
CA	Pomona	\$1,164,766
CA	Rialto	\$546,485
CA	Richmond	\$559,735
CA	Riverside	\$1,383,070
CA	Riverside County	\$4,276,900
CA	Sacramento	\$2,375,126
CA	Sacramento County	\$2,396,773
CA	Salinas	\$1,013,978

State	Grantee Name	Allocation Amounts
CA	San Bernardino	\$1,455,066
CA	San Bernardino County	\$3,040,382
CA	San Diego	\$6,168,104
CA	San Diego County	\$1,925,974
CA	San Francisco	\$8,757,780
CA	San Joaquin County	\$1,460,619
CA	San Jose	\$4,128,763
CA	San Luis Obispo County	\$855,184
CA	San Mateo County	\$1,166,526
CA	Santa Ana	\$2,831,989
CA	Santa Barbara County	\$829,013
CA	Santa Clara County	\$717,484
CA	Santa Maria	\$521,839
CA	Santa Monica	\$553,576
CA	Santa Rosa	\$516,527
CA	Sonoma County	\$817,572
CA	South Gate	\$865,273
CA	Stanislaus County	\$1,023,163
CA	Stockton	\$1,725,572
CA	Sunnyvale	\$508,191
CA	Ventura County	\$826,094
CA	Westminster	\$511,454
CO	CO State Program	\$8,154,036
CO	Adams County	\$836,047
CO	Aurora	\$1,009,717
CO	Colorado Springs	\$1,043,089
CO	Denver	\$3,769,259
CO	Pueblo	\$678,970
CT	CT State Program	\$10,818,309
CT	Bridgeport	\$1,351,004
CT	Hartford	\$1,572,727
CT	New Britain	\$772,694
CT	New Haven	\$1,514,570
CT	Waterbury	\$931,128
DC	District Of Columbia	\$7,489,476
DE	DC State Program	\$934,980
DE	New Castle County	\$978,285
DE	Wilmington	\$1,008,057
FL	FL State Program	\$21,507,109
FL	Brevard County	\$644,208
FL	Broward County	\$1,579,569
FL	Collier County	\$888,850
FL	Escambia County	\$855,417
FL	Ft Lauderdale	\$852,872
FL	Gainesville	\$567,404
FL	Hialeah	\$1,734,021

State	Grantee Name	Allocation Amounts
FL	Hillsborough County	\$2,458,811
FL	Hollywood	\$625,671
FL	Jacksonville-Duval Count	\$2,779,039
FL	Lee County	\$881,538
FL	Manatee County	\$635,485
FL	Marion County	\$727,072
FL	Miami-Dade County	\$7,468,222
FL	Miami	\$3,392,918
FL	Miami Beach	\$715,418
FL	Miami Gardens City	\$567,612
FL	North Miami	\$507,641
FL	Orange County	\$2,523,982
FL	Orlando	\$921,665
FL	Palm Beach County	\$2,823,871
FL	Pasco County	\$1,055,241
FL	Pinellas County	\$1,237,464
FL	Polk County	\$1,222,920
FL	Pompano Beach	\$507,694
FL	Sarasota County	\$581,819
FL	Seminole County	\$991,180
FL	St Petersburg	\$914,999
FL	Tallahassee	\$784,267
FL	Tampa	\$1,538,393
FL	Volusia County	\$805,614
GA	GA State Program	\$19,084,426
GA	Athens-Clarke County	\$604,969
GA	Atlanta	\$3,441,091
GA	Augusta-Richmond County	\$927,319
GA	Clayton County	\$856,410
GA	Cobb County	\$1,337,048
GA	Columbus-Muscogee County	\$740,907
GA	De Kalb County	\$2,359,998
GA	Fulton County	\$896,069
GA	Gwinnett County	\$1,713,730
GA	Macon	\$541,299
GA	Savannah	\$1,121,523
GU	Guam	\$1,221,922
HI	HI State Program	\$2,166,888
HI	Honolulu	\$4,016,074
IA	IA State Program	\$11,866,889
IA	Cedar Rapids	\$536,843
IA	Davenport	\$711,923
IA	Des Moines	\$1,763,874
IA	Dubuque	\$502,294
IA	Sioux City	\$779,497
IA	Waterloo	\$570,881

State	Grantee Name	Allocation Amounts
ID	ID State Program	\$4,438,807
ID	Boise	\$533,411
IL	IL State Program	\$20,286,504
IL	Aurora	\$506,883
IL	Berwyn	\$559,545
IL	Chicago	\$34,356,259
IL	Cicero	\$581,065
IL	Cook County	\$4,121,046
IL	Decatur	\$623,309
IL	Du Page County	\$1,443,723
IL	East St Louis	\$750,339
IL	Evanston	\$801,460
IL	Kane County	\$517,394
IL	Lake County	\$1,057,106
IL	Madison County	\$566,987
IL	McHenry County	\$540,732
IL	Oak Park	\$796,581
IL	Peoria	\$790,404
IL	Rockford	\$861,073
IL	Springfield	\$516,191
IL	St Clair County	\$586,413
IL	Will County	\$602,271
IN	IN State Program	\$16,293,551
IN	East Chicago	\$559,073
IN	Evansville	\$1,217,598
IN	Fort Wayne	\$874,319
IN	Gary	\$1,498,882
IN	Hammond	\$948,137
IN	Indianapolis	\$3,942,177
IN	Lake County	\$550,643
IN	Muncie	\$590,276
IN	South Bend	\$1,148,607
IN	Terre Haute	\$760,163
KS	KS State Program	\$8,360,995
KS	Kansas City	\$1,003,797
KS	Topeka	\$816,686
KS	Wichita	\$1,168,490
KY	KY State Program	\$12,157,352
KY	Covington	\$679,522
KY	Lexington-Fayette	\$849,668
KY	Louisville	\$4,870,830
LA	LA State Program	\$13,541,639
LA	Baton Rouge	\$1,734,745
LA	Houma-Terrebonne	\$507,405
LA	Jefferson Parish	\$1,469,179
LA	Lafayette	\$672,893

State	Grantee Name	Allocation Amounts
LA	New Orleans	\$7,578,168
LA	Shreveport	\$1,072,168
MA	MA State Program	\$18,443,744
MA	Arlington	\$533,800
MA	Boston	\$8,209,151
MA	Brockton	\$610,110
MA	Brookline	\$667,436
MA	Cambridge	\$1,302,128
MA	Chicopee	\$531,528
MA	Fall River	\$1,232,852
MA	Holyoke	\$551,671
MA	Lawrence	\$710,503
MA	Lowell	\$979,048
MA	Lynn	\$1,033,392
MA	Malden	\$636,677
MA	Medford	\$716,681
MA	New Bedford	\$1,228,020
MA	Newton	\$923,339
MA	Pittsfield	\$613,738
MA	Quincy	\$848,274
MA	Somerville	\$1,181,067
MA	Springfield	\$1,700,802
MA	Worcester	\$1,904,831
MD	MD State Program	\$5,680,393
MD	Anne Arundel County	\$865,183
MD	Baltimore	\$9,523,896
MD	Baltimore County	\$1,721,080
MD	Montgomery County	\$2,104,743
MD	Prince Georges County	\$2,512,242
ME	Me State Program	\$6,575,089
ME	Cumberland County	\$605,763
ME	Portland	\$876,120
MI	MI State Program	\$22,108,890
MI	Battle Creek	\$531,444
MI	Bay City	\$592,249
MI	Dearborn	\$873,199
MI	Detroit	\$15,234,947
MI	Flint	\$1,763,839
MI	Genesee County	\$756,066
MI	Grand Rapids	\$1,650,890
MI	Jackson	\$568,942
MI	Kalamazoo	\$758,089
MI	Kent County	\$639,448
MI	Lansing	\$898,823
MI	Macomb County	\$687,708
MI	Oakland County	\$1,553,232

State	Grantee Name	Allocation Amounts
MI	Pontiac	\$633,479
MI	Royal Oak	\$558,226
MI	Saginaw	\$1,022,177
MI	Wayne County	\$2,308,510
MN	MN State Program	\$10,865,236
MN	Dakota County	\$704,252
MN	Duluth	\$1,162,800
MN	Hennepin County	\$993,011
MN	Minneapolis	\$5,520,902
MN	St Louis County	\$1,001,832
MN	St Paul	\$3,298,163
MO	MO State Program	\$12,011,262
MO	Kansas City	\$3,628,139
MO	Springfield	\$551,673
MO	St Joseph	\$727,371
MO	St Louis	\$8,156,188
MO	St Louis County	\$2,188,751
MP	Northern Marianas	\$589,165
MS	Ms State Program	\$13,348,427
MS	Jackson	\$1,031,154
MT	MT State Program	\$3,731,327
NC	NC State Program	\$22,157,468
NC	Asheville	\$509,460
NC	Charlotte	\$1,930,217
NC	Durham	\$789,101
NC	Fayetteville	\$589,648
NC	Greensboro	\$781,141
NC	Raleigh	\$991,091
NC	Wake County	\$582,164
NC	Winston-Salem	\$748,097
ND	ND State Program	\$2,582,637
NE	Ne State Program	\$5,128,578
NE	Lincoln	\$726,148
NE	Omaha	\$2,017,088
NH	NH State Program	\$4,612,322
NH	Manchester	\$766,545
NJ	NJ State Program	\$10,221,710
NJ	Atlantic City	\$553,438
NJ	Atlantic County	\$545,890
NJ	Bayonne	\$779,080
NJ	Bergen County	\$4,333,887
NJ	Burlington County	\$663,041
NJ	Camden	\$1,149,122
NJ	Camden County	\$1,057,935
NJ	Clifton	\$581,485
NJ	East Orange	\$693,362

State	Grantee Name	Allocation Amounts
NJ	Elizabeth	\$839,604
NJ	Essex County	\$2,520,882
NJ	Gloucester County	\$581,762
NJ	Hudson County	\$1,535,992
NJ	Jersey City	\$2,676,991
NJ	Middlesex County	\$800,475
NJ	Monmouth County	\$1,240,040
NJ	Morris County	\$931,156
NJ	Newark	\$3,533,348
NJ	Paterson	\$1,184,137
NJ	Somerset County	\$519,821
NJ	Trenton	\$1,251,452
NJ	Union City	\$555,355
NJ	Union County	\$2,169,536
NM	Nm State Program	\$6,778,653
NM	Albuquerque	\$1,807,256
NV	NV State Program	\$2,035,393
NV	Clark County	\$2,595,173
NV	Las Vegas	\$2,105,118
NV	North Las Vegas	\$677,704
NV	Reno	\$836,301
NY	NY State Program	\$25,527,382
NY	Albany	\$1,523,772
NY	Babylon Town	\$526,925
NY	Binghamton	\$955,655
NY	Buffalo	\$6,594,081
NY	Dutchess County	\$654,862
NY	Elmira	\$560,951
NY	Erie County	\$1,209,200
NY	Islip Town	\$840,437
NY	Jamestown	\$573,517
NY	Monroe County	\$789,300
NY	Mount Vernon	\$745,701
NY	Nassau County	\$6,458,352
NY	New Rochelle	\$686,935
NY	New York	\$73,929,729
NY	Niagara Falls	\$1,037,411
NY	Onondaga County	\$897,454
NY	Orange County	\$713,117
NY	Rochester	\$3,954,235
NY	Rockland County	\$860,643
NY	Schenectady	\$1,048,938
NY	Suffolk County	\$1,511,657
NY	Syracuse	\$2,524,997
NY	Tonawanda Town	\$772,574
NY	Troy	\$845,286

State	Grantee Name	Allocation Amounts
NY	Union Town	\$578,661
NY	Utica	\$1,192,417
NY	Westchester County	\$2,373,791
NY	Yonkers	\$1,533,003
OH	OH State Program	\$26,205,724
OH	Akron	\$2,790,522
OH	Canton	\$1,183,577
OH	Cincinnati	\$5,339,182
OH	Cleveland	\$9,801,913
OH	Cleveland Heights	\$715,677
OH	Columbus	\$2,642,649
OH	Cuyahoga County	\$1,552,324
OH	Dayton	\$2,595,505
OH	Franklin County	\$746,920
OH	Hamilton City	\$605,828
OH	Hamilton County	\$1,396,621
OH	Lake County	\$575,083
OH	Lakewood	\$902,439
OH	Lima	\$506,015
OH	Lorain	\$502,230
OH	Montgomery County	\$759,496
OH	Springfield	\$815,869
OH	Stark County	\$589,412
OH	Toledo	\$3,275,494
OH	Warren	\$541,184
OH	Youngstown	\$1,610,332
OK	OK State Program	\$8,101,391
OK	Oklahoma City	\$2,161,404
OK	Tulsa	\$1,513,504
OK	Tulsa County	\$521,635
OR	OR State Program	\$7,873,436
OR	Clackamas County	\$871,505
OR	Eugene	\$567,404
OR	Portland	\$4,172,282
OR	Salem	\$597,562
OR	Washington County	\$824,990
PA	PA State Program	\$23,411,484
PA	Allegheny County	\$6,714,064
PA	Allentown	\$1,129,049
PA	Altoona	\$819,718
PA	Beaver County	\$1,596,719
PA	Berks County	\$1,109,659
PA	Bethlehem	\$687,480
PA	Bucks County	\$975,905
PA	Chester	\$586,664
PA	Chester County	\$1,130,871

State	Grantee Name	Allocation Amounts
PA	Cumberland County	\$558,742
PA	Dauphin County	\$621,187
PA	Delaware County	\$1,700,587
PA	Erie	\$1,458,364
PA	Harrisburg	\$855,478
PA	Johnstown	\$644,490
PA	Lancaster	\$738,012
PA	Lancaster County	\$1,382,274
PA	Lehigh County	\$574,614
PA	Luzerne County	\$2,057,026
PA	McKeesport	\$500,957
PA	Montgomery County	\$1,514,639
PA	Northampton County	\$738,192
PA	Philadelphia	\$21,486,240
PA	Pittsburgh	\$6,848,936
PA	Reading	\$1,267,021
PA	Scranton	\$1,401,868
PA	Upper Darby	\$797,813
PA	Washington County	\$1,762,094
PA	Westmoreland County	\$1,832,195
PA	Wilkes-Barre	\$794,109
PA	Williamsport	\$518,859
PA	York	\$693,600
PA	York County	\$1,074,741
PR	PR State Program	\$20,835,644
PR	Aguadilla Municipio	\$764,657
PR	Arecibo Municipio	\$1,124,937
PR	Bayamon Municipio	\$1,874,802
PR	Cabo Rojo Municipio	\$509,023
PR	Caguas Municipio	\$1,390,581
PR	Canovanas Municipio	\$548,313
PR	Carolina Municipio	\$1,596,195
PR	Cayey Municipio	\$536,499
PR	Guayama Municipio	\$506,041
PR	Guaynabo Municipio	\$786,550
PR	Humacao Municipio	\$642,921
PR	Isabela Municipio	\$537,621
PR	Juana Diaz Municipio	\$651,677
PR	Manati Municipio	\$542,285
PR	Mayaguez Municipio	\$1,168,388
PR	Ponce Municipio	\$2,118,806
PR	Rio Grande Municipio	\$587,542
PR	San Juan Municipio	\$4,253,787
PR	San Sebastian Municipio	\$568,040
PR	Toa Alta Municipio	\$635,194
PR	Toa Baja Municipio	\$871,335

State	Grantee Name	Allocation Amounts
PR	Trujillo Alto Municipio	\$643,815
PR	Vega Baja Municipio	\$706,348
PR	Yauco Municipio	\$601,387
RI	RI State Program	\$3,282,670
RI	Pawtucket	\$845,934
RI	Providence	\$2,303,402
RI	Woonsocket	\$545,802
SC	SC State Program	\$11,136,176
SC	Charleston County	\$831,125
SC	Columbia	\$524,731
SC	Greenville County	\$984,729
SC	Horry County	\$622,075
SC	Lexington County	\$588,970
SC	Richland County	\$568,201
SC	Spartanburg County	\$532,752
SD	SD State Program	\$3,254,060
TN	TN State Program	\$13,467,433
TN	Chattanooga	\$712,946
TN	Knoxville	\$771,803
TN	Memphis	\$3,329,685
TN	Nashville-Davidson	\$2,012,994
TX	TX State Program	\$41,472,772
TX	Amarillo	\$739,071
TX	Arlington	\$1,304,792
TX	Austin	\$3,062,820
TX	Beaumont	\$741,325
TX	Bexar County	\$701,160
TX	Brazoria County	\$707,747
TX	Brownsville	\$1,347,839
TX	Corpus Christi	\$1,393,181
TX	Dallas	\$7,187,357
TX	Dallas County	\$866,753
TX	El Paso	\$3,492,976
TX	Fort Bend County	\$777,971
TX	Fort Worth	\$2,746,929
TX	Galveston	\$585,604
TX	Garland	\$858,997
TX	Grand Prairie	\$569,746
TX	Harris County	\$4,463,961
TX	Hidalgo County	\$3,463,905
TX	Houston	\$12,375,861
TX	Irving	\$930,680
TX	Laredo	\$1,490,976
TX	Lubbock	\$947,453
TX	Mc Allen	\$733,518
TX	Montgomery County	\$741,614

State	Grantee Name	Allocation Amounts
TX	Pasadena	\$790,214
TX	Plano	\$509,050
TX	Port Arthur	\$564,089
TX	San Antonio	\$5,974,286
TX	Tarrant County	\$1,156,125
TX	Waco	\$685,599
TX	Wichita Falls	\$583,425
UT	UT State Program	\$5,021,811
UT	Provo	\$700,321
UT	Salt Lake City	\$1,680,347
UT	Salt Lake County	\$1,005,916
VA	VA State Program	\$11,389,160
VA	Alexandria	\$512,214
VA	Arlington County	\$728,367
VA	Chesapeake	\$507,406
VA	Chesterfield County	\$515,089
VA	Fairfax County	\$2,462,398
VA	Henrico County	\$603,481
VA	Newport News	\$659,087
VA	Norfolk	\$2,097,079
VA	Portsmouth	\$724,490
VA	Prince William County	\$789,775
VA	Richmond	\$2,044,088
VA	Roanoke	\$766,017
VA	Virginia Beach	\$1,010,599
VI	Virgin Islands	\$775,978
VT	VT State Program	\$3,398,824
WA	WA State Program	\$11,126,387
WA	Clark County	\$559,180
WA	King County	\$1,863,675
WA	Pierce County	\$1,224,641
WA	Seattle	\$4,993,052
WA	Snohomish County	\$1,262,714
WA	Spokane	\$1,564,373
WA	Spokane County	\$622,278
WA	Tacoma	\$1,182,824
WA	Vancouver	\$549,529
WI	WI State Program	\$17,101,862
WI	Madison	\$817,092
WI	Milwaukee	\$6,912,159
WI	Milwaukee County	\$712,755
WI	Racine	\$817,554
WI	West Allis	\$574,434
WV	WV State Program	\$7,977,649
WV	Charleston	\$760,168
WV	Huntington	\$854,337

WV	Wheeling	\$606,447
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WY	WY STATE PROGRAM	\$1,718,313
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Appendix B: Comparison of ESG and HPRP

	Emergency Shelter Grants (ESG) Program	Homelessness Prevention and Rapid Re-Housing Program (HPRP)
Amount Available	<ul style="list-style-type: none"> • \$160 million in FY 2009 	<ul style="list-style-type: none"> • \$1.5 billion one-time appropriation
Eligible Grantees	<ul style="list-style-type: none"> • States (51, including Puerto Rico) • Metropolitan cities (203 in FY 2009) and urban counties (102 in FY 2009) • Total number of grantees (including 4 territories): 360 	<ul style="list-style-type: none"> • States (51, including Puerto Rico) • Metropolitan cities (337) and urban counties (148) • Total number of grantees (including 4 territories): 540
Eligible Sub-Recipients	<ul style="list-style-type: none"> • Territories and local government grantees may provide ESG funds for projects operated by their own agencies and private non-profit organizations. • State grantees must provide all funds to local governments or private non-profit organizations acting as sub-recipients. 	<ul style="list-style-type: none"> • Territories and local government grantees may provide HPRP funds for projects operated by their own agencies, other local governments, and private non-profit organizations. • State grantees must provide all funds to local governments or private non-profit organizations, except for a reasonable portion of funds for administrative costs.
Eligible Activities	<ul style="list-style-type: none"> • Renovation, major rehabilitation, or conversion of a building to a shelter. • Essential Services (limited to 30 percent of grant, can be waived). • Operations of homeless shelters (staff salaries for operations management limited to 10 percent of grant). • Homelessness Prevention, including short-term mortgage/rent, short-term utilities, security deposits, first month's rent, landlord-tenant mediation, tenant legal services (limited by law to 30 percent of grant). • Administration (limited to 5 percent of grant). 	<ul style="list-style-type: none"> • Financial assistance, including short-term rental assistance (up to 3 months) and medium-term rental assistance (up to 18 months), security deposits, utility deposits, utility payments, moving costs, and hotel/motel vouchers. • Housing relocation and stabilization services, including case management, outreach, housing search and placement, legal services, and credit repair. • Data collection and evaluation, including HMIS costs. • Administration (limited to 5 percent of grant).

Eligible Program Participants	<ul style="list-style-type: none"> • Homeless persons • Persons at risk of becoming homeless who must meet four specific criteria to receive homelessness prevention assistance: <ul style="list-style-type: none"> - The inability of the family to make the required payments is due to a sudden reduction in income; - The assistance is necessary to avoid the eviction or termination of services; - There is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and - The assistance will not supplant funding for pre-existing homelessness prevention activities from other sources. 	<ul style="list-style-type: none"> • Homeless persons and persons at risk of becoming homeless, who meet the following three criteria: <ul style="list-style-type: none"> - Any individual or family receiving rental assistance must have at least an initial consultation with a case manager to determine need. - Household must be at or below 50 percent of Area Median Income (AMI) - Household must meet both of the following circumstances: <ul style="list-style-type: none"> (1) no appropriate subsequent housing options have been identified; AND (2) the household lacks the financial resources and support networks needed to obtain immediate housing or remain in its existing housing.
Allocation Formula	<ul style="list-style-type: none"> • Based on the previous year's Community Development Block Grants (CDBG) formula, with minimum grant allocation at 0.05 percent of the total. Territories receive 0.2 percent of the total ESG allocation. 	<ul style="list-style-type: none"> • Based on FY2008 CDBG formula; minimum grant allocation set by HUD Secretary at \$500,000.
Match	<ul style="list-style-type: none"> • Match grant funds with an equal amount of funds from cash or in-kind sources, with states exempt from matching the first \$100,000 of their awards. 	<ul style="list-style-type: none"> • No match is required for HPRP.
Expenditure Deadlines	<ul style="list-style-type: none"> • Local government: spend all ESG grant funds within 24 months of grant award. • State grantees: make grant funds available to subrecipients within 65 days of the grant award by HUD with obligation by 180 days of availability from the state, and spent within 2 years of grant award. 	<ul style="list-style-type: none"> • All grantees must spend at least 60 percent of funds within 2 years of the date that HUD signs the grant agreement, and 100 percent of funds within 3 years of this date. • HUD may recapture unexpended funds in violation of the 2-year expenditure requirement and reallocate such funds to grantees in

	State prevention funds should be available within 180 days, and obligated and spent within 30 days, and 180 days respectively.	compliance with that requirement.
Reporting and Access of Program Funding	<ul style="list-style-type: none">• Integrated Disbursement and Information System (IDIS): Request ESG payments and report accomplishments• HMIS: Collect beneficiary data• Consolidated Annual Performance and Evaluation Reporting (CAPER)	<ul style="list-style-type: none">• IDIS: Request HPRP payments and report accomplishments• HMIS: Collect data on use of funds and persons served• Quarterly reporting required by Recovery Act: HUD will establish requirements pursuant to direction by OMB

Appendix C: Habitability Standards for HPRP

Organizations providing rental assistance with HPRP funds will be required to conduct initial and any appropriate follow-up inspections of housing units into which a program participant will be moving. Following are the habitability standards that grantees must follow:

(a) State and local requirements. Each grantee or subgrantee under this Notice must ensure that housing occupied by a family or individual receiving HPRP assistance is in compliance with all applicable state and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing or services.

(b) Habitability standards. Except for less stringent variations as are proposed by the grantee or subgrantee and approved by HUD, housing occupied by a family or individual receiving HPRP assistance must meet the following minimum requirements:

(1) Structure and materials. The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements.

(2) Access. The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(3) Space and security. Each resident must be afforded adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(4) Interior air quality. Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) Water supply. The water supply must be free from contamination.

(6) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) Illumination and electricity. The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) Food preparation and refuse disposal. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) Sanitary condition. The housing and any equipment must be maintained in sanitary condition.

(11) Fire safety.

(i) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(ii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

Appendix D: Special Grant or Subgrant Conditions for “High-Risk” Grantees

(a) A grantee or subgrantee may be considered high risk if HUD determines that a grantee or subgrantee:

- (1) Has a history of unsatisfactory performance, or
- (2) Is not financially stable, or
- (3) Has a management system which does not meet the management standards set forth in this part, or
- (4) Has not conformed to terms and conditions of previous awards, or
- (5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

- (1) Payment on a reimbursement basis;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- (3) Requiring additional, more detailed financial reports;
- (4) Additional monitoring;
- (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

- (1) The nature of the special conditions/restrictions;
- (2) The reason(s) for imposing them;

- (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and
- (4) The method of requesting reconsideration of the conditions/restrictions imposed.

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Attachment “D”

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respect to data, information or report(s) required under subpart E of this part (but that are not required by sections 309(m) or (n) of the Fannie Mae Charter Act or by sections 307(e) or (f) of the Freddie Mac Act), the Secretary may pursue any civil or administrative remedies or penalties against the GSE that may be available to the Secretary. The Secretary shall pursue such remedies under applicable law.

(3) *Procedures.* The Secretary shall comply with the procedures set forth in subpart G of this part in connection with any enforcement action that he or she may initiate against a GSE under paragraph (e) of this section.

[69 FR 63642, Nov. 2, 2004]

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS**Subpart A—General****Sec.**

- 84.1 Purpose.
- 84.2 Definitions.
- 84.3 Effect on other issuances.
- 84.4 Deviations.
- 84.5 Subawards.

Subpart B—Pre-Award Requirements

- 84.10 Purpose.
- 84.11 Pre-award policies.
- 84.12 Forms for applying for Federal assistance.
- 84.13 Debarment and suspension; Drug-Free Workplace.
- 84.14 Special award conditions.
- 84.15 Metric system of measurement.
- 84.16 Resource Conservation and Recovery Act.
- 84.17 Certifications and representations.

Subpart C—Post-Award Requirements

FINANCIAL AND PROGRAM MANAGEMENT

- 84.20 Purpose of financial and program management.
- 84.21 Standards for financial management systems.
- 84.22 Payment.
- 84.23 Cost sharing or matching.
- 84.24 Program income.
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- 84.26 Non-Federal audits.
- 84.27 Allowable costs.

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PROPERTY STANDARDS

- 84.30 Purpose of property standards.
- 84.31 Insurance coverage.
- 84.32 Real property.
- 84.33 Federally-owned and exempt property.
- 84.34 Equipment.
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- 84.40 Purpose of procurement standards.
- 84.41 Recipient responsibilities.
- 84.42 Codes of conduct.
- 84.43 Competition.
- 84.44 Procurement procedures.
- 84.45 Cost and price analysis.
- 84.46 Procurement records.
- 84.47 Contract administration.
- 84.48 Contract provisions.

REPORTS AND RECORDS

- 84.50 Purpose of reports and records.
- 84.51 Monitoring and reporting program performance.
- 84.52 Financial reporting.
- 84.53 Retention and access requirements for records.

TERMINATION AND ENFORCEMENT

- 84.60 Purpose of termination and enforcement.
- 84.61 Termination.
- 84.62 Enforcement.

Subpart D—After-the-Award Requirements

- 84.70 Purpose.
- 84.71 Closeout procedures.
- 84.72 Subsequent adjustments and continuing responsibilities.
- 84.73 Collection of amounts due.

Subpart E—Use of Lump Sum Grants

- 84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.
- 84.81 Definition.
- 84.82 Provisions applicable only to lump sum grants.

- 84.83 Property standards.

- 84.84 Procurement standards.

- 84.85 Reports and records.

- 84.86 Termination and enforcement.

- 84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

APPENDIX A TO PART 84—CONTRACT PROVISIONS

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 59 FR 47011, Sept. 13, 1994, unless otherwise noted.

§ 84.1

Subpart A—General

§ 84.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Additional or inconsistent requirements shall not be imposed, except as provided in §§ 84.4, and 84.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 84.2 Definitions.

Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) Services performed by employees, contractors, subrecipients, and other payees; and
- (3) Other amounts becoming owed under programs for which no current services or performance is required.

Accrued income means the sum of:

- (1) Earnings during a given period from:
- (i) Services performed by the recipient; and
- (ii) Goods and other tangible property delivered to purchasers; and
- (2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through

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the use of predetermined payment schedules.

Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by HUD to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, capital advances under the Sections 202 and 811 programs, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which HUD determines that all applicable administrative actions and all required work of the award have been completed by the recipient and HUD.

Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

Cost sharing or matching means that portion of project or program costs not borne by HUD.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which HUD sponsorship ends.

Disallowed costs means those charges to an award that HUD determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

Excess property means property under the control of HUD that, as determined by the Secretary, is no longer required

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for its needs or the discharge of its responsibilities.

Exempt property means tangible personal property acquired in whole or in part with Federal funds, where HUD has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

Federal awarding agency means the Federal agency that provides an award to the recipient.

Federal funds authorized means the total amount of Federal funds obligated by HUD for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by HUD regulations or implementing instructions.

Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party

in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Prior approval means written approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 84.24 (e) and (h)). 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 federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in HUD regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Project period means the period established in the award document during which HUD sponsorship begins and ends.

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Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Recipient means an organization receiving financial assistance directly from HUD to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term includes commercial organizations, international organizations when operating domestically (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers. The term does not include mortgagors that receive mortgages insured or held by HUD or mortgagors or project owners that receive capital advances from HUD under the Section 202 and 811 programs.

Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "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. 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.

Small awards means a grant or cooperative agreement not exceeding \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403(11), whichever is greater.

Subaward means:

(1) An award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award".

(2) For Community Development Block Grants, the term "subaward" does not include the arrangement whereby the prime recipient transfers funds to another entity and that entity is the project. A distinction is made between such a transfer for the furtherance of the prime recipient's goals and the transfer of funds to a subrecipient who carries out activities and is accountable to the prime recipient. For example, in a CDBG award where a prime recipient has as its program goal the revitalization of a downtown area, the funds transferred to a business in the downtown area to remodel its store would not be considered a subaward subject to this part 84.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term includes commercial organizations and international organizations operating domestically (such as agencies of the United Nations).

Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and

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Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.

Suspension means an action by HUD that temporarily withdraws HUD sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by HUD. Suspension of an award is a separate action from suspensions under HUD regulations implementing E.O. 12549 and E.O. 12689, "Debarment and Suspension," at 2 CFR part 2424.

Termination means the cancellation of HUD sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by HUD that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

Working capital advance means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73492, Dec. 27, 2007]

§ 84.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program

manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 84.4.

§ 84.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this rule when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this rule shall be permitted only in unusual circumstances. HUD may apply more restrictive requirements to a class of recipients when approved by OMB. HUD may apply less restrictive requirements when awarding small awards and when approved by OMB, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by HUD.

§ 84.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, commercial organizations and international organizations operating domestically, or other non-profit organizations. State, local and Federally recognized Indian tribal government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," (24 CFR part 85).

Subpart B—Pre-Award Requirements

§ 84.10 Purpose.

Sections 84.11 through 84.17 prescribe forms and instructions and other pre-award matters to be used in applying for HUD awards.

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§ 84.11 Pre-award policies.

(a) *Use of Grants and Cooperative Agreements, and Contracts.* In each instance, HUD shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public Notice and Priority Setting.* HUD shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 84.12 Forms for applying for Federal assistance.

(a) HUD shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by HUD in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by HUD.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) 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 *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which

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application is made has been selected by that State for review.

§ 84.13 Debarment and suspension; Drug-Free Workplace.

(a) Recipients and subrecipients shall comply with the governmentwide non-procurement debarment and suspension requirements in 2 CFR part 2424. These governmentwide requirements restrict subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 21.

[72 FR 73491, Dec. 27, 2007]

§ 84.14 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance;

(b) Is not financially stable;

(c) Has a management system that does not meet the standards prescribed in this part;

(d) Has not conformed to the terms and conditions of a previous award; or

(e) Is not otherwise responsible, HUD may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 84.15 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 U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in

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the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. HUD shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 84.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, commercial organizations and international organizations when operating domestically, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 84.17 Certifications and representations.

Unless prohibited by statute or codified regulation, HUD is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements**FINANCIAL AND PROGRAM MANAGEMENT****§ 84.20 Purpose of financial and program management.**

Sections 84.21 through 84.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 84.21 Standards for financial management systems.

(a) HUD shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S.

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Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 84.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

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(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 84.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by HUD to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special HUD instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. HUD may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, HUD shall make payment within 30 days after receipt of the billing, unless the billing is improper.

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(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and HUD has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, HUD may provide cash on a working capital advance basis. Under this procedure, HUD shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, HUD shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their sub-recipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, HUD shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (h)(2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, HUD may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, HUD shall not require separate depository

accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (k)(2), or (k)(3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) 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.

(1) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives

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its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this rule, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all non-construction programs when electronic funds transfer or predetermined advance methods are not used. HUD has the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet Federal needs.

§ 84.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by HUD.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of HUD.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If HUD authorizes recipients 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 shall be the lesser of paragraphs (c)(1) or (c)(2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) *The current fair market value.* However, when there is sufficient justification, HUD may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by 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 volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

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(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (g)(2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that HUD has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient 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 recipient.

(2) The value of donated equipment shall 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 shall 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 shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, mate-

rial, equipment, buildings and land shall be documented.

§ 84.24 Program income.

(a) HUD shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with HUD regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by HUD and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When HUD authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that HUD does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless HUD indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 84.14.

(e) Unless HUD regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by HUD regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted

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from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 84.30 through 84.37).

(h) Unless HUD regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 84.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon HUD requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from HUD 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 award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by HUD.

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(6) The inclusion, unless waived by HUD, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Institutions of Higher Education," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, HUD is authorized, at its option, to waive cost-related and administrative prior written approvals required by Circular A-110 and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of HUD. All pre-award costs are incurred at the recipient's risk (i.e., HUD is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify HUD in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

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(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless HUD provides otherwise in HUD's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) HUD may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds \$100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by HUD. HUD shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from HUD for budget revisions whenever paragraphs (h)(1), (h)(2) or (h)(3) of this section apply.

(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 § 84.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When HUD makes an award that provides support for both construction and nonconstruction work, HUD may require the recipient to request prior

approval from HUD before making any fund or budget transfers between the two types of work supported.

(k) For both construction and non-construction awards, HUD shall require recipients to notify HUD in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless HUD indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, HUD shall 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, HUD shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 84.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organization (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(1) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(2) [Reserved]
(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act

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Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

[59 FR 47011, Sept. 13, 1994, as amended at 62 FR 61617, Nov. 18, 1997]

§ 84.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 84.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding pe-

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riod and any pre-award costs authorized by HUD.

PROPERTY STANDARDS

§ 84.30 Purpose of property standards.

Sections 84.31 through 84.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. HUD shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 84.31 through 84.37.

§ 84.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 84.32 Real property.

HUD prescribes the following requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of HUD.

(b) The recipient shall obtain written approval by HUD 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 purposes consistent with those authorized for support by HUD.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the

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recipient shall request disposition instructions from HUD or its successor Federal awarding agency. HUD shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by HUD and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 84.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(2) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD 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 (I)) to donate research equipment to educational and non-profit organiza-

tions in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

(b) *Exempt property.* When statutory authority exists, HUD has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions HUD considers appropriate. Such property is "exempt property." Should HUD not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 84.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations 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.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the equipment without approval of HUD. When the equipment is no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by HUD which funded the original project; then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be

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given to other projects or programs sponsored by HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by HUD. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of HUD.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates HUD for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any dif-

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ferences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify HUD.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to HUD or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from HUD. HUD shall determine whether the equipment can be used to meet HUD's requirements. If no requirement exists within HUD, the availability of the equipment shall be reported to the General Services Administration by HUD to determine whether a requirement for the equipment exists in other Federal agencies. HUD shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120

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calendar days after the recipient's request, the recipient shall sell the equipment and reimburse HUD an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by HUD for such costs incurred in its disposition.

(4) HUD may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) HUD shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When HUD exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 84.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a

residual inventory of unused supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, as long as the Federal Government retains an interest in the supplies.

§ 84.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. HUD 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.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) HUD has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for HUD purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by HUD in developing an agency action that has the force and effect of law, HUD shall request, and the recipient shall provide, within a reasonable time, the research

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data so that they can be made available to the public through the procedures established under the FOIA. If HUD obtains the research data solely in response to a FOIA request, HUD may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by HUD, the recipient, and applicable subrecipients. This fee is in addition to any fees HUD may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as 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:

(A) 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

(B) 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.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by HUD in developing an agency action that has the force and effect of law* is defined as when HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the origi-

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nally-authorized purpose, and the recipient shall not encumber the property without approval of HUD. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 84.34(g).

[59 FR 47011, Sept. 13, 1994, as amended at 65 FR 30499, May 11, 2000]

§ 84.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. HUD may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 84.40 Purpose of procurement standards.

Sections 84.41 through 84.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 84.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in

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support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 84.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict 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 employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients 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 shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 84.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such

procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 84.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2) and (a)(3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder or offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

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(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project in-

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volved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of Executive Orders 12549 and 12689, "Debarment and Suspension," at 2 CFR part 2424.

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(2) The procurement is expected to exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, 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 small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73492, Dec. 27, 2007]

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Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 84.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained; and
- (c) Basis for award cost or price.

§ 84.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 84.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by

which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) 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.

(3) 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) 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 223, "Surety Companies Doing Business with the United States."

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(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

REPORTS AND RECORDS

§ 84.50 Purpose of reports and records.

Sections 84.51 through 84.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 84.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 84.26.

(b) HUD shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 84.51(f), performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. HUD may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

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(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify HUD of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) HUD may make site visits, as needed.

(h) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 84.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) HUD requires recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. HUD has the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a

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final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) HUD shall prescribe whether the report shall be on a cash or accrual basis. If HUD requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) HUD shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) HUD requires recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by HUD upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients HUD shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. HUD shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) HUD may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, HUD may require recipients to report in the "Remarks" section the amount of cash advances received and retained in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar

days following the end of each quarter. HUD may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) HUD may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in HUD's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When HUD needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, HUD shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When HUD determines that a recipient's accounting system does not meet the standards in § 84.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. HUD, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) HUD will shade out any line item on any report if not necessary.

(4) HUD may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) HUD may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 84.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. HUD shall not impose any other record retention or access requirements upon recipients.

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(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by HUD. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by HUD, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, etc. as specified in § 84.53(g).

(c) Copies of original records may be substituted for the original records if authorized by HUD.

(d) HUD shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) HUD, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph (e) are not limited to the required retention period, but shall last as long as records are retained.

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(f) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when HUD can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to HUD.

(g) *Indirect cost rate proposals, cost allocation plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply 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 recipient submits to HUD or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to HUD or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 84.60 Purpose of termination and enforcement.

Sections 84.61 and 84.62 set forth uniform suspension, termination and enforcement procedures.

§ 84.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply.

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(1) By HUD, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By HUD with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to HUD 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 HUD determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (a)(2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 84.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 84.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, HUD may, in addition to imposing any of the special conditions outlined in § 84.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by HUD.

(2) 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.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, HUD shall provide

the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless HUD expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (c)(2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD's regulations at 2 CFR part 2424 (see § 84.13).

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73492, Dec. 27, 2007]

Subpart D—After-the-Award Requirements**§ 84.70 Purpose.**

Sections 84.71 through 84.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 84.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. HUD may approve extensions when requested by the recipient.

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(b) Unless HUD authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in HUD instructions.

(c) HUD shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that HUD has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, HUD shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 84.31 through 84.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, HUD shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 84.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of HUD to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 84.26.

(4) Property management requirements in §§ 84.31 through 84.37.

(5) Records retention as required in § 84.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of HUD and the recipient, provided the responsibilities

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of the recipient referred to in § 84.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 84.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, HUD may reduce the debt by paragraphs (a)(1), (a)(2) or (a)(3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, HUD shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Subpart E—Use of Lump Sum Grants

§ 84.80 Conditions for use of Lump Sum (fixed price or fixed amount) grants.

(a) Heads of awarding activities (HAAs) shall determine and publish the funding arrangement for award programs having a published program regulation or Notice of Funding Availability. For other awards, discretion may be provided to Grant Officers to determine the funding arrangement on a transaction basis. In such cases, Grant Officers shall document the basis for selection of the funding arrangement in the negotiation record. Appropriate consideration to fixed amount (lump sum) awards shall be made if one or more of the following conditions are present:

(1) The HUD funding amount is definitely less than the total actual cost of the project.

(2) The HUD funding amount does not exceed \$100,000 or the small purchase

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threshold fixed at 41 U.S.C. 403 (11), whichever is greater.

(3) The project scope is very specific and adequate cost, historical, or unit pricing data is available to establish a fixed amount award with assurance that the recipient will realize no increment above actual cost.

(b) [Reserved]

§ 84.81 Definition.

(a) A lump sum award is an award for a predetermined amount, as set forth in the grant agreement, which amount does not vary with the amount of the recipient's actual incurred costs. Under this type of award, HUD does not pay the recipient for its incurred costs but rather for completing certain defined events in the work or achievement of some other well-defined milestone. Some of the ways in which the grant amount may be paid are, but are not limited to:

(1) 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 grant;

(2) On a unit price basis, for a defined unit or units (such as a housing counseling unit), at a defined price or prices, agreed to in advance of performance of the grant and set forth in the grant; or,

(3) In one payment at grant completion.

(b) The key distinction between a lump sum and a cost reimbursement grant is the lack of a direct relationship between the costs incurred by the recipient and the amount paid by HUD in the lump sum arrangement.

§ 84.82 Provisions applicable only to lump sum grants.

In addition to the provisions of this subpart E, subparts A and B of this part apply to lump sum grants.

(a) *Financial and program management.* Paragraphs (b) through (e) of this section prescribe standards for financial management systems, methods for making payments, budget revision approvals, and making audits.

(b) *Standards for financial management systems.* (1) Records that identify adequately the source and application of

funds for federally-sponsored activities are required. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(2) Effective control over and accountability for all funds, property and other assets are required. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(3) Comparison of outlays with budget amounts for each award is required. Whenever appropriate, financial information should be related to performance and unit cost data.

(4) Where HUD guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(5) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(6) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

(c) *Payment.* (1) The standard governing the use of banks and other institutions as depositories of funds advanced under awards is, HUD shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(3) Except as noted elsewhere in this part, only the following forms shall be

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authorized for the recipients in requesting payments. HUD shall not require more than an original and two copies of these forms.

(i) *SF-270, Request for Advance or Reimbursement.* HUD has adopted the SF-270 as a standard form for all non-construction programs when electronic funds transfer or predetermined advance methods are not used. The SF-270 shall also be used for lump sum payment requests. HUD, however, has the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(ii) *SF-271, Outlay Report and Request for Reimbursement for Construction Programs.* HUD has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, HUD may substitute the SF-270 when HUD determines that it provides adequate information to meet HUD's needs.

(d) *Revision of budget and program plans.* (1) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon HUD requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(2) Recipients are required to report deviations from program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(3) For nonconstruction awards, recipients shall request prior approvals from HUD for one or more of the following program or budget related reasons.

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) The need for additional Federal funding.

(iii) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(4) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(5) Except for requirements listed in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, HUD is authorized, at its option, to waive cost-related and administrative prior written approvals required by Circular A-110 and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(i) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify HUD in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This action may be taken unless:

(A) The terms and conditions of award prohibit the extension.

(B) The extension requires additional Federal funds.

(C) The extension involves any change in the approved objectives or scope of the project.

(6) For construction awards, recipients shall request prior written approval promptly from HUD for budget revisions whenever paragraphs (d)(6)(i) or (d)(6)(ii) of this section apply.

(i) The revision results from changes in the scope or the objective of the project or program.

(ii) The need arises for additional Federal funds to complete the project.

(7) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(8) When HUD makes an award that provides support for both construction and nonconstruction work, HUD may require the recipient to request prior approval from HUD before making any fund or budget transfers between the two types of work supported.

(e) *Non-Federal audits.* (1) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133,

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"Audits of States, Local Governments, and Non-Profit Organizations."

(i) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(ii) [Reserved]

(2) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(3) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(4) Commercial organizations shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

[59 FR 47011, Sept. 13, 1994, as amended at 62 FR 61617, Nov. 18, 1997]

§ 84.83 Property standards.

(a) *Purpose of property standards.* Paragraphs (b) through (g) of this section set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. HUD shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of paragraphs (b) through (g) of this section.

(b) *Insurance coverage.* Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured un-

less required by the terms and conditions of the award.

(c) *Real property.* HUD prescribes the following requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards:

(1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of HUD.

(2) The recipient shall obtain written approval by HUD 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 purposes consistent with those authorized for support by HUD.

(d) *Federally-owned and exempt property*—(1) *Federally-owned property*—(i) *Title to federally-owned property remains vested in the Federal Government.* Recipients shall submit annually an inventory listing of federally-owned property in their custody to HUD. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to HUD for further HUD utilization.

(ii) If HUD has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless HUD 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 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by HUD.

(2) *Exempt property.* When statutory authority exists, HUD has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions HUD considers appropriate. Such property is

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"exempt property." Should HUD not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(e) *Equipment.* (1) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(2) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the equipment without approval of HUD. When the equipment is no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(i) Activities sponsored by HUD which funded the original project; then

(ii) Activities sponsored by other Federal awarding agencies.

(3) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by HUD that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by HUD.

(4) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(i) Equipment records shall be maintained accurately and shall include the following information.

(A) A description of the equipment.

(B) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

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(C) Source of the equipment, including the award number.

(D) Whether title vests in the recipient or the Federal Government.

(E) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(F) Location and condition of the equipment and the date the information was reported.

(ii) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(iii) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(iv) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify HUD.

(v) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(5) HUD may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) HUD shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If HUD fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

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(iii) When HUD exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

(f) *Intangible property.* (1) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. HUD 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.

(2) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(3) Unless waived by HUD, the Federal Government has the right to paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

(i) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(ii) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(4) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose.

(g) *Property trust relationship.* Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. HUD may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

§ 84.84 Procurement standards.

(a) *Purpose of procurement standards.* Paragraphs (b) through (i) of this section set forth standards for use by re-

cipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by HUD upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(b) *Recipient responsibilities.* The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to HUD, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

(c) *Codes of conduct.* The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict 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 employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited

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item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(d) *Competition.* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. The other factors shall include the bidder's or offeror's compliance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), hereafter referred to as "Section 3." Section 3 provides that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws, and regulations, economic opportunities generated by certain HUD financial assistance shall be directed to low- and very low-income persons. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(e) *Procurement procedures.* (1) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (e)(1)(i), (e)(1)(ii) and (e)(1)(iii) of this section apply.

(i) Recipients avoid purchasing unnecessary items.

(ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the recipient.

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(iii) Solicitations for goods and services provide for all of the following.

(A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(B) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(D) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(2) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(i) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(ii) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(iii) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(iv) Encourage contracting with consortiums of small businesses, minority-

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owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(v) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(3) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall 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. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(4) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted, as set forth at 2 CFR part 2424.

(5) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(i) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(ii) The procurement is expected to exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(iii) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(iv) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(f) *Cost and price analysis.* Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(g) *Procurement records.* Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained; and

(3) Basis for award cost or price.

(h) *Contract administration.* A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(i) *Contract provisions.* The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual,

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or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(i) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(ii) 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.

(iii) 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 statute of all persons supplying labor

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and material in the execution of the work provided for in the contract.

(iv) 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 223, "Surety Companies Doing Business with the United States."

(4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this rule, as applicable.

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73492, Dec. 27, 2007]

§ 84.85 Reports and records.

(a) *Purpose of reports and records.* Paragraphs (b) and (c) of this section set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

(b) *Monitoring and reporting program performance.* (1) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 84.82(e).

(2) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (b)(6) of this section, performance reports shall not be required more frequently than quarterly or less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the

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reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(3) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(4) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(i) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(ii) Reasons why established goals were not met, if appropriate.

(5) Recipients shall not be required to submit more than the original and two copies of performance reports.

(6) Recipients shall immediately notify HUD of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(7) HUD may make site visits, as needed.

(8) HUD shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(c) *Retention and access requirements for records.* (1) This paragraph (c) sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(2) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of

the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by HUD. The only exceptions are the following.

(i) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(ii) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(iii) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(3) Copies of original records may be substituted for the original records if authorized by HUD.

(4) HUD shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, HUD may make arrangements for recipients to retain any records that are continuously needed for joint use.

(5) HUD, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph (c)(5) are not limited to the required retention period, but shall last as long as records are retained.

(6) Unless required by statute, HUD shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when HUD can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to

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the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to HUD.

§ 84.86 Termination and enforcement.

(a) *Termination.* (1) Awards may be terminated in whole or in part only if paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section apply.

(i) By HUD, if a recipient materially fails to comply with the terms and conditions of an award.

(ii) By HUD with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(iii) By the recipient upon sending to HUD 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 HUD determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1)(i) or (a)(1)(ii) of this section.

(2) If costs are allowed under an award, the responsibilities of the recipient referred to in § 84.87(a)(1), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(3) If costs are allowed, the cost principles in § 84.27 apply, even though the award was made on a lump-sum basis. Alternatively, a termination settlement may be reached by prorating the grant amount against the percentage of completion or by some other method as determined by the Grant Officer, as long as the method used results in an equitable settlement to both parties.

(b) *Enforcement—(1) Remedies for non-compliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, HUD may, in addition to imposing any of the special conditions outlined in § 84.14, take one or more of the fol-

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lowing actions, as appropriate in the circumstances.

(i) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by HUD.

(ii) Wholly or partly suspend or terminate the current award.

(iii) Withhold further awards for the project or program.

(iv) Take other remedies that may be legally available.

(2) *Hearings and appeals.* In taking an enforcement action, HUD shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(3) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless HUD expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (b)(3)(i) and (b)(3)(ii) of this section apply.

(i) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(ii) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD's regulations at 2 CFR part 2424 (see § 84.18).

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73492, Dec. 27, 2007]

§ 84.87 Closeout procedures, subsequent adjustments and continuing responsibilities.

(a) *Closeout procedures.* (1) Recipients shall submit, within 90 calendar days

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after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. HUD may approve extensions when requested by the recipient.

(2) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 84.83(b) through (g).

(b) *Subsequent adjustments and continuing responsibilities.* (1) The closeout of an award does not affect any of the following:

(i) Audit requirements in § 84.26.

(ii) Property management requirements in §§ 84.83(b) through (g).

(iii) Records retention as required in § 84.53.

(2) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of HUD and the recipient, provided the responsibilities of the recipient are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

APPENDIX A TO PART 84—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall 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 is otherwise

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entitled. The recipient shall report all suspected or reported violations to HUD.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative

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Agreements," and any implementing regulations issued by HUD.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

[59 FR 47011, Sept. 13, 1994, as amended at 72 FR 73493, Dec. 27, 2007]

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

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- 85.2 Scope of subpart.
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- 85.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 53 FR 8068, 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§ 85.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 85.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 85.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services

Attachment “E”

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3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its 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 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 and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

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 agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/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.

PARTS 226-229 [RESERVED]

PART 230—COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A-122)

Sec.

- 230.5 Purpose.
- 230.10 Scope.
- 230.15 Policy.
- 230.20 Applicability.
- 230.25 Definitions
- 230.30 OMB responsibilities.
- 230.35 Federal agency responsibilities.
- 230.40 Effective date of changes.
- 230.45 Relationship to previous issuance.
- 230.50 Information Contact.

APPENDIX A TO PART 230—GENERAL PRINCIPLES

APPENDIX B TO PART 230—SELECTED ITEMS OF COST

APPENDIX C TO PART 230—NON-PROFIT ORGANIZATIONS NOT SUBJECT TO THIS PART

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

SOURCE: 70 FR 51927, Aug. 31, 2005, unless otherwise noted.

§ 230.5 Purpose.

This part establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

§ 230.10 Scope.

(a) This part does not apply to colleges and universities which are covered by 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A-21); State, local, and federally-recognized Indian tribal governments which are covered by 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87); or hospitals.

(b) The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and non-profit organization participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 230.15 Policy.

The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

§ 230.20 Applicability.

(a) These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

(b) All cost reimbursement sub-awards (subgrants, subcontracts, etc.)

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are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this part shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, 2 CFR part 220 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, 2 CFR part 225 shall apply.

(c) Exclusion of some non-profit organizations. Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Appendix C to this part. Other organizations may be added from time to time.

§ 230.25 Definitions.

(a) Non-profit organization means any corporation, trust, association, cooperative, or other organization which:

(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 its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "non-profit organization" excludes colleges and universities; hospitals; State, local, and federally-recognized Indian tribal governments; and those non-profit organizations which are excluded from coverage of this part in accordance with § 230.20(c).

(b) Prior approval means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the part and its Appendices. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

§ 230.30 OMB responsibilities.

OMB may grant exceptions to the requirements of this part when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

§ 230.35 Federal agency responsibilities.

The head of each Federal agency that awards and administers grants and agreements subject to this part is responsible for requesting approval from and/or consulting with OMB (as applicable) for deviations from the guidance in the appendices to this part and performing the applicable functions specified in the appendices to this part.

§ 230.40 Effective date of changes.

The provisions of this part are effective August 31, 2005. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

§ 230.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular A-122. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost) to the OMB circular; and Appendix C contains the information that was in Attachment C (non-profit organizations not subject to the Circular) to the OMB circular.

(b) Historically, OMB Circular A-122 superseded cost principles issued by individual agencies for non-profit organizations.

§ 230.50 Information contact.

Further information concerning this part may be obtained by contacting the

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Office of Federal Financial Management,
OMB, Washington, DC 20503,
telephone (202) 395-3993.

APPENDIX A TO PART 230—GENERAL PRINCIPLES

GENERAL PRINCIPLES

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GENERAL PRINCIPLES

A. Basic Considerations

1. Composition of total costs. The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.
2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:
 - a. Be reasonable for the performance of the award and be allocable thereto under these principles.
 - b. Conform to any limitations or exclusions set forth in these principles or in the 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 organization.
 - d. Be accorded consistent treatment.
 - e. Be determined in accordance with generally accepted accounting principles (GAAP).
 - 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.
 - g. Be adequately documented.
3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the

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costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.

c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.

d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. Allocable costs. a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. Applicable credits. a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accrue or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance organizational activities or service operations

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should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards 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.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see §215.24 of 2 CFR part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110).

6. Advance understandings. Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

7. Conditional exemptions. a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of Appendix A, subsection C.e. of 2 CFR part 225 (OMB Circular A-87); Appendix A, Section C.4. of 2 CFR part 220 (OMB Circular A-21); Section A.4. of this appendix; and from all of the administrative requirements provisions of 2 CFR part 215 (OMB Circular A-110) and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its

own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A-87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in paragraph 17 of Appendix B to this part). 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 cost rates and be allocated their share of the organization's indirect costs if they represent activities which include the salaries of personnel, occupy space, and benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

a. Maintenance of membership rolls, subscriptions, publications, and related functions.

b. Providing services and information to members, legislative or administrative bodies, or the public.

c. Promotion, lobbying, and other forms of public relations.

- d. Meetings and conferences except those held to conduct the general administration of the organization.
- e. Maintenance, protection, and investment of special funds not used in operation of the organization.
- f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

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 subparagraph B.2 of this appendix. 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 an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances 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.

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances 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, library expenses 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). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g of this appendix.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General. a. Where a non-profit 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 com-

putation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in subparagraph D.2 of this appendix.

b. Where 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 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 subparagraphs D.2 through 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, shall 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 separating the organization's total costs for the base period as either direct or indirect, and 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 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 shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in subparagraph B.3 of this appendix.

c. The distribution base may be total direct costs (excluding capital expenditures

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and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in paragraph 32 of Appendix B.

d. Except where a special rate(s) is required in accordance with subparagraph 5 of this appendix, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall 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 subparagraph C.3 of this appendix, is required. The rate in each case shall 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.

3. Multiple allocation base method.

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph D.3.b of this appendix. Each grouping shall then be allocated individually to benefiting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph D.3.c of this appendix.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall 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 subparagraph C.3 of this appendix. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. 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 paragraph 11 of Appendix B to this part ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Appendix B to this part ("Interest").

(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 shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. (a) 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 shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest 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.

(b) 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 shall 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 where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefiting 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

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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 shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall 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 shall 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 sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall 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 or use allowances 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) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefiting functions on the basis of either the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefiting from the use of that space, or organization-wide employee FTEs or salaries and wages applicable to the benefiting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall 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 shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be

allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefiting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f of this appendix. 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 shall then be allocated to benefiting functions based on MTDC.

d. Order of distribution. (1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph D.3.d.(2) of this appendix, this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs 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 subparagraph D.5 of this appendix, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefiting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant

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agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall 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 shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in subparagraph C.3 of this appendix.

4. Direct allocation method. a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: General administration and general expenses, fundraising, and 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 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 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 shall be computed in the same manner as that described in subparagraph D.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 award or it may consist of work under a group of 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 the rate differs significantly from that which would have been obtained under subparagraphs D.2, 3, and 4 of this appendix, and the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. Definitions. As used in this section, the following terms have the meanings set forth below:

a. Cognizant agency means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit 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.

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 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, grant, 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.

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2. Negotiation and approval of rates. a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency 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 non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall 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 awards necessitate special indirect cost rates in accordance with subparagraph D.5 of this appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency.

b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three months after the effective date of the award.

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on 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, shall not be negotiated if all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute 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 and the non-profit organization, the

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dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

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.

APPENDIX B TO PART 230—SELECTED ITEMS OF COST

SELECTED ITEMS OF COST

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APPENDIX B TO PART 230—SELECTED ITEMS OF COST

Paragraphs 1 through 52 of this appendix provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. Advertising and public relations costs. 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 term public relations includes community relations and means those activities dedicated to maintaining the image of the non-profit organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the non-profit organization of obligations arising under a Federal award (See also paragraph 41, Recruiting costs, and paragraph 42, Relocation costs, of this appendix);

(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-profit organizations are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

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 Federal awards (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

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are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one Federal award or for both sponsored work and other work of the non-profit organization, are allowable to the extent that the principles in Appendix A to this part, paragraphs B. ("Direct Costs") and C. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the non-profit organization, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) 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-profit organization.

2. Advisory Councils. Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

4. Audit costs and related services. a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in an indirect cost rate proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section 200(d) are allowable, subject to the conditions listed in A-133, section 230 (b)(2).

5. Bad debts. Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

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6. Bonding costs. a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the non-profit organization. They arise also in instances where the non-profit organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the non-profit organization in the general conduct of its operations 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.

7. Communication costs. Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. Compensation for personal services. a. Definition. Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in subparagraph 8.h of this appendix). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. Allowability. Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. Reasonableness. (1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. Special considerations in determining allowability. Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. Unallowable costs. Costs which are unallowable under other paragraphs of this appendix shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. Overtime, extra-pay shift, and multi-shift premiums. Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

(2) When employees are performing indirect functions, such as administration, maintenance, or accounting.

(3) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed.

(4) When lower overall cost to the Federal Government will result.

g. Fringe benefits. (1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see subparagraph 8.h of this appendix), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular

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awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3)(a) 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 shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) 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 organization is named as beneficiary are unallowable.

h. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

i. Pension plan costs. (1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) 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 days after

each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

j. Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are 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 organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

k. Severance pay. (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations 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:

- (a) Law
- (b) Employer-employee agreement
- (c) Established policy that constitutes, in effect, an implied agreement on the organization's part, or
- (d) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(a) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization 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 organization.

(b) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs 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. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

(c) Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are

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paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

(d) Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

(e) Severance payments to foreign nationals employed by the organization 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 organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

1. Training costs. See paragraph 49 of this appendix.

m. Support of salaries and wages.

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph 8.m.(2) of this appendix, except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Appendix A to this part.)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge

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of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in subparagraphs (1) and (2), must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

9. Contingency provisions. Contributions to a contingency reserve or any similar provision 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. The term "contingency reserve" excludes self-insurance reserves (see Appendix B to this part, paragraphs 8.g.(3) and 22.a(2)(d)); pension funds (see paragraph 8.i); and reserves for normal severance pay (see paragraph 8.k.)

10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a. Definitions. (1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, acts that constitute a cause for debarment or suspension (as specified in agency regulations), and acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

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(5) Proceeding includes an investigation.
b. (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, or a State, local or foreign government, are not allowable if the proceeding: Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and 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 determination of organizational liability.
- (c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.
- (d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subparagraphs 10.b.(1)(a), (b), (c) or (d) of this appendix.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subparagraph 10.b.(1) of this appendix.

c. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph 10.b of this appendix may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph 10.b of this appendix is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of a specific term or condition of a federally-sponsored award, or specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph 10.b of this appendix, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph 10.c of this appendix has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, 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 sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs 10.b and f of this appendix, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. Depreciation and use allowances. a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowance or depreciation. However, except as provided in

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paragraph 11.f of this appendix, a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the non-profit organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation 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 presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the non-profit organization in satisfaction of a statutory matching requirement.

d. General criteria where depreciation method is followed:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life.

(2) In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method.

(3) Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

e. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that,

under subparagraph 11.d of this appendix, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Criteria where the use allowance method is followed:

(1) The use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost.

(2) The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell.

(3) The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the 6 2/3 percent equipment use allowance limitation.

h. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. Donations and contributions.

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the organization, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to an organization by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either

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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 Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the non-profit organization's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the non-profit organization; and

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government.

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an 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 award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Section 215.23 of 2 CFR part 215 (OMB Circular A-110). Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

c. Donated goods or space. (1) Donated goods; *i.e.*, expendable personal property/supplies, and donated use of space may be furnished to a non-profit organization. The value of the goods and space is not reimbursable 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 2 CFR part 215 (OMB Circular A-110). Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. Employee morale, health, and welfare costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the non-profit organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the non-profit organization. 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.

14. Entertainment costs. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. Equipment and other capital expenditures.

a. For purposes of this subparagraph, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. 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. 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-profit organization's regular accounting practices.

(2) "Equipment" means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-profit organization for financial statement purposes, or \$5000.

(3) "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.

(4) "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.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

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(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(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 approval of the awarding agency.

(4) When approved as a direct charge pursuant to paragraph 15.b.(1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see paragraph 11., Depreciation and use allowance, of this appendix for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see paragraph 43., Rental costs of buildings and equipment, of this appendix for rules on the allowability of rental costs for land, buildings, and equipment.

(6) 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 use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

16. Fines and penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. 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 solely to raise capital or obtain contributions are unallowable.

b. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subparagraph B.3 of Appendix A to this part.

18. Gains and losses on depreciable assets. a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s)

shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under paragraph 11 of this appendix.

(b) 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.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in paragraph 22 of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with paragraph 9 of this appendix.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subparagraph a shall be excluded in computing award costs.

19. Goods or services for personal use. Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

20. Housing and personal living expenses. a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.

21. Idle facilities and idle capacity. a. As used in this section the following terms have the meanings set forth below:

(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-profit organization.

(2) "Idle facilities" means completely unused facilities that are excess to the non-profit organization's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: That which a facility could achieve under 100 percent operating

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time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and 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, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; 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 foreseen. Under the exception stated in this subparagraph, 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 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.

22. Insurance and indemnification. a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see subparagraphs 8.g and 8.i(2) of this appendix).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:-

(a) Types and extent of coverage shall be in accordance with sound business practice and

the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance 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, shall not exceed the present value of the liability.

(e) 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 subparagraph 8.g(4) of this appendix). The cost of such insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) 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 shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

23. Interest. a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-profit

organization's own funds, however represented, are unallowable. However, interest on debt incurred after September 29, 1995 to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after September 29, 1995 and used in support of Federal awards is allowable, provided that:

(1) For facilities acquisitions (excluding renovations and alterations) costing over \$10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

- (a) A statement of purpose and justification for facility acquisition or replacement.
- (b) A statement as to why current facilities are not adequate.
- (c) A statement of planned future use of the facility.
- (d) A description of the financing agreement to be arranged for the facility.
- (e) A summary of the building contract with estimated cost information and statement of source and use of funds.
- (f) A schedule of planned occupancy dates.

(2) For facilities costing over \$500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of §§ 215.30 through 215.37 of 2 CFR 215 (OMB Circular A-110), which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated

bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(3) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(4) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(5) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subparagraph 23.b. of this appendix. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(6) Non-profit organizations are also subject to the following conditions:

(a) Interest on debt incurred to finance or refinance assets acquired before or reacquired after September 29, 1995, is not allowable.

(b) Interest attributable to fully depreciated assets is unallowable.

(c) For debt arrangements over \$1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share

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attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(d) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(e) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

b. For non-profit organizations subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of subparagraph a do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

c. The following definitions are to be used for purposes of this paragraph:

(1) Re-acquired assets means assets held by the non-profit organization prior to September 29, 1995 that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) Initial equity contribution means the amount or value of contributions made by non-profit organizations for the acquisition of the asset or prior to occupancy of facilities.

(3) Asset costs means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

24. Labor relations costs. Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25. Lobbying. a. Notwithstanding other provisions of this appendix, costs associated with the following activities are unallowable:

(1) 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;

(2) 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;

(3) Any attempt to influence: The introduction of Federal or State legislation; or 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), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: The introduction of Federal or State legislation; or 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, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) 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.

b. The following activities are excepted from the coverage of subparagraph 25.a of this appendix:

(1) Providing a technical and factual presentation of information on a topic 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 recipient member, legislative body or 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 hearing.

(2) Any lobbying made unallowable by subparagraph 25.a.(3) of this appendix to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of subparagraph B.3 of Appendix A to this part.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to paragraph 25 complies with the requirements of this Appendix.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when: the employee engages in lobbying (as defined in subparagraphs 25.a. and b. of this appendix) 25 percent or less of the employee's compensated hours of employment during that calendar month, and within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When the conditions described in this subparagraph are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when the conditions described in this subparagraph 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.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of paragraph 25. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Appendix; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

d. 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 sponsored agreement 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 federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

26. Losses on other sponsored agreements or contracts. Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

27. Maintenance and repair costs. Costs incurred for necessary maintenance, 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 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 shall be treated as capital expenditures (see paragraph 15 of this appendix).

28. Materials and supplies costs. a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should 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. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

29. Meetings and conferences. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see paragraphs 14., Entertainment costs, and 33., Participant support costs of this appendix.

30. Memberships, subscriptions, and professional activity costs. a. Costs of the non-

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profit organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the non-profit organization'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 Federal cognizant agency.

d. Costs of membership in any country club or social or dining club or organization are unallowable.

31. Organization costs. Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

32. Page charges in professional journals. Page charges for professional journal publications are allowable as a necessary part of research costs, where:

a. The research papers report work supported by the Federal Government; and

b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

33. Participant support costs. Participant support costs are 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 meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

34. Patent costs. a. The following costs relating to patent and copyright matters are allowable: cost 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; cost 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 general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see paragraphs 37., Professional services costs, and 44., Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable:

(1) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award.

(2) 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 (but see paragraph 45., Royalties and other costs for use of patents and copyrights, of this appendix).

35. Plant and homeland security costs. Necessary and reasonable expenses incurred for routine and homeland security to protect 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; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to paragraph 15., Equipment and other capital expenditures, of this appendix.

36. Pre-agreement costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

37. 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-profit organization, are allowable, subject to subparagraphs b and c 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 paragraph 10 of this appendix.

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-profit organization'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-profit organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-profit organization's total business is such as to influence the non-profit organization 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 grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

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(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(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 subparagraph 37.b of this appendix, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered

38. Publication and printing costs. a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-profit organization.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

39. Rearrangement and alteration costs. Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

40. Reconversion costs. Costs incurred in the restoration or rehabilitation of the non-profit organization'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.

41. Recruiting costs. a. Subject to subparagraphs 41.b, c, and d of this appendix, 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 the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. 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 organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. 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 being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

42. Relocation costs. 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 limitation described in subparagraphs 42.b, c, and d of this appendix, 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 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 days, including advance trip time.

(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 subparagraph 42.b.(4) of this appendix, are limited to 8 percent of the sales price of the employee's former home.

(4) The continuing costs of ownership 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

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as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, 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 subparagraph 42.b(1) and (2) of this appendix. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with paragraph 50 and not relocation costs 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.

43. Rental costs of buildings and equipment. a. Subject to the limitations described in subparagraphs 43.b. through d. of this appendix, 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-profit organization continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subparagraph 43.b. of this appendix) that would be allowed had title to the property vested in the non-profit organization. For this purpose, a less-than-arms-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 divisions of a non-profit organization; non-profit organizations under common control through common officers, directors, or members; and a non-profit organization and a director, trustee, officer,

or key employee of the non-profit organization or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a non-profit organization may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-profit organization.

d. 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 subparagraph b) that would be allowed had the non-profit organization purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall 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 paragraph 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-profit organization purchased the facility.

44. Royalties and other costs for use of patents and copyrights. a. 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 award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the non-profit organization.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a non-profit organization.

c. In any case involving a patent or copyright formerly owned by the non-profit organization, the amount of royalty allowed should not exceed the cost which would have been allowed had the non-profit organization retained title thereto.

45. Selling and marketing. Costs of selling and marketing any products or services of the non-profit organization are unallowable (unless allowed under paragraph 1. of this appendix as allowable public relations cost).

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However, these costs are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

46. Specialized service facilities. a. The costs of services provided by highly complex or specialized facilities operated by the non-profit organization, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph 46 b. or c. of this appendix and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subparagraph A.5. of Appendix A to this part.

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 does not discriminate against federally-supported activities of the non-profit organization, including usage by the non-profit organization for internal purposes, and is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Rates shall be adjusted at least biennially, and shall 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 costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

47. Taxes. a. In general, taxes which the organization 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 taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, special assessments on land which represent capital improvements, and Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

48. Termination costs applicable to sponsored agreements. Termination of awards 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

below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the non-profit organization's other work shall not be allowable unless the non-profit organization 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-profit organization, the awarding agency should consider the non-profit organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-profit organization shall be regarded as evidence that such items are reasonably usable on the non-profit organization's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall 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 requirements of other work.

b. If in a particular case, despite all reasonable efforts by the non-profit organization, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this appendix, except that any such costs continuing after termination due to the negligent or willful failure of the non-profit organization to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and 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-profit organization,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, 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, special 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-profit organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such

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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.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see §215.61 of 2 CFR part 215 (OMB Circular A-110)); and

(b) The termination and settlement of sub-awards.

(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, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with §215.32 through 215.37 of 2 CFR part 215 (OMB Circular A-110).

(3) Indirect costs related to salaries and wages incurred as settlement expenses in subparagraphs 48.e.(1) and (2) of this appendix. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under sub awards, including the allocable portion of claims which are common to the Federal award, and to other work of the non-profit organization are generally allowable.

An appropriate share of the non-profit organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

49. Training costs. a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the

field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in subparagraphs b and c.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in paragraphs 11, 27, and 50 of this appendix.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under subparagraphs 49.b and c of this appendix may be allowed with prior approval of the awarding

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agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

50. Transportation costs. Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see paragraph 28 of this appendix). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

51. 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-profit organization. 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-profit organization's non-federally-sponsored activities.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the non-profit organization in its regular operations as the result of the non-profit organization's written travel policy. In the absence of an acceptable, written non-profit organization policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205-46(a)).

c. Commercial air travel. (1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would: require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in additional costs that would offset the

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transportation savings; or offer accommodations not reasonably adequate for the traveler's medical needs. The non-profit organization must justify and document these conditions on a case-by-case basis in order for the use of first-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-profit organization's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-profit organization can demonstrate either of the following: that such airfare was not available in the specific case; or that it is the non-profit organization's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by non-profit organization-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 allowable commercial air travel, as provided for in subparagraph c., is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a non-profit organization located in a foreign country means travel outside that country.

52. Trustees. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 51 of this appendix.

APPENDIX C TO PART 230—NON-PROFIT ORGANIZATIONS NOT SUBJECT TO THIS PART

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts

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9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Mitretek Systems, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee

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22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other non-profit organizations as negotiated with awarding agencies

PARTS 231-299 [RESERVED]

Attachment “F”

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Circular No. A-133

Revised to show changes published in the *Federal Registers*
of June 27, 2003 and June 26, 2007
Audits of States, Local Governments, and Non-Profit Organizations

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of States, Local Governments, and Non-Profit Organizations

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

2. Authority. Circular A-133 is issued under the authority of sections 503, 1111, and 7501 *et seq.* of title 31, United States Code, and Executive Orders 8248 and 11541.

3. Rescission and Supersession. This Circular rescinds Circular A-128, "Audits of State and Local Governments," issued April 12, 1985, and supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," issued April 22, 1996. For effective dates, see paragraph 10.

4. Policy. Except as provided herein, the standards set forth in this Circular shall be applied by all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern.

Federal agencies shall apply the provisions of the sections of this Circular to non-Federal entities, whether they are recipients expending Federal awards received directly from Federal awarding agencies, or are subrecipients expending Federal awards received from a pass-through entity (a recipient or another subrecipient).

This Circular does not apply to non-U.S. based entities expending Federal awards received either directly as a recipient or indirectly as a subrecipient.

5. Definitions. The definitions of key terms used in this Circular are contained in § 105 in the Attachment to this Circular.

6. Required Action. The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in the Attachment to this Circular. Federal agencies making awards to non-Federal entities, either directly or indirectly, shall adopt the language in the Circular in codified regulations as provided in Section 10 (below), unless different provisions are required by Federal statute or are approved by the Office of Management and Budget (OMB).

7. OMB Responsibilities. OMB will review Federal agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to ensure uniform, effective and efficient implementation.

8. Information Contact. Further information concerning Circular A-133 may be obtained by contacting the Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

9. Review Date. This Circular will have a policy review three years from the date of issuance.

10. Effective Dates. The standards set forth in § .400 of the Attachment to this Circular, which apply directly to Federal agencies, shall be effective July 1, 1996, and shall apply to audits of fiscal years beginning after June 30, 1996, except as otherwise specified in § .400(a).

The standards set forth in this Circular that Federal agencies shall apply to non-Federal entities shall be adopted by Federal agencies in codified regulations not later than 60 days after publication of this final revision in the *Federal Register*, so that they will apply to audits of fiscal years beginning after June 30, 1996, with the exception that § .305(b) of the Attachment applies to audits of fiscal years beginning after June 30, 1998. The requirements of Circular A-128, although the Circular is rescinded, and the 1990 version of Circular A-133 remain in effect for audits of fiscal years beginning on or before June 30, 1996.

The revisions published in the *Federal Register* June 27, 2003, are effective for fiscal years ending after December 31, 2003, and early implementation is not permitted with the exception of the definition of *oversight agency for audit* which is effective July 28, 2003.

Augustine T. Smythe
Acting Director

The revisions published in the *Federal Register* June 26, 2007, are effective for fiscal years ending on or after December 15, 2006.

Rob Portman
Director

Attachment

PART __ --AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT
ORGANIZATIONS

Subpart A--General

Sec.

- ___.100 Purpose.
- ___.105 Definitions.

Subpart B--Audits

- ___.200 Audit requirements.
- ___.205 Basis for determining Federal awards expended.
- ___.210 Subrecipient and vendor determinations.
- ___.215 Relation to other audit requirements.
- ___.220 Frequency of audits.
- ___.225 Sanctions.
- ___.230 Audit costs.
- ___.235 Program-specific audits.

Subpart C--Auditees

- ___.300 Auditee responsibilities.
- ___.305 Auditor selection.
- ___.310 Financial statements.
- ___.315 Audit findings follow-up.
- ___.320 Report submission.

Subpart D--Federal Agencies and Pass-Through Entities

- ___.400 Responsibilities.
- ___.405 Management decision.

Subpart E--Auditors

- ___.500 Scope of audit.
- ___.505 Audit reporting.
- ___.510 Audit findings.
- ___.515 Audit working papers.
- ___.520 Major program determination.
- ___.525 Criteria for Federal program risk.
- ___.530 Criteria for a low-risk auditee.

Appendix A to Part __ - Data Collection Form (Form SF-SAC) .

Appendix B to Part __ - Circular A-133 Compliance Supplement.

Subpart A--General
§_____.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

§_____.105 Definitions.

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

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

Audit finding means deficiencies which the auditor is required by §_____.510(a) to report in the schedule of findings and questioned costs.

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

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 the Office of Management and Budget (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 shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §_____.400(d)(1) and §_____.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in §_____.520, and, with the exception of R&D as described in §_____.200(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 §_____.400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

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.

Federal agency has the same meaning as the term agency in Section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does

not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 205(h) and § 205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should 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 in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of financial reporting; and
- (3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process--effected by

an entity's management and other personnel--designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

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

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

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;

(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws 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.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with §____.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with §____.215(c).

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 as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) any corporation, trust, association, cooperative, or other organization that:

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

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

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 direct funding to a recipient not assigned a cognizant agency for audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 400(b).

Effective July 28, 2003, the following is added to this definition:
A Federal agency with oversight for an auditee may reassign oversight to another Federal agency which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment."

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 200(c) and § 235.

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 provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including 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.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. 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. 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.

Single audit means an audit which includes both the entity's financial statements and the Federal awards as described in § 500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the

Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes 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 *et seq.*) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in S.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in S.210.

Subpart B--Audits

S.200 **Audit requirements.**

(a) Audit required. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in S.205.

(b) Single audit. Non-Federal entities that expend \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in a year in Federal awards shall have a single audit conducted in accordance with S.500 except when they elect 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 program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with S.235. 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 \$300,000 (\$500,000 for fiscal years ending after December 31, 2003). Non-Federal

entities that expend less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in S.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting 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.

S.205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through 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 consumption 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 shall 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 fiscal year; plus

(2) 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 institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years 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 awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements 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 which are federally restricted are considered awards expended in each year 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 an award to carry out a Federal program shall 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 stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal 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 institutions are not considered Federal awards expended.

S .210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

- (2) Provides similar goods or services to many different purchasers;
- (3) 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.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

(e) 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 contract with the for-profit subrecipient should 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 contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to vendors. However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

S .215 Relation to other audit requirements.

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in S .520 and, if not, the estimated incremental cost. The Federal agency shall 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 Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

S .220 **Frequency of audits.**

Except for the provisions for biennial audits provided in paragraphs **(a)** and **(b)** of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government 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 under audit.

(b) Any non-profit 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.

S .225 **Sanctions.**

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

- (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
- (b) Withholding or disallowing overhead costs;
- (c) Suspending Federal awards until the audit is conducted; or
- (d) Terminating the Federal award.

S .230 **Audit costs.**

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity which has Federal awards expended of less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) per year and is thereby exempted under S.200(d) from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with S.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowable; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

S.235 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 control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available. (1) When a program-specific audit guide is not available, the auditee and auditor shall 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 shall 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 S.315(b), and a corrective action plan consistent with the requirements of S.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements of S.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of S.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, 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 in accordance with the requirements of S.500(e).

(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) shall 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 conformity with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which shall 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 provisions of contracts or grant agreements 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 S.505(d)(1) and findings and questioned costs consistent with S.505(d)(3).

(c) Report submission for program-specific audits.
(1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with S.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity 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 shall 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

S.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of S.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to S.100 through S.215(b), S.220 through S.230, S.300 through S.305, S.315, S.320(f) through S.320(j), S.400 through S.405, S.510 through S.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

Subpart C--Auditees

S.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with S.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by S.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) 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 S.315(b) and S.315(c), respectively.

S.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by the Grants Management Common Rule (hereinafter referred to as the "A-102 Common Rule") published March 11, 1988 and amended April 19, 1995 [insert appropriate CFR citation], Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in the A-102 Common Rule, OMB Circular A-110, or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. 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 external quality control reviews, and price.

(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. To minimize any disruption in existing contracts for audit services, this paragraph applies to audits of fiscal years beginning after June 30, 1998.

(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.

S .310 Financial statements.

(a) Financial statements. The auditee shall 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 shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with S .500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual 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 assigned by the pass-through entity shall 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.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year end. While not required, it is preferable to present this information in the schedule.

S .315 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 shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under S .510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings 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)(4) 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 shall describe the planned corrective action as well as any partial corrective action taken.

(3) 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 shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall 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 Federal clearinghouse;

(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 shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall 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 shall include an explanation and specific reasons.

§ _____.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the data collection form and reporting package shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period.) Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form which states 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 form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

- (i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).
- (ii) Where applicable, a statement that significant deficiencies in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
- (iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee.
- (iv) Where applicable, a statement that significant deficiencies in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
- (v) The type of report the auditor issued on compliance for major

programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies which will receive a copy of the reporting package pursuant to § .320(d)(2) of OMB Circular A-133.

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § .530 of OMB Circular A-133.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § .520(b) of OMB Circular A-133.

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

- (A) Activities allowed or unallowed.
- (B) Allowable costs/cost principles.
- (C) Cash management.
- (D) Davis-Bacon Act.
- (E) Eligibility.
- (F) Equipment and real property management.
- (G) Matching, level of effort, earmarking.
- (H) Period of availability of Federal funds.
- (I) Procurement and suspension and debarment.
- (J) Program income.
- (K) Real property acquisition and relocation assistance.
- (L) Reporting.
- (M) Subrecipient monitoring.
- (N) Special tests and provisions.

(xiii) Auditee Name, Employer Identification Number(s), Name and Title of Certifying Official, Telephone Number, Signature, and Date.

(xiv) Auditor Name, Name and Title of Contact Person, Auditor Address, Auditor Telephone Number, Signature, and Date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § .400(a) and § .400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall 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 data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in §____.310(a) and §____.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in §____.315(b);

(3) Auditor's report(s) discussed in §____.505; and

(4) Corrective action plan discussed in §____.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB a single copy of the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) Instead of submitting the reporting package to a pass-through entity, when a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall 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 Federal clearinghouse

designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.

(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

Subpart D--Federal Agencies and Pass-Through Entities
§ 400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than \$25 million (\$50 million for fiscal years ending after December 31, 2003) a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment.

Following is effective for fiscal years ending on or before December 31, 2003: To provide for continuity of cognizance, the determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. For example, audit cognizance for periods ending in 1997 through 2000 will be determined based on Federal awards expended in 1995. (However, for States and local governments that expend more than \$25 million a year in Federal awards and have previously assigned cognizant agencies for audit, the requirements of this paragraph are not effective until fiscal years beginning after June 30, 2000.)

Following is effective for fiscal years ending after December 31, 2003: The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, the cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000).

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 which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

- (1) Provide technical audit advice and liaison to auditees and auditors.
- (2) Consider auditee requests for extensions to the report

submission due date required by § .320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor 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 shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(6) 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 audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § .220, consider auditee requests to qualify as a low-risk auditee under § .530(a).

(b) Oversight agency for audit responsibilities. An auditee which does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § .105. The oversight agency for audit:

(1) Shall 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) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received

in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.

(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

(2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

(3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

(4) Ensure that subrecipients expending \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

(5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

S .405 Management decision.

(a) General. The management decision shall 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.

(b) Federal agency. As provided in **S .400(a)(7)**, the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency.

As provided in §____.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in §____.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with §____.510(c).

Subpart E--Auditors

§____.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control. (1) In addition to the requirements of GAGAS, the auditor shall 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 for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over 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)(2)(i) of this section.

(3) 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)(2) of this section are not required for those compliance requirements. However, the auditor shall report a significant deficiency (including whether any such condition is a material weakness) in accordance with §____.510, 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 shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements 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 shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall 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 § .315(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 shall 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 § .320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

§ .505 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) shall 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 conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a

material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which shall include the following three components:

(1) A summary of the auditor's results which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that significant deficiencies in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance which is material to the financial statements of the auditee;

(iv) Where applicable, a statement that significant deficiencies in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings which the auditor is required to report under S .510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in S .520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under S .530.

(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 shall include audit findings as defined in S .510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should 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.

S .510 Audit findings.

(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify significant deficiencies which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs which are greater than \$10,000 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 shall also report known questioned costs when likely questioned costs are greater than \$10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs which are greater than \$10,000 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 which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which 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 \$10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known 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 make an additional reporting when the auditor confirms that the fraud was reported outside of 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 § 315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail 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 shall be

included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award 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 number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) 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 shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

S .515 **Audit working papers.**

(a) Retention of working papers. The auditor shall retain working papers 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, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, 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 working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

§ 520 Major program determination.

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1. (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:

(i) \$300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended equal or exceed \$300,000 but are less than or equal to \$100 million.

(ii) \$3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$100 million but are less than or equal to \$10 billion.

(iii) \$30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed \$10 billion.

(2) Federal programs not labeled Type A under paragraph (b) (1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2. (1) The auditor shall identify Type A programs which are low-risk. For a Type A program to be considered low-risk, it shall 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, it shall have had no audit findings under § 510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 510(a)(3) and § 510(a)(4), fraud under § 510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 525(c), § 525(d)(1), § 525(d)(2), and § 525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the

end of the fiscal year to be audited of OMB's approval.

(d) Step 3. (1) The auditor shall identify Type B programs which are high-risk using professional judgment and the criteria in § .525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known significant deficiencies in internal control or compliance problems as discussed in § .525(b)(1), § .525(b)(2), and § .525(c)(1), a single criteria in § .525 would seldom cause a Type B program to be considered high-risk.

(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 the larger of:

(i) \$100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to \$100 million in total Federal awards expended.

(ii) \$300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than \$100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B), 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.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § .530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working

papers 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 part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance 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 shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

(1) A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

(2) To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

S .525 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. The auditor shall use auditor judgment and 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 applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall 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.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate 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 indicate risk. For example, recent monitoring or other reviews performed by an oversight entity which disclosed no significant problems would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. OMB plans to 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 a high-risk for time and effort reporting, 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, laws, regulations, or the provisions of contracts or grant agreements 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 closeout 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.

S_____.530 Criteria for a low-risk auditee.

An auditee which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods) shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with **S_____.520:**

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

Appendix A to Part ____ - Data Collection Form (Form SF-SAC)
[insert SF-SAC after finalized]

Appendix B to Part ____ - Circular A-133 Compliance Supplement

Note: Provisional OMB Circular A-133 Compliance Supplement is available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503.

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Attachment “G”

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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 1, 2010 by and between Legal Aid Foundation of Los Angeles, a nonprofit California corporation, partnership, dba, whose business address is 1102 Crenshaw Boulevard, Los Angeles, CA 90019-0095 (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 has a Department of Health that provides a multitude of health care and related services; and

WHEREAS, in the course of providing health care and related services the City obtains protected health information; and

WHEREAS, Business Associate performs particular duties and/or provides particular services to the City; and

WHEREAS, the City wishes to disclose some information to Business Associate, some of which may contain protected health information; 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.

ATTACHMENT G

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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.** Business Associate shall protect, defend, indemnify and hold City, its officials, employees, and agents (collectively in this Section referred to as "City") harmless from and against any and all claims, demands, causes of action, losses, damages, and liabilities, whether or not reduced to judgment, which may be asserted against City arising from or attributable to or caused directly or indirectly by Business Associate, Business Associate's employees, or agents in the performance of the duties under this Agreement or any alleged negligent or intentional act,

omission or misrepresentation by Business Associate, Business Associate's employees or agents, which act, omission or misrepresentation is connected in any way with performance of the duties under this Agreement. If it is necessary for purposes of resisting, adjusting, compromising, settling, or defending any claim, demand, cause of action, loss, damage, or liability, or of enforcing this provision, for City to incur or to pay any expense or cost, including attorney's fees or court costs, Business Associate agrees to and shall reimburse City within a reasonable time. Business Associate shall give City notice of any claim, demand, cause of action, loss, damage or liability within ten (10) calendar days.

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.

Legal Aid Foundation of Los Angeles
(Name of Business Associate)

a nonprofit California
(corporation, partnership, individual)

By Alma Agust

Title: Executive Director

By _____

Title: _____

CITY OF LONG BEACH, a municipal corporation

Assistant City Manager

By J

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"City"

The foregoing Agreement is hereby approved as to form this 27th day of

September 2010

ROBERT E. SHANNON,
City Attorney or designee

By R.E.S.

Deputy

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Attachment “H”

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CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

CERTIFICATION REGARDING DEBARMENT

By signing and submitting this document, the recipient of federal assistance funds is providing the certification as set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the recipient of federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The recipient of Federal assistance funds shall provide immediate written notice to the person to which this agreement is entered, if at any time the recipient of Federal Assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstance.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
4. The recipient of Federal assistance funds agrees by submitting this document that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The recipient of Federal assistance funds further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from procurement or non-procurement programs.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this

CERTIFICATION REGARDING DEBARMENT
Page 2

clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under Paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which the transaction originated may pursue available remedies, including suspension and/or debarment.

The regulations implementing Executive Order 12549, Debarment and Suspension, 24 CFR Part 24 Section 24.510, Participants' Responsibilities require this certification.

1. The recipient of Federal assistance funds certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such participants shall attach an explanation to this document.

Agreement Number: _____ Contract Agency: Legal Aid Foundation of Los Angeles

Name and Title of Authorized Representative: Silvia Argueta, Executive Director

Silvia Argueta
Signature

9/14/2010
Date

Attachment “I”

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CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

CERTIFICATION REGARDING LOBBYING

Contractor(s) and lobbyist firm(s), as defined in the Los Angeles County Code Chapter 2.160 (ordinance 93-0031), retained by the Contractor, shall fully comply with the requirements as set forth in said County Code. The Contractor must also certify in writing that it is familiar with the Los Angeles County Code Chapter 2.160 and that all persons acting on behalf of the Contractor will comply with the County Code.

Failure on the part of the Contractor and/or Lobbyist to fully comply with the County's Lobbyist requirement shall constitute a material breach of the contract upon which the City of Long Beach may immediately terminate this contract and the Contractor shall be liable for civil action.

The Contractor is prohibited by the Department of Interior and Related Agencies Appropriations Act, known as the Byrd Amendments, and the Housing and Urban Development Code of Federal Regulations 24 part 87, from using federally appropriated funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.

The Contractor must certify in writing that they are familiar with the Federal Lobbyist Requirements and that all persons and/or subcontractors acting on behalf of the Contractor will comply with the Lobbyist Requirements.

Failure on the part of the Contractor or persons/subcontractors acting on behalf of the Contractor to fully comply with Federal Lobbyist Requirements shall be subject to civil penalties. The undersigned certifies, to the best of his/her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment or modification of said documents.
2. If any funds other than Federal appropriated 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

ATTACHMENT 1.....

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CERTIFICATION REGARDING LOBBYING

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3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Agreement Number: _____ Contract Agency: Legal Aid Foundation of Los Angeles

Name and Title of Authorized Representative: Silvia Argueta, Executive Director

Silvia Argueta
Signature

Date

9/16/2010

ATTACHMENT 1
PAGE 2 OF 2 PAGES